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JOINT COMMITTEE ON THE AUSTRALIAN CRIME
COMMISSION

Reference: Legislative arrangements to outlaw serious and organised crime groups

WEDNESDAY, 4 MARCH 2009

BRISBANE

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JOINT STATUTORY
COMMITTEE ON AUSTRALIAN CRIME COMMISSION
Wednesday, 4 March 2009

Members: Senator Hutchins (*Chair*), Senator Boyce (*Deputy Chair*), Senators Fielding, Parry and Polley and Mr Champion, Mr Gibbons, Mr Hayes, Ms Ley and Mr Wood

Members in attendance: Senators Hutchins and Parry and Mr Champion

Terms of reference for the inquiry:

To inquire into and report on:

The effectiveness of legislative efforts to disrupt and dismantle serious and organised crime groups and associations with these groups, with particular reference to:

- a. international legislative arrangements developed to outlaw serious and organised crime groups and association to those groups, and the effectiveness of these arrangements;
- b. the need in Australia to have legislation to outlaw specific groups known to undertake criminal activities, and membership of and association with those groups;
- c. Australian legislative arrangements developed to target consorting for criminal activity and to outlaw serious and organised crime groups, and membership of and association with those groups, and the effectiveness of these arrangements;
- d. the impact and consequences of legislative attempts to outlaw serious and organised crime groups, and membership of and association with these groups on:
 - i. society
 - ii. criminal groups and their networks
 - iii. law enforcement agencies; and
 - iv. the judicial/legal system
- e. an assessment of how legislation which outlaws criminal groups and membership of and association with these groups might affect the functions and performance of the ACC.

WITNESSES

BROADHURST, Professor Roderic, Private capacity 17
**SCHLOENHARDT, Dr Andreas, Associate Professor, TC Beirne School of Law, University of
Queensland 1**

Committee met at 8.57 am**SCHLOENHARDT, Dr Andreas, Associate Professor, TC Beirne School of Law, University of Queensland**

CHAIR (Senator Hutchins)—Welcome, Dr Schloenhardt. I declare open this public hearing of the Parliamentary Joint Committee on the Australian Crime Commission. This is the ninth hearing for the committee's inquiry into legislative arrangements to outlaw serious and organised crime groups. The terms of reference are on the committee's website. The committee has held public hearings in each of the states and territories over the past eight months. The committee's proceedings today will follow the program which has been circulated. I remind all witnesses that, in giving evidence to a parliamentary committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken; the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

I remind members of the committee that the Senate has resolved that government officials should not be asked to give opinions on matters of policy and should be given a reasonable opportunity to refer questions asked of an officer to a superior officer or to a minister, if that is appropriate. This resolution does not include factual questions asking for explanations of when or how policies were adopted. Dr Schloenhardt, do you have any comments to make on the capacity in which you appear?

Dr Schloenhardt—My appointment at the University of Queensland is currently shared with the University of British Columbia in Vancouver and the Monterey Institute of International Studies in Monterey California.

CHAIR—The committee has accepted your submission as submission No. 1. We thank you for providing us with a copy of your preliminary report on organised crime offences in the Asia-Pacific. Do you wish to make any changes to your submission before we proceed?

Dr Schloenhardt—No.

CHAIR—I now invite you to make a brief opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Dr Schloenhardt—As you would have seen from my submission, I am quite excited about this inquiry, since I am involved in a two-year study on the very topic of your investigation. The project that I am involved in is of around 24-months duration. It is funded jointly by the Federal Police, the Institute of Criminology in Canberra and the United Nations Office on Drugs and

Crime. The reason for setting up the project beyond my own, I guess, interest and expertise in organised crime is that the Federal Police were motivated in particular to find out about relevant provisions in Australia, following what were then only the first rumours about the legislation in South Australia, which later became law. The AFP, as a national body obviously, was interested in the flow-on effects into other states and at the national level.

The UNODC's interest in that is largely in relation to international law and the adoption of the Palermo Convention against Transnational Organised Crime in the Asia-Pacific region. The study that we are conducting goes well beyond Australia. It covers 23 jurisdictions in the region, from the US and Canada to the Pacific islands, Australia and South East Asia and up to Japan, China and Korea. I will give a very quick synopsis of the submission that I have made and the appendix that was made available a little later. When we review the legislation in the region, leaving aside countries that have not legislated on this issue at all, there seem to be four different models crystallising.

Perhaps the oldest of those models is the one that the United States implemented in 1970 with the so-called RICO or racketeer influenced and corrupt organisations model. That model is now being used at the federal level in the United States and by about two thirds of all state jurisdictions as well. It is a very cumbersome model to tackle organised crime and it focuses, obviously, strongly on corruption and commercial influence into legitimate enterprises by criminal elements, including criminal organisations.

The second model, which we find particularly in jurisdictions like Japan, China—as well as its special administrative regions—and Taiwan, is local organised crime laws that are tailored specifically to criminalise either Chinese triads or Japanese boryokudan and it identifies some of the elements in how this legislation goes about that. Some of these elements special insignia, symbols and traditions with which these organisations operate. As I stated in my submission, these laws, at least in part, are ill-suited to apply to broader categories of criminal organisations.

The last model, which does not have quite the same theoretical foundation and it is the one that we will probably find in most places around Australia and all common law countries, is that of conspiracy. That has been used against criminal organisations particularly in Australia. More particularly, in Victoria this model seems to have been reasonably unsuccessful particularly in going after more senior members of criminal organisations or associates that are more distant to the core of the activities.

Some common concerns that come out when looking at the different jurisdictions can be identified. One recurrent theme that can be found in pretty much every country that has these laws is concerns about creating guilt by association. Also, concerns about vagueness and overbreadth are quite common, particularly in those jurisdictions that have legislated more recently and tried to capture a broad range of different types of organised crime. As mentioned earlier, particularly in places like Japan and Hong Kong, the laws are seen by many as too narrow and too tightly tailored for a specific type of organised crime, leaving more modern forms of criminal organisation outside.

Another concern that was particularly expressed in my conversations with Australian agencies is the costs that are associated with administering some of the legislation, particularly if the

legislation captures lower ranking members of the organisation. These costs, particularly by agencies in Victoria and Queensland, are seen as quite prohibitive.

If I were to express any views about the best example that I have come across, I would say that it is hard to find some kind of No. 1 in all of those. New Zealand seems to have applied its laws very successfully. The objectives that New Zealand expressed when it first legislated in the late nineties to go after specific types of Pacific Islander groups, Maori groups and some biker gangs, seem to have been quite successful, particularly after the legislation was amended in, I think, 2002. That, of course, does not mean that organised crime no longer exists, but it certainly seems to have suppressed the imminent concerns that people had at the time.

In terms of a legislative model that would fit into our system, I think the Canadian model has been reasonably successful and also very sound from a human rights and constitutional perspective. It is quite interesting to see what kinds of cases have come before the courts, all of which have involved very senior members of criminal organisations. At this time, Canadian authorities have not gone after lower ranking members. Having said that, on Thursday last week, the Prime Minister introduced a new bill into the Canadian parliament in Ottawa to make further changes to the laws. This is a response to the current gangland killings that have taken place in Vancouver and that have cost about 40 lives over the last 18 months. The new amendments will introduce new offences, if certain types of criminal offences—in particular, homicide and firearm related crimes—are committed in association with a criminal organisation.

Perhaps in terms of crime suppression and number of convictions, the US RICO model seems to have been extremely successful in going after a great range of criminal organisations in the United States. The Italian Mafia obviously features more prominently in the cases over the last 20 years. As we all know, RICO has been applied to a great range of other cases that have nothing at all to do with organised crime. In Australia, we would also find that RICO does not sit very comfortably with our current criminal justice model.

If I am allowed to make one last point, I guess the question is: do we need any of these laws in Australia? I am not sure that I have a clear answer to that. It depends, of course, on what model the states, territories or the federal government sees as most suitable. Learning from overseas experience, particularly Canada, having offences that are aimed at these sorts of directors and financiers of criminal organisations, I think, would be quite welcome by most agencies around the country and also would withhold many of the challenges that we have seen elsewhere. I also think that this is where we have the biggest loophole at the moment. If we had an Al Capone or a Pablo Escobar in Australia, I do not think we would have anything to charge them with.

Secondly, a further option might be to think about having offences like the new ones in Canada: existing offences committed on behalf or in association with a criminal organisation, which essentially then work as a sentencing enhancer rather than creating a completely new crime. The sense I get—I have formed this as a personal opinion—is that having a wide-ranging ‘participation in a criminal organisation’ or ‘association with a criminal organisation’ offence is, firstly, prohibitively expensive and, secondly, not necessary. That completes my quick observations.

CHAIR—Thank you.

Senator PARRY—I am just digesting your last comment. Why do you say ‘cost prohibitive’? What is your basis for saying that? We know that law enforcement is costly regardless, but why do you think—

Dr Schloenhardt—I think a basic model that we find in a number of jurisdictions—I think it stands as part of the heart of the South Australian legislation and can also be found in New South Wales, New Zealand and elsewhere—is simply that being a member of a criminal organisation, associating with a criminal organisation or, as others call it, supporting a criminal organisation casts such an extremely wide net that we would have to criminalise the person that sells a member of a bikie gang a Snickers bar or a sandwich.

Senator PARRY—But that is only if you take it to its ultimate conclusion. It is like a lot of laws: if they are used to their ultimate measure—

Dr Schloenhardt—Right. The answers that I have received, particularly from Victoria and Queensland, which I think have been a little more outspoken about this than other jurisdictions—this is the attitude of our Attorney-General here and of a former police minister now in Victoria—are that, ‘We do not have the money to go after those low-ranking supportive criminal organisations and also they are not really our main concern. We would be going after the wrong people if we did that.’

Of course, the theoretical foundation for that is that we want to cut off every possible support, in any form or shape, to a criminal organisation. This model or this idea—it has been a little glossed over; I think it was discussed briefly when this legislation was proposed here in Queensland—goes back about 20 years to legislation that came out of California’s street terrorism act. That was the first one that legislated this way. This was in response to the gangland wars that we saw in Los Angeles in the early eighties. This is where Canada and New Zealand got the idea from. But this is really in response to youth gangs, graffiti spraying and violent street crime, not the sort of sophisticated crime enterprises that we are talking about.

Senator PARRY—I want to ask several questions, if the answer to this question is yes: does your research look at cross-border issues where one state will legislate more severely than other state; how detailed is your research on that; and is there any evidence emerging? I will give you two pieces of legislation: the South Australian legislation that you have referred to; and the legislation that you have not referred to, which is the Northern Territory ‘unexplained wealth’ provisions, that sits in a larger, broader bill that we took evidence about yesterday or the day before. Do you have any research that indicates whether that is pushing criminal activity across borders?

Dr Schloenhardt—Very limited. We are not looking at any sort of cross-border cooperation between governments or between criminal organisations. The only and very limited point that I have come across, which should be somewhere in the submission, is the sorts of concerns that were expressed particularly by the Northern Territory and Victoria after South Australian first legislated. Last week I returned from visiting Adelaide again, and it seems to me that some of those early concerns are confirmed. I have heard from New South Wales Police in Broken Hill that certain members who have shown up there used to be based in Adelaide; and Victoria has made similar observations in Mildura. It is a little hard with the Northern Territory to see that, just because of its remoteness.

Senator PARRY—Are you familiar with the Northern Territory legislation that we have referred to?

Dr Schloenhardt—Superficially, yes. Because we are not really covering proceeds of crime in any way in my research, I do not think I am expert enough to comment on that.

Senator PARRY—With all respect, it seems like a bit of a gap. You have mentioned going after the big people like the Al Capones, which I think was a good analogy. It is the Criminal Property Forfeiture Act in the Northern Territory, and we have had evidence that removing all the money, which is the end game for a lot of the top end, is really disrupting criminal activity. That seems to be very effective legislation. Do you have any personal comment, apart from your lack of research in that area?

Dr Schloenhardt—I think your comment and your observation are very correct. We learned this sort of approach—to go after the money and make sure that any crimes that are engaged in are at a cost at the end of the day—when criminal organisations first emerged in the 1970s and early 1980s. I say this more from my heart than from my head: I think our proceeds of crime legislation nationwide is relatively sound; a number of international organisations, like the FATF and so on, monitor such pieces of legislation closely. As a result, I do not have any concern about those pieces of legislation around the country; on the other hand, I have not given this the same depth of analysis as I have to specific criminal offences.

Senator PARRY—Could I ask that—and only if you are comfortable doing so—if you become familiar with that piece of legislation in the Northern Territory, you provide a further written submission to us? If you have the time and ability and the inclination to do so, it would be great.

Dr Schloenhardt—I can look into that. I will not make any promises, but I will give this a closer look; that is for sure.

Senator PARRY—Thank you. I think it is parallel to what you were saying about leaving the little fish alone and going for the big fish, and this is big fish legislation.

Dr Schloenhardt—Yes. The sort of parameters of this particular project, which obviously are determined by the donors that stand behind it, are focusing specifically on substantive criminal offences; and I am fully aware that this is somewhat artificially cutting out some other aspects. The other big issue that we leave unaddressed in all of that is cross-jurisdictional cooperation with extradition, mutual legal assistance and so on. We know of the problems within Australia. But then, of course, doing this within the region or internationally is a further challenge that I think is beyond anything we can really imagine at this point.

Senator PARRY—I will just move to organised crime in relation to bikie gangs. Have you done extensive research into them in Australia and, in particular, their structural or organisational links between states?

Dr Schloenhardt—Moderate. I would not call it extensive; I have not published on that. As part of this research, I had to become familiar with that. Also, as part of the earlier inquiries that your committee undertook on amphetamines, we did a fair bit of research, particularly into

connections in the drug markets between the bikie gangs. That is about the extent of my knowledge. I am no expert on the particular culture, insignia and symbols that are used and the sort of interturf war that occurs between them.

Senator PARRY—Do you have a view on policing management of biker gangs in relation to zero tolerance of minor traffic offences to assist in management of more serious and organised crime, or do you think there is no connection there?

Dr Schloenhardt—No. The particularly very strong measures that have been instituted in South Australia over the years—I think we need to take the anti-fortification laws into the equation as well, when looking at that—have had some effect. They have certainly changed the dynamics of the groups and some of their presence. Their visibility has probably reduced. Also, now that the new legislation is in place in South Australia in particular, even though it has not been applied to a great number of groups at this point, certainly changes and displacement are happening. What I do not know—I am not sure whether we will ever be able to measure it—is how much of that is simply pushed underground. That is known and has been seen in other jurisdictions. The next presenter here will talk about Chinese triads, as I understand it, where similar attempts in Chinese cultures to suppress very visible groups that use insignia and have a sort of family structure result in such groups sometimes being displaced but largely just being pushed underground.

What we have not seen, for example—I have found no evidence of it whatsoever—is a change in the magnitude of the drug market in Adelaide since the anti-fortification laws or the new legislation has come in. The prices for substances on the street have not changed a great deal, it is just as easy or as difficult as it was before to buy the most popular drugs and the suppliers are largely the same.

Senator PARRY—You are suggesting that it is now shifting its focus and just becoming more deeply covert.

Dr Schloenhardt—Yes, and I think that lesson has been learned in many other jurisdictions before.

Senator PARRY—Is that a worldwide phenomenon?

Dr Schloenhardt—Yes.

Senator PARRY—Is there much published about that—that this happens every time you introduce tougher restrictions on the more-public organised crime groups?

Dr Schloenhardt—In particular, Chinese and Japanese gangs in their culture are perhaps the most similar to biker gangs. The history and backgrounds, of course, are fundamentally different, but the way—

Senator PARRY—But they are founded on violence and intimidation; that is their main weaponry.

Dr Schloenhardt—These days yes, but they have a different background historically, of course, and they were very well embedded. Particularly in Japanese society, historically, they were well respected within the community. Chinese triads too exercised a social function for the larger society for a long time. This goes back centuries, and the bikie gangs can be traced back only perhaps 50 or 60 years. But still today they exercise a certain support system for their members—you have seen this also in many of the submissions that have been made to the committee. Of course, the use of insignia is, I think, one of those features. I guess, worldwide, they are the most visible groups as a result of that, and any effort to suppress them has just shifted them underground. In Japan, where the legislation is relatively soft, we have seen an enormous concentration of wealth and power within a very small number of groups. That certainly was not the desired effect of the legislation, but it makes the remaining cartels a lot more powerful than they used to be. That is why Japan has not taken any further steps to suppress them, because they are worried that they will only become more influential, more powerful and more clandestine.

Senator PARRY—That is interesting evidence; thank you. I will leave it there for the moment.

CHAIR—I will carry on from Senator Parry's line of questioning. Middle-level police officers have spoken to us, on and off *Hansard*, about how they believe anti-biker legislation is important because, if they are able to remove them from the roads and make them much less visible, the public will feel safer. If I recall correctly, you said earlier that a number of senior officers you have spoken to—as have we—do not necessarily share that view but question the need for resources to go there rather than anywhere else. Why do you think honest, respectable middle-level officers are advocating this sort of approach, whereas the senior officers, particularly as we have spoken to them, have an entirely different view? I can understand why that may be so, but here we have men and women effectively on the beat saying that this is what they think they need in order to curtail this public intimidation.

Dr Schloenhardt—Yes. There are two points to that. I cannot explain other people's points of view on that, but one thing—this features very prominently in public policy—is: are we going to reduce the visibility of those groups? Obviously, in places like Adelaide, that has been very high. By going after them in that way, we remove them a little out of the public spectrum, we do not see them as much and, of course, the effect, as you say quite rightly, is that the public feels, 'Okay, if we don't see them any more; it's safer and it's under control.'

The other aspect, which perhaps is something that I feel more passionate about, is to genuinely go to the heart of the criminal activities that these groups engage in—it does not matter to me whether they wear a jacket or what is printed on it—and to make sure that they do not monopolise the local drug trade and, as such, also supply vast amounts of contraband and other services. Bikie gangs are probably the most visible form of organised crime. But I am concerned that, in the discussion among police and the legislators that have acted on this, the debate has been preoccupied by biker gangs. I think we see around the country enough examples of other groups with less visibility that I think pose a similar and potentially much greater danger. For example, patterns of Colombian organised crime are re-emerging on the Gold Coast and we are seeing a resurgence of cocaine around Australia, which has almost nothing to do with biker gangs but is about supplying a very dangerous commodity. It is at an incredibly low price just to

get people interested and, of course, the groups behind that have no visibility whatsoever. But I think we should go after them just as much as we go after those that—

CHAIR—You have identified Colombian groups on the Gold Coast; would you be able to identify for us other groups that equally are less visible?

Dr Schloenhardt—I think many are Middle Eastern groups, particularly in Western Sydney, and similar reports have come out of Western Australian and Queensland. Some of them may have a cultural dimension to them, but the criminal elements are not displayed very obviously. There might be some remaining elements of Italian organised crime, particularly in Melbourne. I think the Russian organised crime that had some influence on the Gold Coast, in particular in the late eighties and early nineties, remains, but I think it is less visible than ever. Maybe the numbers have reduced too, but I think some very senior people are still residing there. In addition, there are a great number of people where we cannot really identify a common bond other than that they are extremely smart, sophisticated and quite influential. If we try to disentangle the gangland killings of Melbourne some years ago, yes, some of them shared a similar history but they were just networks of very sophisticated individuals. Quite arguably, it is hard to identify them as a group, but they still operate in some sort of conjunction to facilitate the trade.

CHAIR—But, essentially, aren't bikies the supply chain for the distribution of drugs in the end? We have never had evidence of Colombians selling cocaine on the Gold Coast in competition with Russian mafia or other people who might be selling it. In fact, we have had evidence that in Western Sydney the Lebanese gangs now have full bikie chapters.

Dr Schloenhardt—We are probably looking at a different level of seniority, when we talk about these groups. Some of my Canadian colleagues have referred to the bikies as the 'slow and the stupid' because they make themselves so very visible. The legislation that was tailored in Canada to go after them specifically, for example, just went after those who were slow and stupid enough to fit into this set of criteria that the legislation spelled out. I have mentioned something else also—and I do not know of how much concern this is to you, but I understand from Jacqui that you will be travelling to Canada later this year.

CHAIR—We would be interested in your comments on the Canadian circumstance.

Dr Schloenhardt—Yes. Obviously at the moment I spend a lot of my time in Vancouver, and the current string of gangland killings there has left the police and, up until now, the legislators completely puzzled. Most of these shootings have occurred in prime locations around town—down town in very wealthy suburbs and a few just around the corner from where I live, which is near the university and the residence of our consul-general. All of the victims, leaving some innocent bystanders aside, were not known members of criminal organisations—some had criminal records and some had a Chinese background, but the Chinese population in Vancouver is very high anyway—and they really seemed to oversee syndicates that, in the Vancouver case particularly, were involved in the importation of precursors and the exportation of methamphetamines and ecstasy, much of which we obviously now see arriving here in Australia. Vancouver is now one of the main embarkation points for ecstasy in particular being detected in Sydney and Brisbane.

Obviously, we see there a criminal environment in which enormous amounts of money can be made and sophisticated individuals who obviously have people working for and with them; but at this point the RCMP is at a complete loss to identify any structure between them. The argument that the RCMP is presenting to the government is to say, 'What we have done with the laws that we've had for 10 years is "to go again after the slow and the stupid", but we haven't got the right mechanisms to go after these more sophisticated criminal enterprises,' which in their view pose a much greater danger.

CHAIR—A lot of the evidence that we have taken and the discussion we have had have been on motorcycle gangs. Have we veered off in the wrong direction a bit?

Dr Schloenhardt—Clearly not, because this features so prominently in the public debate. Also, some legislators act on that and they have acted very swiftly—and not just in South Australia. But I think we have to be clear: do we want legislation just to go after outlaw motorcycle gangs, or do we want a criminal offence and perhaps other legislative measures that apply to criminal organisations more broadly?

I think there is a real danger that we will make the same mistakes that places like Hong Kong have made in tailoring the legislation for a particular phenomenon at a particular time. That may expire a few years down the track; maybe in 10 years time bikie gangs will not be that prominent any more and perhaps we can just put a sunset clause on the legislation. But, if we want to be serious about fighting organised crime, I think we should look more broadly at different types of organisations. The danger then is being too broad in all of that and capturing every bowling club. We do not want that either. I am not saying that we have an easy task at hand here.

Senator PARRY—Is there something connected with bowling clubs that we do not know about?

Dr Schloenhardt—Some of those concerns go back to the discussions we had eight years ago about terrorism laws, and I do not think we want to go down that path again. But I think the challenge here is finding a nuanced approach that is broad enough to capture different models of organised crime but narrow enough to get the right defendants at the end of the day. That is why I said earlier that I think the existing Canadian law, at least insofar as prosecutions are concerned, has been surprisingly effective. When it was introduced, everyone thought, 'Okay, every member, every loose associate, is now going to the courts.' In the early days there were a lot of mass trials that ended up in absolutely nothing, but the high-profile cases were really very senior members of very dangerous and very influential bikie gangs off some Italian criminal enterprises and so on. This is not the end of organised crime in Canada, but we can probably point to at least 10 nationally operating criminal syndicates that have been dismantled as a result of this legislation. I think that is a success and it means that some people who used to be immune to prosecution are now behind bars.

CHAIR—Would you say that the Canadian legislation is the one to look at as being the most effective, as you have given in your paper?

Dr Schloenhardt—The Canadian legislation has three offences. The first is directing and organising for a criminal organisation. The second is committing criminal offences on behalf of an organisation. The third is a participation offence. The last one is the broadest one, which

surprisingly has never been used in its five years of existence. That I think is also the dangerous one, and that is perhaps why prosecutors have shied away from it. It is the other two that are quite helpful: the offence of directing and the offence of committing on behalf of.

With the directing offence, it depends a little on how you define ‘criminal organisation’, but there seems to be a common pattern emerging in all jurisdictions. Where we have sound evidence that someone is masterminding criminal enterprises and where we may have witnesses who will testify about the role of that person and where they got their instruction from, I think nobody has any doubt that these people should be criminalised, even if they do not get involved physically in the execution of any crime.

I think the second offence of committing a crime on behalf of an organisation has somewhat of a deterrent effect. You do not really create a new criminal offence because a person may just be selling drugs; but the person does this on behalf of a criminal organisation. It operates a bit as a sentencing enhancer in that sense. So you answer all the sceptics who think you are widening the net of criminal liability, because you are not, but you are also taking into account that, because a person does this as part of a syndicate, that creates quite a danger and warrants higher punishment. If you apply this thoroughly and consistently, you will take individuals out of the groups and perhaps you will be able to dismantle some of those organisations. It is that last offence, the participation offence, that most of the submissions to this committee have been concerned with, as it is really casting a net that is extremely wide and the parameters are not clearly articulated.

CHAIR—That is where we get to the nub of the participation issue and we have often asked questions about it. We go and get, say, these numbnuts in the bikie gangs—and I imagine, from what you say, even in Canada they have numbnuts. But is it the major businessman who makes significant donations to charity, who owns a big nightclub, who has no criminal record at all and who fronts up to church on Sundays? How do we get to those people? Every time we have asked this of police services, either on or off the record or in camera, they have said that they can identify a handful of leading businessmen in their cities that they know, essentially, are involved in the distribution of drugs. What legislative instrument is there that can be used to get to those people?

Dr Schloenhardt—Some jurisdictions have tried to have offences such as ‘knowingly allowing premises to be used by criminal organisations’ or ‘financing criminal organisations’. You could also think of offences such as ‘living off the earnings of criminal enterprises’, which I think is something that has not quite been tested yet.

CHAIR—We have that legislation in the Northern Territory.

Dr Schloenhardt—Yes. That perhaps would be a way then to go after those who neither plan nor execute but who financially benefit from that. This is perhaps best addressed through proceeds of crime legislation. That may not be unique to criminal organisations but may apply to many other forms of commercial crime also—and I think we are perhaps shifting into a different area there.

If you feel that directing a criminal organisation or committing crimes on behalf of one is not catching enough people, it might be worthwhile looking more closely at some of the more

specific offences. We find some of those in Hong Kong, which has a long list of those different types of criminal activities. These are tailored very much for the Chinese settings—allowing premises to be used and financing. Perhaps you can think of other types of conduct that very specifically contribute to these organisations—not just part of the page but something more than that, something more detailed, where we can perhaps identify more clearly what the criminal element is in that. Does what I am saying make any sense?

CHAIR—Yes.

Mr CHAMPION—You have referred to the South Australian act and said that reducing visibility, for instance, does not necessarily change the drug market. We have had evidence that extortion is a very large part of these groups' revenue streams, so do you think a reduction in visibility and prominence might have an effect on extortion offences or rates of extortion?

Dr Schloenhardt—I do not know what the level of those offences is in places like South Australia. One of the other concerns that Adelaide in particular had—I lived there for most of my life—was the other industries in which organised crime and, in particular, bkie gangs exercised influence; the security industry was one of them. I remember being in a nightclub when I was in my 20s and suddenly a piece of furniture flew through the window because that nightclub was controlled by a different gang.

CHAIR—You were doing research, were you?

Dr Schloenhardt—Of course I was. This is not unique to Adelaide, because the security industry has been so heavily influenced by criminal groups. Quite frankly, I am at a bit of a loss as to how to go about that, because much of that is reasonably clandestine already. They do not have long beards and a Harley Davidson when they check your drivers licence as you walk in, so I do not know that you can push them any further underground. This perhaps is addressed by some sort of crowd control licences or other sort of regulation of the security industry. I think there is a fair degree of extortion in that, as it is. I do not know that the Serious and Organised Crime (Control) Act really addresses this specific issue. Does that answer your question?

Mr CHAMPION—In a way. You seem to be saying that drugs are fuelling most of this, or that is where the very high profits are. What role does the UN Office on Drugs and Crime play in combating that?

Dr Schloenhardt—Very, very little, given their very limited finances. The UNODC—hence my link to them and their involvement in this project—is obviously an advocate around the region for the Palermo convention, which has the participation offence in it. The uptake, as is always the case by Asian and Pacific countries, is very slow and there is also a fair degree of opposition to it. They do not really have any money or staff to do any more against organised crime. Obviously they have extensive anti-drug campaigns in South-East Asia, many of which are funded through AusAID. They do not do any work here, simply because we are a developed nation and we do not need their support.

One of the other interesting pieces of work that they are doing—they have kind of outsourced this a little to the New Zealand government—is the promotion of organised crime laws in the Pacific islands. As far as I understand it, NZAID is paying the Pacific Islands Forum to have

uniform legislation across the Pacific. Achieving such uniformity is extremely aspirational, but there are people in Suva drafting model legislation tailored to the Pacific islands; places like Vanuatu and the Marshall Islands have adopted that. They are working with other A-Gs' departments to have that.

This is, I think, important from an Australian perspective because the AFP has created transnational crime centres in the Pacific islands. Obviously our foreign policy is very interested in security in the Pacific islands. We know that many drugs come through there. There is the potential for firearms to come through there. There have always been allegations about trafficking through the Pacific islands. So having a more comprehensive and more harmonised approach also in legislation in the region, I think, is in our best interest. Clearly, the UN has a mandate to assist small island states and developing countries in getting there and it is creating incentives to come on board when it comes to international cooperation.

Mr CHAMPION—You are talking about Colombian and Russian groups; there is an international problem. There is a story in the *Australian* today on how Mexico is at the crossroads of almost becoming a narcostate; the drug cartels have forces that are equivalent to the army that is there. Given that, what can we do to insulate ourselves from those international aspects? It seems to me that they are driving a lot of the trade and a lot of the gangs.

CHAIR—And how do we compare with the rest of the world in terms of organised crime?

Dr Schloenhardt—That depends a lot on who you ask. Even in Australia, you get very different answers as to what are the actual levels of organised crime around Australia. As far as visible violent offences are concerned, I think we are featuring quite well because we do not see a great deal of them. Even turf wars between gangs are very limited. When bikie gangs throw chairs at each other at a boxing ring on the Gold Coast, that is only in one part of the country and it only happens every blue moon. So we are a long way from the sorts of Mexican disasters that have been unfolding over the last 12 months.

On the other hand, we know that we have a very lucrative amphetamine market in Australia, and your committee explored that two or three years ago. The UN keeps singling us out as being, per capita, probably one of the biggest markets in the world; there is money there to spend on drugs in Australia. Other commodities may feature less prominently, particularly firearms; we no longer seem to have a great problem with them. The sex trade is probably a big unknown here. Migrant smuggling seems to come and go; every once and while lots of money seems to be made overseas rather than in Australia. We are certainly not insular.

If you are asking me—but maybe this is not your question—where our biggest vulnerability is, I think it is not the lack of a nationwide anti-organised crime offence but that we lose a lot by having great diversity and inconsistency between the states and territories and there being a lack of a clearly articulated national approach to that. The fact that the AFP does not really have a organised crime squad I find a little disconcerting; I understand that they may have recently set one up or they are about to do so. But our law enforcement agencies are extremely diverse. Of course, the federal government thinks that this whole-of-government approach is taking everyone on board, but the sheer diversity of players I think creates a problem rather than an advantage in all of that.

Senator PARRY—I just want to go back to the three elements of the Canadian legislation: the directing, committing and participating. Correct me if I am wrong, as I do not know a lot about the Canadian legislation, but I would imagine it would have been like other jurisdictions around the world and in Australia, where you have an offence for instigating a crime anyway. I would imagine that ‘directing’ is either replacing or enhancing instigation.

Dr Schloenhardt—No. The best you can get outside of those laws would be a conspiracy offence which, in the absence of any physical overt acts, they have been unable to prove. It is the same experience as—

Senator PARRY—So the burden of proof is changing. The new legislation is obviously allowing a lower burden of proof; otherwise, there would be no advantage in doing this.

Dr Schloenhardt—I would not necessarily say that it is lower or, for that matter, higher. The legislation is tailored for a different type of evidence. It largely depends on the elements of what is a criminal organisation and how you prove that.

Senator PARRY—Are criminal organisations clearly defined by—

Dr Schloenhardt—Yes: three or more members with some degree of structure and ‘for the purpose of committing’. I think the Canadian definition is limited to organisations working for material or financial benefit.

Senator PARRY—But you still have to prove that there is an intent to commit, I gather, or have the direct evidence thereof.

Dr Schloenhardt—Yes.

Senator PARRY—Then how do you prove the direction? What is the burden of proof for ‘direction’?

Dr Schloenhardt—For the most part, by having a witness who is willing to testify—for example, a former member. You cannot really do that without having very comprehensive witness protection programs and also admissibility of certain statements in court, such as through video link, pretaped or however you can do it. With any organised crime laws, witness protection is a very important element. Again we have a degree of diversity around Australia with that, and that is perhaps something else that needs to be enhanced. I think it is also about keeping up with technology, new ideas and what the courts are happy to accept in these circumstances.

Senator PARRY—I do not see any difference with ‘committing’ an offence. If you commit an offence on behalf of an organisation, you are still committing an offence. If you commit the offence, you commit the offence. So why is there ‘committing on behalf of’? Is that just an increased element for penalty purposes?

Dr Schloenhardt—It is really just a sentencing enhancer to put them behind bars for longer.

Senator PARRY—That explains that; that is good—and then there is participating. You have mentioned that the AFP does not have an organised crime unit. The relationship with the Australian Crime Commission probably fills that gap. Do you have any comment on that?

Dr Schloenhardt—I do not know that I am qualified to comment on these organisational matters; no, I do not think I can.

Senator PARRY—But the charter of the ACC is ostensibly to look at organised crime in Australia; that is one of the key planks of what the ACC does.

Dr Schloenhardt—Right. The ACC Act has a definition of organised crime in it, which it inherited from the NCA. I think others have said before me that that definition has a degree of inflexibility, given the list of offences that are identified in there. One problem is that that brings a degree of slowness with it, if and when new forms of crime arise. A good example is when, in early 1999, we had the boat arrivals in Far North Queensland and later in New South Wales with Chinese illegal immigrants on them; it was what we now call people-smuggling. That at the time was not on the list of ACC offences, and that would have been the best organisation to really work on that.

Senator PARRY—So, in essence, you are saying that the ACC legislation, whilst it is effective in certain measures, is probably not as broad as an organised crime unit within the AFP would be.

Dr Schloenhardt—Yes. We do not just stick to a list of common characteristics of organised crime. It gives you great safety because you know what you are in for. You have clearly set parameters that ‘these are criminal offences’, if and even when they arise we become active. Either we do it as we did with the ACC and we clearly articulate a limited number of offences, or we do what has been done in the United States and has been copied by the Philippines. You put 250 offences in there so that, at the end of day, the organisation becomes responsible for pretty much anything.

This was discussed at the UN level as well when they wrote the Palermo convention: ‘Should we just have a catalogue of offences to which organised crime applies and say that drug trafficking and sex trafficking are organised crimes, or do we try to inject a bit of theory into that and have a definition of, in this case, “organised criminal group”?’ That brings certain challenges with it too. But I think, particularly with law enforcement, you want a bit more flexibility when it comes to prosecution.

Senator PARRY—So that is your argument then. Your argument for the AFP unit is simply that it could just be so broad and sweeping and just use its normal powers.

Dr Schloenhardt—Yes. Since they have a mandate to look at a very wide range of offences, I think they are in the best position, if and when new forms of organised crime arise, to respond to them and perhaps then refer them to the ACC or, should the ACC be unable to act, do it themselves or hand in hand with state police forces.

CHAIR—In your view, are Australia’s current laws sufficient to meet our obligations under the Palermo convention?

Dr Schloenhardt—Strictly speaking, yes, because the Palermo convention offers different models and our current conspiracy laws would comply with it. So we are meeting what we have signed up to internationally.

CHAIR—Do you think they are sufficient to combat serious and organised crime?

Dr Schloenhardt—No, they are not.

CHAIR—Why not?

Dr Schloenhardt—I think the conspiracy laws are too narrow. There is some variation between the states, but the bottom line is that most of them require some sort of physical, overt act either as evidence or even as an element of the criminal offence. Also, the fact that in most jurisdictions, such as Queensland, the Attorney-General needs to sign off before you can actually use conspiracy charges seems to limit their use very significantly. Cases of conspiracy are few and far between, really.

The literature criticising conspiracy laws as inadequate against organised crime is very, very extensive and has been driving that reform in the United States from 40 years ago; also, in countries with similar legal systems like ours and Canada, it was behind that reform in the late nineties. The UK has produced extensive debates about that too. Even though it is saying that the conspiracy laws are inadequate, the UK has not quite found the best possible alternative to them. The creation of SOCCA, I think, is a first step, but some sort of substantive criminal law component is yet to be implemented in that. I would mention the Home Office; I understand that this is a work in progress and not a government priority at the moment, but we may see some kind of participation offence in there as well. Most European countries have this, so I would imagine that there even might be some pressure on the UK to act.

I will just make one footnote to that. The idea behind the Palermo convention was that having uniform laws around the world would also then facilitate extradition and the transfer of evidence and proceedings and so on between countries. It is probably too early to say whether that is really happening. We are currently proposing to do a follow-up study, to start next year, on this particular aspect looking at mutual legal assistance and extradition insofar as organised crime is concerned. The Attorney-General's Department did an extensive review of our mutual legal assistance treaties, the domestic and Commonwealth act and the extradition arrangements two or three years ago, identifying some sort of weaknesses within our domestic system. Our next step will be to look at how this works when we pick up the phone and call other countries or get calls from them insofar as organised crime is concerned.

CHAIR—I know that there is a lot of commentary in your submission, but I cannot recall whether you specifically say, 'The Commonwealth government should do this.' Is there something that you would say we should recommend in terms of legislative arrangements when our inquiry makes its recommendations? Are there five or six things that we should do?

Dr Schloenhardt—That is right. No, I have not put this in writing, simply because our work is still ongoing. The project that I am working on will be completed by the middle of the year and will be presented initially to the UN in September in Bangkok. I am more than happy to make my final report available to the committee. I do not know whether you will still be working

on this by August or September; I think that would be the question. At this point I am probably not prepared to put anything in writing before then, because I think, from my point of view, it would be premature and I think I would have a better and more elaborate explanation of any recommendation in a few months time.

CHAIR—Are there any further questions?

Senator PARRY—No. You have given very good evidence; thank you.

Dr Schloenhardt—Thank you very much.

[10.04 am]

BROADHURST, Professor Roderic, Private capacity

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Prof. Broadhurst—I appear here also representing the Centre of Excellence in Policing and Security. It is a new body, which I will talk a little about in a minute. A node of it is based at the Australian National University, where I have recently taken up an appointment as a professor.

CHAIR—The committee would like to thank you for providing us with a draft copy of your article on triad societies in Hong Kong. The committee notes your expertise in organised crime in the Asia-Pacific and is pleased that you are available to contribute that expertise to this inquiry. I now invite you to make a brief opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Prof. Broadhurst—Thank you. I want to touch on four things very lightly, which I hope we will have time to talk about a little more. One is the Centre of Excellence in Policing and Security, which is a centre for excellence that was set up last year and is funded by the Australian Research Council. It is principally based at Griffith University, which is the university I am at currently. One of its tasks is to improve the quantity and quality of research done on matters affecting police. One major component of that research program comes under the heading of ‘illicit organisations’. This is our research program that looks at issues related to organised crime or illicit organisations generally. The project is really designed to develop and test a general multilevel theory of illicit organisations or organised crime.

I do not want to be boring, because that is a trait that goes with academia a bit, but it is very, very important from an academic point of view. There is the famous statement by Kant, the 19th century philosopher, about there being nothing more practical than a good theory. Indeed that is exactly what has been missing before in the field of organised crime—and I think I have made this point to this committee previously. We want to come up with some workable theories, which we then hope to use as a means for at least regulating, controlling, curbing or whatever it is that we need to do to reduce the harm of organised crime, particularly as we experience it here.

One of the things that we will be doing is comparing youth gangs and looking at traditional organised crime groups and terrorist organisations. We will be looking at two different levels of analysis. One is the organisational level. It is really important to get a handle on organisational changes and how these illicit organisations are run, organised, administered—or however you want to call it.

At the individual level we want to look at how people are recruited and how they intensify their commitment to the organisation, whether it is a criminal organisation or a terrorist organisation. We know that there are profound differences. We are really concerned about looking much more closely at what I would call the traditional kinds of criminal behaviour elements of organised crime; then we want to look at them across jurisdictions. We want to look

at things like the impact of leadership change and how people disengage. Of course, like others, we are interested particularly in any interaction between terrorist organisations and criminal organisations.

We have a great group of people involved in this project. Involved in that group, apart from me, is Professor Peter Grabosky, who is well known in this area, particularly in crime generally; Dr Sandy Gordon—or Professor Sandy Gordon as he is now—who is a former head of AFP Intel; John MacFarlane; and Julie Ayling. It is quite a well-informed group. In a sense, we will be looking at the literature, building some theory and looking at whether we can really, in a sense, test some of the propositions we have about organised crime.

Just to give you an example, there is another project that we are asking the ARC to fund. Actually, on that note, perhaps I am allowed a very brief commercial. One way the fiscal stimulus package could get a faster run in the community is to look very carefully at loosening up some of the constraints on the Australian Research Council so that we have more money flowing into our R&D area and, of course, into some of these priorities areas that your very own committee have identified in previous meetings. In other words, we have a lot to do in terms of understanding what is going on with modern forms of organised crime. It has become immensely more complicated. The morphology, if you like, the shape of things is changing very rapidly.

One area that Dr Raymond Choo, Dr Chantler and I have been looking at is the problem hitting us in cyberspace, the whole question of cyber security, particularly what appear to us as very new and novel forms of criminal networks appearing in that format, some of which may have connections with traditional mafia-like groups. But one of our hypotheses is that these are new, unique forms. That is not to say that traditional organised crime is not involved; they are, but they tend to come into that illicit market in cyberspace or on the internet through the hire of delinquent professionals and so on. Certainly that is a priority area. We would agree, for example, with the Americans and so on that this is probably the No. 1 threat or one of the most serious threats to national security generally and of utmost importance is our defence of cyberspace and what we are doing about that problem, not just as a nation or as individuals or departments but in a regional international context. Of course, cybercrime, like a lot of the organised crime that we are concerned about, has a transnational dimension; it is so obvious in cyber crime. We very, very seldom get all the elements of the offence taking place in a single jurisdiction; it is usually across several jurisdictions. Indeed, it is pretty obvious that some of the better organised criminal networks use sovereignty or rather the lack of cooperation between sovereign states as a mechanism—and you have heard this before and I should not really rave on. So that is that issue.

I also want to touch briefly on the role of the United Nations Office on Drugs and Crime, particularly their focus on global crime trends—it is a very, very important and neglected subject—and their focus particularly on transnational crime, organised crime and corruption. These are the sorts of very new and very focused areas at the global level where we do need improved data and improved knowledge. I have to report, rather sadly, that our commitment to the UNODC and that process could be stronger. We probably need to be more active in trying to stimulate and promote addressing—or help other countries in their capability to address—these very, very fundamental evidentiary data collection problems, particularly in South-East Asia and Africa.

I make that statement because I know that the federal government is very interested in boosting its stock in the United Nations for various reasons. I would strongly urge that we give that some sort of priority. It is very important that we do have a global fix, a regional fix, and that we are involved in that process in an orderly way. Certainly, at the very least, the statistical collections of the UN, which are notoriously—I have to think of the right word here; I will withdraw the word ‘notoriously’—tend to be not as complete or comprehensive as we would like them to be. That is just another point.

I would like to talk about capacity building in our region very briefly, because it is very important for us to have an outward- and forward-looking policy. Sure, we are very worried about impact on Australia, but a lot of that impact is coming from our immediate region, the Asian region, and we need to have a capacity building component, which I am sure the AFP and others have talked to about. I would like to elaborate on that, if I have the chance.

Finally, we might have a bit of an opportunity to touch on what is happening in Asian organised crime, particularly the status of triads. You may have questions to field on that. With respect to Asian organised crime, we ran an important seminar a couple of years back—which we should do again—in Singapore, looking at what is happening in that region.

My feeling is that the situation is quite serious in some parts of China. The Chinese government, for example, is no different from the Australian government; it does not like to share revenue with anybody, particularly on organised crime. Organised crime has had a big impact on revenue particularly in southern China, and there are also some problems in northern China as well—but there are important cultural differences. From accounts that have been given, there is strong evidence that some form of organised crime has penetrated into almost every county within the province of Jiangsu, which is a big province in southern China of 70-odd million people. Counties can vary in size, but they can be of up to two, three, four or five million people, so they are large municipal or administrative identities. In that one province alone, pretty well in every county there had been some degree of penetration by organised crime. Also, there has been a very largely ineffective, I think, attempt to attack that problem by the Chinese authorities. They have had some successes of course but, generally speaking, they have had to look at what they call the ‘umbrella problem’. In other words, a lot of these groups are protected. The ‘umbrella’ is the sort of symbolism they use to refer to people both within the party and within government, where of course there is a strong overlap. So there are very important issues of corruption there.

My general feeling is that the problem of organised crime has not run away from us yet and we are going to be watching this situation very closely because we know that the GFC, the global financial crisis, is having an awful impact—a very rapid, very sudden impact—not only in China but in South East Asia generally. I have returned recently from Cambodia where, in the last quarter, we have been doing some work there, including looking at some of the issues of elite and organised crime. We are very, very worried about the ‘resilience’ of some aspects of the governance of crime in that jurisdiction. It is not uncommon—although I must admit that it is not as common as it used to be—to walk downtown in Phnom Penh or somewhere like that in South-East Asia and recognise personalities from so-called organised crime groups freebooting it, for want of a better word, in those jurisdictions. That is it. I am sorry that has taken a bit longer than I intended.

CHAIR—No, that is fine. I think you suggest that there is no common definition. More often than not in our inquiry, people have pointed to motorcycle gangs, saying that they are no longer dominated by Anglo-Saxons, there are no longer even a lot of patched members and there are a lot of associates. What are your comments on that? I know that you have mentioned youth gangs and all the rest of it; is there a common strand going through the groups that you have mentioned whereby they are connected to some sort of figure or board, or is it as disorganised as we have heard from other people?

Prof. Broadhurst—I think the question that you ask is terribly important. The fact that there is not a ready answer is one of the reasons why CEPS, the Centre of Excellence in Policing and Security, is focused on illicit organisations. I can offer you some sort of explanation. The common definition of ‘organised crime’ that might be used around the world would be the one that we derive from the Convention against Transnational Organised Crime, which is a pretty basic denominator sort of definition: two or three more people, more than once—you know the drill. One of the problems with that is that it captures groups that sometimes we would not necessarily think of as organised crime in the traditional mafia sense.

The question you are really asking is: what is the morphology or organisational structure? Is it really disorganised? I think there is a problem with the terminology ‘organised’ and ‘disorganised’; I really do. If you look at the morphology or hierarchical structures of commercial businesses at the moment, they are often very flat. They are more often confederate based, if you like. For example, with triads, as we traditionally understand them to be, there are all kinds of caveats or qualifiers, because triads do not necessarily equal organised crime and organised crime does not equal triads; the overlap is not complete. Some triads are not involved in things that we would recognise as traditional organised crime activities, and some are. Some groups that are not triad identified or badged in any sense operate quite effectively in Hong Kong and South East Asia, although they might sometimes hire triads, et cetera. Anyway, I am diverting from this important question about hierarchical leadership.

Traditionally, triads operate very much, because of their historical backgrounds, as confederacies. Triad leaders do not typically hold what we would understand as operational or executive functions; they hold very important mediating and brokering functions. In other words, they often act as mediators within that particular triad or between triads to negotiate project costs, profits and things like that. So they operate more like an umpire or a referee and, of course, charge heavily for that influence and for taking that role.

CHAIR—Is that similar to how the bikies operate as well?

Prof. Broadhurst—To be honest with you, apart from what reading I have done, my contact with bikies is pretty cold. You would have to go back to the years I worked in the Western Australian prison service, when there were significant bkie groups and they were a cause of concern for prison intelligence and for their activities afterwards. They are obviously responding to the countermeasures that law enforcement has put out. They are obviously destructuring.

In the good old days, the triads could go about quite brazenly, if you like, with triad paraphernalia. They could have the meetings, the temples and the recruitment rituals and so on. These could be quite elaborate and quite significant events, signifying their power or territorial connections and so on. They do not do that any more in places like Hong Kong. The heat that

comes on to them through the anti triad societies laws and so on, which simply outlaws those things, means that that has disappeared. Even in the jails and other places, you do not see the same kind of tattooing and so on. So there is a definite response to effective law enforcement and that is to avoid those sorts of things—and bikies are no different in that sense.

But there have also been, I think, important social and cultural changes going on, as you mentioned, amongst the bikie groups so that there is not the level of commitment. There is the argument that it is a bit like a baby-boomer sort of phenomena and that, with folks of my age—perhaps not your age—it will simply die out or transform to something else. But, as I have said to this committee before, the bikies are just as good at their own publicity as the triads are. The triads sold the patriotic line. They used the connection of the anti-Manchu or famous kind of pro-Ming sort of idea to give them an aura of respectability, patriotism and so on. Bikies deliver bundles of soft toys to hospitals on their annual runs for, I think, pretty self-interested publicity type reasons.

The short answer would be: I think there is a certain degree of, shall we say, flattening of the hierarchical arrangements. The level of commitment may have varied and so on. Art Venio has talked a lot about this in his own work. He has been something of an anthropologist of the Australian outlaw motorcycle gang. He certainly does ply a fairly sympathetic line of ‘misunderstood baby boomers with problems who do not look so nice, so they are a bit scary’. But I know, from my own experiences, that that reputational violence or reputational thing is a very, very important aspect of selling organised crime: ‘You are in the business of providing protection’—and there is all sorts of stuff we could say about it.

But the mere fact that they change their morphology suggests to us that they are sensitive to law enforcement countermeasures, as you would expect. We think they are fundamentally rational actors. They are in the business of maximising profit and minimising pain, so they behave more or less like rational actors. They do not always behave rationally, incidentally, because they may not always have the resources to do so. But, generally speaking, they respond in much the same sort of way that a business would respond in a hostile environment. It would change its tactics. It would perhaps reduce its footprint. Perhaps it would move to a different market.

With illicit organisations, it depends again on which particular class you are speaking of. If you are a Gambetti scholar, you might see organised crime very much as a form of illicit enterprise fundamentally based on selling protection; in other words, it is prime. The prime market that it works in is selling protection to other illicit organisations or criminals. If I am a criminal who sells you drugs and you do not pay me, I cannot go to the police. So I will go to the local outlaw motorcycle gang or triad or whatever and say, ‘I’ve got this contract and I can’t enforce it; can you fix it for me?’ ‘Oh yeah, we’ll do it, but we’ll take a cut.’ Gambetti argues, as other do, that there is a shift from this basic protection-extortion type aspect. Fundamentally, if you look at the way triads and other organised crime groups are organised, particularly at the gang level, they are low skill; they do not have the delinquent professionals in their ranks. So they then might have to coerce or encourage or whatever.

There is this complex that you can think of as being made up of two layers. There are the gangs and the corporate structure. The gangs may even compete amongst each other for turf, territory or whatever it happens to be. But the corporate structure is more dynamic and more

project driven. It relies on entrepreneurial types, people who are going to bankroll particular sorts of products. But there are lots of very good examples of effective illicit organisations, once they get these systems working, changing their morphology and structure, adapting to different markets and slipping from that protection and extortion into actual fully fledged businesses. They take them over and, of course, like a lot of other businesses, they want to minimise competition, monopolise and guarantee their profits and so on. So you get some of these extra kinds of structures.

The famous work done in New York with the five mafia families showed us that, at some point, when law enforcement was pretty ineffective or less effective than it should have been, those five families were able to meet as a confederacy and, in a sense, were able to sort out conflicts amongst themselves. As rational actors, they knew that, if you needed to murder somebody—it happens occasionally that somebody gets knocked off in a tea shop because they have not paid up—generally speaking, it would bring you bad luck. So you would try to minimise the amount of violence. But violence is still very useful; even a little bit is helpful. Incidentally, the triads traditionally, as a matter of fact, do not tend to kill; they tend to maim and they tend to maim very, very seriously. They use particular sorts of rituals for doing that. But you, as the maimed victim, are a walking advertisement for their brutality, their courage and so on.

The whole issue of violence is very important, but it is perhaps a bit too complicated to be talked about in any detail here. We do touch on it in the paper because, at least in the Hong Kong scene, we are observing that there is a pretty significant decline in lethal violence by triads, particularly of the kind of stuff that worries governments, such as assassinations—the more serious end of it. You get lethal struggles between different gangs, often youth gangs; they might have a fight on the street, which leads to a death and so on; and, in a sense, that is part of the functions.

Much more serious issues are when you get targets who are identified and then assassinated and so on, or you get fights between rival gangs that are deadly and bring in innocent victims—lots of them. In the case of Hong Kong, not unlike here, some arson cases, which were designed to intimidate businesses into receiving protection, go bad and citizens are burnt to death in a nightclub and that sort of thing.

As with all rational actors, there is an attempt to manage violence. But, of course, from my criminological perspective, people who fundamentally are pathological individuals, with all due respect to their illicit organisational skills, can be and are dangerous and their behaviour has a pathological element. So undoubtedly there is an element or a degree of irrationality, just as there is in politics or any sort of enterprise.

Senator PARRY—You have given a very broad ranging answer; thank you for that. What evidence do you have, moving into the future, of triads or Asian organised crime groups moving into Australia?

Prof. Broadhurst—That is a cracker question. I think it is the \$64 million question.

Senator PARRY—Can we start with the basics? What do you understand is happening in Australia today with Asian crime groups?

Prof. Broadhurst—It is interesting. As I understand it, from my discussions with law enforcement here, the general attitude seems to be that there is no major Asian crime presence here. Of course, there has been and there is, I think, some evidence of overseas organised crime or Asian crime groups—triads, the Yakuza and the like—involved in some of our tourist spots. But my impression, just talking about Brisbane for a starter, is that there is not much of an organised crime problem amongst the Chinese community here. It is predominantly a Taiwanese community, but there are a significant number of members from other parts of Asia as well. But there is not a strong organised crime element here. The hongts here are pretty much in control of that part of it. They do have the occasional putative gang that attempts to shake down a merchant or whatever, but there has not been any clear evidence that anything has stuck here. That is in relation to the local community.

In relation to the Gold Coast and so on, opinion varies a lot, particularly about certain roles more recently, although, to be honest, I do not know that our law enforcement people have the capability in many respects. But I strongly suspect that, with the very rapid increase in the movement of Chinese tourists around the world and Chinese tourism and business to Australia, there will be some associated organised crime activity, but my guess is that it would be on a pretty—

Senator PARRY—Limited scale.

Prof. Broadhurst—limited but probably essential sort of scale.

Senator PARRY—Do you see any displacement effect in any Asian countries where, either through competition, the global financial crisis or any other reasons, they would want to relocate to Australia?

Prof. Broadhurst—The basic sort of line to take here is that organised criminals are fundamentally opportunists. They look for market niches. It is still a speculative argument that we made about the movement of triads to southern China. I think what is more interesting has been the penetration of some of these Chinese groups, both north and south and, of course, the Japanese, into what are the fundamental lucrative attractor markets in Asia: Macau; parts of the Philippines, particularly Sibuyan; and parts of Thailand.

Senator PARRY—For what reason are we not seen as being attractive?

Prof. Broadhurst—Essentially, profit orientated.

Senator PARRY—So it is the populations in these other places and ease of—

Prof. Broadhurst—I think there is a matrix of decision-making. One element would be concern about diversity and the idea of being resilient to attacks on you by law enforcement. Generally speaking, with law enforcement in some jurisdictions, if you are in the business of illicit organisations, you really do have to worry about it now. If you cannot corrupt them, you have to have very effective countermeasures.

Senator PARRY—So what strengths do you see with Australian law enforcement—or weaknesses, for that matter—in relation to Asian crime groups?

Prof. Broadhurst—Part of the reason for my not having answered your question is that I really do not know and I do not think anybody does. We do know historically that the Yakuza were very heavily involved here on the Gold Coast consequent to the massive Japanese tourism trade and so on, particularly related to sex trafficking, sex business or the sex industry and the like. I would just instinctively think that there would be an element of protection. Somebody would be operating some degree of protection in those markets and I think it is unlikely that it would be Australian, but it could be an Australian base or Australian indigents.

As for what has happened in other countries, about which we know little—as I cannot really make precise observations about Australia—the feedback I get is that it is not a particularly significant problem. Okay, there are attractors around casinos, the Gold Coast tourist spots and so on; you get the normal kind of criminal activity around those. As for the degree to which it is organised, there is an argument about whether it is fundamentally local, franchised or whether there is some other kind of layout. There is a debate going on within the intelligence community at the moment as to how much of that is going on.

But the evidence of Chinese and other organised crime groups penetrating South-East Asia is quite compelling. They are attracted to jurisdictions with weak or less robust law enforcement. They are attracted to safe havens. You can do a lot of your business set-ups in places such as Cambodia, Laos and the like, bearing in mind that there is some risk for you still in that environment. The idea is that you may pay a transaction cost for that risk. We are pretty confident that that is what goes on in some jurisdictions in relation to cybercrime: that illicit organisations or enterprises—fishing companies, identity theft and carding companies or groups or whatever—operate in jurisdictions that are pretty safe. For example, the biggest carding operations in cyberspace operate out Russia and the Eastern European countries, and they are relatively safe havens. It is very difficult for us as law enforcement officials to get letters rogatory. Forgive me for scoffing, but it is a long tail. So these people are pretty safe. This is replicated, I think, certainly in parts of South-East Asia.

Senator PARRY—So, in essence, you are saying that Australia is relatively robust with its law enforcement integrity here.

Prof. Broadhurst—I think we have robust law enforcement in terms of integrity. Whether or not we have a capacity—

Senator PARRY—So you say that is a potential weakness—

Prof. Broadhurst—I do. I am alluding to this not because I know anything in particular, although certainly there is a lot of speculation. But it does worry me that we do not have a bilingual or multilingual capacity. One of the things that we are trying to do here is to get in at least a bilingual if not a multilingual capacity. It is very, very difficult. If you look at the major investigations of triads by European forces, you will see that they are major headaches; they do not speak the language. Triads also tend to use basic codes and particularly colloquial forms of Cantonese and so on; consequently, they tend to be less risk averse than you think. They have so much contempt for our capacity to intervene that they do not even take the same security measures they would in Hong Kong or southern China. They may find it more difficult to bribe or corrupt police officials in Australia—I do not know, but I certainly hope so—but that facility is open to them in other jurisdictions. That is why I say it is a transaction cost.

My problem would be not that we are suddenly being swamped by Asian criminals—I do not think that is true—but that they would be very strategic with whatever kind of illicit opportunities are occurring in Australia; it is my guess also that they would be quite limited. But jurisdictions where there are general tourist attractors, as we call them—Macau is a classic example—attract illicit enterprises and criminals because they provide opportunities for all sorts of states, including the North Koreans, for example, to play whatever games they need to. We are not yet at that stage by any means. But I am concerned that, when you talk to state police forces, you get a focus on domestic issues, domestic gangs, and you get a bit of a focus on scams that are rolling through—say, Korean students get rolled or whatever. There is certainly enough of that to keep domestic forces active and it is complicated enough because of the cultural and linguistic issues. But that seems to be its limit.

As for the broader sort of organisational intelligence level, strategic intelligence level, as I would call it, it is difficult for me to say, but I suspect that we really do not have the capability. For example, I would have thought there is one thing that you need to do at the very least. One obvious area where we are interacting with Asian businesses all the time is on the internet, through B2B and so on. That is where you would expect to find opportunities and where you would expect criminals to work. We do not even have a capacity to monitor that effectively. We do not have a capacity to monitor serious crime on cyberspace in English. Even in a decrypted environment, we do not have a capacity. So it is very, very important that we are able to improve our capacity in that regard, particularly with our partners.

My short answer would be that Australian law enforcement needs to reach out and connect with its counterparts in South East-Asia. It needs to engage heavily with the Chinese and other capable policing agencies to make sure that our intel has the capacity to understand what is going on pretty heavily in places such as Taiwan and Cambodia. These sorts of places are not for small or fickle players; that game is quite serious. My concern would be whether we really have that capacity.

I am a little concerned about the AFP. I do not want to criticise the AFP gratuitously in any way, but there are interesting issues that need to be addressed when we consider that consuls are being rotated out of jurisdictions after a maximum of two or three years. I do not want to be too flamboyant about it but, after a two- or three-year period, they have just learned how to handle the cocktail circuit; they have clubbed up with the Canadians, the Yanks and the Brits et cetera, but they have not really penetrated the local scene.

It is a little bit like the Singapore defence minister talking about our needing to have a 360-degree view of the threats that are around us. If we look to the north, it is pretty obvious that we do have some law enforcement problems needing our engagement. One way to engage such problems is to have a very active forward policy where you are trying to monitor. You can do that through multilateral links, such as your UN work and your work with ASEAN and so on. Truly, nothing works better than being able to phone up a mate in Hong Kong or China and say, 'Listen Mao'—or 'Mi'—I've got this problem down here. What can you tell me about it? What are the links? Who can you get to help me with this?' That is just magic; that is gold. You cannot get that, unless you really do have this forward investment strategy and all that sort of stuff. I think we are vulnerable. I do not think we are at 100 or 110 per cent capacity in that area. I think we need to develop a better capacity rapidly. With the GFC bedding down and the lag effect and so on, I think the next 12 to 18 months could be important.

Mr CHAMPION—I believe that you gave some evidence to the committee in 2007 that Australia should consider RICO style laws. How might they be applied to bikie gangs in particular? We have been given a small indication that the relationship between the chapters is unclear, including any financial relationship they might have. I know that you are not an expert, but perhaps you could provide some illumination on that.

Prof. Broadhurst—Outlaw motorcycle gangs are an interesting group, and we certainly did talk about them. One of the things I advanced to this committee before was that we need a head-and-feet policy, a little like what the South Australians have done recently. That is, not only do you attack who you think are in the leadership group but also, simultaneously, you attack the foot soldiers; so you try to do a head-and-feet job.

The reason I thought RICO type legislation would be helpful is that it allows you to build up the pattern offence idea: the idea that there is a sort of hierarchy. It allows you to do that largely through intelligence gathering and interception of conversations, such as telephone conversations, and all that sort of thing. Queensland, incidentally, has just acquired those powers and, as a consequence, we may find ourselves with more trouble than we think we will have. The really important thing about RICO is that it focuses on trying to chop off the head—to identify who commissions this sort of work and is behind this sort of stuff—and it allows this pattern offence to go ahead. So I think it would be applicable to motorcycle gangs and the like. But it all relies on this very important question of gathering intelligence.

With what the South Australians have done, I like the idea of outlawing the wearing of a patch or whatever—although that is not going to work in our jurisdictions, because of civil liberties concerns and so on, I guess, or perhaps it would be difficult to convince the public. But the South Australians have adopted what is very much an American-style approach by using their liquor licensing act as a means of putting a wedge between the bikies and the locations at which they were selling drugs. In other words, if you came in and out of such-and-such a pub and you were a Black Uhlan, the person with a liquor licence would say, ‘You’re banned from this hotel.’ That was a kind of softer way, using soft power or smart power rather than hard power, to try to curb them.

However, the great thing about RICO-type laws, particularly if you can link them to good anti-bribery laws and good witness protection laws, is that you can get people to come forward and testify. That has been the big problem for many years. Of course, breaking the kinds of links between gangsters or criminal fraternities and so on does require penetration. It is the same with terrorist groups and so on.

How can I put it? The really short answer would be: yes, I think those kinds of laws are really vital; the fact that we do not have them does handicap us a bit. What form would they take? They would obviously be of an Australian form and type. But I do think it is very important that you put pressure on—we were just talking with Jacqui earlier about it—excessive income. In Hong Kong, if you are a public servant, you have to be able to prove where you got your income from. You might say, ‘Look, I won this money at the races,’ but, in Macau, if you do not have those racing bet chits, that is it; you are done. The presumption is that you are guilty of accepting a bribe or whatever. So there is this reversal of the onus of proof.

Mr CHAMPION—What are the consequences for you there? Do you just have to give up the money, or do you get dismissed from the Public Service?

Prof. Broadhurst—That is a good question. I think you may even be open to some sort of penalty or punishment, but you are definitely open for dismissal.

CHAIR—What about politicians there?

Prof. Broadhurst—That is a good question. I would have to check.

CHAIR—Please take that on notice, if you would. I would be interested to know about elected officials—although I do not know whether they have them in Hong Kong anymore or whether they ever did.

Prof. Broadhurst—With all due respect, some of them are elected, in this rather odd college that they have, and some are appointed.

CHAIR—If you could take that on notice, it would be appreciated very much.

Prof. Broadhurst—Yes. I have a feeling that it applies to any salaried official, elected or not. But it certainly would be worth checking. It certainly would be a very important piece of legislation to have in China simply because of the large legislative bodies that are created in the Chinese political system. I will check that.

That has been a very effective weapon, I think, for putting pressure certainly on civil servants and on police officers and so on. It has also put pressure on organised crime figures. Some of these organised crime figures are notoriously known for who they are. I should be very careful whom I name here, but there are incredibly wealthy individuals in Hong Kong in that area who are well known for their associations with triads and, indeed, have reportedly used triads for various kinds of business activities. These people have managed to evade pretty intensive law enforcement activities that have tried to link them into that sort of pattern type that you are referring to.

I think we need pretty strong and specific laws to attack illicit organisations. I think there is a genuine concern in the community that, by doing this, somehow or other we will be usurping basic civil liabilities. But I think, because of the connection between organised crime and corruption, there is a very, very strong argument that we need specific legislation to attack that particular element. Without that umbrella, some of these businesses would find it very, very difficult to operate, and not only just in a sort of economic sense but in a social sense as well. I think that was one of the great things about the original ICAC in Hong Kong: that it recognised that was needed if you were to curb—we still talk about it—the symbiosis between what was the Royal Hong Kong Police Force, the triads and crime. There was a deal going on there but, as long as the streets were kept reasonably safe and you coughed up to some triad every time there was an important political case or community case, everything would be sweet. The brown bags with the necessary cash bonuses would still be in your locker every month, and all that sort of stuff. The way that was broken, of course, was not only by attacking corruption and beefing up the anti triad societies laws but also by changing community attitudes. People did not care or—put it this way—they could not do anything about it, so protection, corruption and all that sort of

stuff flourished in that kind of environment. But the ICAC started to arrest people, build up cases and provide absolutely massive community education programs, which are very, very important to get people turned off or stop accepting these kinds of practices as things that you cannot do anything about. Of course, it shifted from the public sphere to the private sphere over a 20-year period. Initially the government was the focus of attention and later it became private enterprises through backhanded commissions and all sorts of rorts that go on, which interfere with our so-called free marketplace.

Things can be done, but they require political will. Almost every example that I can think of where there have been positive, effective changes has centred on legislative political will, making decisions, passing and enabling the necessary legislation and supporting those executive arms in that pretty tough fight that can go on.

Some of these people are very well placed and connected and often have at least a veneer of social respectability. I do not want to name anybody, but there is 'bikie member X', who has a significant education through the prison service and universities in Western Australia and so on, who could make a very compelling argument to you about how helpful and community oriented some motorcycle gangs are. But I would beg to differ and would suggest that we are dealing with people who are not stupid; quite the contrary. These are clever, committed people who understand what I would call the very thin deterrent veil. With all due respect to the law enforcement authorities, once you realise, in a sense, the fundamental weaknesses of law enforcement in any jurisdiction and how fundamentally weak the state really is and you have measures to counter them, what is there to fear?

CHAIR—As there are no further questions, we thank you very much. I now declare this meeting of the Parliamentary Joint Committee on the Australian Crime Commission adjourned.

Committee adjourned at 10.53 am