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PARLIAMENTARY JOINT COMMITTEE ON LAW
ENFORCEMENT

**Reference: Adequacy of aviation and maritime security measures to combat serious
and organised crime**

THURSDAY, 17 FEBRUARY 2011

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**JOINT STATUTORY
COMMITTEE ON AUSTRALIAN CRIME COMMISSION**

Thursday, 17 February 2011

Members: Senator Hutchins (Chair), Senator Mason (Deputy Chair) and Senators Fielding, Parry and Polley and Ms Grierson, Mr Hayes, Mr Keenan, Mr Matheson and Ms Vamvakinou

Members in attendance: Senators Hayes, Hutchins, Mason and Polley and Ms Grierson

Terms of reference for the inquiry:

To inquire into and report on:

The effectiveness of current administrative and law enforcement arrangements to protect Australia's borders from serious and organised criminal activity. In particular the committee will examine:

- (a) the methods used by serious and organised criminal groups to infiltrate Australia's airports and ports, and the extent of infiltration;
- (b) the range of criminal activity currently occurring at Australia's airports and ports, including but not limited to:
 - the importation of illicit drugs, firearms, and
 - prohibited items
 - tariff avoidance
 - people trafficking and people smuggling
 - money laundering
 - air cargo and maritime cargo theft
- (c) the effectiveness of the Aviation Security Identification Card (ASIC) and Maritime Security Identification Card (MSIC) schemes; including the process of issuing ASICs and MSICs, the monitoring of cards issued and the storage of, and sharing of, ASIC and MSIC information between appropriate law enforcement agencies;
- (d) the current administrative and law enforcement arrangements and information and intelligence sharing measures to manage the risk of serious and organised criminal activity at Australia's airports and ports; and
- (e) the findings of the Australian Crime Commission's special intelligence operations into Crime in the Transport Sector and Illegal Maritime Importation and Movement Methodologies.

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Committee met at 9.16 am

CHAIR (Senator Hutchins)—I declare open this meeting of the Parliamentary Joint Committee on the Australian Crime Commission. Today's hearing is for the committee's inquiry into the adequacy of aviation and maritime security measures to combat serious and organised crime.

I advise witnesses that, although the committee prefers all evidence to be given in public, requests to give all or part of your evidence in camera will be considered. Evidence taken in camera may, however, subsequently be made public by order of the Senate or this committee. I remind witnesses that all evidence given is protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee. Such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee.

If a witness objects to answering a question, the witness should state the ground upon which the objection is to be taken, and the committee will determine whether it will insist on an answer, having regard to the ground that is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera.

The Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

[9.19 am]

BUCKPITT, Mr Jeff, National Director, Intelligence and Targeting Division, Australian Customs and Border Protection Service

EVANS, Dr Ben, National Director, Law Enforcement Strategy Division, Australian Customs and Border Protection Service

GRANT, Mrs Marion, Deputy Chief Executive Officer, Border Enforcement, Australian Customs and Border Protection Service

KELLEY, Ms Roxanne, National Director, Enforcement and Investigations Division, Australian Customs and Border Protection Service

WALL, Mr Terry, National Manager, Passenger Operations, Australian Customs and Border Protection Service

CHAIR—I welcome officers from the Australian Customs and Border Protection Service. I invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Mrs Grant—Thank you, Chair. On behalf of the Australian Customs and Border Protection Service, thank you for the opportunity to come and provide evidence at today's hearing. The team that I have with me today basically represents all of the areas of the Customs and Border Protection Service that the terms of reference for your inquiry touch on, so we should be in a position to answer questions that you have for us. The information that was included in our November 2009 submission and any views that we put forward today are provided from our perspective as the primary border protection agency. Our environment encompasses the maritime domains of our exclusive economic zones, seaports, airports, international mail centres and cargo depots and warehouses. The Customs and Border Protection Service does take a leading role in combating serious and organised crime at the border, through targeting, detecting and interdicting illegal cross-border movements of people, goods, vessels and aircraft. We investigate border offences and regulate certain entities operating in the border environment through licensing depots, warehouses and customs brokers.

Serious and organised crime groups do pose a serious risk to the integrity of the Australian border. Our work is intelligence led and risk based to maximise the impact of our interventions against the key entities breaching our laws. In our experience, the most successful outcomes are achieved when intelligence is shared between partners such as the Australian Crime Commission, the Australian Federal Police, counterpart state and territory police and crime commissions and particularly when we set up joint operational responses. Against that backdrop of what we do at the border, we are very happy to answer questions from the committee. Thank you.

CHAIR—Thank you, Mrs Grant. Do any of your other colleagues wish to make an opening statement or add to yours? Not if they want to stay in the service, I imagine! Just joking! Thank you for that. I know that we may go in camera as a result of some of our questions. I have a few questions. The first is to do with Customs dealing with both airports and ports. We have a very

different policing model at the airports as result of a number of inquiries. The main group—for want of a better word—that conducts and controls security there is the Australian Federal Police. At the ports—and the committee had the opportunity of going to major and minor ports throughout the country—because it is the state police and it is not a coordinated role with the Federal Police in charge, it looks a little less secure. We have been to some ports where—and I think my colleagues will agree with me—people can walk in and off the port without Customs, the Federal Police, the state police, AQIS or Immigration being involved at all. Do Customs have a view on replicating the system that occurs at the airports? Should it occur at the ports as well?

Mrs Grant—Customs does not have a particular view one way or the other on whether the unified policing model that pertains to the airports should be replicated in the seaport environment. We do have a view that we see those environments as being quite different. Our view would be that it is probably not just a straightforward case of replicating that particular model in the seaport environment. But we would certainly leave substantive comment on that issue to our colleagues from the Australian Federal Police, as the people with the experience of providing that unified policing service in airports.

CHAIR—In your own submission, Mrs Grant, you make the point that there is no single agency that has sole responsibility for organised crime in the port environment. I just wonder if you would like to expand on whether the fact that you have made that statement suggests that it may be something that should be looked at.

Mrs Grant—I think we make that statement to give a sense of the complexities of the operations in the seaport environment—not that airport environments are not complex operations in their own right. But we would say that the legal framework around the seaports is less robust than in the international airport environment.

Take Customs controls around seaports. We gazette, under section 15 of the Customs Act, a seaport and then that becomes a Customs-controlled area. But if you look at the provisions within that section of the Customs Act, you see we do not have huge powers within that act to do many things apart from set some parameters about what can and cannot be done with cargo in the area. They do not necessarily give us the same level of control that we have over access to areas in international airports. From that point of view from the framework of stronger controls, we would certainly see that there is scope technically to do something. How practical that might be in an application to a busy port environment would be something else that we would have to work through with industry. But I think that concept is different from having one agency in charge of a particular environment, because even within the airport context there is more than one agency operating in that environment with differing responsibilities. Considering the responsibilities that we undertake in an airport environment, working closely with colleagues from the Australian Federal Police, the immigration department and the quarantine service, I would not think there is still just one agency in charge of an international airport.

CHAIR—But there is a peak body. It has an acronym starting with J. I can't recall its name.

Mrs Grant—Yes, there are the JAITS and JAIGs.

CHAIR—Yes, there is a peak body and then the ultimate body that seems to be responsible for that is the Australian Federal Police in coordinating it. And, as I say, in your own submission

you point out that is not the case in the port environment. The only reason I ask this is that I note in your own submission and other submissions that the majority of illicit drugs, counterfeit cigarettes and tobacco is not coming in a 747 but is coming in through a ship. So if we are good enough to have that structure at the airport, are we missing out on having a level of coordination at the port that we should have?

Mrs Grant—I will get Mr Buckpitt or Mr Wall to talk more about our experience within that construct in the airport with the JAITS and JAIGs. They look at a slice of activity rather than being an overarching authority for all activity in the airport. Our passenger operations functions in the airport, for example, are quite distinct and separate from the unified policing model in the airport.

Mr Buckpitt—The role of the JAITS and JAIGs at the airports is to investigate matters, whether they be criminal or otherwise, of concern to law enforcement. The teams that we are talking about are typically fairly small, of the order of 10 people. Typically, you are looking at representation from the AFP, state police and Customs. Sometimes there is participation from other agencies on an as-required basis. The JAIT function is investigative. The JAIG function is an intelligence support role. Both teams are quite small. I think it is in five international airports that we have the JAITS and JAIGs. Their role is certainly a key role in terms of organised crime and issues of infiltration. The question though is how that might apply at a seaport. I think that there would be pros and cons. The fact that the port environment is so physically different from an airport's is part of the consideration that makes the question fairly complex. Take just the issue of accessing containers. Most of the containers are accessed away from the actual port environment. There are exceptions to that, of course, but for the most part there is the fact that they are accessed away from the port environment. If you were to have a JAIT type of operation at a seaport, you would have to think carefully about what their role would be, because they would not be doing the sorts of things that Customs is currently doing in terms of opening up containers at our container examination facilities.

The other thing that I would say is relevant is this. To some extent, if you look at some of our recent operational activity—and it has been widely reported that the AFP and Customs have established task forces in Sydney at Port Botany and at some of the secondary ports in the Sydney metropolitan area—you see the work there has been, in some respects, mirroring the JAIT/JAIG type of function but for a particular period of time and for a particular purpose in relation to organised crime.

CHAIR—And has probably been successful.

Mr Buckpitt—Certainly there has been one major find in relation to cocaine, I think it was, in the middle of last year and which was a substantial quantity. That was reported in the media. There are certainly opportunities and I think the question is whether or not arrangements like that should be ongoing, and the extent to which the current initiative at Sydney is successful will inform the answer to your question as to whether it should be an ongoing type of arrangement.

CHAIR—Maybe this is not a fair question to put to you but I will put it and if you are inclined to answer it you will. In our experience on this committee, and a number of us have been on it for a while, often—in my experience and I am sure my colleagues who have been on it for a while would agree with me—it depends a bit on how active in the various states the state

police want to be. On this inquiry we have been to places where the level of cooperation between the state, federal, Customs, immigration and AQIS people has been spectacular. Then you can go to other states where they sit around like stunned mullets and you wouldn't be surprised that drugs go through any of these states at all; in fact, of course, they do. So if we have got a successful model working at the port of Sydney and the port of Melbourne maybe that is something for us to consider in our recommendations. I just say that as far as being an observation from me and I do not expect you to respond.

Mr Buckpitt—The only comment I would make would be to say that Sydney and Melbourne are the key ports of highest risk in terms of drugs entering by sea cargo. All ports are a risk, but historically if you look at where the detections have occurred the vast majority of them has been in Sydney followed then by the ports of Melbourne and Brisbane. I accept the substance of what you have said but I would also suggest to you that you should consider the fact that there are differing levels of risk attaching to different seaports.

CHAIR—How many brokers are licensed by Customs? I am not sure if you have those figures in front of you.

Mr Buckpitt—I think we would have to take that question on notice.

CHAIR—So if you could tell us what process someone goes through to get a brokers licence.

Mrs Grant—I can give you a quick idea of that. To become a qualified customs broker there is a tertiary qualification, so study to be undertaken, examinations and assessment and if successful in passing that particular qualification then they may make application for a customs brokers licence. Within our legislation we then apply an improper person check to the applicant for a brokers licence which includes a criminal record check and a financial background check. Obviously, if those checks are not successful we would not issue the brokers licence. In cases where we have already issued licences and then some noncompliance with our requirements is identified, we can do everything from sanctioning or reprimanding the broker right through to suspending the brokers licence, cancelling it or not renewing it depending on the severity of the noncompliance with the requirements.

CHAIR—There was an instance at the port of Sydney two or three years ago with brothers with, I think, a Lebanese surname. You might recall that day.

Mrs Grant—Yes, I do recall that.

CHAIR—They operated about half a kilometre from the port of Sydney. They do not have a licence or anything, but their son/nephew does. There is no reason for him not to have a licence and for them to work in his yard, is there?

Mrs Grant—Given that the licence is to the individual, we cannot not give the licence to somebody who has got family connections. But that is the sort of information that we will take into consideration when we are looking at the suitability for a licence. When we identify, perhaps, issues where the legislation currently does not allow us to have the controls that we might want, we take that sort of information into consideration to see if we then need to amend our legislation. For example, our depot licensing regime—

CHAIR—If you would like to go in camera on this, Mrs Grant, just make the request and we will go in camera.

Mrs Grant—Thank you. At the moment I am just talking in generalities. Where we find the legislation is perhaps not as strong as it could be we will make assessments about whether we need to make a bid to amend the legislation. We found a situation like that in our depot licensing regime, so we are currently progressing an amendment to give us better grounds to cancel depot licences. I am just using that as an example.

CHAIR—Do you take into account the people associated with the customs broker or licensee? At the moment you cannot—is that right?

Mrs Grant—If we are going to go there, perhaps I will take you up on your offer to go in camera.

CHAIR—We will go in camera.

Evidence was then taken in camera but later resumed in public—

[10.54 am]

FLORIAN, Mrs Kathleen, Brisbane Office Manager, Australian Crime Commission

HARFIELD, Mrs Karen, Acting Chief Executive Officer, Australian Crime Commission

OUTRAM, Mr Michael, Executive Director, Serious and Organised Crime, Australian Crime Commission

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

Mrs Harfield—I thank the committee for the opportunity to make these opening remarks. The Australian Crime Commission submitted an unclassified submission in November 2009 and we have also provided two in camera briefings to the committee and its secretariat. While I will frame this opening statement around the terms of reference for the inquiry, I would also like to briefly outline the role of the Australian Crime Commission in fighting serious and organised crime.

The ACC has continued to advance the understanding of the nature of serious and organised crime in Australia, including at our airports and ports. Our role in the aviation and maritime sectors is to produce actionable intelligence products for partners and stakeholders; to engage directly with the national security community in respect of the nexus between national security and serious and organised crime. Nowhere is this more evident than at the gateways into and out of Australia.

The ACC's operating model, based on the Sentinel strategy, is driving better operational outcomes for the ACC and its partners, including in the border domain. A key component of this model is stronger collaboration and a whole of government approach which links to national security models. This means collaborating with partners, including the Attorney-General's Department, the AFP, the Department of Infrastructure and Transport, Australian Customs and Border Protection Service, the Department of Immigration and Citizenship, Australian Quarantine and Inspection Service and AUSTRAC.

The ACC sources its intelligence and evidentiary materials through investigative tools and techniques as well as special powers that enable collection of evidence and intelligence in circumstances where conventional law enforcement methods are not effective.

The ACC has been active in the airport and port environments through two special intelligence operations and the work of the Aviation Criminal Assessment Team, or ACAT. The ACC's Crime in the Transport Sector Determination was operational from November 2005 to June 2008, producing some 395 reports related to the maritime sector, including three strategic intelligence reports and five policy discussion papers; 91 reports related to the aviation sector. The ACC's Illegal Maritime Importation and Movement Methodologies Determination was operational between November 2006 and December 2008 and produced 177 reports, including six strategic intelligence reports and three policy discussion papers on small craft and domestic fishing

environments. The ACC's Aviation Criminal Assessment Team was established following recommendations of the Wheeler review in 2005, and since then ACAT has produced and disseminated 69 intelligence products specific to the aviation environment.

Since the conclusion of these activities the ACC has continued to maintain a role in monitoring crime in the aviation sector, including the provision of input into the Office of Transport Security's aviation risk assessment process. In June 2010 the ACC board approved the organised crime penetration of the border determination. Through this work the ACC can use its coercive powers to assist partner agencies to better understand the nature of transnational organised crime infiltration of the border, the emerging threats and the changing methodologies found therein. Through this ongoing and past work in our aviation and maritime domains the ACC has built up a solid picture of the range of serious and organised crime occurring in our airports and ports and the methods employed to perpetrate this criminal activity.

What the ACC found through its special intelligence operations was that trusted insiders and internal facilitator groups linked to serious and organised crime were operating within Australia's ports and airports. The majority of identified organised criminality involved the larger metropolitan container ports and international airports, although criminal activity at smaller and regional ports and in general aviation was also observed. In particular, ACC findings revealed that because the ASIC and MSIC regime was never originally designed to harden the environment against serious organised crime, but rather focus on national security threats in those environments, these groups have exploited gaps, weaknesses and inconsistencies in the application of the regimes. However, we are also cognisant of the intertwined nature of border security and criminality.

While the ACC acknowledges the primary purpose of the ASICs and MSICs is to support counterterrorism initiatives, there is significant threat posed by serious and organised crime in these sectors. Both terrorist groups and criminal groups have consistently been noted as primary threats to Australia's transport sector. The Wheeler review noted that terrorism, organised crime and opportunistic crime present the three primary threats to aviation and airports. Recognition of the threat presented by terrorism also generated enhancements to the maritime environment security regime implemented under the Maritime Transport and Offshore Facilities Security Act 2003.

Likewise, the Department of Infrastructure and Transport, in their 2009 Aviation Security Risk Context Statement, reported that criminal activity can expose aviation security vulnerabilities that might be exploited by terrorists. More recently, the foiled Yemeni bomb plots illustrate that terrorist organisations are mimicking drug importation methodologies that have been utilised by criminal groups for some time. Disruption of crime within the aviation and maritime sectors and the prevention of terrorism need not be considered mutually exclusive objectives.

I thank the committee. We are prepared to take your questions.

CHAIR—There is a document headed UNODC *World drug report 2010*. Would you like to table that for the committee?

Mrs Harfield—We certainly can. That was just to provide a comparison of wholesale prices, where available, from the UNODC *World drug report* and be able to give an opportunity to compare those with the Australian average wholesale price.

CHAIR—For all of us, I want to understand how much money we are talking about. We are talking about wholesale price, not the on-the-street cost of these drugs—is that correct?

Mrs Harfield—No—then there would be a significant profit element moving from the wholesale price to the street price.

CHAIR—Could you run us through that. You have nominated here, in US dollars: cocaine per kilo, heroin per kilo, amphetamines per kilo and ecstasy per kilo. Could you run through the cost from the countries you have nominated—in US dollars and comparing it to Australia?

Mrs Harfield—Just to give you an example, although these were available in the UNODC *World drug report 2010*, these are 2007-08 figures. We have attempted to compare like to like to the illicit drug report that the Australian Crime Commission produces—the 2008-09 figures. An example would be, in relation to cocaine, that the source country is Colombia and that the UNODC average wholesale price per kilo is believed to be \$2,348. The average wholesale price in the United States ranges from \$10,000 to \$43,000. In the United Kingdom it is \$64,682. Would you like me to round these figures up?

CHAIR—So that is US\$64,682 per kilo?

Mrs Harfield—Yes. Canada: \$38,761. The average Australian wholesale price for cocaine is \$146,539.

CHAIR—That is the wholesale price. The other day, we were told that, on the street, a kilo of cocaine costs about \$300,000.

Mrs Harfield—It is certainly in the order of that. I could confirm that in detail for you if you would like. I could take that on notice.

CHAIR—What about ecstasy? Could you go through what it costs per thousand tablets?

Mrs Harfield—From source country, per thousand tablets, the range is between \$3,426 and \$4,796. In the United States, the average wholesale price is between \$5,000 and \$13,000. In the United Kingdom, it is between \$4,620 and \$8,316. The Canadian average wholesale price is between \$1,708 and \$6,641, compared to the Australian average wholesale price of \$5,914 to \$25,344.

CHAIR—So that is per thousand tablets?

Mrs Harfield—Yes, that is per thousand tablets.

CHAIR—So in the Netherlands the wholesale price for a tablet is about US\$4.10. That is the way I read that chart. Is that right?

Mrs Harfield—Yes, you have done the maths there.

CHAIR—And anywhere between \$5.90 and \$25.30 in Australia. We have been told that an ecstasy pill in Sydney is between \$30 and \$40 and an ecstasy pill in Western Australia is between \$50 and \$60. Is that your intelligence?

Mrs Harfield—I could confirm that price. You obviously get fluctuations across the country. I am not quite sure how up-to-date that information is. This is from our 2008-09 view, but we could find the current price for you if you would like us to. That does not sound unreasonable. I would have thought it would be in the order of that. It will vary from place to place though.

CHAIR—Can you just go through for the *Hansard* the other two drugs that are nominated there—heroin per kilo and amphetamines per kilo.

Mrs Harfield—For heroin in the source country we are looking at a wholesale price per kilogram of \$2,256 to \$2,554. In the United States that then goes to between \$40,000 and \$100,000. In the United Kingdom it is \$18,480 to \$35,113. The Canadian average wholesale price is \$75,894 to \$213,452. The Australian average wholesale price for 2008-09 is between \$160,000 and \$210,000, and that is price per 700 grams because that is, in intelligence terms, the weight that it is currently measured in.

CHAIR—In Australia it is 700 grams rather than one kilogram?

Mrs Harfield—Yes.

CHAIR—On the basis of the figures for those popular drugs, are we a target country because of the price our consumers are prepared to pay for cocaine, heroin, amphetamines and ecstasy?

Mrs Harfield—On the basis of our assessment, a well-described motive for serious and organised crime is profit. The reality is that they will attempt to infiltrate the markets that give them the biggest profit margin. Obviously drugs are available across the globe, so we are not the only target but the price will have some affect on the decision making.

CHAIR—We got told cocaine in LA was about \$20,000 a kilogram, yet you are paying anywhere up to \$167,000 a kilogram wholesale here. You would have to think that Australia has become a prime target for drug importers on that basis.

Mrs Harfield—It is certainly a much more attractive market for them.

CHAIR—We have had a number of significant drug busts where people are on remand awaiting trial. I know that it is before the courts, so they are innocent until proven guilty. Is it correct that we have a number of public officials who are currently on remand for being involved in importation?

Mrs Harfield—I have no knowledge of that specifically I am afraid.

CHAIR—I was thinking of the Deputy Director of the New South Wales Crime Commission, Mr Standen. Can you remind the committee of what he has been charged with?

Mr Outram—I do not recall the precise offences, but I understand it is alleged that that person was involved in a conspiracy that involved an importation of drugs. I think it was amphetamines, but I am not across the details of that particular case.

CHAIR—In your public submission you refer to terrorism and crime. You are our peak intelligence body. As a committee we have been involved in a number of inquiries which have highlighted the connection between terrorism and crime. Is that just an international phenomenon or is there evidence that there are more and connections between people who are involved in serious and organised crime and terrorism?

Mrs Harfield—It is our assessment that we are finding more of those connections as time goes on. We could give you some further detail on those but, because of the nature of the incidents and the sensitivity of the information, we would have to do that in camera.

CHAIR—We can go in camera but I am sure my colleagues would like to ask some questions on the record first.

Senator MASON—I have a quick one. In terms of serious and organised crime, the operational matters are clearly yours and you work out administrative arrangements with other agencies. Is it your understanding that your capacity is inhibited by any legislative arrangements. The parliament looks after legislation, of course, and we can do something about that. Are there some aspects of your legislation where you feel that the powers you have should be amended or increased to enable you to police organised and serious crime at Australia's ports more effectively?

Mrs Florian—When we start to talk about potential vulnerabilities to criminal infiltration of Australia's ports, there are a number of areas where regulatory changes have started to address that and there are some areas where there are still outstanding issues. It is probably more appropriate if we deal with that in more detail in camera.

Mr HAYES—Given the nature of change that has already occurred in airports—the commercialisation of airports and airport infrastructure—what challenges has that posed in terms of security arrangements?

Mrs Florian—I think that poses significant challenges from a number of points of view. I suppose some of the issues that it raises are the increasing commercialisation of shopping precincts within airport infrastructure; the moving of international flights from CTFR airports into some regional airports has created issues. The nature of some flights that go from those airports to key destinations, particularly in South-East Asia, may be significant from an illicit commodity sourcing point of view. Some of those commercial issues certainly do raise questions about serious and organised crime within the airport and how to most effectively harden that environment.

Mr HAYES—I suppose the environment has been hardened, given the regulatory support in terms of the anti-terrorism aspects of airports. Can you make any comparisons between airports and what occurs at seaports vis-a-vis airports their security posture?

Mrs Florian—I think one of the tensions within airports and maritime ports is the extent to which addressing traditional national security issues in those environments also covers the threat of serious and organised crime there. As a policy position, Australia has responded very strongly in relation to effectively dealing with and addressing some of the threats to terrorism within those environments. Senator Hutchins' question around the relationships between serious and organised crime and terrorism raises a question about the extent to which our policy responses need to meld those two positions as well.

Mr HAYES—We have had the opportunity to see different standards of security at our ports. Comparing the ports of Sydney and Adelaide, different standards certainly apply across our port infrastructure. Does the fact that there are multiple standards create windows of opportunity for organised crime in terms of importation?

Mrs Florian—During the course of the work that the Australian Crime Commission did in the transport sector, where we focused on the maritime environment, we looked at 12 maritime ports across the country. We looked at a mixture of ports—ports that were essentially container ports, large ports and also some regional ports—to get a feel for the different ports and the security environments that existed within them. As a result of that work, some vulnerabilities were identified around port security and access issues, but in order to go into those vulnerabilities I think we would need to go in camera.

Mr HAYES—One other thing I want to ask about is the issuing of both maritime security and aviation security cards. Again, I suppose they both had their genesis in anti-terrorism and that has now been expanded into detection and avoidance of serious organised crime personalities in our facilities. Are there difficulties or vulnerabilities in the current way that we administer our MSIC and ASIC regimes?

Mrs Florian—It is certainly the case that the policy intent of the MSIC and ASIC regimes was protection of airport and maritime infrastructure against traditional national security threats. They have been very successful in achieving that policy intent. The original policy intent was not to protect against serious and organised crime. There are a number of issues on which we could probably go into more detail and discuss in camera.

Ms GRIERSON—Post September 11, 2001, the audit committee did a major report into aviation security. At the time, we found some serious deficiencies in Sydney Airport's security regime and a lack of a security culture. That report came out around 2003 or 2004. Have things improved or changed?

Mrs Florian—It is certainly the case that with a permanent policing presence within the aviation stream that culturally the arrangements within the airports are improving. That certainly is not something that happens overnight, but there is indication of a much stronger shift towards improved cultural outcomes.

Ms GRIERSON—However, you highlight added risk because of the commercialisation of airports. Commercialisation would be particularly evident at Sydney Airport. Have you given advice on that area to Sydney Airport?

Mrs Florian—With both aviation and maritime, we are talking about streams that are absolutely critical to this nation's ongoing economy. We need to have passengers moving quickly and freely through airports. We need to be able to get our containers through maritime ports quickly. There are very strong commercial interests that are absolutely critical for the nation. The balance between the passage of trade and people and the vulnerabilities is always a difficult balance to measure.

Ms GRIERSON—Do you think it is right at the moment?

Mrs Florian—From an ACC perspective I do not think we are equipped to answer that overall question. Certainly in relation to serious and organised crime there are ongoing indications that our airports and ports are being exploited by serious and organised crime groups.

CHAIR—If there are no more questions I will ask people to leave the room. We are going to go in camera again.

Evidence was then taken in camera but resumed later in public—

[12.09 am]

JANECZKO, Mr Richard, Private capacity

CHAIR—Do you have anything to say about the capacity in which you appear

Mr Janeczko—I am a retired Customs officer and also do consultancy work in anti-smuggling.

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

Mr Janeczko—I am appearing basically at the invitation of the committee. I have done a number of jobs for companies that are affected by smuggling, mainly tobacco smuggling. I have also read a number of the submissions and I have a few comments that I would like to make about those submissions. I was in Customs for almost 45 years. I look young to most people but I have actually been in Customs for that period of time and I have worked for areas as diverse as censorship and counterfeit goods. I have been posted to Sydney, Melbourne and Adelaide and worked for four years overseas as chairman of the World Trade Organisation committee that was run out of the World Customs Organisation in Brussels. I travelled to Geneva and that was mainly to do with the origin of goods and fraud in relation to those. I have represented Customs all over the world. Basically that is my background.

One of the issues I had a lot to do with before I retired was the increase in tobacco smuggling. I believe that organised crime chases the money and I made a number of statements while I was still working in Customs and I have repeated them since that because of the huge amount of profits involved it attracts organised criminals. I was asked a number of times in public about whether there was a relationship between duty rates and tobacco smuggling and I said there was. If you walk along a footpath and found five cents, you might not pick it up but if it was a \$100 note, you would definitely pick it up. I think smuggling is a bit like that. You mentioned drugs earlier. I think there is a huge level of organised crime involved in bringing tobacco into Australia. I think Customs is doing quite a good job in intelligence, interdiction and prosecuting it, but I think they are doing a lot of that with one arm tied behind their back. I think they do need a few more tools and powers to do that properly.

The airport policing model has been discussed a bit here. I was involved very much in dealing with the police from a Custom's perspective about how that would work. I am not sure whether the committee is aware that the model as it was introduced did not have any impact apart from the beneficial interchange of intelligence to the operations of Customs investigation and prosecution. The airport model does not mean that Customs then stepped away and the AFP conducted its investigations into whether it was child pornography, tobacco smuggling, firearms or whatever. That continues and I think it works very well. The airport model did provide a greater forum for the interchange of intelligence and a better way to create taskforces.

I read a number of the submissions and I would just like to give you my views on some of the things especially in the AFP Association submission. I think the comments that are made about the Narcotics Bureau probably need to be examined very closely because some of the throwaway lines there as to why the Narcotics Bureau was created. The idea that any corrupt people in the

AFP are basically ex-Customs officers needs very close examination. I had a lot to do with the Narcotics Bureau. I did an efficiency audit of it. I appeared before the Williams royal commission. I know that quite a large number of people that we recruited to the Narcotics Bureau were ex-police and went on to the police. There are some very famous success stories of Customs officers going on to be police commissioners with a great record as well. I was not impressed by the cheap shot in that report.

The other thing that I do have a bit of information and experience on is the importation of illegal firearms. I think the idea that there is large-scale smuggling of firearms through the border has been tested many times and found not to be so. A lot of the illegal firearms that are found have basically been diverted after they were illegally imported, so I think that probably needs more than a throwaway line. It needs to be looked at more closely.

I do believe that if you are going to the maritime environment then there needs to be a good assessment of how the airport model is actually working. I think it has improved things a lot. At the end of the day it is all about cooperation, sharing of intelligence and setting up taskforces when they need to operate. I do not think that just creating a structure that is called a unified policing model is necessarily the answer even though that is a good way to encapsulate it. The airport model works mainly because of the cooperation between the agencies involved and the fact that a number of agencies contribute to it. I think you have to be very careful of putting a sort of umbrella organisation in charge of everything, I think we need to understand what that means before we try to do that in a maritime environment.

I think the airport model is successful, but it is successful in that it is mainly about community policing, intelligence and those things. The agencies that operate the airport, including Immigration, Quarantine, Customs and others, still carry out their functions. I just wanted to clarify that if there was a perception that it made every offence at the airport all belong to one agency as a result of that, it is not true at all.

Those are the basic comments I have and I am happy to answer any questions.

CHAIR—You talked about tobacco smuggling. We have had the opportunity to look at the X-rays and the containers full of tobacco. We were told most of it comes out of China and Indonesia. Is that your recollection?

Mr Janeczko—China is a major manufacturer. Indonesia and the Philippines are also manufacturers. A lot of the tobacco, though, that comes into Australia is routed through other ports. But China is a huge source of tobacco that is smuggled in, as is Indonesia.

CHAIR—Do you understand that the federal government is going to a no-branding of tobacco? Do you think that will make it easier for people to import tobacco?

Mr Janeczko—I think the fact that you do not have the indicators on tobacco packets makes it easier to counterfeit. I think that is another thing that needs to be considered before that is done because identifying the illegal tobacco will be just another challenge for law enforcement and others. The illegal tobacco that is currently being seized and prosecuted by Customs ranges from a leaf that has been chopped up to counterfeit stuff and to stuff that is legitimately redirected. So when we are talking about tobacco the problem is bigger than the stuff that is sold commercially

at retail. I think that the plain branding needs to be accompanied with some regime to make sure that it does not make it easier for people to smuggle it.

CHAIR—The committee has received evidence for and against including the use of criminal intelligence in the establishing of eligibility for maritime and aviation security cards. What is your view of this proposal? Do you believe that criminal intelligence is rigorous enough to be used in a fair and effective way, given that it may restrain individuals from certain types of employment?

Mr Janeczko—I believe that people who are working in sensitive areas do need to have quite strong checks carried out. I am a strong supporter because too often in the business that I have been in we come across people who really should not be working in that environment—for example, people with criminal records. So I think that quite strong checks should be carried out. I followed the debate about the ASI card and MSI card and all that sort of stuff. We are talking about a lot of teething problems, but I think that the objective should be to make that as broad as possible. I think people who work in that area must understand they are working in a privileged area and if public security is involved, as well as organised crime, they should be willing to provide that information.

CHAIR—One of the things we have come across, and we have been told countless times, is that most people involved in serious and organised crime do not have a record but that they are known associates of serious and organised crime figures—they are the so-called trusted insiders. So people like that would not necessarily have a criminal record at all but they would be known associates of some pretty heavy duty characters.

Mr Janeczko—I will come at that in two ways. Firstly, it is like saying that you should not have bus tickets because people would pay honestly and then when you get the few guys who are ripping off the bus system you would never catch them. I think that the security checks and the MSIC and ASIC do provide a basic level of security that is required. If you are talking about the really big-time organised criminals I think only very few of them are ever caught by any agency. I think most law enforcement agencies believe they know who they are. It will not solve all the problems, but it will go a long way to solving a problem which would be bigger if you did not have those checks.

I think the other thing is that a lot of major crimes are committed by disorganised criminals, not only organised crime. Some of these people who are making millions and billions out of the Commonwealth are not that well organised. Sure, you will not get some of the so-called Mr Bigs, but I do not think that is a reason not to make the border as secure as it can be.

Mr HAYES—Any level of importation of any substance requires a fair degree of organisation.

Mr Janeczko—That is true. If you look at things like tobacco smuggling, there is a whole lot of organisation in sourcing it, getting it shipped and doing all the paperwork. Once you get it to Australia you have got to repackage it and sell it. In itself it is major organisation, even with simple things we have done, like cigarette smuggling organised through crew on aircraft. We busted people from a number of airlines who were bringing in a large quantity of tobacco and

cigarettes. Somebody would then collect it from those people as they came in and they would sell it. If you call that 'organised', that is organised crime.

Then there is the real organised crime, in the sense of what somebody here mentioned as 'Middle Eastern crime.' I think Customs, amongst other agencies, do know who the main organisers are; but the problem is that you have to get enough evidence to prosecute. There is more crime at the border than Customs can deal with, even if you doubled the staff.

Mr HAYES—The origins of both the MSIC and ASIC cards were in detecting, suspecting and protecting against terrorist acts against airport and port infrastructure. Given that there is now a move to look at organised crime and criminal activity, are those regimes, ASICs and MSICs, presently strong enough for that purpose?

Mr Janeczko—I think we have come a long way. I can remember as a very young Customs officer at Sydney Airport going from where the Qantas administration building is onto the tarmac. I thought I was showing my Customs pass, but I actually flashed my Bankcard—for those old enough to remember Bankcard—and I was let through. The ASIC card and the MSIC card are a long way ahead. But one of the realities of organised crime is that it is a game: if you do something they will be trying to outsmart you. That should not stop us from trying to make the system as tight as we can, but nothing is foolproof.

Senator MASON—Mr Janeczko, you have been a Customs officer for 45 years, did you say?

Mr Janeczko—Almost, yes.

Senator MASON—My God!

Mr Janeczko—I am still there, is that what you mean?

Senator MASON—That is a long time. It would be a hell of a long time to be in parliament, put it that way! What would you do to improve the capacity of Customs to fight organised and serious crime?

Mr Janeczko—I think that Customs is very well resourced on the intelligence side. A lot of successful seizures of narcotics and tobacco, and other seizures, around Australia go down to very good intelligence, targeting and information sharing with other agencies. When it comes to a lot of the crimes that Customs actually have responsibility for investigating and prosecuting, I think the officers do a good job with one hand tied behind their backs. There are a lot of powers that they do not have, powers that have been taken away from them, which would improve them.

Senator MASON—What do you mean when you say prosecute 'with one hand tied behind their backs'? The committee would be interested to know what you mean by that.

Mr Janeczko—To prosecute somebody in Australia you need good evidence that will stand up in court. I will use tobacco as an easy example because it is the hugest revenue fraud in Australia at the moment. It is a major international crime. If you bring in a container, depending on the size you could be ripping the Commonwealth off for \$4 million or \$6 million per container. When Customs detects that activity at the border, it has the choice of investigating and

prosecuting as a civil offence, a customs offence or a criminal offence. To get a jail term, you have to have a criminal prosecution.

Customs no longer has some of the powers that it used to have—things like executing a three-year warrant under the Criminal Code. Customs does warrants in its own jurisdiction and, if there is enough evidence, in discussion with the DPP it will become a criminal prosecution. Customs does not have the ability to access TI, telecommunications intercept, material. Customs is an armed investigative body as well as a border protection body, yet it has a restriction on how well an investigation can be carried out, because it has to go to other agencies to get the normal tools that people doing that kind of work should have. You would have to go to the AFP or the Crime Commission to continue an investigation.

Senator MASON—To enforce the law or to prosecute the law, sir—or both?

Mr Janeczko—Doing surveillance if you do not have the capability is an example. A good example is that we found six containers of tobacco in Perth that were being shipped across to the east coast. That was \$6 million. That is the revenue we are talking about. You have to track those things across the country and then take out the bad guys at the other end, because if you just seize it you will not catch whoever is doing it. So you have to let it be unpacked and try to follow it through the chain. Customs is almost powerless to track that because the legislative capability to do that has been taken away from it. It is not included in the list of law enforcement agencies. And, yet, that is something that happens every day of the week. That is an example. If you intercept material, you have to go through a lot of bureaucracy to use that in a prosecution. Those sorts of issues restrict investigators.

Senator MASON—So liaising with other agencies becomes foremost?

Mr Janeczko—Liaising is getting better and it is important, but the trouble is that a lot of the agencies we are talking about are overstretched anyway. It was not unusual in most of my years in investigation that, if I asked another agency if they would like to help me, they would say, ‘Come back in three weeks time, on Monday week or a month’s time and then we will help you.’ That does not help you much if the container is leaving. We will use the state police if we can. We get a lot of cooperation but, at the end of the day, other agencies’ priorities are not ours.

Senator POLLEY—Thank you for coming before us. We have had evidence given to us from a variety of witnesses in relation to the underreporting of criminal activity. As somebody who has been involved in the industry for so long, have you got a view as to why there is underreporting? Is it because people feel threatened, they just do not want to get involved or they do not know which agency to report to based on whether it is in a port or an airport?

Mr Janeczko—Underreporting by the public or by—

Senator POLLEY—By people working in our airports and ports in general.

Mr Janeczko—I think it was Donald Rumsfeld who said, ‘You don’t know what you don’t know,’ or words to that effect. One of the issues with crime is that usually it depends on detection to be reported. We get a lot of prosecutions for child pornography. The people who smuggle that through the border are not going to report that to anybody. Once you do an

investigation and uncover there is a huge ring of people doing that and you find other people you will find out that there is actually a crime.

When we did the investigation on the east coast of the six containers I mentioned coming from Perth, we found that there were 50 containers that had come into the country and Customs had only got six. In that sense, that shows you that there is underreporting of the magnitude of the crime unless it is a victim that is reporting. These are not victimless crimes, but to whose benefit is it to report it? That is the question I would ask—who is getting the benefit out of reporting?

Senator POLLEY—If you were to report the illegal importation of cigarettes it would be the taxpayer who benefits because otherwise there is less money for the government to use in the community. But in relation to the things that you would have perhaps seen in your time in the industry, is there commercialisation around airports, particularly with there being more retail outlets and catering facilities? Has that changed the dynamics around an airport? Is that a concern? Have you got a view?

Mr Janeczko—I have not got a view. But just to finish off on the last answer, I am not against reporting. I am saying that there is underreporting because people do not have the incentive to report. I am all for reporting.

On the other question, the more people you have in an airport and the more traffic you have coming and going the more risk there has to be anyway because you have a larger number of people coming in and a larger number of people to check. There are legitimate goods that have to be in an airport. There are only a small percentage of those things you can target. The advantage of duty-free is probably a thing. We had a major success a year or two ago in uncovering and prosecuting people who ended up with five or six years in jail because they were getting around the duty-free laws. So greater commercialisation, in the sense that if you get a concession by buying at an airport that you could not get if you were not buying at an airport, has brought greater risks. Where there is a vulnerability you will find crime. I think the fact that it is a shopping centre where planes land has created a lot of opportunity.

CHAIR—As there are no further questions, thank you for, Mr Janeczko.

[12.30 pm]

HARVEY, Ms Tamsyn, Assistant Secretary, AusCheck, Attorney-General's Department

McDONALD, Mr Geoff, First Assistant Secretary, National Security Law and Policy Division, Attorney-General's Department

CHAIR—I welcome officers of AusCheck and the Attorney-General's Department. I invite you to make a short opening statement, at the conclusion of which members of the committee will be invited to ask you questions.

Mr McDonald—Our department views the work in this area as very important, right across the range of security crime and security related issues, so we very much welcome the work that you are doing. We have provided a written submission; I will not go through all the content of that. We have given some thought to that submission and that outlines some of our thoughts about this area. As you know, that submission was written a little while ago. In paragraph 44 of the submission we mentioned that, under the MOU with CrimTrac, criminal history information is destroyed after three months. We are currently reviewing the time period, looking at trying to keep the material a little bit longer, because it becomes a problem sometimes in the context of litigation. We are currently negotiating with CrimTrac about that. We think it would be better if the time frame for retention of criminal history information was about six months rather than three months. That is about it in terms of adjustments to the submission.

Mr HAYES—Throughout this inquiry both maritime security identification cards and aviation security identification cards have featured, and AusCheck has a pretty central role in that. Would you inform the committee, at the outset, of the changes that have occurred in the last 18 months with MSIC and ASIC processing?

Mr McDonald—The first thing I should say is that many of the changes are to do with the criteria—the framework—and AusCheck's job is to check things against the framework. The framework itself is developed by the Department of Infrastructure and Transport and the Office of Transport Security, who, I understand, are appearing at this inquiry later. The key change in the framework is to add some offences to the MSIC criteria to bring them more closely in line with the ASIC criteria—there were some omissions from the MSIC criteria, probably the most dramatic being some of the homicide offences. That was an important change. The other key change relates to the time period for the cards. That has been reduced to four years with a review every two years. So, as a result of that, we will have more frequent checking and checking on a wider range of offences.

Mr HAYES—In terms of the checking of a more wide range of offences, those relating to criminal offences—matters of indictment and also those where someone has been found guilty and has received a custodial sentence—where there is a suspended sentence in respect of an indictment matter, is that reportable for the purposes of AusCheck?

Ms Harvey—Yes it is. Under the Crimes Act a term of imprisonment includes a suspended sentence. It would include a sentence where someone is imprisoned, say, until the rising of the court—that is another common thing that we see. So a term of imprisonment covers off on a suspended sentence.

Mr HAYES—Coming back down to four years: that would be the four years that there will be—between reviews of both MSIC and ASIC holders?

Ms Harvey—Sorry?

Mr HAYES—As to reducing the period of four years, you will do a complete review at the end of four years as to a person's integrity for the holders of both MSIC and ASIC cards?

Ms Harvey—At the moment, for ASICs there is a complete check every two years; for MSICs the person has a choice as to whether they want to take out a two-year card or a four-year card, but there will always be a full check of criminal history, an ASIO check and, if necessary, a DIAC check at the two-year point in an MSIC card as well as at that four-year point.

Mr HAYES—Is there any great difference between the procedures for analysing ASICs and MSICs—the two different cards?

Ms Harvey—The procedures are not different. When an application is lodged with AusCheck it goes to CrimTrac, ASIO and, if necessary, DIAC. We then get that information back in and assess it against the criteria for each of those cards, MSICs or ASICs. But there is a similar procedure that is followed by my staff.

Mr HAYES—And neither of those cards goes to intelligence matters such as known criminal associations?

Ms Harvey—No.

Senator MASON—Just following on from Mr Hayes's questioning: you suggest in paragraph 64 that an alternative for a name based check is a check based on a unique biometric identifier in combination with a person's name. Do you have the technology to do that? Is it up and running—ready to go? What is the story?

Mr McDonald—No. We have tried to be forward-looking with our submission. Some of you would be aware of the work that is being done with law enforcement, with fingerprinting and identifying people. There are big equipment issues. Clearly, to make it efficient, it is useful to have electronic scanners and things like that. So implementation of biometrics would involve quite a big capital investment; there is no question about that. And, of course, we have a circumstance where we have to look at the cost-benefit analysis of every national security measure and weigh it against other national security measures. So we have mentioned that. Obviously, there is some work being done in this area. We have no doubt that a fingerprint based scheme would be a better scheme in terms of guaranteeing absolutely that the person you are talking about is that person. We have got—

Senator MASON—I will just interrupt there, Mr McDonald. The government is proposing to bring in a unique healthcare identifier, which you have probably heard about. You would not be seeking to use that as the unique identifier, would you?

Mr McDonald—Certainly there are no proposals of that nature.

Senator MASON—Indeed. On paragraph 46 you refer to subsection 14(2) of the AusCheck Act. This specifies that personal information held in AusCheck may be used or disclosed—sharing your information with various agencies. Do you initiate the sharing of information? Is that proactive or do other agencies that you share information with seek it from you?

Mr McDonald—They seek it from us.

Senator MASON—Okay, so they seek it from you; you do not disburse it. Do they need to show cause, or just interest?

Mr McDonald—Clearly, they need to indicate to us that it is for the purpose of law enforcement. In the last period we have had requests from the AFP, the Crime Commission and Customs and Border Protection. It does happen that from time to time they request this information.

Senator MASON—In paragraph 7 you say that your division ‘is responsible for the development of law and policy relating to organised crime’. Is that still the case?

Mr McDonald—Our division covers some issues in relation to organised crime. We look after the telecommunications interception work. Our main *raison d’être* is dealing with broader security issues—terrorism and stuff like that. There is also another division, the Criminal Justice Division, which is the division that looks after most mainstream crime issues. And I am here representing the department as a whole—

Senator MASON—If there were legislative gaps in the network protection that were required by the parliament to be looked at, it would be your division that they would be referred to?

Mr McDonald—Sorry, you said ‘network protection’.

Senator MASON—Yes.

Mr McDonald—Sorry, you mean cyber—

Senator MASON—Not necessarily, no, just the umbrella of protection that might be necessary—will everything come through your division at the end?

Mr McDonald—Yes, in terms of telecommunications interception and those sorts of issues. We also are obviously very interested in the sharing of information between agencies. That is a big policy issue that we are concerned with.

Senator MASON—It has a very proud history that division.

Senator POLLEY—Thank you for your submission. In relation to the ports and seaports and the MSIC and ASIC cards, obviously we know why they were instigated in the first place, but do you see the need for any change or tightening of the eligibility for temporary passes and visitors’ passes? Are you happy with the regime that is on the ground?

Mr McDonald—Policy responsibility for those criteria is the Office of Transport Security. Obviously there was a tightening up of the criteria last year and we are very supportive of efforts to improve security and deal with crime. But as for us commenting on details about that criteria and the like, obviously that is the responsibility of the separate Office of Transport Security. I think you have had the opportunity to talk to the law enforcement agencies about what they confront operationally and you might be able to draw conclusions there. But in terms of the policy of that, I probably would not want to say much more about it.

Senator POLLEY—In relation to the time period of renewal—and with MSIC it is two to four years, an optional thing—do you see a necessity for, or do you have a view about, whether there should be uniform times? Is two years adequate time?

Mr McDonald—We were very happy with the idea of that two-year review in the middle of it. That seems to address any security concerns. Whether it is four years or two for the total card, I do not think that matters so much as every two years. We were really pleased to see the greater frequency across the range of our policy responsibilities.

Senator POLLEY—In paragraph 69 of your submission you talk about sharing of information. Can you elaborate a bit further on that paragraph for the committee? You say:

Under the current Guidelines, agencies are provided with information from the AusCheck database which has been copied onto a CD or in a written document, and hand delivered. This restricts the ability of law enforcement agencies to use AusCheck database information in operationally critical circumstances.

Can you explain why that is the procedure?

Mr McDonald—Yes. What we are pointing to there is being quite upfront about how the current system works. Clearly, if we had more streamlined systems it might be of more use. However, like the other issues that we have discussed, it would have a technological and resource impact because of which, when weighed up against all the many other things that are going on, the national security space might not get the same priority. If you want to look at an area where there could be improvement, we have just identified one.

Ms Harvey—The only thing I would add is that where IT systems are becoming more secure—for example, if an agency has a system which is quite secure—we can probably email that information when it is required. It will depend on the ability of our systems to talk together.

Senator POLLEY—So we have it on record, can you outline for the committee the agencies that you are talking about?

Ms Harvey—There are guidelines that have been updated and included on the web. I can hand over copies of that if that will help. The agencies are ASIO, the AFP, the Australian Customs and Border Protection Service, the Australian Crime Commission, AUSTRAC, Centrelink and the Department of Infrastructure and Transport.

Senator POLLEY—Not the Australian Taxation Office?

Ms Harvey—No.

Senator POLLEY—If you could table that document, that would be useful. Thank you.

CHAIR—I have two quick questions. You may wish to put them in a document. The committee commenced this inquiry in September 2009 and, as such, many of the submissions to the inquiry, including your own, are over a year old. Can you confirm for the committee the changes made to both the ASIC and MSIC schemes in the last two years?

Ms Harvey—Certainly. There were the changes outlined before around the increased criteria for MSICs and the move to the two-year and four-year card for MSICs. There are also self-reporting obligations in the MSIC regime now. They have been enhanced in the ASIC regime as well.

CHAIR—I wonder if it might be of assistance to ask if you could just put in a document an outline of what has changed in the last two years.

Ms Harvey—Certainly.

Mr McDonald—We can certainly put it in a document. In the main, I think we covered things earlier on, but we can do that again for you.

CHAIR—The other question I have—and it may be something you might wish to take on notice—is what the likely resource implications of introducing a criminal intelligence element to the assessment of MSIC applications would be. What other issues would arise from such a measure?

Mr McDonald—I will take that on notice, but I can tell you that, as I said earlier, it would be quite significant.

CHAIR—Okay.

Proceedings suspended from 12.50 pm to 2.03 pm

HUNT-SHARMAN, Mr Jonathon, President, Australian Federal Police Association**BRIDLE, Mr Ian, Vice President, Federal Operations, Australian Federal Police Association****SANTAMARIA, Federal Agent Ben, Zone Coordinator, Federal Investigations and Office Operations Support, Australian Federal Police Association**

CHAIR—I welcome the Australian Federal Police Association. I invite you to make a short opening statement, at the conclusion of which members of the committee will be invited to ask you questions.

Mr Hunt-Sharman—Thank you for the opportunity for the Australian Federal Police Association to appear before the Parliamentary Joint Committee on Law Enforcement. This is indeed significant in itself, because it was exactly a decade ago, in February 2001, that the AFPA recommended to the then Senate Legal and Constitutional References Committee the establishment of a parliamentary joint committee to oversight law enforcement, in particular the AFP. As you are aware, we have continued to echo that view in various hearings and forums and are delighted now to be before this committee which now has a direct opportunity to influence decision making and legislation relating to the Australian Federal Police.

In our submission, the AFPA has highlighted a number of current inadequacies in Australia's maritime protection strategy, including the lack of a comprehensive screening process for incoming cargo; the questionable effectiveness of the Maritime Security Identification Card, or MSIC, scheme; and uncertainties regarding state and Commonwealth jurisdiction. These failings require significant attention because there is established evidence that organised crime is flourishing at Australia's numerous maritime facilities. Vast quantities of illicit drugs and other contraband have already been discovered on board cargo ships arriving from international destinations, despite the comparatively small number of detections that occur at our maritime ports in comparison to other avenues such as air cargo and parcel post. For example, sea cargo only accounts for around one per cent of illicit drug detection seizures at the Australian borders, yet counts for over 80 per cent of the cocaine, over 70 per cent of the ATS, or amphetamine-type stimulants, and around 80 per cent of MDMA in total quantity and weight seized by the AFP.

It is likely that substantially more illicit drugs and illegal items are reaching Australia in relation to these unprotected maritime ports and are therefore going undetected. The truth is that surprisingly little is known about the level of organised criminal activity in Australia's maritime ports. This is likely due to the lack of widespread protection, detection and investigation capability at these facilities. The relative neglect that the maritime security industry receives in comparison with aviation is difficult to justify, given that the ships offer organised crime syndicates a means by which to traffic greatly increased quantities of illicit materials compared to post or air. This should be enough to convince decision makers that action is required on maritime security.

The AFP believes that the Commonwealth government should pursue the replacement of the existing maritime security structure with an all-in model under which the Commonwealth would

assume responsibility for the coordination of maritime security and policing services at key maritime general cargo ports such as Sydney, Melbourne, Brisbane and Fremantle. In the event of such a change, the expansion of the AFP to include responsibility for maritime security and policing would make sense as a natural flow-on from its jurisdiction of Australia's major airports. Many of the recent recommendations arising from the federal audit of police capabilities conducted by Mr Roger Beale AO, which are partly aimed at streamlining the aviation security structure, could equally be applied in the context of the maritime industry.

We recommend the introduction of bodies with similar functions to the AFP's successful Joint Airport Investigation Teams and Joint Airport Intelligence Group. The AFP JAITS and JAIG models, as they are known, would be ideal for the conduct of organised crime investigations at key general cargo maritime facilities. The AFP is also able to provide services, including the Australian Federal Police Protective Service officers, to ensure the security of the critical infrastructure at those ports. There is also considerable potential for improvement in Australia's maritime security framework with regard to the issuance of the Maritime Security Identification Card. Figures provided by the department of transport indicate that, since October 2009, approximately 30 per cent of the 12,552 maritime workers who applied for the card had a criminal record. Nevertheless, just 41 of those applicants were denied a MSIC. This low figure is mainly due to the limited scope of the 'adverse criminal record' definition that is employed in the screening of potential employees.

It is imperative to Australia's national interest that the security standards to which maritime workers are currently subject is addressed to reflect the sensitive environment in which they work. Moreover, there must, again, be consistency in the approach applied to the security identification card system by the maritime and aviation sectors. Should the AFP be responsible for federal and criminal law enforcement functions relating to maritime activity, including the investigation and/or oversight of border crime investigations, this would inevitably require cooperation with the state governments through COAG to allow the AFP to provide maritime security and policing at designated cargo ports, replicating the aviation model.

While this proposal may well be controversial, it is also necessary, not to mention overdue. The Australian Strategic Policy Institute in its April 2005 report, *Future unknown: the terrorist threat to Australian maritime security*, made similar recommendations on national security grounds. Our maritime ports, as with our airports, require that one organisation plan and implement a unified security framework that guarantees continuity in the protection of Australia's maritime facility. The AFP is uniquely placed to confront this challenge due to its established international network, a highly trained police force and a track record of success in border crime and transnational crime investigation.

The AFPA submits that it is time for the AFP to have broad oversight of designated airports and designated maritime ports to ensure national harmonisation in these two key areas of national security. At the very least, this is an important debate that should be discussed at the highest levels of government and law enforcement. We trust that the parliamentary joint committee will seriously consider the 30 recommendations made by the AFPA. Thank you.

CHAIR—Thank you, Mr Hunt-Sharman. Mr Hayes is going to lead the batting.

Mr HAYES—Your last point is probably a good place to start. You are talking about having not simply the AFP but Protective Service officers taking over greater responsibility for security of ports in place of a myriad of private security agencies.

Mr Hunt-Sharman—That would be ideal, but of course they could be supplementing those people as well. The important thing in regard to the AFP Protective Service officers is the fact that they are sworn officers that are under the full AFP integrity regime and they are highly trained. What it would do is that, whilst they are playing a role of protecting the security of the area, they would become the eyes and ears and the conduit for information to be passed through to the AFP.

Mr HAYES—Those security officers would still come under the extended jurisdiction of the commissioner of police?

Mr Hunt-Sharman—Yes, that is correct.

Mr HAYES—Have you any knowledge or intelligence about the level of security activity that takes place now, with the very diverse nature of our ports, and the selection criteria for security officers, where in the port of Sydney or any other designated port?

Mr Bridle—I understand there is no across-the-board standard. It is specific to each of those ports and the agencies that are providing security at those ports. In a number of cases they have private security companies.

Mr HAYES—During the course of our inquiry we have heard that some members of outlawed motorcycle gangs actually hold some of those positions, so I guess they are a bit varied in their selection and retention strategies.

Mr Bridle—Obviously those are areas of grave concern to us as well.

Mr HAYES—You make a point about the integrity regime overpinning police officers or Protective Service officers. They are subject to the same AFP integrity regime?

Mr Hunt-Sharman—Yes, and the Australian Federal Police clearly has the highest level of integrity regime of any police force in Australia. All AFP employees are subject to that integrity regime, including the Protective Service officers.

Senator MASON—Civilians too?

Mr Hunt-Sharman—That is correct. They are all employed under the Australian Federal Police Act, yes. But we did some costings in 2010 for, say, one designated maritime general cargo port and 30 AFP protective service officers. The estimated costs would be \$3.6 million plus supply costs of \$1.5 million, being a total cost of \$5.1 million per annum. The establishment of a similar model to the Joint Maritime Crime Task Force, or some type of model similar to the JAITS and JAIGs, with 30 AFP, two state police officers, two customs and border protection personnel and two ACC personnel funded by the Commonwealth at a general cargo port, was estimated to be \$4.3 million plus supply costs of \$1.8 million—a total of \$6.1 million per

annum. That gives a rough idea. It is relatively cheap in comparison to the safeguards the Commonwealth and indeed Australia would get.

Mr HAYES—You are talking about armed personnel?

Mr Hunt-Sharman—Yes. The Australian Federal Police Protective Service officers are fully trained at the same level as the Australian Federal Police officers and they are fully armed.

Mr HAYES—Another thing that has come up during the course of this inquiry is the strength of both ASICs and MSICs in terms of identifying people working in and about our airports or ports. Do you have any views about whether those cards should be evaluated solely against criminal convictions? Should there be a level of intelligence that goes into the issuing of those cards to ensure to some extent that fit and proper people are engaged in those pieces of infrastructure?

Mr Hunt-Sharman—In regard to our recommendations—and this may assist the committee—we have produced a summary of those recommendations and numbered them. That may be of assistance, so I will table some copies of that for the committee. But our recommendation No. 10 was that there be criminal intelligence checks of current and prospective SIC holders and that the AFP Commissioner must be satisfied based on that intelligence that the applicant or SIC holder is a fit and proper person and, if he or she is not satisfied, an adverse criminal record be established.

Mr HAYES—Would that also include known associates of people with criminal records of serious and organised crime?

Mr Hunt-Sharman—Yes. There are other structures in place where a fit and proper person test occurs—for example, in regard to firearm licences—and that captures those issues. In regard to a review mechanism, the person always has the ability to appeal such a decision, but we see it as an important element. In fact, when you look at the criteria for the aviation security identification card compared to the criteria for the maritime security card, it is somewhat conflicting and somewhat confusing. We would say that, if nothing else, the criteria have to be harmonised. We understand the logic behind it—aviation was very important after 11 September 2001—but the issuing of an MSIC is quite random. We believe that needs to be brought in line and a higher test established in regard to identity—and indeed the person who signs off on those documents. It should be something similar to receiving an Australian passport.

Mr HAYES—Could I just digress. You have raised the issue of domestic travel and the lack of identity verification in domestic travel, as have some of your colleagues from the AFP when they appeared before us in Western Australia. Could you explain to us the significance of not having to identify yourself before boarding an aircraft and what that means for organised crime in this country?

Mr Hunt-Sharman—As you would be aware, before they had the automated ticketing system, an individual had to identify themselves to collect their ticket at the airport and they would have to use proper identification, whether that is a driver's licence or a passport et cetera.

Mr HAYES—I think you still do if you go to the counter, but if you go to the automatic check-in machine—and we have one downstairs—you obviously do not.

Mr Bridle—You can even do that online on your personal computer.

Mr Hunt-Sharman—We certainly see this as a serious issue. We can understand the commercial imperatives that may be there with regard to the airlines saying they want to use the automatic ticketing system or, indeed, online booking. But what we would like to see is that there is a specific offence in play for the situation where someone travels on false identification. This becomes very important in relation to future investigations by law enforcement agencies, including the Australian Federal Police, where we may identify criminals who have travelled on false books—and, of course, there is no offence for that—and that might be part of an investigation of proving criminality in an offence et cetera.

Mr HAYES—If you bring an orange into Canberra and do not deposit it where it says that fruit and vegetables have to be deposited, you can be fined.

Mr Hunt-Sharman—Yes. You can travel on false identification for criminal activity and you are not fined.

Mr HAYES—Whereas, if you travel in Europe or around the United States at the moment, there is a series of checks and balances in the system where you visually have to be sighted against some photographic evidence as to who you are.

Mr Hunt-Sharman—Yes. We spelt out the offence itself. It is in recommendation 18:

That an offence be inserted into the Aviation Transport Security Act ... that will make it an offence to travel on an aircraft flight under a false or assumed name or name of another person, without reasonable excuse; and

That a further offence be inserted into the Aviation Transport Security Act ... that will make it an offence for a person or organisation to assist a person to travel on an aircraft flight under a false or assumed name or name of another person, without reasonable excuse.

Importantly, we have reasonable excuse built in. This is not about people making an error or people trying to avoid—where, for personal circumstances, they are trying to get on a flight to leave a state without someone knowing. If there is a reasonable excuse for the behaviour, then it would be looked at—

Mr HAYES—It happens to politicians all the time!

Mr Hunt-Sharman—If you are going to keep the automated ticketing system and the online booking system, then you need to build in an offence for breaching.

Senator MASON—Just remind me—I was not a member of the legal and constitutional committee 10 years ago, was I? I might have been.

Mr Hunt-Sharman—I think you were and you made some very good recommendations.

Senator MASON—So it has taken 10 years for these things to start to move, Mr Chairman?

Mr HAYES—You have to wait for it sometimes.

Senator MASON—Mr Hunt-Sharman, you mentioned in your opening remarks that we are not sure how much crime is committed at airports and ports in Australia. I used to teach criminology and we used to talk about the ‘dark figure’—the amount of crime that is unreported, in effect. Are there any estimates at all as to the size of the ‘dark figure’ in Australia’s ports or airports?

Mr Hunt-Sharman—I believe that the Australian Crime Commission and, indeed, our colleagues from the Australian Federal Police behind us should be able to give some more detail on that. It is important to say that, even in looking at some of the other submissions, there seems to be a view that someone else is doing the policing at, particularly, maritime ports. Some people think it is the Australian Federal Police, some people think it is some other organisation, and there seems to be absolute confusion.

I can assure you that, in regards to a permanent police presence at key maritime ports, there are no Australian Federal Police there. In fact, a number of us who have worked over the years in drug investigations have been quite amused by that comment because we have hardly been on the cargo ports themselves. There is clearly a gap that is sitting under the radar that has not been addressed. Some people think there are state police there, but when the state police give their statements they say, ‘No, it is the Australian Federal Police.’

Senator MASON—I was going to ask you about that. Looking at recommendations 20 and 23 of your report, if the committee and indeed the parliament would accept those and legislate to bring them into effect with, as you say, the assistance of the states, because it would take that, do you think the apparent enhanced law enforcement capacity at Australian airports by the Australian Federal Police—it is seemingly superior—would be a reflection of AFP techniques, recruitment and so forth? Or is that more a reflection of maritime ports having a different geography and a different context? In other words, would it make a big difference if the AFP were to take over the policing role?

Mr Hunt-Sharman—We say it would because it would be consolidating the intelligence coming through and simplifying the reporting mechanisms. In the end, it is the border of Australia and we have the Australian Federal Police at the border in regards to airports but we have not got them in regards to maritime ports and, in fact, we do not have anyone else there. We see it as an important issue that there is a uniform policing presence. We suggest that the policing presence should be Australian Federal Police Protective Service officers. They would be more suited to protecting infrastructure and being the people on the ground in those areas. But a model similar to the JAIT’s and the JAIG’s could work very well with the state police. It gets around a lot of the jurisdiction issues. Those models in aviation have been very successful and can quite easily be replicated, we would argue.

Senator MASON—That is an important recommendation. I will ask you one last question in relation to one of the legal offences here that an illicit enrichment offence of public officials should be proposed as recommended in article 20 of the United Nations Convention against

Corruption. In effect I think it is fair to say that that is a reversal of the onus of proof against public officials. Is there precedent for that?

Mr Hunt-Sharman—Certainly the unexplained wealth provisions that have been introduced into the Proceeds of Crime Act are similar. We see it as important to have that offence, and we believe the Commonwealth would have the power to create such an offence due to the international conventions that we are signatories to.

Senator MASON—So an external affairs power?

Mr Hunt-Sharman—Yes, external affairs powers. We see it as an important issue in regards to public officials where they may well have unexplained wealth—

Senator MASON—I don't!

Mr Hunt-Sharman—We did have a fallback position that it only apply to high-risk border agencies such as the Australian Federal Police, the Australian Crime Commission, the Australian Customs and Border Protection Service and Immigration—the ones that are at a high risk of being corrupted.

Senator MASON—Fair enough. We have seen the issue before in relation to certain individuals. It is an issue, isn't it?

Mr Hunt-Sharman—Yes.

Senator MASON—It is clearly an issue.

Senator POLLEY—Your recommendations about having a stronger presence on our wharfs in particular and at the ports is contrary to some other evidence that there is some threat to law enforcement personnel on ports—intimidation and assertions that accidents happen. Is that something you would be concerned about or have a view on?

Mr Hunt-Sharman—If evidence like that has been given, I think it absolutely justifies our argument for having the Australian Federal Police on the ports. Sir Robert Mark, who actually created the Australian Federal Police—he was the Commissioner of the Metropolitan Police, or Scotland Yard—back around 1973 made a recommendation that there should be specific police based at the maritime ports and the airports and that they should be established there for the purpose of dealing with organised crime. That was in England, and we would say that it applies here.

Senator POLLEY—There was a question earlier about unreported crime and what the statistics would be. I know you could not provide those statistics to us, and I hope we get them later, but do you have a view as to why there is so much unreported crime? Part of the evidence this morning was that people would not know who to report to—the state police, the AFP or Customs. I find that extraordinary. If I were a witness to a crime, would it matter if I did not know exactly where to go? Surely I could go to the state police and make a report. I am sure they are quite capable of recommending where to go if that was not the right place. Is that justification for unreported crime?

Mr Hunt-Sharman—Again, one of the difficulties is what I mentioned earlier, which is confusion about jurisdiction—who is responsible and who is not? There is many a situation in which an individual may go to a state police station and complain about a matter and be told, ‘That’s not a state police responsibility’ and no further action happens. The reality is that if you have a uniformed policing presence at the key maritime ports it is clear that people can go to the Australian Federal Police officers that are actually based there. It makes a clear line of communication and intelligence gathering available to policing. That does not happen at the moment. Customs is only at certain locations. A lot of people would not see a Customs officer as a law enforcement officer or a police officer. Therefore, they would not approach them. We have to remember that there are other areas where Customs would not be seen. At the moment people see a private security guard firm that may employ officers who are former organised crime members, bikie gang members or whatever as the only avenue. Where do you go if you are going to work every day and there is no-one to report anything to? You have private security guards there who you think might be suspect themselves. This all changes once you have public officials there in the form of Australian Federal Police Protective Service officers supported by the investigation and intelligence teams that we are suggesting should be established.

Senator POLLEY—You have outlined gaps in relation to both the MSIC and the ASIC, and we have had other evidence in relation to people who can get a security pass—an ASIC or an MSIC. An MSIC can be opted for a two- or four-year period, with a review in a two-year period. Do you have any views on whether that should come into line with the airport passes?

Mr Hunt-Sharman—Again, this probably gets back to the issue of the lack of ongoing probity checks being done. We did recommend in recommendation 15 that current and prospective SIC holders’ details should be recorded on the National Police Reference System to enable ongoing probity checks on SIC holders. There are no set dates as such; it is just an ongoing process. Under the current system there are significant delays and also, depending on what type of offence the person has committed, they do not even have to report it and then the onus is on them as an individual. It is really like having your hand in the cookie jar.

Senator POLLEY—In relation to airport security, we recently visited Adelaide airport. I think that impressed all the committee members given the way they use ASIC passes in terms of how they can close down areas and the monitoring of it being very good. A comment was made that why it does not work perhaps as well in other major airports is that they are much busier. But does it really matter to what extent passengers are going through an airport? If we are talking about security, shouldn’t it be uniform across the country?

Mr Hunt-Sharman—We would say definitely. It is a very important issue. In fact, prior to this hearing we were talking about how all the systems are now different. It is an issue and it needs to be addressed. There is certainly a lot of work to be done on the MSIC criteria and on the obtaining of one. Also, work needs to be done on the ASIC. So I think if that is all combined together it would be an immediate fix for some of the issues that exist at the moment. In recommendation 16 we recommend, when you are looking at the issue of ongoing checks, that back-checking occur. We recommend:

That AusCheck collaborate with Crimtrac in relation to the National Face Recognition Project with a view to utilising the Face Recognition computer program to compare the photo records held on all current and potential SIC holders with police database photo images.

It is an important issue. When they were trialling this system in Victoria—and I am sure CrimTrac could give more details on this—they found large numbers of people having numerous drivers licences and this program picked up the duplication of photos. I think in one case one person had multiple drivers licences—a number of 30 to 60. The issue here is that the technology is there. If CrimTrac wants to continue trialling its system there is an opportunity here to enhance security by running those old records through a face recognition program.

Senator POLLEY—Thank you for that. Obviously, what would flow on from those recommendations would be tightening up the temporary passes process as well. Do you have anything that you want to put on the record in relation to how temporary passes are actually allocated?

Mr Hunt-Sharman—No.

Senator POLLEY—One flows from the other, I would suggest.

Mr Hunt-Sharman—Yes, it would.

Senator POLLEY—I have one final thing, which is in relation to ports, again, and waterways. Something that I find interesting—and there may be surveillance of small craft that go alongside international ships coming into our waterways—as somebody who is on the water quite often it is very easy to go alongside an international ship, even ones coming into little old Tasmania, so it would be very easy to have parcels dropped over the side to a boat. I am wondering if you have any comments on that as to whether that, in your view, needs to have greater scrutiny.

Mr Hunt-Sharman—We certainly see that as a vulnerable area with any of the smaller port areas and any entry point in Australia. What we would say at the moment is we are just focusing on where we can see the one per cent of detections that leads to around 80 per cent of total drug seizures. Imagine if we increased it to two per cent. That is what we have got to start looking at. Yes, Senator, again it would probably have a flow-on effect. But we have an opportunity here with the main general cargo ports to start policing them, and we see that as the first priority.

Mr Bridle—We are certainly recommending the enhancement of the CCTV processes that currently exist at the ports. I think that would head off a lot of what you are addressing with that question.

Senator POLLEY—So many of your recommendations rely on others being implemented in relation to CCTV cameras and additional surveillance. It is one thing to have a camera there but you have got to have someone monitoring it and you have got to have other security measures in place, because we all know that there are cameras already in place but not all the crime is being detected.

Mr Hunt-Sharman—Indeed. One of the issues we have raised is that the cameras need to be upgraded so they are of evidentiary value. Really, there is no point in having them there if they cannot even do that. I think a very good example was Sydney domestic airport with the outlaw motorcycle gang violence there whereby they ended up having to rely on various privately owned footage and they did not cover the area where the incident happened.

Senator MASON—The footage was not of sufficiently good quality—is that what you are saying?

Federal Agent Santamaria—It could not be used for identity.

Senator MASON—Because it was not sufficiently clear?

Federal Agent Santamaria—Yes, you could not prove that the person on camera was the person before the court. The camera quality was not up to standard.

Mr Hunt-Sharman—This is because we are relying on private systems—the one that belongs to Qantas and the ones that belong to various airlines—so you are putting a mish-mash together. We are saying that if you are talking about security at airports the focus has tended to be on Customs halls and so forth but that the CCTV program needs to be covering the whole of the airport security area. This is where we have also raised the use of automatic numberplate recognition. It is available and it is being used by nearly all state jurisdictions, who are trialling it. We would say entry points into airports and maritime ports would be significant in regard to what that data could provide to us either before, during or after a criminal or critical national security issue.

Senator POLLEY—Excellent. Thank you very much.

Ms GRIERSON—You mentioned in your recommendations mandatory reporting. Do you have a view on the need for a strong whistleblower protection framework? Does that impact on this area?

Mr Hunt-Sharman—In regards to mandatory reporting, we see the risk of corruption as a major issue not just for Australians but for our members. Our members are very strongly behind us in having the highest integrity regimes for ourselves and also for the people that we are working directly with. In regards to that, it is slightly different to whistleblower legislation. We would certainly like a reporting mechanism there, whether it is to ACLEI or another body. It is a way of enhancing it. It is not critical. There are certainly some critical things to be dealt with here, we would say, and one of the issues that we believe to be so is this. It would be beneficial for all Commonwealth law enforcement agencies and law enforcement sections of agencies to be subject to ACLEI's powers, and certainly ACLEI has moved to cover Australian Customs and border protection. So we are pleased with that decision. We think that their legislation may need amendment to enable it to be stronger and pick up other agencies as required. If you take our joint aviation intelligence teams, for example, you have got a mix of non-sworn personnel from, say, Customs and the ATO. Actually the ATO is with the identity crime task force. But there are a number of people working together on highly sensitive investigations and yet they are not subject to our stringent integrity regime and they are not actually subject to ACLEI. One of the solutions—a quick fix—would be to have those individuals seconded to the AFP. That would automatically put those public servants under our integrity regime, which would be an important matter to address.

Ms GRIERSON—Without some sort of mandatory reporting regime, do you think the integrity regime would be sufficient to give your members comfort in being whistleblowers or putting forward that sort of information?

Mr Hunt-Sharman—Our members are highly professional and we do not need a whistleblower program. In saying that, the AFP itself has its own internal system, which is called the Confidant Network, which allows you to provide information on other members of the AFP or anyone else if you suspect any criminal or corrupt or inappropriate behaviour. So we have internal mechanisms sitting there. If individuals were seconded from the other Public Service agencies under the AFP Act for the duration of the task forces they would then have that available to them but they also would be subject to it.

Ms GRIERSON—You also recommend that the AFP Commissioner must be satisfied, based on criminal intelligence checks et cetera, that an ASIC or MSIC holder is a fit and proper person. Are you suggesting a process should go all that way every time—that it is the responsibility of the commissioner to tick off and sign off on all those?

Mr Hunt-Sharman—If the process itself is tightened up, it will identify those individuals that potentially may be not fit and proper persons. You are using proper databases, first knowing who the applicant is. One of the problems here is that when you look at this system it goes right back to even putting in your application form. You have people right down the list. I forget the list but I saw it and I was horrified by it. It can be the dentist, your physio, a chemist. In one way it is that old list that we used to have years ago for passport applications. It can be anyone—your grandmother's auntie. The difficulty is that it is all being tightened up with regard to passports. It has been tightened with regard to the ASICs to some extent, but with MSICs there is absolutely no tightening up. So we would say that, once you put all those processes in place, you can have proper analysis of who is actually applying and who is working in these areas. It is certainly a significant issue and I am sure the committee has already identified it.

Senator MASON—It is probably our weakest link, isn't it?

Mr Hunt-Sharman—Yes. Except there is a mighty big weak link in this process. In many organisations you have to provide identification through a fingerprint or other such things.

Ms GRIERSON—I would like to ask you something specific about that. You recommend that current and prospective SIC holders be required to provide a unique identifier, such as a fingerprint, as a condition of being eligible. Would that be required in the AFP or in other security and policing agencies?

Mr Hunt-Sharman—Yes.

Ms GRIERSON—Are you sure they would all require a unique identifier?

Mr Hunt-Sharman—Yes. A unique identifier can be a range of things these days. A fingerprint is the easy one to use but there are other methods. The important thing here is that you need unique identifiers for different roles, such as a teacher. There are a number of professions where you have to provide a unique identifier. Surely, on both national security grounds and with regard to organised crime, which now fits within the national security statement, there is a justification to prove the identity of people working in these locations.

Ms GRIERSON—And you would not be satisfied with just the photo recognition, the face recognition? You also recommend number plate recognition.

Mr Hunt-Sharman—Using a unique identifier such as a fingerprint is not unique; it is out there, and it happens in a number of professions—if you are a security guard you have to provide a unique identifier. You are capturing this group of people who are working in a vulnerable area for Australia and national security—a vulnerable area in regard to organised crime—and I would say that most people would not have an issue with providing identification to prove who they are.

Ms GRIERSON—You also recommend that, in airport and maritime port security, the CCTV coverage be improved, reviewed et cetera. I do not know what the use of CCTV is in ports. Is it up to every individual port authority? Is it the practice in some ports or all ports? What is the situation?

Mr Hunt-Sharman—As we understand it, it is absolutely ad hoc. Our recommendation is for it to be considered in regard to the maritime ports, but we do need to at least deal with the aviation industry. CCTV is not very expensive in its total cost. It was estimated that \$20 million would be the cost of upgrading airport CCTV systems across the 11 designated airports, and the estimated costing is \$4 million to upgrade CCTV systems at two designated maritime general cargo ports. So, when you look at value for money, this is a relatively low capital outlay for a significant result.

Ms GRIERSON—Are your members involved in CCTV scrutiny as a work practice? Are there members who would be sitting in front of screens looking at those things?

Mr Hunt-Sharman—We do not have members doing it, and we would not envisage the AFP officers doing that unless there was a need to have graduated control of the CCTV commensurate with the increase of threat that is occurring, whatever that is. So we would see access to it, and real-time access to both CCTV and the national plate recognition system, as extremely important. But it would not be the day to day; that would probably be through the Office of Transport Security.

Ms GRIERSON—The recommendations that you make around strengthening unique identifiers, face recognition, fingerprint recognition, number plate recognition and the use of CCTV systems—do you know of other countries that use that sort of rigorous regime?

Mr Hunt-Sharman—Yes, and in Australia a lot of those systems are already in place in different state jurisdictions. It is not particularly intrusive and there are all the safeguards. Certainly the CEO of CrimTrac could provide the committee with some detailed information on their system, the trialling of the system nationally and the positive impact of it—it is quite extraordinary.

Ms GRIERSON—I think this may have been asked before I entered the room. You have recommended that the committee seek records in relation to a number of cases where there have been breached protocols: not reporting illicit drugs, precursor drugs found at airports et cetera. Can you elaborate on why you think that is important?

Mr Hunt-Sharman—The issue here is that there are a lot of policies and agreements and memoranda of understanding and so forth, but we see it as even broader than that. The importing of, for example, prohibited weapons and so forth does not fit within the AFP jurisdiction as such;

it is through Customs. We would say that, with the national security environment, it would seem somewhat illogical that we are not picking up direct investigation of those issues.

Ms GRIERSON—So what is your major concern regarding customs and border control scrutiny? What gaps are you trying to point to?

Mr Hunt-Sharman—One of the main issues is that Customs is not at all of these locations—when you are talking about the general cargo or, for example, the domestic airports. There are two parts to this equation: there is the national security part and there is the organised crime elements and the criminality part. That can be best captured with a structure that is already in place at the 11 major airports, with the Australian Federal Police providing the counterterrorism first response capacity as well as the policing capacity.

Ms GRIERSON—Is feedback from your members giving you comfort that international cooperation is improving, or is working well or needs enhancing?

Mr Hunt-Sharman—The Australian Federal Police could better answer that, but our understanding from our members is that the AFP has a somewhat extraordinary international network that works extremely well with various countries. So, again, we have got the structure in place for dealing with trans-national crime and organised crime and terrorism. There could be a harmonisation and you could cover the ports doing the same thing.

CHAIR—Mr Hunt-Sharman, I refer you to recommendation 26. It follows a little bit on from what Ms Grierson was asking. Could you expand on your concerns that you have highlighted there and what legislative amendments you believe should be in place to strengthen it.

Mr Hunt-Sharman—In this area there have been issues of matters not being reported in a timely manner. This could be better addressed through legislation. It is really—

CHAIR—Is this something you would like to say to us in camera rather than on the record.

Mr Hunt-Sharman—Yes, that would be better.

Evidence was then taken in camera but later resumed in public—

[3.17 pm]

PHELAN, Mr Michael, Deputy Commissioner, Close Operations Support, Australian Federal Police

ZUCCATO, Mr Kevin, Acting Deputy Commissioner, Operations, Australian Federal Police

CHAIR—I welcome officers of the Australian Federal Police. I invite you to make a brief opening statement, which will be followed by questions from the committee.

Mr Phelan—Thank you for the opportunity to appear before you today. The AFP established the Serious and Organised Crime portfolio under its crime program in February of 2010. This has enabled the AFP to flexibly deploy its resources and capabilities to proactively combat serious and organised crime wherever it is detected. Given the dynamics and resilience of many organised crime groups, the AFP is committed to working closely with law enforcement partners in Australia and around the world to maximise opportunities to prevent, disrupt and defeat organised crime.

While Australia's air and sea ports remain vulnerable to infiltration by organised crime, especially for the import and export of illegal goods and proceeds of crime, our national responses to organised crime need to remain holistic and open-minded. A strategic response to organised crime will naturally incorporate links to the broader environment, including potentially all sea and air ports, but must remain conscious of the wider networks and implications both domestically and internationally. The AFP is now mandated to provide a holistic policing capability at Australia's 11 major airports. The Commonwealth jurisdiction of these facilities makes this mandate appropriate.

In addition to the provision of law and order and general security, the unified policing model provides multijurisdictional investigative capabilities to the joint airport investigation teams and the joint airport intelligence groups. This affords a policing response to airport based organised crime that is linked to broader law enforcement activities focused on related criminality external to the aviation environment. In contrast to the unified policing model, it would be significantly more complicated and resource intensive for the Commonwealth to adopt the equivalent of an all-in policing model at Australia's maritime ports. Unlike the majority of the 11 airports, maritime ports are not designated Commonwealth land and, as such, any jurisdictional mandate for AFP to operate in these environments relates to the investigation of Commonwealth offences and not geographic responsibility. Rather, the AFP remains committed to its strategy of maintaining and developing cooperative relations between the various Commonwealth, state, territory and private organisations to promote safety and security across the maritime environment. The AFP believes that this strategy is the most appropriate and effective method for combating organised crime at the ports and would neither recommend nor support the broadening of its policing mandate in this context.

The AFP's renewed focus on serious and organised crime has incorporated appropriate law enforcement responses to aspects of this criminality linked to the maritime environment. Criminal intelligence is used to inform, prioritise and plan all AFP operations. The active gathering of intelligence on organised crime groups improves investigational effectiveness and

efficiency and allows law enforcement to be both proactive and opportunistic, targeting vulnerabilities in criminal groups and their methodologies. The AFP works closely with partner law enforcement agencies, including the ACC with its coercive powers, to develop an increasingly detailed intelligence picture of organised criminality, including at air and sea ports.

Operational members from the AFP serious and organised crime portfolio occupy senior positions within joint taskforces the remit of which includes criminality at the ports. Working closely with colleagues from the ACC and Customs and the New South Wales Crime Commission, these members focus on the nexus between organised crime entities and the maritime port environment in New South Wales. These taskforces have enjoyed a number of operational successes and have contributed to a better understanding of the criminality in Australia's ports.

However, organised crime groups are dynamic, flexible and risk averse and will seek alternate methods of transporting illegal goods in and out of Australia. With its large coastline and vibrant mining industry, Australia's remote industrial ports remain vulnerable to exploitation by organised crime groups. Similarly, the use of small rendezvous type craft to convey illegal goods from offshore mother ships to non-commercial ports is a known methodology for avoiding law enforcement interest. The recreational cruise ship industry also represents some additional opportunities for infiltration by organised crime. These examples clearly illustrate that the focus of law enforcement must remain on serious and organised crime in its broadest sense. If attention is directed at one environment to the detriment of the bigger picture, organised crime groups will quickly circumvent law enforcement detection. This will result in the problem being displaced and not necessarily defeated.

The responsibility of responding to serious and organised crime in Australian ports can not be left to law enforcement and other regulatory agencies alone. Through closer engagement between authorities and the private sector, security, integrity and professional standards in a range of related industries could be improved. Breaches of these standards could be met with civil litigation and further incentives if required.

As the Commonwealth's principle law enforcement agency, the AFP is pleased to discuss its experiences responding to serious and organised crime, including at air and sea ports around Australia. I am prepared to answer any questions in relation to that. It might also be beneficial if towards the end we could move in camera, because Mr Zuccato can give some very clear and contemporary examples of some of our ongoing operations and some of the methodology that we are employing, particularly at the ports, if that would please the committee.

CHAIR—Thank you, Deputy Commissioner. We will take that up.

Senator POLLEY—In relation to the ASIC and MSIC regimes, do you think that there needs to be a tightening up of the methodology for how they are handed out?

Mr Phelan—At the moment, there is a pretty robust system in terms of how they are handed out or how they are done. There are certainly some improvements that can be made. In the first instance, I have listened to some of the submissions around some sort of biometric security measures. We would welcome something like that. Anything that can tighten up those sorts of things would be fine. We can also look at some of the issues around criminal convictions and

ASICs and MSICs. I know that there is a presumption of innocence, but perhaps when we charge someone for something and they go before the courts there should be a mechanism there for suspension or something similar to that. At the moment, they do not lose their ASIC cards because of pending criminal action. It is only a conviction that they do so.

The other point I would like to make is on the issue of intelligence being used, particularly for MSICs. I have heard some of the submissions, particularly around people's association with criminal groups et cetera, and would that be sufficient. Whilst intuitively it makes sense to utilise intelligence to help regulatory authorities determine whether or not someone should be eligible for a card, it would be remiss of me if I did not go into some of the problems that would exist in doing that as well. Not the least of those is that intelligence is intelligence; it is not evidence. So if we are put to the test with some of that information, which I would imagine would be the case, and if we are defending those cases, we would have to be very discerning about giving up our sources or where the particular intelligence came from. That could in fact lead us to withdraw from actually defending a particular case that might be against us.

The other issue is: what intelligence do we use? What threshold do we use? Where do you go to get that intelligence? Do you go to each and every one of the state police agencies, the Federal Police, the ACC, ASIC, the ATO, Customs; all the various other law enforcement agencies, like the New South Wales Crime Commission and the various corruption commissions that exist? There is myriad intelligence held that is not evidence based, and it is important to work out where you go. Even then, if we were to say that intelligence was appropriate, what level do we set that within an agency? What sort of intelligence? How robust is that information? How truthful is that information? How historic is that information? And so on and so forth. So there are a lot of vulnerabilities in using intelligence, and that is why, from our perspective, we are not fully supportive of using intelligence to determine one's ability to get an MSIC card.

CHAIR—What about an ASIC card?

Mr Phelan—Similar.

CHAIR—What about the ASIO requirements for that? Are they the same?

Mr Phelan—I do not know the exact details, but I am assuming they are similar in that they cannot be appealed, because obviously the information they are using to base those on we could not have in any sort of open tribunal forum. That would be the same for us on a number of occasions, I would imagine, if we were to use criminal intelligence.

CHAIR—But there has been a determination by the ACC—I forget the name of it, but you know the name of the one I am referring to?

Mr Phelan—Yes.

CHAIR—There is a particular way of grading levels of intelligence, isn't there—from one to five?

Mr Phelan—There is: the Admiralty Scale.

CHAIR—The Admiralty Scale, yes.

Mr Phelan—That is right, but then again: what if you had something that was F6, which is information that has not been tested and the accuracy of which is unknown, but it is a very important aspect—it might say, ‘This person is a drug importer’—and then you might have A1 intelligence that says that the person is in a much lesser position, for instance they have stolen something or other. Using the Admiralty Scale, based upon the type of intelligence rather than its reliability, is difficult, because the most important intelligence may be in your F6 type arrangement.

CHAIR—But we have been told on any number of occasions that most of the people we are referring to would not have criminal records.

Mr Phelan—I would agree with that. Right from the outset, that is what I said: we are happy to look at it, and we would support ways to look at it, but it would be remiss of me if I did not talk about what the vulnerabilities were, on behalf of all law enforcement agencies, and where you would go to actually get that intelligence. I am not saying no to it, because obviously the Australian Federal Police, and indeed all of us in the executive, want to work closely with our law enforcement partners to make sure that we can target-harden the ports as well as we can with the airports—it is important. But the actual issue of intelligence is a very vexed one as far as we are concerned.

Senator POLLEY—In relation to the security around these ASIC and MSIC pass holders, and the way the security operates at airports, there is a big gap between how it is applied at the ports. Would you acknowledge that?

Mr Phelan—In terms of what they are actually used for?

Senator POLLEY—Yes.

Mr Phelan—I would acknowledge that, yes. I think that some of those systems can certainly be tightened up as to what you can actually use your MSIC for.

Senator POLLEY—There has also been evidence given to us that there is a lack of reporting of organised crime both at the airports and the ports in this country. Would you acknowledge there is an underreporting and can you outline what you perceive as some of the issues around that?

Mr Phelan—It is an interesting point, underreporting. I have worked in community policing before, and you do not know what you do not know—in other words, what has not been reported to you. As you know, that can be extremely subjective. We have some empirical data from our airports—since we have policed the airports under the Unified Policing Model—that 29 per cent of the involvement of our members working there is crime related and 71 per cent is non-crime related. So there is a correlation there. The issue of unreported crime at the airports is difficult. I do not know. Given that you have police there, you assume that a lot of the crime is reported.

The maritime space is a different environment to those that we have at the airports, because the airports are about people. There are lots and lots of people moving through an airport, and

normal criminal offences occur to them. The seaports are a different kettle of fish. There it is about commodities, with sea containers and so on. Most of the people that are there are the employees who are working on the docks. In terms of normal criminal activity, it is difficult to ascertain what is being reported and underreported. There would be more criminal activity in terms of volume at an airport, probably, simply because of the volume of people that go through, than there would be at a port. There I am talking about normal criminal activity, not serious and organised crime, because we are well and truly aware of the vulnerability of the ports given that they are one of the major avenues where illegal goods come in.

Senator POLLEY—It has been suggested to the committee—and the evidence that we have received throughout this hearing is—that there seem to be some circumstances within the ports at least where, because the states have jurisdiction, there does not seem to be anyone taking responsibility, necessarily, with the AFP and Customs being involved. Do you have a view on whether or not there should be a stronger AFP presence at our maritime ports?

Mr Phelan—We have been directly related to this over the last couple of years, and I do not think I have ever seen the intelligence exchange between the agencies more joined up than it is now at our seaports, particularly the relationship between the AFP and the Customs and Border Protection Service, as well as the state police. We can talk a little bit later on, in camera, about the very specific arrangements we have, but since the submission was first done, in 2009, we have come a mile and a half in terms of working with our state partners, particularly in the sharing of intelligence. There are protocols that exist between the Australian Federal Police and Customs and each of the state police agencies about the sharing of intelligence within the seaports, and we are actively working with our other partners at the moment, in states other than New South Wales, to form joint task forces at the seaports similar to the arrangements that exist at the airports around the Joint Airport Investigation Teams and the Joint Airport Intelligence Group but, quite frankly, far more robust—in other words, with more people and better resourced to meet the threat. That is the key thing, in our view, around the seaports. Intelligence is the key. It is not about numbers. It is not about people in blue uniforms. I did hear one of the submissions before about the eyes and ears. It is difficult to see things that are hidden inside containers. The key to working on the waterfront is intelligence and working closely with your partners, both here in Australia and overseas, to try and disrupt those activities.

Senator POLLEY—I think the rest of my questions will have to be in camera.

CHAIR—Are there any further questions for the public record?

Ms GRIERSON—You mentioned the difference between port and airport environments. Most activities in a port happen portside. Crews are often not allowed off ships and there is a vast turnover et cetera. There are visitors to the ports—chaplains, provision and service deliveries, personal services, family et cetera. How do you accommodate that in a port environment in a safe way? Have you any problem with that sort of activity? My understanding is that port authorities do not provide any facilities for that sort of activity either. It really happens on a ship. How do you think of seafarers' welfare as well as security and safety?

Mr Phelan—Generally, crimes that occur offshore or on a ship are reported to the state police upon arrival and they are investigated accordingly. If we talk about passenger liners, organisations like Carnival have been working very closely with all the state police and the AFP

around the jurisdictional issues. Their captains and their people on their boats well and truly know, and are up to date, on the reporting arrangements. They actually have agreements with the state police, particularly when they dock in port, as to the reporting of crimes and so on. The state police send people out to investigate them. They have pretty robust procedures in place for investigating things that have happened on the boats offshore.

Ms GRIERSON—So you are quite satisfied with that system? Are different ports more satisfactory than others?

Mr Phelan—I think so. At the end of the day, it is difficult to get a real line without actually knowing what is going on there. The amount of reported crime, if we are talking about standard criminal activity other than serious and organised crime, is normally commensurate to a level of traffic of people. If the traffic of people is not equal to the amount that are at airports, then that is the sort of threat you need to.

The other point I would like to make is that when we are talking about serious and organised crime at the ports and the investigation of that crime, the ports are but a small component of that. If we are talking about a container or any sort of commodity, it is where it passes through. It is not necessarily organised or facilitated there; it is one of the points in the supply chain to get drugs from the Golden Triangle all the way to the streets of Sydney or somewhere like that. It is one of the many components that are worked through. That is what the Australian Federal Police and our law enforcement partners are working on—not just that one particular point in the supply chain, but everything else.

The vast majority of activity that comes through the ports actually operates outside of the ports. Of course one of the vulnerabilities, as we have seen with our major seizures this year, is that it does not always happen at the major seaports. It is coming through small craft that meet mother ships outside. That is the whole coastline. It is simply not practical to have people at every one of those and checking every pleasure craft that comes into organisation. It is all about intelligence.

Ms GRIERSON—I am pleased to hear you say that because Customs have said that concealment is becoming more sophisticated and it is no longer an informal or casual system, which would not support that sort of activity. You mentioned your success with the small vessels. So there is an emphasis on intelligence and international cooperation. We have seen some highly successful outcomes. Have you been confident that you were inside the loop and that these did not come as a surprise to you?

Mr Phelan—Not every single one, no.

Ms GRIERSON—You wish.

Mr Phelan—I wish. Customs and Border Protection have their own great intelligence system for selecting containers and so on. Sometimes things come cold, but in the vast majority of instances things are based on intelligence. We would know either specifically what was going to happen or in a more roundabout way that leads us to a picture to help target particular containers or vessels.

Ms GRIERSON—Can you tell us a little bit more about the success of the New South Wales Port Crime Task Force?

Mr Phelan—I would. We would like to go into that but I would prefer if we did that in-camera because we can be quite detailed about some of that if it was appropriate.

Senator MASON—Have you had a look at the AFP Association's submission?

Mr Phelan—I am aware of the majority of it, yes.

Senator MASON—They make some recommendations in relation to legislative reform—for example, recruiting persons to engage in criminal activity, a security-relevant offence, an illicit enrichment offence for public officials. There are at least three that I can see. Do you have any comment in relation to them? Do you need those in your armoury?

Mr Phelan—Our armoury is pretty good. I am not knocking them for putting that forward; I think it is good. But it is arguable that we can do a lot of those things already with the existing arrangements we have. If people are doing things deliberately to try and circumvent some laws then we can do stuff around security. On enrichment of public officials, I think there are enough offences out there for both Commonwealth and state public servants and others that we would be able to capture them under the existing legislative provisions.

I am not putting too fine a point on it if I say that over the last 10 years or so the parliament has been quite good in terms of law enforcement and what powers we have asked for and what we have been given—both physical powers but also legislative backing in terms of new offences. I think we do have a robust structure out there that enables us to do what we need to do at this point in time.

Senator MASON—Thank you.

CHAIR—Just on that point, we had a document from the ACC this morning telling us how much the wholesale price was of heroin, cocaine and amphetamines on the streets here in Australia. You can see it is just so lucrative when you look at what it goes for in, say, the United States, even for a kilo of cocaine, and what it sells for here. That is why I say when you look at people who are on remand at the moment like the New South Wales deputy crime commissioner, when you look at Army officers that have been convicted of being involved, it is no longer someone knocking off a pallet of dog food on the waterfront; we are talking about huge amounts of money involved, which must be so tempting. That is why I wonder whether or not the AFP Association's submission is suggesting that maybe they are not strong enough.

Mr Phelan—It is an interesting question. Drugs in particular is just like every other commodity in the world: whether we are talking about copper or gold, the price is driven by the standard economic equation of supply and demand. Demand in Australia is high. The price is not the driver; it is demand, which is high. For cocaine, for example, the reason the price is a lot lower in the United States is because supply is a lot easier in the United States than it is here. Those that are willing to pay for it at that particular price slide you up the demand curve and the price curve and you end up paying those terrible wholesale prices for it, which in turn see the

profits and people willing to do it. It is a couple of years salary, the wholesale price for a kilo of cocaine.

CHAIR—The risks are enormous, but the profit is ginormous, isn't it?

Mr Phelan—Exactly.

CHAIR—We will go in camera now.

Evidence was then taken in camera—

Committee adjourned at 4.35 pm