



**ROYAL COMMISSION ON
the activities of the Federated
Ship Painters and Dockers Union**

FINAL REPORT, Volume 5

The Government of the Commonwealth of Australia
and
The Government of the State of Victoria

ROYAL COMMISSION ON THE ACTIVITIES OF THE
FEDERATED SHIP PAINTERS AND DOCKERS UNION

Commissioner: Mr Frank Costigan, Q.C.

Final Report

Volume 5 Drug Trade

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ROYAL COMMISSION ON THE ACTIVITIES
OF THE FEDERATED SHIP PAINTERS & DOCKERS UNION

FINAL REPORT

VOLUME 5

DRUG TRADE

NOTE

Certain material has been deleted from this published Volume upon the advice of the National Crime Authority. These deletions have been made to avoid possible prejudice to investigations. As a result, blank spaces appear in parts of the Volume.

VOLUME 5

THE DRUG TRADE

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CHAPTER 1 - INTRODUCTION

"And how do you feel about doing business with this drug?" he asked at length.

Auguste shrugged his shoulders and raised his hands at his sides almost to shoulder height in an emphatic flourish. 'I have no problem with that, Buonaparte. To me it's the same as a farmer who grows corn even though he knows it will be used to make liquor that will be bought by men who drink too much. You can't stop men from being fools. If opium isn't the source of their foolishness, they'll find something else to make fools of themselves with.'

William Heffernan, The Corsican
(1983, Granada)

1.001 It was almost inevitable that I would be involved, at some level, with an investigation into drug trafficking. There are some peculiar characteristics of members of the Union which make the involvement of some of them in the drug industry almost inevitable. For example:-

- (a) Their association with the docks puts them in an ideal position to facilitate the entry of drugs into Australia;
- (b) their association with criminal elements in the community generally make it certain they will come into contact with suppliers, pedlars and users of drugs.

1.002 I do not wish there to be any misunderstanding about the content of this volume. In other parts of this Report I have described the facilities which the Union provides from time to time to assist its members in their

criminal activities (false identities, harbouring and the like). I do not suggest the Union or its Executive, as opposed to its members or some groupings of them, is involved in the organisation of drug importations and distribution. The associations which are described do not depend necessarily, or at all, upon the membership by the particular person of the Union. That is to say, it is not possible to allot blame to the Union Executive for the sins of its membership in this area of criminality.

1.003 Drug trafficking is an activity which rightly provokes great vocal condemnation in our society. There are members of the criminal underworld who willingly will admit their involvement in crime but who draw the line at drugs and protest their innocence of participation in its trade most vehemently. Occasionally, these protestations remind me of the Player Queen in Hamlet who was thought to "protest too much"; but I accept that for many people - otherwise of a dishonest or violent bent - drugs are an anathema.

1.004 Thus, I have treated this as a sensitive area and one in which I must exercise great care in preparing this Report. In particular, I have been anxious to avoid:-

- (a) Associating unfairly any person with drug trafficking;
- (b) Interfering with any current covert operation mounted by law enforcement bodies;
- (c) identifying any drug offender currently waiting trial.

1.005 These restrictions have meant that it is virtually impossible, publicly, to describe my investigations. Throughout the last two years I have been monitoring various drug offenders and operations which have been run by different "task forces". Information has been transmitted to and from appropriate police and other forces.

In this way, some loosely coordinated role has been achieved. When I have been able to obtain useful information, following the acquisition of banking and/or other documentary records, I have been anxious to make that available. A number of arrests and prosecutions have resulted from information obtained, analysed and disseminated by my Commission. Where possible, I have referred to those in chapter 7 of volume 1.

1.006 In appropriate cases I have encouraged joint action by those entrusted with drug enforcement and those having the responsibility to collect revenue. Although Section 16 of the Income Tax Assessment Act prevents Taxation investigators from distributing information gleaned from tax offenders (who are also drug dealers) nothing in the law prevents police officers from informing Tax investigators of suspicions as to the undeclared income of the dealer. Thus, it may be that although the dealer is able to escape the heavy penalties imposed by the criminal law he may still fall foul of the revenue law - which in turn, in some cases, may provide penal sanctions for the particular misbehaviour (if some conspiracy is involved). This is an area which should be explored by the authorities and is the subject of more detailed discussion later in this volume.

1.007 I have from time to time conferred with Government as to the state of investigations and the subject of targetting. Bearing in mind time constraints and other factors I sought guidance as to those areas on which the Government would prefer me to concentrate. The area of drug - associated criminality was given highest priority.

1.008 This meant the Commission has - within its limits of time - collected, collated and analysed a vast amount of material. The intelligence material available to the various law enforcement authorities around Australia is

staggering. But it has never been properly collected and collated. It is true that both the AFP and Customs have computer hardware capable of storing the appropriate data. The problem appears to be in providing the input. It is still difficult to break down the barriers which different police groups build around individual target and project areas. An investigative team collects data but if its task is to prosecute "A" (on "admissible" evidence) it may well discard "inadmissible" material in relation to him and other separate material which may relate to "B". It is essential, from an information point of view, that this material finds its way to the appropriate intelligence organisation.

1.009 Consequently I have not received all the available information. What I have received has been largely because of the good relationship developed with the appropriate policing forces. Although there is still present a philosophy of "protecting the patch", my staff and I have been able to develop a good understanding with police forces around the country (and for that matter overseas). By giving assistance - and providing good information and analytical backup, which has enabled on a number of occasions arrests to be made - these relationships have been cemented.

1.010 It must be remembered that the Commission does not have an operational arm in the true sense. It is not investigating crime with a view to solving it and prosecuting the offenders. It is an intelligence gathering organisation. It does not arrest, interview "suspects" or prosecute. I have not regarded my role as one of making spectacular arrests leading to impressive trials, a la the US District Attorney. Generally, I have not obtained, nor have I sought, credit for prosecutions and convictions arising from the work of my Commission.

1.011 The reports which have come to me - which are by no means complete and are merely a selection - demonstrate the breadth of the Australian problem in combatting drug importations. There has been tremendous publicity in Australia over recent years given to various aspects of the illegal drug industry. Our community has been saturated by the media coverage including the exposure of the Mr Asia Group, the drug connotations of the Nugan Hand exercise, and many and varied Royal Commissions and some particularly extravagant seizures of drugs.

1.012 There have been a number of arrests involving marijuana plantations. These have occurred in every State of Australia. There was the notorious case of the American "Grannies". There always seems to be at least a scintilla of corruption surrounding the arrests (or non-arrests) of villains involved in these areas. The circumstances surrounding the Trimbole case hardly need further restatement here. There have been allegations of too early release of various drug offenders, light sentences, improper deportation, incomplete investigations, ad nauseam.

1.013 There has been such a surfeit of reported drug offences and drug-related corruption allegations that the community is in danger of becoming inured to them. This will be disastrous as the joint resolve of Governments and law enforcement organisations to overcome the drug problem will be weakened if there is not a continued outcry against the perpetrators of these particularly nauseating criminal activities. The rage must be maintained!

1.014 There were a number of extant investigations into drug related matters of criminality being investigated by me as at 30 June 1984. In respect of these matters analyses had either been completed or were well advanced.

Those matters have been made the subject of proposed references to the National Crime Authority. I sincerely trust that the Authority will proceed with those investigations.

1.015 Having said that, I am concerned that the NCA might be side-tracked (as I have been occasionally) into investigating individual drug syndicates as referred to it by the Inter-Governmental Committee. I believe the NCA should, in this area of criminality, demonstrate a more global approach. Its aim should be to develop a new strategy to control the importation of drugs. I offer this volume of my Report as some contribution to the development of a more effective total strategy than has yet been found. In expressing that hope I am conscious that much work has been done in this area. There has been a plethora of Commissions in Australia in the last decade which have concentrated on the issues involved in the drug trade. They have considered those issues with great care and offered solutions to the problems. I have collected in chapter 4 their recommendations and some of the discussion in their reports.

1.016 In the following chapters of this volume I set out some of the matters investigated by me (bearing in mind the guidelines established for myself in paragraph 1.004 above). I include a detailed analysis of one man whose financial affairs became of some interest. That will represent, to some extent, a case study on which will be based some of the observations later in this volume.

1.017 Needless to say, I regard the availability of drugs in Australia - pursuant to the activities of criminals - as one of the major threats to the stable future of this country. If a solution can be found to the problems then I believe it will justify the time and cost expended.

Previous Commissions

1.018 I have referred to the fact that a number of Royal Commissions have enquired into drug related matters. I will be referring to their work and reports in the course of this volume. It is as well that I identify those Commissions here.

1.019 The South Australian Government set up its Royal Commission into the non-medical use of drugs on 13 January 1977 ("The Sackville Commission"). It comprised Professor Sackville and Drs. Hackett and Nise. It reported in April 1979. It concentrated on social aspects of drug use.

1.020 On 5 August 1977 Mr Justice Woodward of the New South Wales Supreme Court was commissioned by the New South Wales Government to enquire into drug trafficking in that State ("The Woodward Commission"). His Commission was known as the New South Wales Royal Commission into Drug Trafficking. His investigations substantially concluded by the end of December 1978. His report was submitted 31 October 1979. It was divided into three volumes but the pages are numbered consecutively from volume to volume. Page references only will be given when reference is made to it in the course of this document. Further matters were referred to this Royal Commission just prior to the presentation of its report in 1979. These necessitated further investigations and a second report was presented in May 1980. All references in this volume will be to the first report unless the contrary is stated. The Woodward Commission concentrated on individuals and organisations in New South Wales involved in drug trafficking.

1.021 The Australian Royal Commission of Inquiry into Drugs ("The Williams Commission") was commissioned on 13 October 1977. Mr Justice E.S. Williams of the Queensland Supreme Court was appointed by the Governments of the Commonwealth, Queensland, Tasmania, Western Australia and Victoria. New South Wales and South Australia did not formally participate in the national inquiry although a measure of cooperation was received from these States. Obviously, New South Wales and South Australia regarded their own initiatives as sufficient in the circumstances. The Williams Commission was a wide-ranging enquiry which reported on 21 December 1979. Its report appears in six volumes A - F and references to it will identify the appropriate volume by letter. References to the Commission and its report will identify it by the name of the Commissioner.

1.022 On 30 June 1981 the Acting Prime Minister, the Rt Hon. J.D. Anthony, C.H., M.P., and the Premiers of those three States made a joint statement in the following terms:-

 "The Commonwealth, New South Wales, Victorian and Queensland Governments have established a judicial inquiry into the possible drug trafficking and related activities of Terrence John Clark and other persons associated with him. It will be headed by His Honour Mr. Justice Donald Gerard Stewart of the New South Wales Supreme Court, who has been requested to report no later than 30th June 1982. It is envisaged that the judicial inquiry may be given supplementary terms of reference referring to the activities of other drug trafficking groups should the occasion arise.

 The Victorian Coroner's Report on the deaths of D.R. and I.M. Wilson found that a criminal group involving Terrence John Clark (also known as Alexander James

Sinclair) existed in Australia. The Coroner stated that a huge drug empire had grown within Australia, under the leadership of Clark, involving many other persons. The judicial inquiry will be supported by a Commonwealth/State multi-discipline task group comprising especially seconded Federal and State police officers. The task group will be assisted by lawyers from the Commonwealth and States experienced in the conduct of prosecutions and as required by persons experienced in accounting and banking.

It is considered that the means adopted are the best ones of ensuring that major drug offenders are identified and prosecuted and exposing their techniques and methods, which can then be countered by the authorities."

"The Stewart Commission", as it has been since known, commenced its operations in June 1981. Its report, from which the reference to the joint statement above comes, was presented on 25 February 1983.

1.023 A summary and discussion of the recommendations contained in the various Royal Commission reports will appear in chapter 4 below.

1.024 With the termination of my Commission, only the National Crime Authority with its more limited powers will remain. The role of investigation and suppression of the drug trade will again be the preserve of the overworked police forces with an absence of essential, expensive facilities. This volume surveys both the history of the problem of illegal drug abuse and, to some extent, the current state of play. New proposals are suggested in the concluding chapter which I trust will be fully considered by Government. The longer it is before effective action is taken, the harder becomes the fight.

CHAPTER 2 - SOME INVESTIGATIONS

2.001 Most of the investigative and analytical work conducted by my Commission in drug trafficking is of a confidential nature. It has been conducted in collaboration with other law enforcement agencies. Let me illustrate.

2.002 At the end of April 1982 a joint analytical research team of the Australian Federal Police, Bureau of Customs and the Bureau of Criminal Intelligence of the Victorian Police Force determined to collate information concerning the facilitation of prohibited imports into Australia by various men and to submit a joint situation paper for presentation to the Joint Task Force Management Committee. The analytical task group consisted of six members from the three bodies. As a result of this collation the view was expressed (carrying a probability rating of 70%) that certain facilities were being used to import narcotics and firearms, export meat and steal containerised cargo. The report on which this conclusion was based was forty pages in length and was supported by documentation obtained through the three agencies amounting to some hundreds of pages.

2.003 As a result of this report a meeting was held at Russell Street police complex in Melbourne attended by representatives at a very senior level of the Victorian Police, the Australian Federal Police, and Bureau of Customs and the Australian Bureau of Criminal Intelligence. I also attended together with the two counsel then assisting me. At this meeting there was an in-depth presentation by the team analysts of the material which they had put together.

Some Investigations

Discussion ensued and in due course it was agreed in principle that there should be formed an investigative team consisting of personnel from the various bodies represented at this meeting to carry the matters dealt with in the report into further in-depth investigation.

2.004 That recommendation was considered by the Joint Task Force Committee of Management at its meeting in July 1982 and an Investigative Team was set up. Members of it have attended at the premises of the Royal Commission for further discussion as to the methods and structure of the investigation.

2.005 The investigation team operated from July to December 1982, when it became non-operational and was reduced to a smaller collating and data collection team. It was thought that the original target area was too wide-ranging, with too many investigative areas requiring servicing. It was too big a job for one small team. I do believe I should identify here the nature of the target - it remains an object of the attention of drug enforcement bodies, albeit the original team - even in its reduced form - is no longer together. Personnel who have been identified by me as possible offenders in this area, and who are associated with the original target zone, have become the subject of closer investigation.

2.006 It is now no secret that I have investigated the involvement in the drug trade of Queensland members of the Union. In close cooperation with the Queensland Police - who had done a great deal of work in this area - painters and dockers have been identified as being part of various drug trafficking teams. These involved at least one man who was very senior in the Queensland Branch of the Union. Some of those investigations have been inconclusive to date.

Further work needs to be done. Given the current perception as to the manner in which the drug fight in this country should be conducted it may be very difficult to conclude successfully many drug-related enquiries. The difficulty, as always in this kind of case, is the acquisition of admissible evidence which can be produced before a court to justify a conviction. This, as I will detail below, seems to be the ultimate objective sought by law enforcement bodies and the community.

2.007 I had endeavoured to maintain as confidential the Queensland-based enquiries. Unfortunately, they were exposed as a result of proceedings taken in the Federal Court against me late in 1983 and a subsequent discussion in the Queensland Parliament. The statement I issued as a consequence thereof on 23 December 1983 details these matters. On 21 December I said:-

"My attention has been drawn to a question asked of the Queensland Premier and the answer given, in the Parliament of Queensland last Thursday and Friday, 15 and 16 December. For the sake of complete accuracy I have arranged for copies of each to be procured.

The question was:

'(1) Is he (that is, the Premier) aware that allegations have been made by Mr Frank Costigan in recent Federal Court proceedings in Sydney that the Comalco House Branch of the Bank of New South Wales (now Westpac) was used in 1980 and 1981 by the Painters and Dockers' Union to finance drug transactions in the state?

(2) Has he made any enquiries regarding these allegations and if so, what was the result of such enquiries?'

The Answer given by the Premier was:

'I am aware of these allegations and have made inquiries of the police department. The Queensland police have no knowledge of any painter and docker involvement in drug trafficking in this State, nor do the Queensland police have any knowledge or information which would suggest that the Comalco House Branch of the then Bank of New South Wales was used to finance drug trafficking in this State. The Queensland police have co-operated extensively with the Costigan Royal Commission. At no time, however, have these allegations or matters relating to them been raised with the Queensland police. I am most concerned that the serious allegations concerning our State would be made without their first being raised with the Queensland police. I do not wish to add to the public controversy concerning several public figures currently in dispute with Mr Costigan, but I am concerned that allegations which on their face appear to be without basis would be made by Mr Costigan, particularly when they are calculated to cause serious damage to the reputations of such public figures.' That is the end of answer."

(Transcript p. 17672a-17673)

I then dealt with those portions of the question and answer which referred to "several public figures". I continued:-

"It is further stated by the Premier that the Queensland police have no knowledge of the involvement of the painters and dockers in drug trafficking in Queensland. No doubt the Premier is not aware of the information held by that Force. My relationship with the Queensland police, and its Commissioner, Mr Lewis, has been warm and beneficial. Without exception they have responded to any request I have made and have acted with great professionalism and efficiency. At the suggestion of the Chief Commissioner, Mr Lewis, members of the Force concerned with the suppression of drug trafficking by painters and dockers in Queensland have given sworn

evidence before me and produced and allowed me to copy their charts and files in which the complete network is set out. Indeed, that Force has been engaged in painstaking investigations over the past three to five years and has a deep understanding of the drug distribution network and its foundations which lie in the Queensland branch of the union. The work of this police force has been mirrored to some extent by the AFP, Northern Division, which like the Queensland police has shown great professionalism in the work it has done. The investigations of the AFP confirms the conclusions of the Queensland police. All of these matters are well known, I expect, to the Chief Commissioner of the Queensland police.

The Premier has not written or spoken to me about these matters. If his concern is not abated by my remarks today, and he seeks further information, then I would be happy to explain to him, confidentially, for fear of prejudicing my investigations, the basis of my enquiries. These are not matters for public debate, nor are they matters where I expect to be subjected to uninformed comment in Parliament by the holder of the highest political office in that State."

(Transcript p. 17674-17675)

The Premier has not sought from me any "further information" in relation to these matters.

2.008 Despite what otherwise might appear to be a likely rupture of my hitherto strong working relationship with Commissioner Lewis and his police force, I am pleased to report that cooperation continued undiminished until conclusion of my operational phase. In February 1984 I attended on the Commissioner together with counsel assisting me. I sought an update briefing of the investigations into mutual drug related targets. I received information and, in

turn, passed on information. As a result of the information given to me I mounted a full analytical and investigative operation. I will refer to that again later. The information I passed on lead to, within a few days, the arrest by Queensland Police of at least three drug offenders in Cairns. The offences with which they are charged involve trafficking in heroin in quantities in respect of which substantial penalties are applicable.

2.009 The matters which I have investigated have been, with one exception, of fairly small compass in the scheme of things. There are many individuals and groups involved in the heroin trade. In the Woodward Report, the following observations were made:-

"It is clear on the evidence that there is no suggestion that heroin importation and distribution is in the hands of one, or even a small number of permanently established groups. No 'Mr Big' was discovered nor was there evidence of a small number of major controlling figures or of the prerequisites of monopolistic control. It was firmly established that suppliers in Thailand or elsewhere did not restrict sales to any Australian importation monopoly and were prepared to sell to anyone who would meet their price...Vast amounts of capital are not required. A venture costing \$50,000 will likely return in excess of \$1 million and one or two quite small ventures could quickly generate sufficient capital for a project of that size. Accordingly, the necessity for high order 'organised crime', 'gambling syndicates', 'unscrupulous businessman' and the like to put together significant amounts of capital is just not a prerequisite in heroin importation."

(Woodward, 1979, 1946)

2.010 Because of the sensational treatment by the press of the Mr. Asia syndicate - and in particular the ultimate disposition of the murdered Christopher Martin Johnstone - the public became very much aware of the activities of that particular group. The subsequent Royal Commission into the activities of Terrence Clark and his associates justified and heightened the public interest. One of the estimates made by the Stewart Commission was that between 1976 and 1979 the Clark/Johnstone syndicate had imported 85 kilograms of heroin into Australia. Some attempt was made to allocate the degree of prominence occupied by the syndicate in the Australian heroin trade. The various estimates made by other Commissions were not regarded as very helpful or expressed as being reliable in the area. Short of confirming that the Clark group did occupy some prominence it was difficult to confirm any particular position. If other estimates that 1000 kilograms of heroin were being consumed annually in Australia in the years 1979-1980 are accurate, then Clark's group's position was not of major significance. However, those estimates cannot be verified.

2.011 What can be verified is that Clark's operation was only one of many then active (it was possibly the biggest individual group). But there was a large number of small teams and "privateers" operating. The enormity of the industry was and is such as to defy normal policing methods.

2.012 The methods of importations are themselves innumerable. The list is endless with the inventive imagination of the importer being as unlimited as that of any entrepreneur. Drugs have been imported in the soles and heels of shoes, in wooden statues, picture frames, drinking straws, knitting wool, spray cans, cosmetic jars, the insides of fruit, rolled up newspapers and electrical

goods. I have received information as to even more ingenious methods. On 21 August 1983 at Copenhagen Airport, two individuals were arrested on arrival from Mombassa, Kenya, in possession of one litre of cannabis oil concealed in a length of 66 metres of electrical cable tubing. The plastic tubing, black in colour, was provided at each end with approximately 10 cm of genuine cable serving as a stopper. The tubing contained some 143 ml of oil per metre, probably inserted under pressure of compressed air. Power plugs and electrical items were joined onto the section of genuine cable to add authenticity.

2.013 I have been advised that the concealing of heroin in writing paper is a comparatively new method being utilised by traffickers in Pakistan. The writing paper is saturated with a solution of heroin, and is being offered in both white and brown varieties. Sheets of paper impregnated with white heroin are selling for approximately \$5,500 per kilogram and paper impregnated with brown heroin costs approximately \$1,100 per kilogram. Reports indicate that each sheet of paper contains 3-7 grams of heroin depending on the thickness of the paper. A sample of brown paper was analysed and the purity found to be 27.2% and although low, reports indicate that various grades of heroin are being offered for sale. Pakistani heroin traffickers have been relatively innovative, apparently, in their smuggling methods. In early 1983 heroin with a purity of 21% to 45% was soaked in the cardboard liners of suitcases and also in 1983, heroin saturated towels (purity 61%) were used. The heroin can be removed by soaking the articles in alcohol, chloroform or other suitable solvents. Pakistani heroin is also being trafficked by other nationalities. A group of Iranians, resident in Bangkok, with Pakistani passports is alleged to be involved in the smuggling of heroin soaked into Pakistani carpets. Each carpet is impregnated with a

Some Investigations

solution of heroin and can hold from 1 to 1.5 kgs of heroin. The carpets are then carried from Pakistan to Bangkok where arrangements are made for their transshipment to the United States, Australia and other destinations.

2.014 Other methods of importation have also come to my knowledge. One involves false insides of walking sticks which are secured to make it appear that they have not been hollowed out. Another method involves splitting planks of wood, hollowing out the inside and filling it with drugs. The plank is then re-glued and grease is rubbed over the joint so the same is not obvious. In 1981-1982 hashish was imported from India in cricket bats. I received information of another method which involved the use of the dead letter office in Harbour Street Sydney. Heroin was being imported from Lebanon in mail sent to previously arranged fictitious addresses in Sydney. The letters arrived at the dead letter office where arrangements were made to collect the same via people associated with the illegal importation.

Movement

2.015 At the point of entry of goods into Australia - whether by sea container, accompanied air luggage, postal facilities or whatever - the Customs are fighting a losing battle. The best that can be done is to carry out random and intuitive checks of passengers save where the couriers are either on some kind of alert system or come from a suspect departure point. But, of course, that does not prevent people travelling in peculiar paths. For example they arrive in Australia (although actually, perhaps, leaving originally from Asia) from Fiji which is not regarded by the Immigration/Customs officers as a usual drug import point. This stratagem led to, at least some years ago, people coming into Australia and going straight out

again with a connecting Fijian flight so that they could then return, carrying their drugs, with the family tourists.

2.016 Another ruse was to carry two legitimate passports. In this way the passport showing an entry into, for example, Thailand, would not be used. The method of obtaining a second passport is or was quite simple. When travelling to Arab or Israeli countries it was not difficult, apparently, to get a second passport from the Australian Embassy in one or other of those areas if the traveller announces they wish to travel to the "other side of the fence". For valid security reasons people in those circumstances are issued the second passport. This method was being used by drug offenders some years ago, and possibly still is although I have no current information as to the present attitude of the Department of Foreign Affairs in this regard.

2.017 I do not wish to be specific about any methods of importations or schemes in respect of which current operations are proceeding. I do propose, however, in the next chapter to analyse in some detail the financial dealings of one man who is suspected to have been involved in illegal drug trafficking over a number of years.

"There, where your argosies with partly
sail, -
Like signiors and rich burghers on the
flood,
Or, as it were, the pageants of the sea, -
Do overpeer the petty trafficker,
That curtsy to them, do them
reverence..."

Shakespeare, The Merchant of Venice
(Act I, Scene I, 9)

3.001 I have been aware for some time of a "congregation" of criminals along the Sunshine Coast of Queensland. The concentration appears to be in the Noosa area. The district has come to be regarded as an "R & R" area for southern criminals. Additionally, many of these criminals have taken up permanent residence locally. Concern has been shown not only by local police but also by local community leaders in this criminal infiltration.

3.002 The phenomenon of criminal migration to Noosa has been discussed in other volumes of this Report - in particular, in that dealing with Ian Carroll where the Namsina development by Melbourne criminals Stuart Perry and Barry Rycroft has been examined. The joint and several association of these men with figures such as John Hustwaite, Ross Todaro and Bruno Savron and the Damiani family is there clearly shown. The Melbourne painter & docker and SP bookmaker Phillip Scott was also a "contributory" to the Namsina project.

3.003 The Commission has become aware that Noosa is the scene of thriving drug distribution networks.

Cocaine, cannabis and heroin are widely available. One of the leading lights in these activities is Barry Richard Bull. It appears he is both a user and trafficker in cocaine and he certainly is a user of cannabis. He is suspected of having dealt in heroin. The Commission's interest in him is particularly justified because of his close association with Robert John Lawson.

3.004 In February 1984 I visited Queensland to conduct hearings of the Commission. While there I conferred with the Queensland Commissioner of Police, Mr Lewis, and senior members of his force. I was anxious to obtain up-to-date information as to the involvement of members of the Union in drug activities. I received information in that regard. I also was briefed in relation to the involvement of criminals in the distribution of drugs in the Sunshine Coast area. At the same time I was able to provide some information in relation to drug distributors operating in Cairns. As a result of that information I understand that some investigative work was conducted in that city and various arrests resulted within a few days of the transmission of that information. As I have said elsewhere in this Report this was an example of efficient cooperation between bodies with a joint interest in enforcement of the law. The briefing I obtained in Brisbane indicated that Barry Richard Bull was of major interest to the Queensland Police. In turn I was informed that he was closely associated with Robert Lawson. Bull maintained a close association with Lawson throughout 1983 and into 1984. Lawson knew the parents of Bull's defacto wife, Sylvia Lux, who lived in Bald Hills, a Brisbane suburb. In October 1983 Bull gave to Lawson the parents' telephone number. My enquiries indicate that Lawson was working in Sydney in or around the docks early in 1984 and was maintaining his association with Bull at that time.

3.005 Lawson was born 26 December 1940. He is a Brisbane painter & docker. He is shown in the Union records as living at 20 Oak Street, Shailer Park and as having Union number 4234. That Union number is shared with two other men. The Union records indicate that he consistently paid his union dues each quarter from 1975 to 1980 inclusive (bear in mind that the Union records held by the Commission do not extend beyond 1980. Employment records from employers in Brisbane and Townsville confirm that a Robert John Lawson born 26 December 1940 (who at one stage lived at 20 Oak Street, Shailer Park) was consistently employed during 1979 to 1982 inclusive. Lawson has a criminal history extending over the period 1961-1983 but it is of no particular significance to these matters.

3.006 Bull also had an association with another member of the Union, Paul Goopy of Camp Hill in Coorparoo. Goopy is shown in records as a casual painter and docker whilst on leave from marine steward duties. He has maintained his association with the Union regularly during the years 1975-1980 paying each quarterly instalment of his subscription that has fallen due. He has had various union numbers allocated to him, including 4234 being that allocated to Robert Lawson. It would appear that the three men are associated.

BACKGROUND OF BULL

3.007 Barry Richard Bull was born in Brisbane on 25 July 1943. His parents were George Richard Bull a labourer who was born in Cairns and Dorcas Susan Bull (nee Stibbs) who had been born in Mapleton Queensland. Their address at the time of the birth is shown in the birth certificate as 69 Gavin Street, North Bundaberg. It follows that a special trip of some kind was made to Brisbane for the birth of the young Bull.

3.008 Bull was living at 719 Bowman Street, Noosa Heads as at 23 August 1982 when he was interviewed by police officers at the Tewantin police station. The reason for this interview will be discussed in more detail below. During the course of this interview he gave some background information. He said he had been born in Brisbane in 1943 but lived there only a few months prior to moving to Townsville. He stayed there and was "educated" until he was about 18 when he left home and went to Sydney. In Sydney he had numerous forms of employment. During that time his mother remained in Townsville and he returned to the family home on many occasions.

3.009 He married Shane Beatrice Porter in Townsville in 1964 and moved with her to Sydney where they lived for two years. They returned to Townsville in 1966 whereupon they separated. Some years later they were divorced. After the divorce he followed the meat trade in Victoria, New South Wales and back up to Queensland. Shane Bull was listed as the wife of Barry Bull in his passport application in May 1978. Presumably the divorce took place after that time. As at 1978 she was living at Flat 3/8 St Neot Street, Potts Point NSW. Bull refers to himself as a divorced person in his passenger card for his return trip from Thailand on 18 August 1978. It is possible he was divorced between May and August 1978. This has not been checked.

3.010 Bull claimed that he had lived in New South Wales for about 2 years before finally moving to Noosa Heads. One address in Sydney had been 57 Randwick Street, Randwick. He claimed not to have had any children of his marriage with Shane Porter. As at the time of the interview he claimed to be living with Sylvia Lux.

3.011 Bull said he had lived in the Noosa Heads area for three and a half years prior to the interview in 1982. Since that time his occupation was in partnership with Sylvia in a hairdressing salon called Hairloom. He also claimed to do some sub-contracting building work in the Noosa area. No evidence has been found of any income from this subcontracting.

3.012 On 5 April 1978 Bull obtained a student pilot licence. The licence gave as his home address 14 Gordon Street, Randwick and was current until 31 March 1980. It is not known whether Bull ever lived at that address. It seems surprising that he would give a false address on a document which included his correct name. This address was also used by him in connection with his bank account at CBC Coogee.

3.013 On 8 May 1978 a new passport was issued to Bull at the Sydney office of the Department. In that passport (which includes the normal photograph) he is described as 1.75m in height with blue eyes and fair hair. The passport then records overseas travel from 13 July 1978 until 1981. His travel movements will be referred to below.

3.014 Bull has had a criminal history dating back to 1960. He was first before the Townsville Childrens Court on 30 June 1960 on a charge of disorderly behaviour and his bail of two pounds was then forfeited. On 30 June 1960 he appeared in the Police Court at Townsville and was charged with stealing petrol. He was convicted and discharged and released on a good behaviour bond. Later in the year he was again (nominally) before the Police Court in Townsville. On 24 December 1960 charges of "disorderly manner" and resisting arrest were heard. His bail in both cases was forfeited. On 20 July 1961 he was charged with assault and fined 10 pounds at Townsville.

3.015 He next appeared before the Courts in Mackay on 7 July 1966 when he was charged with stealing and possessing property suspected of being stolen. It is not clear as to whether he was convicted on all charges. The decision is noted as fines in respect of "each charge". They totalled \$45. He then appeared at the Moonee Ponds Court in Victoria on 27 January 1967 when he was fined \$50 for wilful damage and \$25 for unlawful assault. On 25 May 1972 he appeared at the Newtown Court in New South Wales when he was convicted of stealing meat and fined \$40.00. His criminal history mirrors his movements from place to place during this period.

3.016 Bull's next criminal activity is best described as it appears in the judgment of Barwick C.J. in the High Court.

"In March 1973 the vessel Mariana made a voyage from Darwin in the Northern Territory of Australia to the Island of Bali in Indonesia. On its return voyage towards Australia, the vessel was under the observation of the Australian authorities concerned with the administration of the Australian Customs. As the vessel neared the port of Darwin, an Australian Army helicopter co-operating with those authorities began to descend over the vessel in a fashion and to a degree well calculated to alert those on the vessel to the fact that the vessel was under close surveillance. A launch carrying customs officers was at the same time on its way from Darwin towards the vessel. It may be, particularly having regard to the subsequent actions of those on board the vessel, that the action of the helicopter indicated to them the imminence of a boarding operation by the customs.

Joseph Corns was the master of the vessel: Barry Richard Bull, John

Plithakis and Gregory James Conn were either crew members or passengers upon it. The vessel was carrying cannabis, procured in Bali and packed in suitcases. On the near approach of the helicopter these suitcases were jettisoned by those on board the vessel and its decks washed down so that upon the subsequent inspection of the vessel when boarded by the customs officers no cannabis was found on board. Later, in the port of Darwin, no cannabis was found upon any of the persons who had been on the vessel other than 14.8 grams of cannabis resin which was found on Gregory James Conn. However, as the vessel after being boarded was brought into port under escort, the possession within the limits of the port of this quantity of cannabis resin was not relied upon by the Crown in connexion with any of the charges subsequently laid. Some of the contents of the jettisoned suitcases, amounting to 31,000 grams of cannabis, was recovered from the sea by officers of customs.

Joseph Corns, Barry Richard Bull, John Plithakis and Gregory James Conn (the accused) were thereafter indicted before the Supreme Court of the Northern Territory with having committed offences against the Customs Act 1901-1971."

((1974) 131 C.L.R. 203 at 207-208)

3.017 The proceedings referred to in the High Court judgment had commenced in the Supreme Court of the Northern Territory in the second half of 1973. Various points of issue were taken and these were referred to the full bench of the High Court in a reserved Case Stated following the jury's verdict. The verdict was that the men were guilty of importing a prohibited import, having in possession a prohibited import on the ship (namely cannabis) and of assembling for the purpose of preventing the seizure of the import. The High Court heard argument in November 1973 but did not give its judgment until June 1974. The effect of the judgment was to overturn certain of the convictions but

it did not affect the ultimate position. The judgments are 76 pages and comprise a lengthy exposition of the relevant law. There was one count alleged against Bull and the other accused of conspiring together and with John David Belmont Wholagan and with other persons unknown to import cannabis into Australia. This particular charge did not result in a conviction against Bull (nor the others for that matter). It should be noted that the particulars allege the activity had taken place between 23 January 1973 and 2 March 1973 at Darwin and "elsewhere".

3.018 Whilst awaiting the decision of the High Court in relation to the Mariana importation Bull had a further appearance before the Northern Territory courts. He appeared in Darwin on 13 February 1974 and was convicted on a charge of possessing cannabis and sentenced to three months gaol. It is not clear from his criminal history whether that sentence was commenced forthwith or whether it was served concurrently with his subsequent sentence of imprisonment which occurred in the June of that year. Following the judgment of the High Court the Mariana importation was referred back to the Supreme Court where Bull was sentenced in respect of the verdicts which still stood to a total of five years and ten months hard labour on each of the charges. They were to be served concurrently, with a non-parole period of two years and six months.

3.019 It appears that Bull may have appealed following the imposition of the five year sentence but this was unsuccessful. He was required to serve two years nine months as a result of the non-parole period on the major charge and the three months sentence on the possession charge. He was transferred to Adelaide gaol during the course of his sentence. This was on 6 November 1974. He was subsequently released on 17 August 1976. It is not clear from his record what period he spent in gaol - if any - prior to the High Court decision in June 1974.

3.020 His criminal history indicates that he appeared before the Central Petty Sessions (Sydney) on 27 January 1977 when he was charged with possessing Indian Hemp and "drugs" and was fined \$150 on each charge. Charges of forging and uttering documents were also dealt with on that day. In respect of those charges sentencing was deferred on his entering into a good behaviour bond and accepting three years probation. It is hard to reconcile that sentence with his previous history although he may have presented as a drug addict. He had two subsequent appearances in New South Wales in August of that year. On 3 August he appeared again before the Central Petty Sessions and was fined \$500 for supplying Indian Hemp. Again, this appears to be a fairly modest penalty in view of his previous record. On 24 August he was charged before the Waverley Petty Sessions in New South Wales with stealing from a retail store; he was convicted and fined \$200. It is likely that all these offences had been committed prior to Bull's imprisonment on the Mariana charges. The Mariana charges would not then have been previous convictions for the purposes of sentencing and would not have been alleged against him when he appeared in the New South Wales courts. Following his appearance on 24 August 1977 he did not appear again in court until 1982. This was to be in respect of offences committed in the Noosa District.

3.021 Bull appeared at the Petrie Magistrates Court on 26 January 1983. This resulted from offences committed on 3 September 1982, including driving under the influence and exceeding the speed limit. He was convicted on the two charges and fined a total of \$395 with his licence to drive suspended for nine months. In the result he was suspended from driving a motor vehicle until October 1983. Despite that suspension of his licence it appears that Bull continued to drive and this led to him once again being charged with driving offences in either August or September

of 1983. It is thought that these matters may have been dealt with at the Pomona Court on or about 15 September 1983 when Bull may not have been present. It is possible that the court case in September proceeded in the absence of Bull and that he may have been disqualified for life from driving as a result of that hearing. He had had the earlier conviction of January 1983 which had suspended his licence for the nine month period. I have been unable to clarify the precise position in respect of these outstanding matters. There is a further outstanding charge of possession of a firearm. I will refer to the basis of that matter later.

TRAVEL MOVEMENTS

BULL'S FINANCES

I

3.088 I cannot leave the question of Bull's financial activities without making further reference to the part played in his quest for wealth by the solicitor Cartwright. This solicitor facilitated the activities of Bull over a period of four or five years full well knowing that the man was using assumed names. The evidence taken from Cartwright clearly indicates a complicity on his part in the tax evasion activities of his client. In the Williams Report there is reference to the aura which surrounds the wealthy drug traffickers such as to divert the attention of their professional advisers from the source of those assets. I am not prepared to believe in the case of the solicitor Cartwright that he had no knowledge of the source of Bull's money. He was aware of Bull's background as a man with drug convictions. I am not to be taken as saying that he should therefore have refused to act for him. What I am suggesting is that in acting for Bull he should have done so honourably and in accordance with the traditions of his profession. It is simply not good enough for a professional man to bury his head in the sand and choose to ignore criminal activities of his client which he, by giving the clothing of respectability thereto, enhances. That is, Bull by acting through an apparently reputable solicitor - using different names - is able to conduct business in a manner which belies the illegal activities which have been the source of the funds involved. I recommend that Cartwright's activities on behalf of his client Bull be referred by the Commonwealth Attorney-General to the Queensland Law Society for its information and, if appropriate, action.

BULL'S DRUG ASSOCIATIONS

Conclusions

3.124 As I have expressed earlier in this chapter I have no doubt that the source of the wealth acquired by Bull as demonstrated by his property transactions was from drug dealings. Insofar as those properties have been identified it appears that he has been stripped of that wealth by the combined action of the Taxation Office and the coordination by the Special Prosecutor. That is to be applauded. It is unfortunate that his activities have not been sufficiently identified to enable criminal prosecutions to be launched. However, at present, there is no direct evidence of particular drug transactions sufficient to place Bull on his trial.

3.125 It is also unfortunate that for a number of reasons I did not have the opportunity of hearing evidence from Bull as to the acquisition of that wealth. There has been no explanation given to the Tax investigators or, as far as I can tell, to any other person. It will have to be left to some other body to follow the trail further and, in due course, confront Bull with the accusations. It may be because of his awareness of the likelihood of such a future confrontation that he presently prefers not to be "available" for law enforcement agencies. For the moment he remains a fugitive.

3.126 It should not be assumed that Bull is unique. My investigations indicate it is common practice amongst his associates to acquire wealth and not to declare the income. SP bookmakers may (and do) declare some of their illegally-obtained income; they reveal its source even if describing themselves euphemistically as Commission Agents. Prostitutes may declare their income (although I have no evidence they do) possibly describing themselves as "entertainers". It is fatuous to think that hired killers, bank robbers, burglars or drug traffickers will declare their receipts. This is the area where the trafficker is most susceptible. Perhaps this is where the attack should aim.

CHAPTER 4 - PREVIOUS COMMISSIONS

4.001 On 15 July 1977 Donald Bruce Mackay of Griffith disappeared in circumstances which suggested he had been murdered. (In September 1984 a man pleaded guilty in the Victorian Supreme Court to a charge of conspiring to murder Mackay). He had prior to his disappearance been an influential and outspoken opponent of the drug culture and, in particular, that which was said to exist in the Griffith area of New South Wales. The disappearance was the final catalyst required for public pressure in New South Wales to demand a judicial enquiry.

4.002 There were a number of matters which had led to the build up of the pressures. There was by 1977 an awareness of the drug menace which involved cultivation of marijuana in Australia, as well as its importation together with that of heroin and other drugs. In New South Wales, in particular, there was a knowledge of persons in the community who had recently acquired considerable assets and were following a remarkably changed lifestyle. Unexpected transitions to states of affluence were apparent. Prior to July 1977 there had been media agitation for an enquiry and it appeared that both Commonwealth and New South Wales Governments were feeling those pressures.

WOODWARD COMMISSION

4.003 On 5 August 1977 Mr Justice Woodward of the Supreme Court of New South Wales was appointed Royal Commissioner by the New South Wales Government. The terms of his Commission required him to inquire into and report on:-

- (1) The cultivation, etc. of specified drugs (other than tobacco and alcohol)
- (2) The identity of persons involved in:
 - (a) such cultivation, etc.; or
 - (b) illegal or improper activities connected therewith; and
- (3) Whether, in the light of his findings, changes were desirable in:
 - (a) the manner in which the relevant laws were administered; or
 - (b) those laws.

4.004 The terms of the Woodward Commission varied considerably from other concurrent Commissions. Essentially it was limited to law enforcement and associated areas. It was not concerned with matters of international or sociological importance. The requirement to identify persons involved in drug trafficking was what set this Commission apart. Substantially, the Commission had completed its investigations at the end of December 1978 and its report was presented to the New South Wales Government in October 1979. It is noted that the Commission submitted a further (and final) report in May 1980 following its investigation of a matter referred to it late in its other work. This report dealt with companies Balmain Welding Pty Ltd and Wings Travel Pty Ltd and associated persons. Some of the personnel involved in that latter report have been of interest to me in the conduct of my investigations. They will be referred to later.

SOUTH AUSTRALIAN COMMISSION

4.005 On 13 January 1977 the South Australian Government set up a Royal Commission into the non-medical use of drugs. The Commissioners were Professor Sackville (as Chairman) and Drs Hackett and Nise. Its Terms of Reference were to enquire into the factors underlying or relating to the non-medical use of narcotic, analgesic, sedative and psychotropic drugs or substances of dependence, not including nicotine or alcohol, and in particular:

- "1. To marshal from available sources in South Australia, Australia and abroad information concerning such drugs or substances and their use;
2. to inquire into and report on current scientific, medical, social and other knowledge on the effects of such drugs or substances;
3. to inquire into and report on the extent and character of the use or abuse of such drugs or substances in South Australia, the types of persons engaging in such use or abuse, sources of supply, and the medical, social and economic factors underlying or associated with such practices;
4. to inquire into and report on the effects of the existing law and its administration in relation to the use of such drugs or substances in South Australia;
5. to inquire into and report on the provision of educational, preventive, treatment and rehabilitation programs in South Australia for persons using or abusing such drugs or substances; and
6. to recommend such changes to the law in relation to the use and abuse of

such drugs and the provision for such education, preventive, treatment and rehabilitation programs as you think appropriate."

(Sackville et al, 1979, 1-2)

4.006 Its final report was presented in April 1979. The terms of reference embraced issues of law enforcement and the operation of the illicit market in drugs. The Commissioners, however, took the view that social questions should take priority in its investigations. Intensive investigations of law enforcement would have involved exercising powers to compel the production of evidence which would not, it was thought, have been conducive to the climate required for the gathering of worthwhile information and opinions on non-legal related matters. Thus it dealt, in the main, with sociological questions. It will not be necessary, in this chapter, to discuss its findings in any detail.

WILLIAMS COMMISSION

4.007 The Australian Royal Commission of Inquiry into Drugs was established by Letters Patent dated 13 October 1977 issued by the Governor-General. Letters Patent incorporating identical Terms of Reference were issued to Mr Justice E.S. Williams, by the Governments of Queensland (27 October), Tasmania (28 October), Western Australia (2 November) and Victoria (13 November). As Royal Commissions into related areas had already commenced in New South Wales and South Australia no Commissions were issued by the Governments of those States. The Terms of Reference were wide-ranging. They required an investigation into the existence and methods of importing, production and trafficking in drugs; the extent to which those matters were organised; the adequacy of existing laws and law enforcement and the desirability of new laws.

4.008 The Report of the Williams' Commission was contained in six volumes. Its mandate was not to make recommendations as to criminal charges and as a result it does not name names in its reports. Although it did obtain information identifying individual criminal activities and the perpetrators thereof it did not see its role as identifying them. Its inquiry therefore ranged over the whole of Australia (with the exception of New South Wales and South Australia where the separate Royal Commissions were operating) but did deal with the social problems as well as the purely criminal aspects. The inquiry commenced in October 1977 and the reports were delivered at the end of 1979 (that is, a period of some two years).

STEWART COMMISSION

4.009 The next Royal Commission into Drug Trafficking was that appointed by the Governments of the Commonwealth, New South Wales, Victoria and Queensland on 30 June 1981. Mr Justice D.G. Stewart of the Supreme Court of New South Wales was appointed as Commissioner. The early background to the establishment of this Commission was set out in a statement made by the Prime Minister in September 1980:-

"A number of recent incidents and inquiries have given rise to public concern whether present methods of law enforcement are adequate to deal with the activities of major criminal groups involved in drug trafficking. These include:

- . the Reports of New South Wales Woodward Drug Commission;
- . the findings of the Victorian Coroner in the inquest into the deaths of D.R. and I.M. Wilson; and

- . the murder of an intended witness (Mr Gordon) in a major drug trial.
- . Commonwealth/State Police Task Groups have already been established to deal with particular aspects of the drug problem as follows:
 - . Australian Federal Police/New South Wales Police Task Force on Drug Trafficking in New South Wales (this was established on the recommendations of the Williams and Woodward Drug Commissions).
 - . Victoria, New South Wales, Queensland and Commonwealth Joint Police Group under the command of Assistant Commissioner Hall of the Victoria Police to investigate alleged leaks from the former Narcotics Bureau.
- . The report of the Victorian Coroner indicates that one of the criminal groups operating in Australia in recent years engaged in very large scale illegal drug trafficking at enormous profit and appears to have engaged in corruption of several law enforcement agencies. Present law enforcement methods have had only limited success in bringing members of these groups to justice.
- . The threat to the maintenance of law and order and to the community presented by the activities of some major drug trafficking groups requires new approaches and methods. The Government has concluded that the problems presented by the group identified by the Victorian Coroner and like groups can best be dealt with by the establishment of a special judicial inquiry armed with the powers of a Royal Commission under the Royal Commission Act 1902 of the Commonwealth and equivalent State legislation, operating in conjunction with a Federal/State multi-discipline tasks

group. In our view, this task group should include specially seconded Federal and State police officers and it should also have the assistance of lawyers from the Commonwealth and States experienced in the conduct of prosecutions as well as persons experienced in accounting and banking as required...

- . The task of the judicial inquiry and the supporting group would be to inquire into and report on specific cases of large-scale illegal drug trafficking and associated corruption. The Government believes this to be the best means of ensuring that major drug offenders are detected and are brought to justice. It should also expose the techniques and methods of these criminal organisations which can then be countered by the authorities.

(Stewart, 1983, 2-3)

4.010 Discussion took place for some months between the Governments before the Commission was set up in June 1981. The Terms of Reference for the Royal Commission required an investigation into the activities of Terrence John Clark and his associates relating, in particular, to contravention of laws relating to the importation, exportation and possession of drugs. The Commission was required to make recommendations arising out of the enquiry as were thought appropriate but including recommendations as to the method of enforcement of the criminal law and any legislative or administrative changes necessary or desirable in the light of those enquiries. The announcement made by Government at the time of the commencement of the Commission included the following statement:-

"The judicial inquiry will be supported by a Commonwealth/State multi-discipline task group comprising specially seconded Federal and State police officers. The task group will be assisted by lawyers from the Commonwealth and States

experienced in the conduct of prosecutions and as required by persons experienced in accounting and banking.

It is considered that the means adopted are the best ones of ensuring that major drug offenders are identified and prosecuted and exposing their techniques and methods, which can then be countered by the authorities."

(Stewart, 1983, 3)

4.011 The Stewart Commission delivered its final report (following a number of interim reports) in February 1983. Including appendices it comprised 908 pages. It dealt in great detail with the personnel involved, their financial transactions, other activities and the people with whom they associated. It then spent some time considering national crimes commissions and making recommendations. It examined the activities of a single drug syndicate which operated over a three year period. The Commission itself had professional and other staff in some numbers and needed to devote itself over a period of some 18 months to a reconstruction of events. The work involved in carrying out this task was obviously considerable.

RECOMMENDATIONS

4.012 There has been over a six year period four Royal Commissions operating in Australia, all of which had as their subject matters relating to the illicit drug industry in Australia. With the exception of the South Australian Commission which concentrated on the social aspects, the Commissions gave a great deal of consideration to strategies for the future control, in terms of law enforcement, of the drug problem. It is proposed to summarise and compare some of the recommendations contained in the reports and to set out some of the discussion the reports contained justifying the approaches taken.

Civil Liberties

4.013 The question of civil liberties constantly found expression in the reports of the Commissions. Whilst it was accepted that drug enforcement was a real problem in Australia and some strenuous efforts by Governments and the community were required, the hard options were not attractive. The Sackville Commission concluded that it was unrealistic for the community to attempt to eliminate the non-medical use of drugs. This cynical view, with which incidentally I agree, was based as follows:-

"This is partly because a large proportion of the community does use drugs non-medically, notably alcohol, caffeine, and nicotine. Moreover, even if general agreement could be reached on the desirability of eliminating non-medical drug use this would require a degree of surveillance of private behaviour that simply cannot be achieved in a democratic society."

(Sackville et al, 1979, 1)

This view accords with that expressed by the Woodward Commission. In dealing with penalties that might be regarded as appropriate for drug traffickers the following observations were made:-

"This accords with a growing appreciation of the limited effectiveness of legal sanctions in deterring drug traffickers (and other criminals) and with a general acceptance of the need to avoid unrealistic expectations, or even aspirations, of total elimination of illicit drug trafficking. This result is not practicably obtainable except by extreme measures which would be intolerable in a free society."

(Woodward, 1979, 1887-1888)

I add that even in those societies which are not free, and where harsh measures may be taken, there remains a considerable drug problem. "Harsh measures" are not effective simply by reason of being "harsh".

4.014 Those views may be set in proper context by having regard to the serious nature of the drug problem perceived by the Williams Commission. In terms of argument of cost effectiveness the following statement was made:-

"In discussing national goodwill and involvement it is desirable to say a word on the matter of 'cost'. Cost is an argument nearly always appealed to by those who oppose initiatives that are suggested in peace time. It is not advanced so much in war time or in times of national emergency. In the view of the Commission, the problem of drug abuse in Australia contains many elements of war time situation. Australia is a country striving to defend its people against an undisputed social evil. It is not being over-dramatic to describe the present position as one of national emergency."

(Williams, 1980, D87)

National Strategy

4.015 The thrust of the recommendations of the Williams Commission was for a national strategy on drug abuse.

"What is urgently needed is total national involvement. Such involvement means not only active participation by all governments, Commonwealth, State and local, but includes the positive support of the community as a whole."

(Williams, 1980, D86)

It must be remembered that this Royal Commission was into "drugs" generally, involving all the various aspects of their use. Thus a large amount of its time was spent with classifying drugs and their pattern of use. The "National Strategy" therefore combined the treatment of drug users with the enforcement of the appropriate laws.

4.016 It was recommended there be a uniform Drug Trafficking Act. This was to be a national code. This would be enacted by the Commonwealth Parliament and by the legislatures of the States and Territories and be enforced in each State as Federal and State legislation notwithstanding Section 109 of the Constitution.

4.017 The Customs Act was to remain to constitute a prohibition against the importation into Australia of illegal drugs.

"...Evidence before the Commission amply demonstrates that the distribution of illegal drugs by traffickers in Australia is not solely an intrastate activity. The Australian Federal Police should give special attention to interstate operations. It should do so, however, in co-operation with State law enforcement agencies. Joint operations against large targets (i.e. allegedly major traffickers) should be instituted as a matter of course."

(Williams, 1980, D29)

4.018 The uniform Drug Trafficking Act was to:-

- focus police efforts against the criminal element rather than the user population.
- assist police to harrass and capture the large operators.

- overcome the deficiency in Commonwealth law behind the Customs barrier.
- facilitate joint operations between different police forces.

4.019 The proposed Act provided for the setting up of National and State criminal intelligence centres and confiscation of proceeds of drug trafficking supported by high monetary penalties in addition to gaol terms. The Act was also to contain provisions to:-

"...overcome the difficulties connected with prosecuting a crime where a person has given willing co-operation in a covert activity (e.g. the sale of drugs on a street level) and it is desired to call him as a witness for the prosecution. This requires special provisions relating to witnesses. Persons such as accomplices and informants who witness these activities may not make the best witnesses but they are often the only ones. To make this evidence available to the courts:

- (a) the privilege against self incrimination is to be compulsorily waived where a grant of immunity is given, thus making the evidence (e.g. of a minor accomplice) compellable;
- (b) the privilege of police not to be compelled to reveal information received in confidence is re-stated;
- (c) the Attorney-General for the Commonwealth is empowered to relocate witnesses."

(Williams, 1980, D32-33)

4.020 The Commission thought it appropriate to concentrate on the trafficker higher in the distribution chain rather than the street level pedlar who was regarded as almost certainly an addict himself. Thus it was appropriate to place in the Uniform Act an expansion of the powers that law enforcement agencies are usually able to call upon.

Intelligence Collection

4.021 The Williams Commission also saw the shortcomings in the area of criminal drug intelligence. It accepted the recommendations of the Woodward Commission in this regard. Those were in the following terms:-

"In respect of the establishment of a central intelligence system, it would be desirable that initial staffing come from State police, Federal police, Customs and other appropriate enforcement agencies, including Maritime Services, Immigration, Naturalisation, the Taxation Department, the Defence Forces and the Commonwealth Department of Transport (Civil Aviation). All agencies joining the system must, so far as the operation of the system itself is concerned, be prepared to be under one authority. It must support all law enforcement agencies but be under the direction of one central body upon which those other agencies have representations.

The central body should:

- (1) Control the collection and production of intelligence.
- (2) Ensure that a close working relationship is established and maintained with all appropriate bodies and agencies which produce and/or require drug intelligence.
- (3) Ensure optimum efficiency in reporting, analysing, storing, retaining and exchanging such information.

- (4) Undertake a continuing review of the drug intelligence effort identify the deficiencies and to correct them.
- (5) Be vested with a power of controlling (by having the right to impose sanctions) the procedures to be followed by agencies and their members to avoid unnecessary waste of money, time, or effort and interferences with an existing investigation of another agency."

(Woodward, 1979, 130)

The Williams Commission proposed the establishment of National and State Criminal Intelligence Centres to improve what were perceived as "sadly incomplete and fragmented drug intelligence facilities in Australia". It was thought that the centres would permit a uniform and coherent approach to be taken in the exercise of the proposed enforcement powers and a system of recording the use of those powers.

4.022 The three Commissions making recommendations in the area of law enforcement tended to adopt a uniform approach. The Stewart Commission, for example, availed itself of the work done by the previous Commissions and adopted with approbation many of the recommendations. It recommended, inter alia, as follows:-

"...The recommendations of the Williams Commission in favour of cooperating to pool resources and ending the fragmented approach of law enforcement to organised crime, particularly drug trafficking, should be implemented.

...Governments (and police forces) should strive to overcome the inefficiencies imposed by the federal system upon Australian law enforcement by readily appointing joint task forces with elements drawn from different agencies.

...The joint task force should be appointed to deal with limited objectives only and they should have a limited life.

...A joint task force with elements from the Australian Customs Service, Australian Federal Police, and Queensland Police should be based in Cairns to gather intelligence upon allegations that fauna smuggling, drug smuggling and illegal immigration are organised activities in the north of Queensland. The intelligence should be processed through the ABCI and the Queensland Police BCI. The force should send ground parties on a regular basis throughout North Queensland to gather information and to arrange with responsible members of the community to assist in gathering information. Naturally, adequate logistical support must be given to the force."

(Stewart, 1983, 833)

Task Forces

4.023 To some extent the Commissions regarded task forces as a panacea. The Woodward Commission discussed the task force in the following terms:-

"The task force represents, through increased organisational capacity, law enforcement's answer to the increased capacity of organised crime. The criminal rarely pauses to contemplate the niceties of a territorial border and neither should law enforcement agencies. The criminal does not hesitate to employ the skills of lawyers, accountants, bankers, bookmakers, real estate agents and others and a successful enforcement effort needs an appropriate range of individual abilities wedded to an administrative structure based on complete inter-agency co-operation to meet a new type of challenge. It is not however my intention here to provide a treatise on the constitution, duties, aims or procedures of a task force beyond what I have already stated. These are

matters to be determined after further investigation and discussion with persons qualified to express views on the individual matters involved.

The role of the lawyer in the task force is a matter of some disagreement. It is my own view that a lawyer should not, in the first instance, be included in the personnel of such a force. Legal advice can be obtained as and when required from various sources available to law enforcement agencies."

(Woodward, 1979, 1639-1640)

4.024 The Stewart Commission took up the concept of the task force and discussed it in some detail. Some matters are worth repeating here:-

"It appears clear to this Commission that total police effectiveness will never be obtained in Australia unless cooperation between the Australian Federal Police Force and the State forces is significantly improved. In Victoria there has been noticeable cooperation between Victoria Police, Customs and the Australian Federal Police at the level of the Bureau of Criminal Intelligence. Some very successful joint operations have been conducted in that State as a result of this cooperation. As discussed elsewhere, an initiative of the Williams and the Woodward Commissions was the recommendation of the establishment of the Joint Task Force on Drug Trafficking in Sydney. As that task force has no brief in relation to Terrence John Clark and his associates this Commission has not examined its work closely. On the proposed reference to this Commission relating to the Nugan Hand group of companies, in respect of which the Task Force has had a brief, the Commission will become more closely acquainted with its work. Its management committee has reported that the Task Force was a successful initiative. This Commission has no doubt that there is great merit in

setting up for limited periods and with limited objectives groups whose members are drawn from the Commonwealth and from the States. As the two earlier Royal Commissions observed, such a practice utilises resources better, avoids duplication and promotes cooperation in the longer term. This Commission is elsewhere in this report recommending the setting up of such a force in North Queensland.

The joint task force concept has really been applied in the case of this Commission. The Commission's investigators were drawn from the Australian Federal Police and police forces of New South Wales, Victoria and Queensland. Freed from routine police duties, able to concentrate on definite targets and, it is hoped, given reasonably prompt directions and decisions, they achieved a great deal more than could ever have been expected. More importantly, when they return to their forces it can be expected that a further cooperative impetus will be given to those forces.

It has come to the Commission's attention that there is some reservation in the Commonwealth area about the proliferation of task forces. This Commission believes that the only successful way that the criminal justice system in Australia can deal with organised criminals breaking the laws of the Commonwealth and of a State or States is by the use of joint resources in the shape of a task force. Such task forces should, of course, have limited targets and a limited life.

In this regard, the 1981 Victoria Police Annual Report states:-

'The problems of organised crime are becoming increasingly apparent. Coping with organised crime will require greater emphasis on task force operations in the future. These are expensive in terms of manpower and ancillary services but, on performance, highly effective.'

(Stewart, 1983, 516-517)

4.025 It is significant that the Commonwealth/New South Wales Joint Task Force had been set up as a response to the recommendations of the Woodward and Williams Commissions. The task force was established in 1979 and consisted of about 25 Federal and State police officers. Its main aim was to conduct extensive surveillance of people identified by those Royal Commissions and other people suspected of high level drug trafficking. It has been involved in the arrest of 175 alleged offenders mostly in connection with the supply, importation and use of heroin. It had originally been "commissioned" for a five year period. Following a recent investigation of its operations and functions by a retired New Zealand police commissioner it has been given an extension of life. The work of this particular task force has not been examined by Mr Justice Stewart, at least as of February 1983. It does not meet the requirements that a task force should have limited objectives and existence. Nevertheless, its record appears to justify its continuance.

Penalties

4.026 Both the Woodward and Williams Commissions doubted whether enforcement of drug laws would be facilitated by an increase in penalties.

"The Commission has little doubt that law enforcement with regard to drugs will be much more successful if people breaking the prohibitions on illegal drugs are faced with a high risk of detection than if they feel there is comparatively little risk of detection although penalties upon conviction are very high...It is a far greater deterrent that nine traffickers go to gaol for five years each than that one is sentenced to gaol for life."

(Williams, 1980, D12)

Woodward thought that the imposition of greater penalties would merely cause a restructuring of the top echelon of the industry.

"Penalties of this nature are frequently prescribed as a result of emotive reactions to recent events. Such actions will have wide consequences for State policy and should be analysed in policy terms. A penalty of life imprisonment is usually prompted by a policy of prohibition. Such a penalty does not solve the problem. The result of the imposition of such penalty is that probably the way in which the high level illegal industry conducts itself will be altered and steps will be taken by the higher level to separate itself from the lower level of trading where those involved are more vulnerable."

(Woodward, 1979, 1623)

Woodward therefore recommended "against an escalation of custodial penalties in New South Wales". It was thought, furthermore, that the long delay in having matters reach trial in any event operated as a palliative as far as members of the drug industry were concerned in relation to the heavy penalties which might be expected. That is, the offenders were often released immediately after their arrest and were able to spend months, if not years, "on the streets" still operating as usual.

"...If the threat of a severe penalty is to be believed by the potential drug trafficker, resources necessary for speedy prosecution and sentencing must be made available. On the other hand, if drug trafficking offences are said to require speedy disposal in the Courts, it might validly be questioned why they should have preference over other serious offences in an already over burdened criminal justice system. These considerations all raise serious doubts as to what the criminal justice system can hope to achieve in this area of criminal activity."

(Woodward, 1979, 1839-1842)

These comments, although made no doubt in the light of the New South Wales Court experience, are equally applicable to the Victorian courts and, presumably, other criminal jurisdiction in Australia.

4.027 There have been recommendations, and these have been implemented, which provide for substantial fines in addition to custodial sanctions for the drug offenders. Woodward doubted the efficacy of such penalties.

"It is naive, also, to believe that mercenary offenders such as drug traffickers, if penalised in the pocket (where, presumably, it hurts more) by a severe fine, will be intimidated by this experience or influenced not to commit further offences because they cannot afford to do so. Unlike some areas of legitimate business activity in this country, the capital barriers to either entry or re-entry into the illicit drug market are not high, credit is freely available to proven and reliable individuals, and the prospect of quick financial gain in an expanding high demand industry is considerable. The utility of fines in crimes based on greed is questionable and it would be wrong to assert that economic threats in the form of a fine are of unique efficacy.

(Woodward, 1979, 1887)

Nevertheless, despite these reservations, Woodward recommended that the Poisons Act (NSW) be amended to empower the court, upon conviction of a person charged with an offence in relation to a prescribed restricted drug to order execution against:-

"(a) property held by or on behalf of that person which has been obtained or paid for, whether wholly or in part, as the result of the commission of that offence

- (b) any account (e.g. bank, building society, credit union, solicitor's trust or other similar account) kept in that person's name or on his behalf, where an amount has been credited to that account, as the result of the commission of that offence."

(Woodward, 1979, 1907)

4.028 One other aspect of the courts' ability to impose sanctions should be considered. There is provision in various of the statutes dealing with drug trafficking to prevent the automatic bailing of suspects. Alternatively, reasonably high amounts of bail are fixed. Nevertheless the sums of disposable cash which are often available to arrested drug traffickers, and the incentive to avoid heavy prison sentences, will inevitably increase the risk of offenders not presenting for trial. Woodward, consistent with the attitude that the aim will not necessarily justify the means, commented:-

"...legislation to diminish or remove this risk represents too high a price to pay for the increased assurance that such alleged offenders will be present at their trials."

(Woodward, 1979, 1830)

The Money Trail

4.029 In the course of its investigations the Williams Commission identified as a very significant matter the generation of money in the trafficking of drugs. It was the movement of that money which was of particular significance both into and arising from the illegal drug transactions. The point made was that an identification of the path of that money along the trail can lead to the

identification (and ultimately the conviction) of parties to the illegality who otherwise may have remained aloof from the physical transaction itself. Furthermore money is accumulated and the wealthy criminal will eventually demonstrate that acquired wealth in some way or another.

4.030 It was also said money gives access to expertise and to equipment to facilitate the drug activity. The evidence received by the Williams Commission (and it is clear that this is supported by the material before both the Woodward and Stewart Commissions) indicated that those involved in drug trafficking have recourse to the best legal and accounting advice. It was suggested by the Williams Commission -

"...those giving the advice are not necessarily aware of the illegal activity. They may believe that they are advising legitimate businessmen, such is the aura that access to large sums of money creates and the influence it commands."

(Williams, 1980, C377)

4.031 While I agree with the aura that large sums of money creates I have strong doubts whether the lawyers and accountants giving the advice are as naive and unsophisticated as to accept that the client has come by his assets legitimately, particularly when that clients insists on using false names, false bank accounts and evading payment of tax.

4.032 In the area of money controls the Williams Commission stressed the use which should be made of information obtained by the Australian Taxation Office in the course of its normal work. It dealt with the constraints imposed by Section 16 of the Income Tax Assessment Act and apparently took evidence from senior officers of that office. Arguments were advanced by those officers in confidential session in relation to:-

"...the advantages of the present situation where the system encouraged frankness, even from criminals, in the declaration of income and in the payment of tax on that income. The argument would be more compelling if the Commission had not, in the course of its hearings, heard evidence of a number of major traffickers who it is persuaded would not be honest in the declaration of their income to the Commissioner of Taxation."

(Williams, 1980, C373)

I heard the same argument from, probably, the same senior officers. I was not, and still am not, impressed at all with those arguments. I have evidence of many cases where the criminal failed to disclose any income at all to the Commissioner of Taxation. I endorse whole-heartedly the approach of the Williams Commission in this area which is represented by recommendations that continued and increased attention be given to

- "- the financial implications of the illegal importation, production and trafficking of drugs;
- the utilisation of existing resources within the Australian Taxation Office and the Foreign Exchange Control Section of the Reserve Bank of Australia in assisting in law enforcement; and
- further endeavours to identify and develop new resources in this area."

(Williams, 1980, C375)

The resources of the Reserve Bank of Australia are probably now of no great consequence following the removal of certain of the restrictions for overseas financial dealings in December 1983. Nevertheless, it is imperative that some initiative be taken in the area of movement of monies overseas. It is obvious that if drugs are being imported

some financial transactions must take place out of this country. Money or kind must leave Australia in such a way that the importation of drugs is financed. Some means must be found to monitor that movement of monies.

National Crimes Commission

4.033 The Williams Commission believed that there had been a large degree of inefficiency in law enforcement operations to 1979. It was thought that a better result could be obtained if a national mobilisation of resources was effected with a combined effort to enforce the drug laws.

..."Law enforcement efforts should be directed to the harrassment of organised groups by the seizure of drugs and convicting those involved. At the level of users and street pedlars, the main law enforcement effort should be directed at identifying users and their associates and bringing them into the treatment net. There has been too much preoccupation in the past with having users and minor pedlars convicted."

(Williams, 1980, D12)

4.034 It was hoped that the concerted approach advocated by the Williams Commission would be assisted by the establishment of National and State criminal drug intelligence centres and National and State drug information centres.

4.035 A slightly different view was taken by the Stewart Commission which presented its final report at a time when there was much public debate about a national crimes commission. The Stewart Commission recommended the establishment of a standing Royal Commission or Crimes Commission with a general brief as far as "organised crime" in Australia was concerned. However, the recommendations are of particular relevance to a discussion of enforcement of drug laws.

"There seems little doubt that a standing Royal Commission, or crimes commission, would be of great assistance in monitoring and investigating organised crime in Australia. It probably should have power to investigate not only organised crime but crime which is interstate or even local to one State, although, of course, its main focus would be on organised crime. The object of the commission should be to make governments and the public aware of the existence and extent of the activities of organised crime, to assemble material for the prosecution of conspirators and to make a public report at least annually. The first object would be partly achieved by public hearings but it would be better achieved by regular public reports on topics investigated. The second object would be achieved by assembling the information gained concerning certain conspirators and recommending their prosecution once the commission saw that there was a sufficient case against the conspirators. The commission could properly make recommendations as to how the prosecution should be undertaken and conducted. Finally, in its annual reports the commission should make known whatever statistical and factual material that is discovered about organised crime and it should also make recommendations for legislative improvements or improvements in administrative arrangements for the purpose of combatting organised crime."

(Stewart, 1983, 783)

It was suggested that the function of this Commission should be:-

- "(i) to investigate crime especially organised crime;
- (ii) to expose the existence of organised crime and those engaged in it;
- (iii) to expose the role that organised crime plays in illegal activities, corruption and improper practice in government at any level;

- (iv) to recommend action against crime especially organised crime whether by prosecution of its perpetrators or by the improvement of relevant legislation and administrative arrangements;
- (v) to report annually to Parliament;
- (vi) to report whenever desirable to the executive whether publicly or confidentially;
- (vii) to pass to appropriate prosecutors and law enforcement agencies for action information or evidence it has obtained; and
- (viii) to monitor crime especially organised crime and educate the public on these matters."

(Stewart, 1983, 785)

Of course the recommendations in respect of the Crimes Commission were subsumed, to some extent, in the legislation for a National Crimes Commission enacted in late 1982 and then the subsequent National Crime Authority Bill of 1983-1984. Whether, ultimately, the National Crime Authority will be able to carry out the functions recommended by the Stewart Commission is not clear. For instance, the special references which are required before the NCA can "follow the money trail" require the naming of targets. That is, a general reference in respect, for example, of all importations of heroin in Australia, is not possible. I will take this matter up later in this Report.

4.036 The recommendations made by the Royal Commissions have, as would be expected, covered the field in relation to the known and acceptable methodology of crime fighting. They have settled, though, for the soft options. I do not necessarily intend that to be regarded as a criticism. In the light of community awareness and

aspirations those recommendations and their implementation may be all that this country is ready for. Nevertheless, there are some harder options which may be considered. These will be developed later in this volume. The bottom line of all the recommendations appears to be the conviction of drug offenders and their punishment in the traditional sense. It used to be that a period of imprisonment was regarded as the ultimate sanction. In these "enlightened" days it is thought that a hefty monetary penalty should accompany a spell of incarceration. The imposition of those kinds of penalties do not seem to have had much effect. Nor, it is arguable, will any penalties have any effect on criminal activities. The criminologist will argue these matters in every direction without ever coming to a firm conclusion.

4.037 Perhaps the time has come to look for a separate method of dealing with the drug offender which does not necessarily involve him being convicted by a judge and jury of a conventional drug trafficking offence. This is not to say that the major objective of law enforcement agencies should not be to have drug offenders convicted and imprisoned. Operating by itself, unfortunately, it does not seem to provide a sufficient containment of the drug trade.

CHAPTER 5 - ATTITUDES

5.001 The South Australian Royal Commission into drugs conducted its hearings during the period 1977-1978 before producing a report in April 1979. The views reflected by it are therefore to some extent dated. But they are worthy of regard. The Commission took evidence and held public and private hearings in different parts of South Australia. It was intended to be as accessible to the public as possible. Some general attitudes were expressed which, although not necessarily representative, were encountered regularly enough to justify recording. Some of these were:-

- . A widespread belief that medical drugs are good and non-medical drugs are bad, although this is often combined, somewhat inconsistently, with a belief that doctors tend to over-prescribe.
- . A reluctance to recognise that alcohol and tobacco are as harmful or more harmful than presently illegal drugs. Of course this view is not universal, as indicated by the comments concerning the exclusion of alcohol and nicotine from our terms of reference.
- . An anxious concern about illegal drug use among the young, most often expressed by thoughtful middle-aged people, usually with children of their own. Mostly the people expressing concern have not come into contact with illegal drugs and do not believe that their children have, although they fear this may happen. These worries of parents are accentuated by media stories concerning drug use.

- . A belief, particularly among younger people, that cannabis has been incorrectly classified as a dangerous drug and that this classification should be corrected.
- . A willingness to distinguish between the users of illegal drugs, who are usually regarded with some sympathy, and the 'pushers', who are seen as the real cause of the drug problem."

(Sackville et al, 1979, 35)

5.002 Current attitudes of some authorities to offences involving cannabis are similar to those found by the Sackville Commission. There are those politicians who reflect the view that the use of marijuana is a victimless crime and convictions for its use and possession should be expunged. On the other hand, there are police officers who see use of marijuana as only one short step from the use of harder drugs, and is thus one step on the inevitable path to addiction. Both sides call forth "expert" and "uncontradicted" documentation to support their arguments. The non-using section of the community is somewhat bemused by it all. It may be that the de-criminalisation lobby is growing. It appears from statistics that the number of arrests for possession is increasing rapidly, indicating probably a greater deal of use of the drug. A newspaper report of a seminar conducted by the Australian Institute of Criminology in March 1984 indicated that about 15,000 people had been arrested in the year 1983 for offences involving the possession of marijuana:-

"Mr. Nick Koschnitsky, a research statistician with the South Australian Office of Crime Statistics, said there had been a dramatic increase in the number of people arrested for possession of drugs - mainly marijuana - in the last 10 years.

In NSW, arrests for drugs had risen from fewer than 1,000 in 1971 to more than 5,000 in 1980, the latest year for which statistics were available. Of the arrests in 1980, 95 per cent related to marijuana.

Similarly, in Queensland the number of drug arrests had risen from 542 in 1973 to 6,480 last year. Of the 6,480 arrests, 87 per cent were for marijuana but only 141, or 2 per cent, related to heroin.

Mr. Koshnitsky told the Australian Institute of Criminology seminar on corruption and illegal markets that police drug arrest statistics could be misleading because of multiple offence counting systems.

'With drug offences it is quite common for someone to be arrested with a drug and subsequently charged with at least three offences (such as) possession, use, possess for sale, cultivating...'

He said an important problem when considering drug offences throughout Australia was the lack of reliable and comparative statistics supplied in police annual reports."

(Sydney Morning Herald, 24 March 1984)

5.003 I do not propose to enter the argument about the status of the marijuana laws. The use and possession of small amounts for personal use now are viewed, fairly generally, as minor offences for which moderate penalties are imposed. The heavier penalties are reserved for those who traffic in marijuana in the expectation of making huge profits. Part of the argument is that de-criminalisation would render the illegal activities unnecessary. I am not sure that that argument is sound.

5.004 However the community may regard the use of marijuana, there is an united approach to the heroin trafficker. The community generally abhors the dealer in hard drugs. I say "generally" because there are some exceptions, unfortunately, including those who minister professionally to the needs of the dealers. (I do not include in this category lawyers whose responsibility it is to defend criminal charges and who discharge that responsibility - as they do almost without exception - honourably). The community is aware from regular media reports of the effect on the minds, bodies and lives of drug addicts. Reports reflect and foster these attitudes by the manner in which they are written. They are headlined as "drug horror story", "drug murder bodies found", "S.A. has thousands of drug addicts", "The drugging of Australia" and the like. The media generally adopts a view sympathetic to that of the police. For example, a recent article appeared under the title "upkeep of drug squad a continuing battle". It commented :-

"The methods of importing illegal drugs into Australia are many and devious. They have developed over the past decade as the number of drug addicts and users has increased. There are big profits to be made but the risks are equally great not just from law enforcement agencies either. Death or trial by the criminal world can be swift, as the Australian Federal Police records show. Murder is very much part of the scene.

And, according to the article, the war was being lost.

The officer in charge of the eastern region since February is Assistant Commissioner Ray McCabe, who said when asked if the AFP was winning the drug war, "No, I think I can speak for all of us involved - Customs, the State forces and AFP - we are not holding our own. Of course, we don't know the extent of the problem, so we can't say how much is coming in.

The picture is gloomy and the criminals continue to make a quid out of corrupting, in many cases, relatively innocent kids. Perhaps it has something to do with out materialistic society and the power of the dollar.

I don't know if it will ever change. Perhaps it will only change with a better-educated public. But we can be sure that, just as the criminal mind is always devising new ways, the legislation will never catch up with the trends.

Our intelligence is better, we have more men. Many are junior, but we are learning fast and we are developing an expertise and knowledge of what goes on that we didn't have a few years ago.

I don't know what went wrong, why we find ourselves in this position. The war against the drug trafficker has only been serious in the past few years and in the meantime he has become more sophisticated. In a democracy the law and system hold us back a lot. But do the general public want to change that?

As you know, we have the power to tap phones in drug matters and that requires a very complex approval.

No, we are not winning the war. It is going against us, but not for the want of trying".

(Canberra Times, 22 July 1984)

5.005 In an earlier article published in May 1984 it was suggested that, in fact, the police were winning:-

"It is the Federal Police who keep an eye on ports of entry and its records are even more conclusive; almost as much heroin and cannabis was seized in the first four months of this year than in the preceding 12 months.

In 1983, Federal Police took possession of just over 97kg of heroin. The first four months of this year have already yielded more than 70kg. In the whole of last year they seized 60kg of cannabis oil and more than 1500kg of cannabis resin.

This year they've already taken 90kg of oil and 2750kg of resin.

But, as police are well aware, the figures provide something of a dilemma. Are they to be interpreted as concrete evidence of "some result" in the drugs battle? Or is it an ominous indication that more people are taking the chance; that there's more of the stuff around?"

The role of the recent Royal Commissions in educating the public and giving them an awareness of the business like manner in which the drug industry operated was praised:-

"Royal Commissions, so often criticised as unnecessary, non-productive and disproportionately expensive, emerge well from any survey of current trends.

Inspector Willis (of the NSW drug squad) pays tribute to the Stewart Drugs Royal Commission (largely into the Terrence John Clark syndicate), the Woodward Royal Commission and the Royal Commission into Drug Trafficking...

They've been able to give a clearer picture of what the organisation of the drug scene is about. And there's been an uncovering of people who have been involved in drug crimes."

(Weekend Australian, 19-20 May 1984)

5.006 On the other hand, academics are less than enthusiastic in their response to the work of the Commissions. In the March 1984 seminar conducted by the Australian Institute of Criminology the figures estimated by the Williams and Stewart Commissions relating to the extent of the drug trade in Australia were severely criticised:-

"Mr. Ian Elliott, of the Melbourne University Law School, told the conference that Royal Commissions into drugs, including those by Mr. Justice Williams (1980), and Mr. Justice Stewart (1983), had produced figures which were implausible.

He quoted figures from the Williams Commission that between 14,200 and 20,300 hardcore heroin addicts were in Australia, and that the supply of heroin addicts was worth between \$1,000 million and \$1,600 million.

"In gross terms, these figures are so large as almost to defy comprehension," Mr. Elliott said.

He said the Williams figures showed that a heroin addict would spend more than \$70,000 a year on the drug - close to \$200 a day.

"I hardly know where to place the Williams estimate on the gradient of implausibility," he said.

Mr. Elliott said State and Federal governments had harnessed "the prestige of the judiciary" to determine policies to deal with the drug problem.

"We have had (and) we continue to have, a plethora, an unhealthy repletion of Royal Commissions on the subject," he said.

He said the figures were not used as a basis for an analysis of the costs and benefits of action against the drug trade.

"The estimates of the number of addicts and the cost of their dependence do not have to be accurate," Mr. Elliott said.

"They are most often used in a manner akin to ritual incantations against a shadowy enemy."

Mr. Elliott said it was not necessary to explain high crime rates in theft and prostitution by blaming them on drugs.

"For those who have nothing to lose, theft and prostitution must be very attractive propositions indeed," he said.

"The only puzzle is why some thieves and prostitutes chose to spend so large a proportion of their income on an adulterated and extravagantly expensive product.

"Theft and prostitution are rational responses to deprivation.

"The furore about addiction is a distressing sideshow."

(Mercury, Hobart, 24 March 1984)

Another speaker at the seminar, Mr Grant Wardlaw of the Institute of Criminology, said drug enforcement in Australia was in a mess:-

"He said the war against drugs was in full swing, and large amounts of time, money and expertise were being spent on drug enforcement.

Yet, the law enforcement approach to drug use had not succeeded in reducing the availability of illicit drugs.

Mr. Wardlaw said vast resources should not be given to law enforcement agencies because they were unable to control the supply of drugs.

"The evidence seems overwhelming that law enforcement should not be central to drug control policy," he said.

"It may have a valuable subsidiary role, but vast resources should not be allocated to it, and not too much should be expected of it."

Mr. Wardlaw said it should be remembered that about 20,000 deaths and 200,000 lost person-years were associated with drug use in Australia every year.

But, the major drugs responsible were alcohol and tobacco, while drugs of dependence accounted for less than 5 per cent of drug-related deaths of people under 35.

"How on earth have we got our view of the drug problem so out of perspective?" Mr. Wardlaw said."

(Ibid)

5.007 Another view is expressed by the columnist, Kenneth Davidson:-

"Organised crime still lives off prostitution because it used to run it outside the law. Today, the money is in drugs. To me, the answers seem obvious: legalise soft drugs and tax them, and provide hard drugs for registered addicts to remove the present pyramid selling system which survives by continually widening the base.

Yet now we are creating new opportunities for organised crime in making X-rated movies illegal."

(The Age, 6 September 1984)

Legalisation of criminal acts is often seen as a panacea. Make it legal, then it will not be criminal! Therefore, there will be no crimes committed! Hence, there will be no criminals. Society, unfortunately, is not structured so simply.

NEW LAWS

5.008 Contrasted with these last views are those of the legislators in Tasmania and Queensland. On 11th July 1984 new laws came into operation in Tasmania. These laws outlawed cannabis smoking equipment, allowed body cavity searches before arrest, search warrants to be granted by telephone and allowed police to use reasonable force in

searches and drastically increased penalties. The penalties for drug trafficking were increased from \$4,000 or 10 years imprisonment to 21 years imprisonment and/or an unlimited fine. There was, however, no increase in the penalty for mere possession. Further provisions allowed for the seizure and forfeiture of the profits of drug trafficking following court order including any vehicle, vessel or aircraft used in the trafficking. The laws were to allow police to trace, immobilise, secure or freeze the proceeds of drug related crimes with forfeiture to the Government's consolidated revenue fund to follow. I have not seen the precise details of the new legislation. It is not yet clear to me how these provisions are to be enforced. The press release referred to the police being allowed to trace the proceeds of crimes. The precise manner in which this is to be effected is not specified. The Minister for Health in Tasmania, Mr. Cleary, in announcing the new legislation said:-

"The Government was not interested in softening the law for users of marijuana, Mr. Cleary said.

"We have had to deal out punishment commensurable with the amount of money they are making from the crime. We are dealing with people that are making 10 times the fine in profit," he said.

The profits some drug dealers were making made a farce of the fines being handed out by the courts, he said.

"We have to allow police enough power to perform their duty properly but still have some checks and balances." Mr. Cleary said.

"The police are dealing with a serious problem that needs to be tackled forcefully; we can't just tip toe around with this issue."

A police sergeant may also obtain a search warrant by telephone from a magistrate in urgent cases.

A body cavity search may be done on anybody suspected of hiding drugs on their person before they were arrested.

In the past, a person could not be subjected to a body search unless there was evidence they had drugs concealed on them and an arrest had been made."

(Mercury, 12 July 1984)

Queensland

5.009 Similarly tough legislation was announced in Queensland on 27 July 1984. The Premier of that State announced planned new legislation at a National Party State Conference. Its plans would make its laws the toughest in Australia including mandatory life imprisonment for traffickers in heroin and other hard drugs. The legislation would deny parole for offenders sentenced to gaol for selling hard drugs and allow for the forfeiture of assets (similar to the Tasmanian legislation). The Premier said that his Government would not de-criminalise marijuana. He went on:-

"Our aim will be to have the toughest laws in Australia to deter these human parasites from operating in Queensland," he said. "These merchants of death are responsible for the destruction of many lives and terrible tragedy in many homes.

"We know what drugs are doing in relation to robberies and murders right throughout the nation. These continual day-by-day bank robberies to get money for drugs and raiding homes and so on is largely related to the compelling urge to get money to buy these very expensive drugs."

Consistent with the previous views of the Queensland Government that drug dealing networks are centred in Southern States, the Premier claimed that new legislation would make visiting drug pushers think twice before proceeding in a northerly direction.

"We want to make it that they don't come into Queensland because if they get caught they know the consequences will be pretty tough," he said.

(The Age, 28 July 1984)

The strength of the views expressed by the Premier, and the emotive language used, reflects the views of a large portion of the community in regard to the drug traffickers.

5.010 The public view about the magnitude of the drug problem is fed by other newspaper reports. In March 1984 it was reported that a prisoner had been transferred to Pentridge Gaol after heroin worth several thousand dollars was found at Ararat Gaol following a search by police sniffer dogs. In 1983 a former Ararat prisoner had claimed that drugs were freely available in the gaol. I have not confirmed that newspaper report. In July 1984 there was a newspaper report that 900 remote airstrips existed in the Northern Territory which "drug runners could use". There was no evidence of such use but merely the possibility of it. Nevertheless the public's imagination is stirred. I am not to be taken as saying that the community's attitude is not justified. The exact opposite applies. But in this Chapter I am indicating, in a fairly general way, some of the attitudes and the way in which they are developed.

Availability of Drugs

5.011 The future of the illegal drug industry appears bright. The following report was published in London in May 1984 titled "The Boom in Drug Trafficking":-

"The murder on April 30th of the Colombian justice minister, Rodrigo Lara, showed how far drug-traffickers are prepared to go to defend their multi-billion-dollar industry. The flow of drugs - heroin, cocaine, marijuana and

hashish - into western countries will increase this year. Foreign Report has obtained the latest reports compiled in Washington from information provided by American embassies in the producing countries, from the Central Intelligence Agency, the Drug Enforcement Administration and state department sources, and from information from western Europe. The best estimate of the 1983 crop compared with 1982 is as follows:

- . Opium and heroin: The three countries of the "golden crescent" (Afghanistan, Iran and Pakistan) dominate the world's opium/heroin trade. They produced as much as 1,235 tonnes of opium in 1983, up from 975 tonnes in 1982. The "golden triangle" (Burma, Laos and Thailand) produced 670 tonnes, down from 707 tonnes in 1982. Mexico's output has, however, increased.
- . Coca leaf and cocaine: Three countries (Bolivia, Peru and Colombia) produced 92,800 tonnes in 1983 compared with 82,000 tonnes in 1982.
- . Hashish: Afghanistan, Lebanon, Morocco and Pakistan produced 1,230 tonnes in 1983, up from 1,030 tonnes in 1982.

American intelligence sources believe these figures would have been much higher had there not been an increase in drug-control measures last year and more local consumption in countries such as Colombia and Pakistan (where there were no reported heroin cases in 1980 and over 100,000 heroin addicts in 1983).

(Foreign Report, 10 May 1984)

5.012 It is interesting to note that Hong Kong is regarded as the major financial centre for South East Asia's drug trafficking with "old ties to supplies in Thailand and distribution networks in Western Europe and North Africa". India is specified as a route increasingly used by drug traffickers in Asia for heroin as Pakistan, Hong Kong and Thailand were said to be cracking down on traffickers. It was also suggested that the opium crop in Thailand had reduced to 35 tonnes in 1983 from 57 tonnes in 1982 because of Government operations against Burmese guerrillas in Thailand and other illicit drug traffickers. Malaysia was also said to have a large number of addicts consuming 4.7 tonnes of opium a year with a further 4 tonnes passing through that country from the "golden triangle" to consumer countries. I might say there is no doubt from my enquiries that drug traffickers to Australia are using India and Malaysia in their trafficking activities. It would appear from the report that the market for the drug is continuing and the suppliers are readily available.

5.013 It can be seen from documents like The Foreign Report that Australia is not alone in its predicament. There is much that can be done in the way of international cooperation to combat the trade. The Australian Government has taken an initiative in supplying computer and crime intelligence assistance to Thailand. Thailand has been a major source of supply for the Australian drug market so there is a degree of self interest, naturally, in the computer aid package to Thailand the aim of which is to stem the flow of heroin and other drugs from the golden triangle area out of Thailand and to other countries. A newspaper report of the new system indicates that it will enable Thai officials to check and test travel documents of people moving through Thailand. It is designed to provide information on the travel pattern of these people in an attempt to locate drug rings and the pattern of the trade from Thailand.

5.014 There is little doubt that the Australian public is prepared to accept quite harsh legislation from Governments showing a determination to combat the industry. Most people do not see those laws as being directed at them. In so far as they are directed at traffickers in hard drugs, I believe the community is prepared to accept that the full majesty of the law should be brought to bear.

CHAPTER 6 - THE SITUATION

6.001 The ultimate objective is to prepare and design an effective plan for the control and/or suppression of illegal drug trafficking in Australia. Given the previous and current attempts made by various Royal Commissions and law enforcement bodies to arrive at the same objective it may be regarded as a fairly pretentious undertaking. Nevertheless, a further attempt is worthwhile.

6.002 The immediate task is to identify the nature of the drug trafficking industry. Once that is achieved some appreciation may be attempted of the resources presently available to combat the industry and their current use and usefulness.

6.003 The present situation is that the importation, distribution, sale and use of certain drugs of addiction is prohibited in Australia and its several States, and severe penalties are imposed should these laws be broken. These prohibitions have existed for many years, and are supported as being desirable laws not only by every Parliament in Australia, but the general populace. As evidence of this, in recent years the penalties relating to marketing drugs have been increased, reflecting Parliament's wish that this trade be stopped. On the other hand, there is a minority view that drug taking should be "liberalised", and this view has gained some Parliamentary support which is reflected in lesser penalties for personal use of certain drugs.

6.004 The following conclusions may be drawn:-

- (1) The illicit drug trade is condemned by the Australian people, and they will not countenance the removal of the prohibition. Therefore the removal of the prohibition is not an

acceptable remedy to any problem which enforcement of these laws may present to law enforcement agencies. No further consideration need be given to this course of action. (It is possible to develop all of the reasons for the prohibition. It seems unnecessary to attempt to do so. Parliament has "spoken" repeatedly, and that is the end of this aspect of the matter.)

- (2) Parliament's reduction of penalty for users and increase in penalty for marketers indicates that law enforcement should give priority to suppression of marketing. Thus any course of "police" action which is to be considered ought to reflect this emphasis.
- (3) Criminal sanctions against users are not so severe, reflecting the view that they are little more than victims. Courses of action directed at users should emphasise, therefore, persuasion based on non-criminal sanctions (for example education, medical treatment).

6.005 Notwithstanding Parliament's persistence in outlawing this trade, there are those in the community who break the laws, and do so over long periods of time. What is more, the breach of these laws is increasing in frequency, and has increased by extremely large proportions over the past fifteen years. (No attempt will be made here to prove this statement which is treated as empirical). This has occurred notwithstanding the increases in the criminal sanctions which now provide serious penalties which may lead to many years imprisonment.

6.006 It follows that:-

- (1) There is something very attractive, to those who breach these laws, in their breach. Most laws of our Parliaments are generally obeyed, and whilst there are those who

breach many of those laws, usually the breach is by reason of circumstances unique to the offender. In this case, the advantages of breaching these laws seems so considerable that more and more people are prepared to offend. Therefore, any law enforcement effort should be directed at removing those attractions.

- (2) The increase in criminal sanction has not had the effect of diminishing the trade. Accordingly, the conclusion is drawn that further increases in penalty are unlikely to have any effect on the non-observance of these laws.

Both of these matters require further development. What is the attractiveness of the trade? Why is the existence of serious penalties not an effective suppression device in itself?

6.007 In assessing the positive advantages of trading in illicit drugs, one may approach it from the businessman's view. It is, after all, a commercial business (even though illegal). Why does this business succeed? It undoubtedly does, for the profits are very large. No legitimate business produces such profit ratios. There are several possible explanations.

- (a) The product being marketed is produced very cheaply. The means of production where it is outside Australia is serviced by people who are very cheaply employed. However, in Australia labour is not so cheap; and the transportation from point of production to point of distribution is at least as expensive as legitimate business operations, if not more so because of the need to reward better those taking the risk of detection. Overall, it is not clear that this is a line of business any more rewarding on

account of cheap production labour than is the production and importation of leather goods, clothing and electronics from countries such as Korea or Hong Kong. Of course, there are tariffs; yet smuggling of those goods and the consequent evasion of duty does not produce the profits found in this trade.

- (b) The market for importation and distribution of the goods is not controlled by a few. If it were subject to monopolisation, then the selling price could be kept artificially high. But that is not the case. There are many operating in the market. There is competition.
- (c) The extent of the market is difficult to gauge, but it is not as extensive as markets for legitimate products. Not as many buy illicit drugs as drink alcohol, or purchase cigarettes. Therefore it is not the size of the market which produces the huge profits. Of course, if the market extends beyond Australia and encompasses the Western World, the market may be very large indeed. However, such a market is subject to a great deal of competition, and surely this would keep the profit down. Australians may make some money in, for example, the USA market, but it would be insignificant when compared to that made by local Americans.
- (d) The nature of the market is another matter. Although it may be small in number, it is a captive market. Most of the drugs are drugs of addiction. (Those which are not - such as marijuana - may be changed to addictive markets by the "lacing" of the non-addictive drug with for example heroin. This is probably the marketing man's weapon. In any event, the drug may become psychologically addictive if not physically so.) Once addicted, the addict must have more and will pay

excessive amounts to acquire it. The need for the drug will suppress his normal caution. Thus high prices can be extracted repeatedly. Unless the addict knows another supplier who sells cheaper, he must buy. (But there is a real [and justified] fear that the cheaper product may be inferior - and deadly.) There is a lack of the normal commercial inhibition restraining the businessman from pricing himself out of the market. He cannot do so in this case.

- (e) Yet there is competition. If prices are kept extraordinarily high pursuant to some unwritten agreement, then how does the competitive thrust occur? Surely it is not by seeking another distributor's customer but rather by acquiring new customers. Drugs have been in plentiful supply over a relatively few years, and the proportion of the public using drugs is still quite small. Accordingly, there is a large untapped market. In those circumstances, the distributor may be expected to "push" his "line" and acquire new "customers" among people who have not used drugs before.

6.008 It may be concluded that, as a business, drug trafficking is very profitable. This is due to the addictive nature of the drugs which allows very high retail price maintenance. Since only a small proportion of the public has been captured in this market, and competition for those customers would lessen the profit, it may be expected that the businessman in drugs will seek to widen the market rather than compete within it. Thus drug usage may be expected to increase. This conclusion is supported by actual experience in trends over the past few years.

6.009 One answer to high retail price maintenance is to increase the competition. For factors already considered, this may not be regarded as an option as the

Australian people will not accept legal drug supply. Thus the profit remains, and is and will be an attraction to the businessman who is not concerned at the illegality involved.

6.010 Another answer, which needs only to be stated to be rejected as impractical, is to destroy the addictiveness of the drug. If destroyed, then normal prudence would surface and the customer would no longer be "captive". But there is no way yet known of destroying the addictive nature of the drug. Nor is there any proven system of converting the addict into a non-addict. There are ways of assisting, but they require high motivation from the addict himself. No scheme based on medicine or education will have a marked effect on the existing market although education may have a limiting effect on the expansion of the market. As yet, there seems little evidence that education has limited the expansion of the market. Nevertheless, it is a possible course of action, and is one already being promoted in the country.

6.011 If profit is the main motive, then the object of any law enforcement should be the destruction of the profit. A course of action which should be regarded as high in priority ought to be that which results in the loss of the profit, plus a financial penalty of a substantial nature, so that the businessman must take into account the likelihood of incurring that financial loss (in addition to any term of imprisonment) when calculating his profit potential. These matters will be explored further below.

6.012 For the sophisticated businessman the scope for reward in the illegal drug trafficking industry is remarkable. A man with very limited capital can launch himself into the business, the only other requirement being a little native cunning and an amoral outlook.

"Irrespective of the initial source of finance, the situation is that relatively little capital is required to commence a heroin importing operation, though the amount varies with the degree of sophistication employed. Probably no more than a few thousand dollars will cover the costs of a return overseas airline ticket, the purchase of heroin which can be bought in or around Bangkok for as little as \$1,000 a pound, and miscellaneous expenses of perhaps a few hundred dollars. One successful venture which might involve the importation of only a few ounces would provide the capital not only for a further venture, but in addition the establishment of more sophisticated importation procedures. In other words, heroin importers do not need financiers to set up a simple operation. The initial costs involved are minimal. A successful operation generates ample finances to cover the increased working costs which can arise from continued operations and it is, perhaps, those factors which have contributed significantly to the development in New South Wales of the multiplicity of unrelated heroin chains stretching from importation to the street.

(Woodward, 1979, 349-350)

6.013 The nature of the industry, with its encouragement of new entrants to it, is such as to make the task of law enforcement agencies very difficult to perform.

"Though the structure of the heroin trade in this State may appear crude, it is nonetheless effective. The disorganisation of the trade and the laissez-faire type competition that exists between unrelated importers and between unrelated wholesalers may, in part, account for the continued success of trafficking operations. Such a structure greatly hinders significant disruption of the supply sources by enforcement agencies and limits the effectiveness of investigations. No matter where a chain is broken, there are several other similar

chains leading from importation to consumption which are unaffected. The disruption of one chain at a particular point does not necessarily give enforcement agencies any information on the operation of other chains."

(Woodward, 1979, 350)

(Another difficulty in piercing the industry is the complex system by which it is financed. Intelligence shows that those who make the largest profits are shielded by a veneer of "respectable" businesses. The financing of transactions is filtered through a maze of shelf companies and merchant banks and the ordinary resources of law enforcement agencies such as police forces are not adequate to the tasks with which they are confronted).

6.014 But there is one factor which may be manipulated in such a way as to obtain for the community an advantage; the question of reputation. I have found repeatedly during my investigations that the stain or stigma that men fear worst is the label of being a drug trafficker. Thus, I have had witnesses assure me that although they have committed various indiscretions and illegal activities they would never be involved in drugs.

6.015 Trafficking in drugs is regarded by the community as "dirty pool". There has been a high level of media output demonstrating the despair, futility and nightmarish existence of the drug addict. The conscious aim is to develop community attitudes despising the pedlar. Emotive language is the order of the day. There has been at least a limited success in this campaign. Members of the general criminal class are at pains to disassociate themselves from that section of the underworld which is involved in the drug trade. (Of course, this is a ridiculous over-simplification. The notion of one

homogeneous criminal class, exclusive of the drug industry is mythical.) For instance, one of the "targets" of the Woodward Commission was Barry James Pyne. He was interviewed by investigators in March 1978. He admitted having travelled through England and Europe committing theft and fraud crimes, and generally having led a life of crime. However, he denied being involved in drug activity saying:-

"whoever told you I was mixed up in drugs has got to be off their head. I can make a good living without getting into that filthy shit."

(Woodward, 1979, 1448)

Notwithstanding his protestations, the Commissioner found:-

"...irrespective of whatever other illegalities Pyne is involved in, he has been, and probably still is involved in the importation and distribution of illegal drugs..."

(Woodward, 1979, 1453)

6.016 The conclusion that may be drawn from the manner of the response of Pyne to the drug connection is that even the hardened criminal prefers not to be identified as involved in the drug industry. This may, of course, be for reasons other than the shame and/or embarrassment of being so identified (felt either for himself, his family or "loved ones"). That criminals do have pretensions for the family I have no doubt. They have wives, friends, children, dogs and budgerigars. I was informed by a police officer that he had arrested a well known and hardened criminal. He noted with some surprise that the criminal's son was attending one of the best public schools. The criminal responded:-

"It's like this; I don't want him to end up a crook like me or a copper like you."

6.017 The attack on reputation may be the achilles heel of the drug offender. It is the fear of apprehension that prevents many offenders from offending. As I have said, some of the witnesses (not only painters and dockers) appearing before the Commission have claimed outrage at the suggestion they would be involved in such a dirty business as the drug industry. But if men of a criminal character believe they can otherwise insulate their own families from the effects of drug use why should they differentiate between reducing young people to vegetables through drug abuse or raping, shooting or other mayhem? It is not the innate resistance to or abhorrence of the particular illegal activity. Rather, it is the public exposure of the criminal's participation in that field - and the effect this might have on the exposed person's friends and associates. If he is a lowly cog the actual effect might be small - but the higher he is in the scale of things the greater will be the shame. The following exchange in a long forgotten English trial demonstrates the point rather nicely:-

Halsbury: Are you heartily ashamed of the part you played in this (conspiracy)?

Newton: I am rather sorry for it, yes.

Halsbury: Are you heartily ashamed of it?

Newton: Naturally

Halsbury: When did this feeling of shame first come upon you?

Newton: With the likelihood of exposure."

Du Cann, The Art of the Advocate;
(The case involved the Midland Bank
[the "Mr A" case], 1924.)

The "exposure" of the criminal's activity will be at the heart of the matters I put forward for consideration in the final chapter of this volume.

CHAPTER 7 - OBJECTIVES & SOLUTIONS

7.001 The Williams Commission proposed what it termed "a comprehensive national strategy on drugs". The policy espoused noted that law enforcement, education and treatment all had roles to play in reducing drug abuse. The policy required that:-

- "* the supply of drugs for illegal use should be reduced if not eliminated;
- * the user, even if he is also a pedlar, should be pressed towards treatment; and
- * the community as a whole should be educated on the dangers of drug dependence --- not just the dangers of dependence on illegal drugs."

(Williams, 1980, D14)

The Commission was convinced, as must any rational assessor of the problem, that the elimination of drug abuse in Australian society was an unattainable goal. The best society could hope for was containment.

7.002 Stated in its simplest form, then, the objective is to contain the problem of drug abuse. That simplicity of purpose is not really very helpful, however. Given that there needs to be a multi-disciplined attack on drug abuse I will concentrate on that which deals with law enforcement and, in particular, with the significant drug offender.

7.003 The objectives of an orthodox police force operating a drug squad and a joint force investigating drug trafficking may appear to be totally different. But ultimately the perceived success of either body will depend

on its arrests and convictions (and query whether arrests which do not lead to convictions should count at all in terms of the statistics and success rates). It is "heads" which count. Thus, on 7 September 1984 the Commonwealth Attorney-General described the work of the Commonwealth/New South Wales Joint Task Force as a "success story in the fight against organised crime". The JTF was reported as having broken 14 major and 7 minor drug trafficking groups. Since its establishment in 1979 there had been 315 charges laid. In the 1983/84 financial year there had been 30 arrests and 90 charges. Of the people convicted pursuant to its operations, 40 had received sentences of more than 5 years. The success of the JTF was therefore seen in terms of its arrests and charges - not in relation to its impact on the overall drug problem. The JTF's annual report to Government was not released because it contained a substantial amount of confidential information. That in itself is a matter which justifies some further comment. I hasten to say that I applaud the work of the JTF, but its "success" should be measured in terms of its objectives. It had been set up in 1979 as a response to recommendations of the Woodward and Williams Commissions. Its main aim was to conduct extensive surveillance of people identified by those Commissions and other suspects in the drug industry. It has consisted of some 25 Federal and State police officers. Media reports of 19 July 1984 refer to its involvement in the arrest of 175 alleged offenders (presumably at any one time a number of matters were outstanding in the courts) which no doubt reflect the "315 charges" stated by the Attorney. It must be remembered that the work of the JTF was confined basically - although not exclusively - to the State of New South Wales.

7.004 An interesting implication from the Annual Report is that there has been some liaison with the Taxation Office. It is claimed that tax investigators, in association with the work of the JTF, had led to the recovery of \$4.7M in unpaid tax. That is a significant matter and one which requires further consideration.

7.005 A difficulty in defining objectives (and therefore in finding the appropriate solution) has been a preoccupation with conviction rates and the like. This carries with it costing factors - which dominate the minds of the bureaucratic agencies. It is suggested:-

"The prime target in a strategy to reduce the quantity of illegal drugs available in Australia should be the drug trafficker."

(Williams, 1980, D29)

There can be little argument with that statement. But too often the successful targetting of that trafficker is seen as requiring his arrest, charging and conviction on a drug related offence followed by a term of imprisonment. It is true that the ancillary sanctions of heavy fines and confiscations of property are recommended but that is what they are - ancillary.

"To sum up, recognition of major drug trafficking as a lucrative money making commercial venture requires that the criminal law adopt appropriate measures which will place convicted major drug traffickers at risk of severe financial penalties which attack their acquired capital and profits. Accordingly, in the light of evidence received by me as to the enormous profits which can be generated by major drug trafficking, lifting of the maximum fine for indictable offences under the Poisons Act from \$50,000 to \$200,000 is clearly

justified. In order to make the imposition and recovery of fines more effective it would be possible to provide for means inquiries to investigate the financial position of convicted major drug traffickers, and also to supplement this procedure by judicial powers to prevent concealment or disposal of assets to evade the impact of a potential fine. However, both the cost and delay involved in such procedures, and the doubtful benefits which could be expected to result, scarcely compel the conclusion that means inquiries are either a desirable or essential feature of the criminal justice system. Accordingly I do not recommend their introduction."

(Woodward, 1979, 1896-1897)

7.006 The public emphasis remains on conviction. The Williams Commission acknowledges this, arguing that more convictions of traffickers (as opposed to greater penalties) should be the aim.

"The Commission has little doubt that law enforcement with regard to drugs will be much more successful if people breaking the prohibitions on illegal drugs are faced with a high risk of detection than if they feel comparatively little risk of detection although penalties upon conviction are very high. In this connection the Commission must state that the frequent calls by some community leaders for higher penalties on conviction seem to be in the nature of a palliative offered to the public because too few law breakers are being detected. Law enforcement agencies should be given wider powers to assist them in detecting the larger traffickers. It is a far greater deterrent that nine traffickers go to gaol for five years each than that one is sentenced to gaol for life."

(Williams, 1980, D12)

I have been aware of similar responses to the work of my Commission.

"And finally, if we are serious about catching crooks, give more money to the police rather than Costigan Royal Commissions and crime authorities.

Apart from tax evaders who would have been caught by the tax commissioner eventually in any case, the Costigan commission hasn't led to one conviction.

If the Federal Police had had the \$17 million total cost of the Costigan commission added to the \$100 million in their budget this year, there could have been a significant increase in police resources and convictions."

(Kenneth Davidson in The Age, 6 September 1984)

I have corrected elsewhere in my Report the incorrect premise on which Mr. Davidson's argument was based.

7.007 There is also the preoccupation with cost effectiveness which I have referred to earlier. I must say there is considerable justification for it. The cost of maintaining full-time surveillance on any one targetted individual is immense. A minimum number of men required to carry out surveillance for one 24 hour period is nine. Those nine men must have access between them to six motor vehicles - the motor vehicles can be reused during the course of the day but not at changeover times. And it must be remembered that each drug syndicate itself will have more than one member. If the particular target being followed meets with another person it is impossible then to carry out surveillance separately on that other person after they part. Superintendent Winchester of the Criminal Investigation Division of the Australian Federal Police was reported in the press in the following terms:-

"He said that some of the drug importing syndicates were sophisticated and particularly cunning.

They booked in and out of hotels regularly - in one case Federal Police had watched a suspect change hotels four times in a few days. This posed problems for police, not only because of surveillance difficulties, but because police had to assess why the couriers were moving and who was telling them to move.

In some cases, syndicates had used children to wander the corridors of hotels to see if there were any 'strange men' (police) in the vicinity.

Superintendent Winchester said that it was the experience of the Federal Police that it was very difficult to get to the top people in the syndicates as they always distanced themselves from the actual operation.

Federal Police often preferred to follow couriers or shipments when they arrived in the hope of finding some of the principals but this was not always possible because of the cost of police operations.

'In one operation I had 60 men employed on surveillance. It was costing \$10,000 a day in overtime and we had to put the lid on it. They the (traffickers) can afford to leave a consignment of drugs sitting there for weeks and weeks. We have known them to wait three months before coming back. He said police had to make decisions on how long they could keep up surveillance. It is not just police who employ surveillance tactics. Most of the syndicates are employing counter surveillance to see if we are watching the load and they are very good at it. The security of consignment is, of course, of paramount concern. Whether it be the result of counter surveillance or of some chance factor, the loss of a consignment in this mode is an acute embarrassment to the responsible enforcement authority.'

Superintendent Winchester said that the Mr Asia syndicate headed by Terry Clark had to some extent been clumsy but still managed to avoid arrest for a long time.

To some extent, Clark, who died in jail in England last year, had got away from Australian police because of a lack of intelligence material and also because law enforcement agencies had been more fragmented at that time."

(Sydney Morning Herald, 24 March 1984)

7.008 The "rapid growth of organised crime and the need for extensive police task forces" was the basis of a 1984 Victorian submission to the Commonwealth Grants Commission for special consideration at the next Premier's conference.

"The State's submission to the Grants Commission said the sharp rise in drug offences in Victoria's high-density population was putting extra financial strains on the State Budget...

The submission said drug investigations were protracted and expensive. There was a backlog of 550 substances requiring analysis by the national herbarium of the State forensic laboratory before investigations could proceed.

Because major drug dealers were becoming more sophisticated, had large amounts of money and could travel widely, investigators had to travel interstate and overseas.

Organised crime flourished in theft, prostitution, protection, arson, tax fraud, SP bookmaking, union racketeering, loan sharking, pornography, gambling and drugs.

The ability of criminals to cross borders and travel overseas meant special task forces would become more necessary. These required extensive systems of secure communications, transport, surveillance equipment, secure accommodation and recording equipment.

Their operations also required extra staff whose departure from other organisations created further problems.

The submission said 'Large but unpredictable amounts of money and resources' would have to be spent to fight the growing crime rate.'

'The public, media and Government must accept the fact that an extensive and concentrated effort will not necessarily quickly or easily lead to the identification and conviction of major figures' involved in drug rackets.

'Relatively higher-cost police operations should be regarded as essential services required to deal effectively with the special type of problems in Victoria, rather than as indicators of above-average services.' the submission said."

(The Age, 27 June 1984)

7.009 The joint task force concept is regarded as an expensive option. In its 1981 Annual Report the Victorian Police stated:-

"The problems of organised crime are becoming increasingly apparent. Coping with organised crime will require greater emphasis on task force operations in the future. These are expensive in terms of manpower and ancillary services but, on performance, highly effective."

Is the criteria to be the number of convictions? Or the cost per conviction? (Or, as I have hinted before, should "arrest" or "charge" be sufficient?) Should the aim be to attack the generals of drug operations or, merely, the foot soldiers. The view of the Woodward Commission was:-

"...Without the powers of a Royal Commissioner to secure the attendance of witnesses for questioning and the production of documents, the task force is still capable of doing valuable work. However, it must be conventional work and can be directed against only lower level drug traffickers. It cannot be expected, without considerable luck, to be successful against the high level traffickers."

(Woodward, 1979, 1654)

The Woodward Commission believed that it was necessary for success against the drug generals for the police agencies to have greater powers: in particular powers enabling a pursuit of the money:-

"The pilot Joint Task Force has now been established...

It is indeed a significant step forward in this regard and may well have significant success principally because of :

- . the extent of the sharing of resources proposed;
- . the task force approach towards one area of crime - drug trafficking; and
- . concentration on high level traffickers as opposed to street crime.

However, it will not have available to it the one resource which I believe should be available and that is power to investigate by way of the 'paper trail' technique which was used by my Commission under the powers available to me as a Royal Commissioner. I believe that it will become necessary, eventually, to provide such a power to reinforce the effort and provide an additional operating technique."

(Woodward, 1979, 1650-1651)

Although the Woodward Commission saw the concentration on high level traffickers as a significant step forward, it doubted its likelihood of success. The JTF in its Annual Report claimed to have broken 14 major drug trafficking groups. It is not clear how many of the principals of those groups were brought to justice - if that is a matter of any significance. Is the smashing of the syndicates not the ultimate objective? Certainly it is unfortunate if the principal miscreant has not been punished. If he has been isolated sufficiently, and is not allowed to re-enter the drug industry, perhaps there has been a result sufficient to categorise the operation as a success.

7.010 The Woodward Commission doubted the likelihood of a joint task force being successful against top echelon drug operators "without considerable luck". Nevertheless,

"It is a great piece of skill to know
how to guide your luck even while waiting
for it."

Baltasar Gracian,
The Art of Wordly Wisdom (1647)

And police officers, although hoping for some good fortune in their work, as in every human endeavour, apply their abilities to the job in hand. It is true to say that a good deal of the information on which police rely in operational activities comes to them from informants - either cultivated as such or anonymous. The "tip off" may be one of the biggest single factors leading to arrests of offenders. Police have to rely on "information" and "intelligence". They can then carry out surveillance to confirm movements, contacts and the like and, possibly, catch criminals red handed. All of this is time and money consuming. The objective of this work is to put the criminal under pressure - whether known to him or not - and hopefully force him into desperate action. This kind of police work is pro-active in that it pre-dates the actual offence in the course of which

it is hoped to apprehend the villain "in the act". It pre-supposes, once again, the major objective as being one of apprehension and charging. The surveillance is not carried out for its own sake but rather to build up a data bank. That surveillance can only be part-time for reasons advanced earlier unless both the task force and the criminals go into the "operational phase". It is just not possible to watch every drug trafficker, to "tap" every relevant telephone. People involved in criminal activities do suffer from paranoia. They believe their telephones are tapped and every movement is watched. But, one of the most valuable policing aids may be this fear of being watched. Perhaps this is the key to the dilemma. That is, to provide the criminal element with sufficient evidence that they will be almost inevitably "captured" because of the extent of the police surveillance and other activity.

7.011 Let me say something about targetting. One of the concerns experienced by all Royal Commissions into the drugs area was that there be a coordinated and national approach to, inter alia, law enforcement. There needs to be a mutual exchange of intelligence and some rationalisation of the targetting process. That, to my knowledge, has not yet eventuated. There is still substantial overlapping occurring. "Turfdom" as described by Special Prosecutor Redlich, continues to exist.

7.012 The problem with all the selected operational targets is that they are (or become) too big. And, Parkinson's (several) laws apply to them. They absorb manpower and churn out further demands for information and reports. All the information obtained must be verified - with a view to the eventual "big bust" and the presentation of the admissible evidence. This routine is followed because of the existing attitudes to objectives. These appear to include:-

1. The desire to achieve maximum publicity for the arrest.
2. The need to present the person in court and successfully prosecute (i.e. to conviction).

7.013 These two objectives are seen to be crucial to the overall strategy which is to give other would-be criminals an awareness that the system is working, and to deter them from trying the same routine. Of course, all it really does is highlight - to the criminals involved in the industry - the many, many, cases which have eluded thorough police investigation and/or surveillance.

7.014 What is required is to re-define the objective. The objectives set out above are appropriate only if resources allow their attainment. Certainly, the aim should be to discourage people from becoming involved in the illicit drug industry but can this be accomplished in some less resource - consuming manner?

7.015 There has been a great deal of criticism, during the debate on the introduction of the Crime Commission/Authority, on the publicity attaching to the examination of witnesses. This criticism is applied in respect of witnesses appearing before my Commission and also, in anticipation, of those appearing before the new body. The complaint is that people are exposed in a public manner but without there being any certainty that evidence admissible in a court of law will be available sufficient to put them on their trial. The complaint is their characters are blackened - by the public examination - but they are not sent to trial and gaol. The community accepts that every man is innocent until proven guilty - hence the effort required on the part of policing agencies to "produce the goods", or "put up or shut up". Once again, the theory that "convictions" are necessary.

7.016 During the course of my Commission's work, there has been much use of computer facilities. A great deal of publicity has been given to the techniques and methods of criminal investigation using those resources (they are dealt with extensively in Volume 2 of this Report). Whether rightly or wrongly, an air of invincibility has developed about the computers powers. Fittingly enough, I suppose, in the year 1984 there is some suggestion of the "big brother" syndrome operating. Many times the lawyers working with the Commission have been confronted by their professional counter-parts appearing for witnesses with the flattering assertion that the Commission "knows everything". Of course, it did not and has not but the assertion was not surprising bearing in mind the public awareness of the use made of the computer. I mention this matter here to indicate that a criminal's awareness that his activities are being monitored by a body using sophisticated technical aids may prove a substantial disincentive to his continuation of those activities.

7.017 Complementing the computer, the power of a Commission to obtain banking (and other) records gives the criminally-minded person occasion to pause. To have banking activities subjected to close scrutiny - in a capitalistic society which demands some transfer of real funds in return for goods - is unpleasant. This Commission has from time to time gone to some lengths to ensure the secrecy of its enquiries of particular bank accounts. Ultimately a concept of making a target aware that he is the subject of investigation may be one of some assistance in reducing a particular crime. The concept is rather like a publicised saturation of police road traffic activity which is announced on holiday weekends. The hope is not necessarily that many people will be caught offending but that many more people will thereby be careful not to offend.

7.018 This raises the issue of the accessibility of law enforcement agencies to banking records, taxation records and the like. It is universally accepted, I would think, that the destruction of the financial viability of the drug operation should be a major objective. But is this to be achieved by fines or confiscation which follow a conviction or by tax coordinated investigations?

"...It is widely accepted in the United States that the Achilles Heel of the illicit drug trafficking business is its financing and its huge illegal, taxable, and largely unreported profits. Many major drug traffickers insulate themselves from the daily operations of the drug traffic by acting through intermediaries, thus making it most difficult for law enforcement officers to connect them directly with drugs, and successfully to charge them with substantive drug offences. However, while the high level trafficker may avoid handling the drugs, he cannot avoid contact with the flow of money.

Alternatively, the taxation authorities may make substantial assessments, frequently arbitrarily, made on a net worth or assets accrual basis, after conducting systematic tax investigations of suspected middle and upper echelon drug traffickers, smugglers or financiers."

(Woodward, 1979, 1880)

Tax programs specifically aimed at US drug traffickers have been praised as "the single most effective tool in disabling major narcotics violators" in the hearings of a US Senate Sub-Committee on Federal drug enforcements.

7.019 The Williams Commission agreed with those views and recommended that continued and increased attention be given to:-

- "- the financial implications of the illegal importation, production and trafficking of drugs;
- the utilisation of existing resources within the Australian Taxation Office and the Foreign Exchange Control Section of the Reserve Bank of Australia in assisting in law enforcement; and
- further endeavours to identify and develop new resources in this area."

(Williams, 1980, C375)

The Internal Revenue Service in the United States is a much more "public" organisation than its Australian counterpart. It has played a very positive role in law enforcement (witness the "Capone" solution). But even it has received criticism for not being more positive.

"The Internal Revenue Service (IRS), created in 1862 and known then as the Office of the Commissioner of Internal Revenue, is a part of the Treasury Department; it is also one of the largest federal enforcers. The mission of the IRS is to administer and enforce the revenue laws of this country. The Intelligence Division (ID) of the IRS is charged with identifying and bringing to prosecution tax evasion schemes. Organised criminal activity that involves a violation of the federal tax laws falls under the jurisdiction of the ID. These tax laws allow the IRS to play a key role

in the war against organised crime. Attempts to evade the tax laws could result in fines of up to \$10,000 and prison terms of up to five years. Willful failure to file a tax return, supply the IRS with requested information, or pay taxes can bring fines of up to \$10,000 and prison terms of up to twelve months. However, the coordination with other federal and state agencies needed to enforce these laws is lacking. The IRS itself has come under attack for its failure to take a more aggressive posture against organised crime."

(Bequai, 1979, 210)

7.020 But the Australian view of the part to be played by Tax Authorities is quite different. Attitudes of Australians to authority in general are uniformly hostile.

"The Englishman has a natural respect for law and authority; the Australian resents authority and regards a policeman as his natural enemy."

John Pringle, Australian Accent
(1959)

The Tax Department is regarded by the Australian community as just a little lower in its estimation than the police force. These are sociological factors which operate adversely on the tax collector. He becomes more secretive and more determined to avoid confrontation. He is entitled to be circumspect in dealing at all in the affairs of drug traffickers. They are nasty people. It has been recommended by Special Prosecutor Redlich that there be a greater flow of information about criminals from taxation investigators, with a "liberal" view being taken of the otherwise restrictive provisions of Section 16 of the Income Tax Assessment Act. The Commonwealth Attorney-General replying to this criticism said he had been assured by the Tax Department that there was a proper flow of information to, for example, the Australian Federal Police. Such a

"flow" would be contrary to Section 16 unless it dealt with matters requiring AFP investigation, being tax-related offences. There is no provision similar to Section 6P of the Royal Commissions Act pursuant to which information about crimes committed can be transmitted to appropriate authorities. If it does happen then it occurs illegally. Tax investigators should not be put in such a position. The coordinated approach to tax and criminal investigations requires a direct involvement of the taxation officer. To enable the police investigator to obtain the maximum benefit from the "coordinated" approach he must have access to the information obtained by the tax man. I am not aware of direct coordination between, for example, the Joint Task Force and the Tax Department. I had to fight for access to documents and information from the Tax Department. The war apparently continues.

7.021 The Woodward Commission considered the desirability of a new body with specialised responsibility for drug laws (this view being in respect of New South Wales alone, of course).

"The alternative to a police department unable to free itself from a traditional form of administration is to devise something of the order of a crime commission or a drug commission or bureau - a specialised agency facing special problems of law enforcement. However, I do not recommend establishment of a specialised drug oriented agency, nor the establishment of something in the nature of a crime commission to be used to combat all forms of organised crime, together with significant changes in inter-agency co-operation, central intelligence, and other measures of a more tactical nature. That is, to my mind, a decision which must wait until the Police Department has been given an opportunity to implement these suggested procedures and the results have been evaluated."

(Williams, 1980, 1965)

The Commission did not recommend the establishment of such a body. Five years have since passed and although the Joint Task Force will be extended, further consideration may now be given to the views expressed in that earlier report. The Commission saw the value of such a body subject to the further opportunity being given to the New South Wales Police and the Joint Task Force to operate in the meantime.

7.022 These problems are not restricted to Australia. The United States has struggled for a much longer period. They do not yet seem to have found the right solutions:-

"The U.S. drug policy of the last half century has failed. Although the intent of the early reformers may have been to preserve the welfare of society, the United States now has a criminal class of addicts that easily numbers more than half a million. Drug-related crimes absorb much of the manpower and funds of law enforcement agencies, as well as the courts. One third of all U.S. prisoners are there because of some drug-related crime. In passing the Harrison Act, Congress knew that many Americans neither supported it nor understood it. The U.S. narcotics strategy has entangled the country in the domestic affairs of many foreign countries. Thus the United States is supplying helicopters to intercept drugs, but the helicopters are in fact used to quell policital opposition. This is a strange quagmire with no simple solutions. As a result of this unfortunate and ineffective process, we have enriched beyond belief the coffers of organised crime."

(Bequai, 1979, 149)

A need for "new tools" was seen by Bequai but, apart from stating that need, none were suggested:-

"Better training and more funds have been suggested as the answers to curtailing organized criminal activities. Billions of federal dollars have been spent in the last several years, yet syndicate-controlled activities have become more aggressive. Academics, law enforcement sources, and many studies have suggested that making the investigatory apparatus less political and giving it new technological tools will improve its performance. Increased use of electronic surveillance, it is said, will do much to curtail organised criminal activity. Granting recalcitrant witnesses greater protection and immunity, we are told, will also assist in the battle against organised crime.

Many other recommendations have been put forth, but they differ little from one another.

A greater commitment of funds and manpower will not turn the tide against organised crime. We need to streamline our present investigatory tools. We need to depoliticize the federal regulatory agencies and disband those that are obstacles. Few can justify the law enforcement value of outdated agencies like the ICC and the Federal Maritime Administration. There are too many obsolete police agencies and too many laws that work at cross-purposes. The problem is not too few means but poor use of those that exist."

(Bequai, 1979, 213-214)

7.023 The development of the argument that some new techniques should be found may be stated in these terms:-

- * There is a large market for illicit drugs.
- * There are available many people who are willing to service this market.
- * The market is met partly by drugs being supplied in parcels of small volume (disregarding, for the sake of argument, huge container loads).

Objectives & Solutions

- * This allows many different means to be adopted to smuggle the drugs into the country.
- * Those servicing the market are sufficiently intelligent to devise innumerable methods of smuggling.
- * The Customs procedures for detection for drugs in small volume are ineffective.
- * The use of police (whether by Task Force or otherwise) to track down distribution networks in Australia is too costly.
- * Experience of criminal prosecution of drug offenders shows that it does not significantly diminish the flow of drugs.

7.024 Some other course need be taken to suppress the trade. An integral part of the strategy should involve public exposure of, in particular, the financial empires built upon trafficking in drugs. I will develop these matters in the next chapter.

"At no time are people so sedulously careful to keep their trifling appointments, attend to their ordinary occupations, and thus put a commonplace aspect on life, as when conscious of some secret that if suspected would make them look monstrous in the general eye."

Nathaniel Hawthorne, The Marble Faun (1860)

8.001 I have referred in earlier parts of this section of my Report to the anathema with which the community regards the trafficker in drugs. Criminals of all kinds likewise are anxious to avoid the label of "drug trafficker". Bob Bottom the journalist gave evidence to the Moffitt Royal Commission into Organised Crime in clubs in New South Wales. He had written an article in the Sydney Sunday Telegraph which was published in July 1973. It implied that Leonard McPherson (also known as Leonard Murray) was a criminal. McPherson rang Bottom, who gave the following evidence of their conversation:-

"When I answered, the caller said: 'Is that Mr Bob Bottoms?' When I replied 'Yes' he said: 'I have a few words to say to you...you are the man who wrote a story about me in the Sunday Telegraph.' I asked, 'What story?' and he said, 'That story about me taking over the clubs. This is Lennie McPherson here - you know who I am.'

My immediate reaction was to play it cool, so I promptly interrupted and asked, 'I know the story you are referring to but how do you know I wrote it?' He answered, 'I know. I have been told. I am a man who gets upset, and that story has upset me. I'm upset about it and that's why I am calling you'... He ended the conversation on that note, but before ringing off, mentioned that he

wanted us to know that he was not involved in drug trafficking. He said, 'I've heard some people are saying I'm involved in drugs. That's one thing I won't have. When it comes to drugs, I'm 100 per cent against them...I wouldn't have anything to do with it.'

(As cited in McCoy, 1980)

8.002 The effect of publicity on offenders has been given very little analysis in academic writings. The media's role in fighting crime - and the consequent publicity so provided - was the subject of a paper presented at a congress held in May 1984. A report of that meeting included the following matters:-

"The media brings many benefits to the examination of crime and criminals but journalists would do an even more useful job if they were not hamstrung by such rigid and archaic defamation laws, the congress was told yesterday.

Mr Colin Bevan, assistant director of training at the Australian Institute of Criminology, said most royal commissions were set up to examine evidence of corruption in high places, tax avoidance and organised crime 'unearthed and fearlessly brought to light by journalists.'

The recent spate of inquiries and royal commissions and the establishment of offices such as special prosecutor and director of public prosecutions were the result of media exposure of rumours and substantive evidence of misbehaviour at high levels, he said.

These are likely to result in a sudden diminution of such behaviour, at least temporarily."

(Sydney Morning Herald, May, 1984)

The claim that the various enquiries and subsequent events were the result of media exposure is true to the extent that those matters were first conveyed to the public through the media. It is drawing a long bow to give the media credit for all of the consequent action taken by Governments and others once the investigations themselves were commenced.

8.003 In the course of his report on drug trafficking, Mr Justice Stewart dealt extensively with proposals for a National Crimes Commission. He investigated the powers of various crimes commissions in the United States. He explored the criticism made of some Commissions that they were using their coercive powers to eliminate criminal activities. Furthermore, exposure of the criminals was seen as a valuable weapon in campaigns against organised crime figures - a form of legal harrassment, in effect.

"It is both an advantage and a cause for criticism that state commissions have used their compulsive powers to require testimony or production of documents and to prosecute for refusal to testify, perjury or contempt in order to put an organised crime figure out of action. Prosecution for major crime may not be possible because of technical problems with evidence or because key witnesses are unwilling to testify. Crime commission action for contempt or perjury is criticised as a 'back door' method to imprisoning known or suspected organised crime figures for relatively short periods of time. On the other hand it can be argued that any lawful means of curtailing the activities of a member of a crime syndicate is justifiable in view of the magnitude of losses inflicted upon society by such people. The Pennsylvania and New Jersey Commissions have apparently successfully used their powers to compel attendance and production of documents in campaigns against organised crime figures. Both Commissions claim that their confrontation policies have curtailed organised crime activities. The exposure which is given to these activities can be valuable for two

reasons; first, it may act as a deterrent especially where the target is an apparently reputable businessman, and secondly, by increasing public awareness it may reduce the likelihood of exploitation of the public. Obviously it is not possible to measure the Commission's success in either of these areas but examination of annual reports seems to confirm the claim that positive results are obtained. The one reservation is that it is necessary to ensure that targets do not just flee interstate and continue their illegal activities."

(Stewart, 1983, 762)

It was thought, however, that the protection of privilege would need to be provided to an investigating commission to allow publication of its exposes.

"One limitation on the success of crime commissions in exposure of organised crime and public corruption may be lack of privilege. A comparison of the New York Commission (no privilege) with the New Jersey and Pennsylvania Commissions (absolute privilege) reveals a significant difference in information published. It may be that inability to 'name names' severely reduces the impact of commission reports and achieves neither exposure nor deterrence of the individuals involved. However it is not possible to make any authoritative comment on this on the basis of research of written materials only. It certainly seems advisable to provide any investigating commission with the protection of privilege.

(Stewart, 1983, 765)

Consistent with these views, the Stewart Commission numbered amongst the functions of any proposed (Australian) crimes commission that of exposure of the existence of organised crime and those engaged in it. The functions were set out as follows:-

- "(i) to investigate crime especially organised crime;
- (ii) to expose the existence of organised crime and those engaged in it;
- (iii) to expose the role that organised crime plays in illegal activities, corruption and improper practice in government at any level;
- (iv) to recommend action against crime especially organised crime whether by prosecution of its perpetrators or by the improvement of relevant legislation and administrative arrangements;
- (v) to report annually to Parliament;
- (vi) to report whenever desirable to the executive whether publicly or confidentially;
- (vii) to pass to appropriate prosecutors and law enforcement agencies for action information or evidence it has obtained; and
- (viii) to monitor crime especially organised crime and educate the public on these matters."

(Stewart, 1983, 785)

8.004 Those recommendations which emphasised the exposure of the criminal have no place in the operations of the National Crime Authority which came into operation in Australia in July 1984. It is strictly enjoined from publicly identifying an individual. It cannot hold public hearings - except in very restricted circumstances the purpose for which could be effected just as easily by a press release. In its reports to Parliament it is not to identify any person who has been or may be charged with an offence. These provisions were debated before the Senate Standing Committee on Constitutional and Legal Affairs

during its investigations of the proposed Bill for the National Crime Authority. During the course of his presentation to that committee the Commonwealth Attorney-General said:-

"It is the case that the whole thrust of this legislation gears the exercise towards private hearings...What we are talking about here is an investigative agency...of an exploratory kind where it may not be sure that there is anything hard at all at the end of the rainbow. The point is that the process of that exploration or investigation is to that extent infinitely more liable than the processes of the courts to bring down, traduce, people's reputations along the way...Let it get on with the job of investigation and exploration. If there is something which emerges which is hard enough then to go to court, by all means then let normal court procedures apply. But until then...do not traduce people's reputations unnecessarily."

(Committee Transcript, 308 - 309)

The Committee accepted this approach and in its Final Report stated:-

"The Committee considers that the National Crime Authority cannot totally supplant the traditional role of Royal Commissions, where a public airing of allegations is essential during the process of hearing as much as in the report. The National Crime Authority should not be designed to cope with such situations. It should be designed to operate as a standing body armed with appropriate powers and resources to further the suppression of organised crime and official corruption."

(Tate et al, 1984, 78)

It may be accepted that these views prevailed since the Bill was subsequently enacted by deleting the provisions for public hearings. Therefore it is no part of the NCA's responsibility to expose an individual's involvement in criminal activities. Its role is not that of a traditional board of inquiry or royal commission which, in the main, takes evidence in public because of a legitimate public interest in its investigations.

8.005 The Quebec (Canada) Commission of Inquiry on Organised Crime (CECO) was set up in 1972. I have had access to several of its reports and to various commentaries upon its operation. It has maintained a very high public profile. One of the difficulties perceived in Quebec was a lack of public awareness of the extent of organised crime. Hence there was insufficient pressure on Government to do something about it as the public itself did not support the fight. In its 1976 report, CECO stated:-

"There is nothing new in the idea of making the public aware of the fight against organised crime and enlisting its support. This point has been emphasised already on several occasions.

If we are to attain this goal however, the public must know what is going on. We believed that this was our duty, and consequently we used whatever means we considered necessary to make the public aware of the actions of certain groups of individuals. Since it is the public who pays the bill in organised crime, why should it not be kept completely up-to-date? Forewarned is forearmed, or at least better armed."

(CECO, 1976, 258-259)

Some of the other Canadian provinces have not been as enthusiastic as CECO in publicising the miscreants. They have not wished to go as far in identifying the individuals

whilst favouring a view that public awareness of criminal activities generally (specific schemes and the like) should be an aim of Commissions of this kind.

8.006 I have had discussions with the authors of The Impact of Publicity on Corporate Offenders, Messrs Fisse and Braithwaite. This followed a seminar at the Australian Institute of Criminology earlier this year.

"This book was animated by the uncertainty which surrounds the use of publicity as a means of controlling corporate crime. On the one hand, many are quick to agree with Louis Brandeis' famous dictum that sunlight is 'the best of disinfectants; electric light the most efficient policeman'. On the other, the view is prevalent that what happens within companies is so shrouded in fog that the glare of public scrutiny quickly is reduced to a flicker."

(Fisse & Braithwaite, 1983, Vii)

The book is obviously concerned with corporations, not individuals. Nevertheless many of the views are apposite. The point is made that infliction of a loss of prestige by means of court-ordered adverse publicity conceivably could provide a potent weapon against corporations. Thus, for example, a company could have an order made against it that it publish an advertisement in the media effectively branding its own behaviour or products (for example, in respect of false or misleading advertisement or faulty wares). Unfortunately, the value of publicity as a means of controlling harmful business behaviour has not been explored fully.

"...only sporadic attempts have been made to explore or harness the power of publicity as a sanction, whether formally by court order, or informally via consumer activism, investigative journalism, and other channels of public redress. This limited attention stems

largely from diffidence as to the impacts which publicity is likely to have. Indeed, the reaction frequently has been pessimism, as illustrated by Herbert Packer's doubt as to the impact of stigmatization upon a corporation:

"Sociologists...talk about corporate recidivists, but there is very little evidence to suggest that the stigma of criminality means anything very substantial in the life of a corporation. John Doe has friends and neighbors; a corporation has none."

(Fisse & Braithwaite, 3)

8.007 The key to the individual argument appears in the illustration:-

"John Doe has friends and neighbours..".

The individual can be isolated by adverse publicity whether of a formal or informal nature. Formal use of publicity as a punishment has been rare, that is since the abolition of the stocks. The US National Commission on Reform of Federal Criminal Laws (the Brown Commission) in a 1970 draft study put the view that formal publicity as a stigmatising, prestige lowering sanction be used in criminal proceedings. Section 405 of that draft provided:-

"When an organization is convicted of an offence, the court may, in addition to or in lieu of imposing other authorized sanctions,...require the organization to give appropriate publicity to the conviction by notice to the class or classes of persons or sector of the public interested in or affected by the conviction, by advertising in designated areas or by designated media, or otherwise..."

(Fisse & Braithwaite, 287)

Ultimately, this proposal was dropped from the final report of the Commission. Nevertheless it obtained substantial (and continuing) support.

8.008 Improvement in the use of informal publicity as a means of controlling corporate crime was also the subject of suggestions:-

- "(1) increased availability of qui tam suits for private prosecutions;
- (2) modification of defamation laws to place more emphasis on correction orders, and relation of the law of contempt to allow good faith press comment on matter pertinent to trial;
- (3) exploitation of immunized voluntary disclosure as a general strategy of corporation regulation;
- (4) reorientation of official enquiries so as to require scrutiny of corporate reactions to events giving rise to scandal;
- (5) imposition of mandatory corporate disclosure of risks of serious harms; and
- (6) promotion of international exposure of irresponsible corporate practices through mandatory disclosure, investigative journalism, and an international forum of complaint.

(Fisse & Braithwaite, 283)

It is acknowledged by the authors that legal purists will be repelled by imposition of informal sanctions outside a structured legal system. But,

"There will never be the resources in the public sector for adequate public enforcement against corporate crime. Thus, sound policy must encourage private as well as public control."

(Fisse & Braithwaite, 283)

This proposition applies with equal strength to the enforcement of laws against individuals involved in organised crime, a fortiori those involved in drug trafficking. Is there, then, merit in developing a proposal which has as its main thrust the exposure of drug traffickers? This need not be independent of other action against them (particularly of the financial nature) but where convictions and imprisonment need not be seen as the ultimate sanction.

8.009 Not surprisingly perhaps, exposure is seen as "the key to the war on crime" in some sections of the media. A recent editorial expressed the argument this way:-

"Many people seem to think, and the Government has encouraged the belief, that the purpose of such inquiries as the Costigan commission and such bodies as the National Crime Authority is solely to procure the prosecution and conviction of master criminals beyond the reach of the normal processes of criminal investigation and law enforcement. But as the American experience of organised crime has shown, public exposure of crime and corruption, and public awareness of its corrosive influence and high cost to the community, are essential weapons in the fight against this cancer in society."

(The Age, 6 September, 1984)

I agree with those views. During the course of the Commission I have expressed similar views. But the "exposure" cannot just happen. There needs to be some structure for it. It cannot be indiscriminate. I believe that a Crime Authority with sufficient powers - and the obligation to hold the majority of its hearings in public - may well be able to fulfill this function. The argument that such a body would indiscriminately and haphazardly disseminate information publicly ignores the fact that Governments would, presumably, appoint responsible and intelligent men to lead these bodies.

8.010 Realistically, of course, there is now a National Crime Authority which has been given particular, but restricted, powers. No doubt it will be for it to recommend any accretion to those powers, including that of public hearings. The recommendations that I make in this section of my Report - in order that they will have some prospect of receiving a sympathetic consideration, at least - will be independent of the operation of the NCA. They emanate from an appropriate distillation and mix of the various solutions discussed already in this volume. They will give due emphasis to a belief that public exposure is a valuable weapon in the fight against the illegal drug industry.

"Public opinion is stronger than the legislative, and nearly as strong as the Ten Commandments,"

Charles Douglas Warner,
My Summer in a Garden (1871)

CHAPTER 9 - A NEW APPROACH

"If you run after two hares, you will catch neither".

Thomas Fuller MD,
Gnomologia (1732), p.278²

9.001 In spite of the success of the joint task forces, I do not believe that the present law enforcement effort is sufficient to contain illegal drug trafficking; this being thought to be the only realistic objective by those who have considered the extent of illegal drug abuse in Australia. A number of recommendations of the previous Royal Commissions have not been taken up; in particular those which sought a more co-ordinated approach requiring a complete interchange of intelligence. There was to be a national drug intelligence agency and a uniform Customs Act. As I have indicated during the course of this volume, some States have recently introduced new legislation dealing with drug trafficking. Thus the opportunity of taking a concerted approach has been lost. Likewise the thrust of the recommendations of the Williams and Woodward Commissions has been ignored - that is, it is not bigger penalties that are required but better techniques, co-ordination, intelligence and medical treatment.

9.002 There has been co-operation at different levels of law enforcement bodies and at different times. But that has been haphazard and not pursuant to any strict guidelines or set agreements between governments and police forces. It appears to be on a "needs" basis, in situations where assistance is required urgently. In the area of targetting, co-operation appears to be the exception rather than the rule, leading to duplication of efforts. There are also lost opportunities to pool information. One team may receive information during an investigation but discard it

because of its limited value - yet that intelligence may be of great assistance to another investigator - perhaps one operating with the same force, possibly even at the next desk. But policemen are very jealous of their sources, their informants and their intelligence. It is difficult to persuade them to operate as teams and to pool their information. The fear of losing control of such information is justified, from time to time, when through negligence or dishonesty the "secret" information is shared with the criminal opposition.

9.003 Certainly, in a perfect world of crime fighting (a contradiction in terms, surely) there would be mutuality of intelligence - the national bank of data envisaged by previous Royal Commissions. It is not realistic, unfortunately, to expect that to occur in the near future. I say this even though I am aware of current attempts by the Australian Bureau of Criminal Intelligence to co-ordinate a national drugs intelligence scheme. In my experience such efforts have not been totally successful to date because of the difficulties of persuading not only senior officers but officers at all levels of the benefits of a co-ordinated intelligence approach.

9.004 It should be clear from the contents of this section of my Report that, to assist the containment of illegal drug trafficking in Australia, I favour an approach which hits hard at the financial structures built up by the drug traffickers. This might even be to the exclusion in some cases of the imposition of criminal sanctions where there can be great difficulties in obtaining admissible evidence and convicting the offenders. With the attack on the finances - which would involve in the forefront the use of income tax legislation - would be coupled public exposure.

9.005 It is my view that the powers of the Commonwealth Government in the field of income tax collection can be utilised to great effect. The successful criminal will have acquired substantial wealth. That wealth necessarily is the product of income illegally obtained. It is the "unexplained" nature of that income which should be the focus of the investigation. The acquisition of it needs to be the subject of both tax assessment and public exposure. The criminal sanctions hitherto applied have demonstrably failed to contain satisfactorily the trafficking in drugs. The importance of following the "(criminal's) money trail" is often articulated but sometimes without any clear indication as to what use the information obtained thereby will be put. The mechanism I describe below, for the dual attack on the criminal and his money, will provide a useful justification for the money pursuit.

9.006 Barry Richard Bull is a good example of a criminal who should be the subject of the approach I recommend. He has, in the course of this volume, been the subject of a detailed financial analysis. The increase in his assets has been charted. No explanation is available for the income on which his spending and acquisition of property has been based. The original information that he operated bank accounts in false names and appeared to own property in those names came from a police search of his property under warrant in 1982. The tax investigation followed - but fairly slowly. It was eighteen months after the August 1982 search that the tax investigators were in a position to interview Bull (although I have not been advised as to when the matter was first referred to the Australian Taxation Office by the Police). The tax investigation quickly gained momentum with my interest and the referral by me of the matter to the Office of Special Prosecutor Redlich. There was little doubt the matter would not have proceeded as expeditiously without that co-ordinated approach.

9.007 If the Bull investigation had proceeded in the normal way it is likely that Bull would have had much greater opportunity to devise tactics and schemes to avoid the tax man (whether he would have been finally successful is another matter) but one other factor has now arisen; that is, the public exposure of the action taken against Bull which is contained in this Report. This would not have been possible for me had I not obtained the Accountant's file. Of course, the subsequent civil action in the Supreme Court was in the public domain and I am entitled as much as any other member of the public to receive and report on that information. Bull's taxation difficulties otherwise would have justified two or three lines in the Commissioner of Taxation's annual list of defaulters. He would have lost his properties but would not have been subject to any lasting public odium. He should be.

It is only because his activities have become the subject of a Royal Commission's interest that his affairs will now have to accept the fate of public revelation.

9.008 There are many men like Bull, who are known to the tax department, but whose activities are never publicised - except possibly for the annual defaulter's list. Police do give information to the Australian Taxation Office but it is usually when all else has failed. Police are interested in arrests - the tax man in assessments. Unless there is a joint purpose for their co-operation, they will not work together. Indeed, as far as the tax man is concerned, he cannot. The solution appears to be one which allows a Bull - type investigation, with an assessment and a subsequent exposure. Certainly the co-ordination aspect can occur under the auspices of the NCA. There is still a query in those circumstances whether the tax investigator can freely relay all information obtained by him to the police and other joint team members. But the exposure of the tax defaulter - and his unexplained income and assets - cannot

be affected by the NCA which is unable to identify publicly individuals investigated by it. Some other means must therefore be obtained for the exposure element of the joint approach.

9.009 In some ways, the power of the Commissioner of Taxation is greater than that of law enforcement agencies. For example, the burden of proof operates in the opposite way to the common law. In an appeal to a Supreme Court against the disallowance by the Commissioner of an objection against an assessment (or in a reference to a Board of Review)-

"(b) the burden of proving that the assessment is excessive shall lie upon the taxpayer".

(Section 190, Income Tax Assessment Act)

It is a powerful provision. It enables the Commissioner to uphold assessments which, although issued bona fide, may not be capable of proof by the A.T.O. against the taxpayer to the requisite standard of the Courts. On the other hand in some areas the tax investigator is not so strong. The taxpayer will often have expert professional advice and will not provide the information required by the investigator sufficient to enable him to form a proper view of the taxpayer's financial position. It may be impossible in those circumstances to raise any assessment. The unscrupulous taxpayer has scant regard for the investigator.

9.010 The Income Tax Assessment Act provides that the Commissioner may require any person to appear and provide information, give evidence on oath and produce documents. Section 264 provides:-

"(1) The Commissioner may by notice in writing require any person, whether taxpayer or not, including any officer employed in or in connexion with any department of a Governmentor by any public authority-

- (a) to furnish him with such information as he may require; and
 - (b) to attend and give evidence before him or before any officer authorized by him in that behalf concerning his or any other person's income or assessment, and may require him to produce all books, documents and other papers whatever in his custody or under his control relating thereto.
- (2) The Commissioner may require the information or evidence to be given on oath and either verbally or in writing, and for that purpose he or the officers so authorized by him may administer an oath".

However, the penalties for non-compliance with these requirements as they presently exist are insignificant. The relevant Sections are as follows:-

"S.224 Any person who refuses or neglects to duly attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to truly and fully answer any questions put to him by, or to produce any book or paper required of him by the Commissioner or any such officer, shall, unless just cause or excuse for the refusal or neglect is shown by him, be guilty of an offence.

Penalty: Not less than \$4 or more than \$200.

S.225 Upon the conviction of any person for an offence against section 223 or 224, the Court may order him within a time specified in the order to do the act which he has failed or refused or neglected to do, and any person who does not duly comply with such order shall be guilty of an offence.

Penalty: Not less than \$20 or more than \$1,000."

Section 224 contains within it an offence of failing to "truly and fully answer any questions". Presumably, this section is intended to cover the field and no separate charge of perjury would follow an untrue answer under oath. The penalty for what otherwise might be regarded as perjury is therefore fixed at between \$4 and \$200.

9.011 Section 226(1) does provide for the imposition of up to double taxation on the taxpayer who refuses to provide information but this is referable to an initial assessment of tax. It may be impossible to make that initial assessment without the information that is sought. Furthermore, it only applies to the taxpayer; not to his agent, accountant or other person.

9.012 Section 264 cannot be used to compel the production of documents covered by legal professional privilege (see Baker v Campbell [1983-84] 49 ALR 385). Lawyers on behalf of their client, if in doubt about the applicability of the privilege in the particular circumstances, would tend to test the matter in court proceedings. The claim for privilege against self-incrimination also may be available to enable objections to answering the Commissioner's questions to be taken within the terms of the section (see Scanlan [DFC of T] v Swan 83 ACT 4112).

9.013 The Government has introduced legislation in the Parliament on 13 September 1984 (The Taxation Laws Amendment Bill, 1984) to amend, inter alia, the "offence and prosecution provisions" of the Act.

In the second reading speech, the following explanation was given as to part of the Bill's effect:-

"To deal more appropriately with habitual taxation offenders, a tiered penalty structure will operate for second and subsequent offences and will include a liability to imprisonment. The tiered penalty structure will apply to existing offences, such as failure to lodge a return or information or refusing to give evidence when attending before the Commissioner of Taxation, and also to a new group of offences to deal with tax evasion practices in a more complete and certain way than the existing law seeks to do. Under the new rules, it will be an offence to make false or misleading statements or to keep accounting and other business records that do not correctly record and explain the matters contained in the record. For such an offence, the maximum penalty for a first offence will be \$2,000. Yet higher penalties will be imposed where a person recklessly or knowingly makes a false or misleading statement or keeps records incorrectly. For those kinds of offences, first offenders will face maximum penalties of \$3,000 and second and subsequent offenders penalties of \$5,000 or 12 months imprisonment, or both. It will be an express offence to keep records incorrectly or conceal them with the intention of deceiving or misleading the Commissioner of Taxation in the administration of the taxation laws. Falsifying or concealing the identity, address, place of residence or business of a person with the intention of deceiving, hindering, obstructing or defeating the purposes of a taxation law is also to be proscribed. These offences will be punishable by a fine of \$5,000 or 12 months imprisonment or both for first offenders and a fine of \$10,000 or two years for second and subsequent offenders".

(House of Representatives.
Hansard. 13 September 1984, 1280)

I have not seen as yet a copy of the Bill. From what appears in the second reading speech, I doubt whether the existence of claims of privilege or self-incrimination have been limited in any way. It appears that failing to give true answers is still to be regarded as merely a Section 264 offence and not as perjury.

9.014 Police investigators have no right - unlike their tax counterparts - to seize or obtain documents except with a warrant. The target is always alerted to their interest. Police cannot quietly gather, for example, intelligence about banking transactions unknown to their target. They cannot obtain a warrant, generally, without well-made grounds. Usually, the offence alleged must have occurred. Tax investigators on the other hand are not able to conduct investigations, and collect intelligence, in the same way as policemen do. The latter's skills and experience are developed in the area. Each can benefit from the work of the other if they have access to the materials and information which the other holds. A team effort, but within the law, is required.

9.015 Ultimately, the main recommendation I make is one that is a response not just to drug trafficking but to organised crime generally. The criteria to be satisfied includes the proper taxation (and financial deprivation) and the exposure of the villain. Whether his income comes from drugs or some other villainy therefore matters not. The recommendation is that there be established a Taxation Investigation Tribunal (the name itself is, perhaps, not as felicitously chosen as it might be). This would be a body which sits, as a general rule, in public to deal with matters which formerly would have been the subject of Section 264 notices (see paragraph 9.010 above).

9.016 The principles on which such a Tribunal would operate would include the following:-

- (a) It would be a Commonwealth body;
- (b) The chairman would be a senior lawyer, but probably not a Judge. He would hold a limited tenure, necessary because of a "sunset" provision;
- (c) Parties would be entitled to legal representation before the Tribunal;
- (d) It would be an inquisitorial body. It would have the appropriate powers to insist on answers to all questions put;
- (e) The right to refuse to answer questions would be removed. That is, "self-incrimination" would not justify refusal to answer questions. On the other hand evidence could not be given of any answers in any criminal proceedings. Evidence could, however, be given of those answers in any civil proceedings involving (for example) the recovery of taxes;
- (f) It would have power to punish witnesses for contempt, such penalties to include imprisonment. Any such penalties would be the subject of appeal to a full Federal Court;
- (g) There would also be penalties for failing to appear, produce documents, etc;
- (h) The Tribunal would be required to report to Government in general terms (not in particularity) as to its operations on a yearly basis. This would be more a statistical matter to monitor the needs of the body as required. The reporting function in terms of the criminal sanction would be in the hands of the other body which I recommend below;

- (i) Proceedings would be instituted by notice before the Tribunal. It would be a creature of the tax investigator rather than of the taxpayers. Thus, the power of the taxpayer to issue proceedings would be restricted to matters where a return of documents were sought or some decision was required as to whether legal professional privilege applied to various documents being sought. The Tribunal would be required to rule on such matters;
- (j) The Tribunal's function would not be, in the normal course, to make findings on the evidence produced before it but rather to be the forum in which the tax investigators could obtain access to documents and information. Naturally the Tribunal would need to make rulings from time to time on the validity of notices served and matters of a like nature. In respect of all such decisions there would be a right of appeal to the Federal Court;
- (k) There would be a sunset clause included in any legislation for such a Tribunal. It would operate for a period of, say, three to five years and then be subject to review by the Parliament.

9.017 It would be very difficult to restrict the work of the Tribunal to that generated by those tax investigators working on cases where criminally-sourced income was suspected. The answer to this would be to restrict the class of person who might make application to the Tribunal to those appointed specifically to investigate those matters (plus, naturally, the "targets" and their associated witnesses).

9.018 In conjunction with the Tribunal, I recommend there be established an office of the Special Tax Investigator (Crime). His responsibility would be to administer a number of small teams or task forces, by

whatever name, whose responsibility would be to investigate criminally-sourced income with a view to the issue of assessments on otherwise recalcitrant taxpayers (ultimately, the intention being to collect the taxes avoided by seizure of assets where necessary). Each investigating team would consist of a very small number of experienced tax office investigators together with permanently seconded officers from the Australian Federal Police and from the police force in the State in which the particular team operated. This small team would be headed by one or two lawyers whose responsibility would be to direct the team's activities in a particular State and to make applications and examine witnesses as appropriate before the Tribunal. No applications could be made to the Tribunal unless signed by or on behalf the Special Taxation Investigator, except for those made by or on behalf of the witnesses involved.

9.019 There would be a team in each State (or other geographical area) with the overall direction and leadership coming from a central office. This would be based either in Sydney or Melbourne to enable close and regular contact with the National Crimes Authority. Matters for investigation or information generally would be referred to the Special Taxation Investigator by the Australian Tax Office, law enforcement bodies, the National Crime Authority or Government itself. The Investigator could take on targets on his own volition. The Office would not be subject to targetting directions by Government. There would be fixed terms for the leaders of it. It would work in conjunction with the National Crime Authority. Liaison would be established with that body on a permanent basis and hopefully there could be access to the computer facilities of the NCA.

9.020 It is essential that Section 16 of the Income Tax Assessment Act be amended to allow free interchange of information between the officers involved in each task force and in the public report of the Special Tax Investigator.

This would be an annual document (or more regularly where appropriate) which would detail the individuals investigated and appropriate findings made. The responsibility of this Special Tax Investigator would also include liaison with the Director of Public Prosecutions with a view to effecting the civil recovery aspect of the collection process. This presumes the DPP has the appropriate powers - this being the subject of recommendations of other bodies and myself - to involve his office effectively in civil recovery work. The report of the Special Tax Investigator would be tabled in Parliament and would be a public document. It would identify those individuals (and companies) the affairs of which had been examined.

9.021 The recommendations reflect a departure in existing procedures. But it should be borne in mind that similar practices already exist in bankruptcy and company law. The Bankruptcy Act provides for public examination of debtors and other parties before the Deputy-Registrar. What is being recommended therefore has a firm base in our legal system and, I venture to suggest, it is not a procedure that in the past has attracted a great deal of criticism.

9.022 The concern with criminal affluence is the source of the substantial accumulation of assets. The work of the Special Tax Investigator will not necessarily be restricted to the proceeds of drug trafficking. It will inevitably involve an investigation of any apparently unexplained accretion of great wealth. Naturally, some discretion will need to be applied by the Investigator in this targetting. If he roamed too freely he would become the subject of legitimate criticism. Moreover in this connection he will be subject to the jurisdiction of the Federal Court so that need not be a major drawback.

9.023 I should say one more thing in relation to Section 16. The scheme I have proposed is completely at odds with the policy and thrust of the Section. The Section

is far too restrictive in its effect on the interchange of information between parties who, in the exercise of their powers on behalf of the community, need access to intelligence. I make no apology for my strong disagreement with both the content and the application of the Section. It needs re-thinking urgently.

9.024 The recommendations have not been the subject of discussion with other interested bodies. They have been developed by me towards the end of my Commission as a response to the problems I have perceived in the imposition of appropriate sanctions on criminal elements in our society. They are, as far as I am aware, quite novel provisions. They are not thereby to be regarded, in my view, as inappropriate. I believe they may fill a vacuum in the procedures and strategies available to law enforcement agencies in the fight against the wealthy criminal and, in particular, the drug trafficker. I commend them to Government for their earnest consideration. The fight against illegal drug trafficking in Australia is of such importance that any additional weapon that can be utilised - within the bounds of what is acceptable by the community - should be.

9.025 For the sake of convenience I also note here that among the summaries prepared by me for the National Crime Authority under the general description of "Relevant Criminal Activities" was one which dealt with the activities of Barry Richard Bull and his associates. I have described some of those activities in detail in Chapter 3 of this volume. I suggested both a task force and special reference for the consideration of the National Crimes Authority as far as this target was concerned. I repeat that suggestion here as a recommendation. I believe also that the activities of Bull and his friends could usefully be made the subject of a reference to the Special Tax Investigator recommended by me.

9.026 For completeness, I also repeat my recommendation that the activities of the solicitor Robert Cartwright (of the firm, Power & Cartwright of Noosa, Queensland) on behalf of his client Bull be referred by the Commonwealth Attorney General to the Queensland Law Society for its information and appropriate action (see paragraph 3.090 above).

9.027 Finally, I know that these recommendations will be viewed critically by some. Included amongst those critics will be the leaders of the Taxation Office. They see no role for them in crime prevention. The defenders of civil liberties will also be anxious to protect the rights of individuals to receive their income anonymously and surreptitiously, without the prying eyes of the police or the taxman. Some police will be unhappy that part of their role is to be taken up by another body. The wealthy criminals will also be upset, although possibly not as vocally. On the other hand, there will be other concerned members of the community, from the Prime Minister down, who will be eager to do anything that may stamp out the criminals in this society. It is to them I mainly appeal.

9.028 I have considered carefully the proposals in this chapter and offer them as a genuine contribution to the strategies available in the fight against drug traffickers and other criminals. The only other matter I put, in partial expiation, for the tenor of my recommendations, comes from Thomas Hobbes (with appreciation to Professor Sackville et al who cited it in their Royal Commission Report to the South Australian Government in 1979):-

"I know not how the world will receive it, nor how it may reflect on those that shall seem to favour it.

For in a way beset with those that contend, on one side for too great liberty, and on the other side for too much authority, 'tis hard to pass between the points of both unwounded".

(In dedication of Leviathan, 1651)

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