

2 August 2002

The Secretary
House of Representatives
Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

**RE: INQUIRY INTO CRIME IN THE COMMUNITY: VICTIMS,
OFFENDERS AND FEAR OF CRIME**

Thank you for the opportunity to make a submission to the above inquiry.

In his 2001 publication "What Causes Crime"¹, Don Weatherburn identifies a number of areas that impact on crime. Many of these are areas that are directly influenced by federal government legislation, policies and funding. Weatherburn points out that many things can make a crime-prone individual, including family factors, school performance, truancy, poverty and unemployment. Poor parenting is a very significant factor in developing crime-prone individuals. The promotion of programs aimed at changing parental behavior could have a very positive impact on crime reduction. Federal funding of employment programs is also likely to impact on crime, as is serious attempts to address issues of poverty and education.

Drugs and Crime:

Weatherburn also shows that organised crime and insufficient law enforcement makes an ideal environment in which crime can flourish. Organised crime is almost always cross-jurisdictional in nature and usually involves the illicit drug trade at some stage. Stevenson and Forsythe² studied two hundred and sixty seven imprisoned burglars. They found that those who were heroin users reported a higher rate of burglary (13.0 per month) than those who did not use heroin (8.7 per month). Eighty percent of those who used a vehicle to get to and from a burglary used a stolen vehicle. Eighty percent reported using some or all of their burglary income on illicit drugs. Generally, median burglary income for heroin users was higher (\$3000 per week)

¹ NSW Bureau of Crime Statistics and Research Bulletin, No 54, Feb 2001

² Stevenson S & Forsythe L "The Stolen Goods Market in NSW" NSW Bureau of Crime Statistics and Research 1998

than for non-users (\$1000 per week). Higher rates of burglary were significantly associated with greater expenditure on illicit drugs, regardless of the type of drug.

In the 2001 Drug Use Monitoring in Australia (DUMA) Annual Report it was indicated that:

- 60% of adult males arrested for property offences tested positive to an illicit drug, excluding cannabis;
- 45% of adult males arrested for a violent offence tested positive to an illicit drug, excluding cannabis;
- Over half report that they had been arrested on a prior occasion in the past 12 months; and
- 21% report that they had served time in prison during the past 12 months.

In 2002 Fitzgerald and Chilvers³ reported that of 1,161 persons detained in police custody for a criminal offence during the study period, over 69% tested positive to at least one drug type. Nearly 43% tested positive to two or more drugs.

These results cannot show a direct link between drugs and crime, but very strong and supportable inferences can be drawn that drugs contribute significantly to crime levels. The importation of illicit drugs into Australia is threatening our safety and way of life, not only due to the terrible impact of addiction on individuals, but also due to the crime that addicts are forced to resort to in order to finance their habits. A significant and valuable role for the federal government is in the area of programs to fight organised crime and its lucrative drug importation schemes. Until such importation is addressed, there will continue to be a heavy price exacted at the state and territory level.

The Federal Government can no longer continue to argue that crime in our communities is a State/Territory issue and therefore not their responsibility.

As well as organised crime, Weatherburn also identifies insufficient law enforcement as a factor that allows crime to flourish. The effect of increased police appropriately deployed can have a major impact on crime. One only has to look at the extraordinary success of increased strategic policing in New York City over the last 10 years to be impressed by such strategies. Recent work by Marilyn Chilvers of the NSW Bureau of Crime Statistics and Research also shows the link between effective policing strategies and the reduction of crime rates. The realisation that increasing police numbers could have a positive effect on driving down crime was central to the United States federal crime policy during the Clinton presidency.

Clinton Strategy:

In a submission to the House of Representatives Standing Committee inquiry into Local Government and Cost Shifting, we raised the United States Violent Crime Control and Law Enforcement Act, (VCCA) enacted in 1994 with strong bipartisan

³ Fitzgerald J & Chilvers M "Multiple Drug Use Among Police Detainees" NSW Bureau of Crime Statistics and Research 2002

support. It was originally introduced following President Clinton's 1994 pledge to the American people to add 100,000 community police officers to that nation's streets.

VCCA was viewed as the most comprehensive piece of Federal crime control legislation in US history. It authorized \$8.8 billion over six years for grants to add an additional 100,000 community policing officers to the nation's streets and advance community policing nationwide. The body charged with fulfilling the mission of adding the extra police was the US Department of Justice "Community Oriented Policing Services (COPS) Office".

Clinton's 21st Century Policing Initiative not only gained the support of every major law enforcement organization nationwide, it also gained support from the US Conference of Mayors.

A further program was added called COPS MORE (Making Officer Redeployment Effective). It was designed to expand the time available for community policing by current law enforcement officers through the funding of technology, equipment and support staff including civilian personnel.

This program provided law enforcement agencies with grants of up to 75 percent of the total cost of technology, equipment or civilian salaries for one year. Agencies were therefore required to provide a minimum of 25 percent cash match.

We argue that the Federal Government should examine the VCCA and COPS MORE programs in the United States with a view to implementing a similar initiative in Australia.

Australian Police Budgets:

In support of our concerns we made a submission to the Federal Government in March this year arguing that we believed that insufficient Federal funds were being provided to support state, territory and federal police jurisdictions. In support of our claims we provided the figures for total recurrent expenditure by jurisdiction for the period 1999-2000:

New South Wales	\$1,452,584,000
Victoria	\$1,067,734,000
Queensland	\$ 767,416,000
Western Australia	\$ 465,304,000
South Australia	\$ 342,798,000
Tasmania	\$ 100,688,000
Northern Territory	\$ 99,707,000
Federal Policing Operations (including the ACT)	\$ 380,000,000
Total Australian Law Enforcement	\$4,676,231,000

The above table indicates that in pure policing terms, the Federal Government's contribution to operational recurrent expenditure on policing services in Australia was just over 8%. A totally insufficient amount we argue.

Whilst the Government argued that the above expenditure did not include agencies such as the NCA and Customs, it also did not include state or territory based programs that were funded from budgets such as Health and Education. The figures we drew upon for our argument was recurrent operational policing expenditure.

Overseas research into crime prevention:

In a major report to the United States Congress in 1998⁴, the issue of federal (US) funding for crime reduction was considered. A group of respected crime researchers reflected on the primary role of the government in funding crime prevention projects. They pointed out that these projects were most effective when targeted at those areas where youth violence is highly concentrated. The report showed that not only should funding be targeted at trouble spots, but it should also be placed in the context of a multi-agency approach. Programs need to be innovative and developed at local areas. "A much larger part of the national crime prevention portfolio must be invested in rigorous testing of innovative programs, in order to identify the active ingredients of locally successful programs that can be recommended for adoption in similar high-crime urban settings nation-wide."

The report pointed out that "Most crime prevention results from informal and formal practices and programs located in seven 'institutional' settings. These institutions appear to be "interdependent" at the local level, in that events in one of these institutions can affect events in others that in turn can affect the local crime rate."

The seven 'institutions' identified in the report are:

- Communities
- Families
- Schools
- Labor Markets
- Places (specific premises)
- Police
- Criminal Justice

It is clear from the report that federal intervention can be most usefully deployed to fund programs that bring together all (or combinations of) the seven institutions. The same applies to the Australian context. Federal funding to promote crime prevention programs through local funding may have a significant impact. Local police know the needs of their particular community, but often have difficulty in developing programs in their communities through lack of funds. Creative and innovative projects that bring together as many of the seven institutions as possible may be an appropriate

⁴ **Preventing Crime: What Works, What Doesn't, What's Promising**
A Report To The United States Congress Prepared for the National Institute of Justice
by Lawrence W. Sherman, Denise Gottfredson, Doris MacKenzie and John Eck.

source of federal government funding. These types of programs could operate in conjunction with local policing initiatives.

The PFA recommends that the Federal Government establish an “Innovations Grant Program” for programs aimed at local crime reduction. The aim of such grants would be to bring together local representatives of the seven institutions identified in the US report to develop locally based programs for crime reduction. It would be appropriate for local police to have a coordination role in such programs.

The PFA also supports a program similar to the one introduced by the Clinton administration in the United States to put more police at the local level and to increase the number of police engaged in fighting organised crime and drug importation.

The submission from the Police Federation is therefore about formulating a national policy on supplementing and assisting local policing initiatives with federal government funding, as well as increasing funding to our Federal Police, thus ensuring that all parties who have an influence on local law enforcement share the burden.

Concerns regarding Private Policing:

We have also recently raised concerns about the proliferation of Private Policing services in Australia.

David Bayley, the eminent American crime researcher has pointed out that the growth of private policing in the United States means that now there are about four times as many private police in the United States as publicly funded police. In Australia in 1999 there were 31,752 employees in the private security industry at a time when there were 43,038 sworn police. The increase in the number of private police is likely to continue as businesses seek to ensure that their private interests are protected. There is every indication that Australia is heading for the same proportion of private police to sworn police as in the USA. Of concern is the lack of professional regulation of the private security industry and their potential to involve themselves in areas traditionally the prerogative of the sworn police.

Central to the sworn police officer is the oath of office – an oath that ensures that the officer acts without fear or favour and cannot be directed to exercise his or her powers. The discretion of the public officer is paramount. The private security agent has no such oath of office. He or she operates at the whim of the employer –he is an employee in the true sense of the word – subject to the direction of the person who pays his or her salary. The sworn officer is accountable to the state and the law. The private security agent is accountable only to his employer. What happens if the interest of the private employer differs from that of the state or the law? How are private police made accountable and to whom are they accountable?

Another major issue of concern of the PFA is if we continue down the road of the proliferation of private policing and those in our society that can afford them are well served, the unfortunate offshoot will be that those who are most in need of policing services will be those that are less likely to be able to afford them, (ie the lower socio

economic group in our communities). It is for this reason we must maintain a strong public policing presence in our society.

The PFA feels that rather than discussing the expansion of private policing in communities, it would be more appropriate for the government to be funding a study of the most appropriate ways in which to minimise the need for private security in that area and where there is a need for the use of private police ensure that private security agents are well trained, cognisant of their responsibilities to the law, accountable through a process of registration and subject to stronger regulation by sworn policing agencies. Such a study should also include research to determine appropriate resourcing of State, Territory and Federal police jurisdictions.

The PFA therefore recommends that the Federal government fund a study of the private security industry with the aim of minimising the need for private police as opposed to sworn police, establishing protocols for the better regulation of the private policing industry and research on resource allocation formulae for public police.

Consistency in legislation between jurisdictions:

Another area that PFA believes the Federal Government could play a pivotal role is in respect to facilitating the continuing move to greater consistency in legislation across all jurisdictions.

The key area of concern in recent times has been in relation to DNA legislation.

The crucial areas in variances from the national model include:

- The Range of Offices for which persons can be tested
- Informed Consent
- Safeguards in –
 - Providing a portion of DNA to a person sampled & a copy of DNA analysis results
 - Matching requirements
 - Penalties for misuse
- Registration of orders
- Destruction requirements
- Recognition of what is lawfully taken from other jurisdictions

It may be appropriate for this committee to review other areas of legislation where inconsistencies arise causing problems for police investigators across jurisdictions.

The PFA gives a commitment to work with State, Territory and Federal Government to ensure that legislation is of assistance to police in their fight against crime and not an inhibitor through inconsistency across jurisdictions.

National Crime Fighting Model:

At the time of compiling this submission, significant debate is taking place over the future model of the National Crime Authority/Australian Crime Commission.

The PFA has developed a discussion paper on “The Move from the NCA to the ACC” which we provided to the Federal Justice Minister and all State and Territory Police Ministers.

Our submission was underpinned by several key issues:

1. The ACC should have an intelligence & investigative function performed by sworn police and should be staffed by employees of police services on secondment from all jurisdictions;
2. That the CEO should have a strong, lengthy law enforcement background, preferably being a current senior serving police officer; and
3. That the Board of the ACC be made up of all Police Commissioners and chaired by the Commissioner of the AFP
4. That an Intergovernmental Committee of State and Commonwealth Ministers should provide a Ministerial oversight of the Board

I have provided a full copy of that submission, including recommendations, as ANNEXURE A.

Conclusion:

The members of this Standing Committee are all experienced politicians and community leaders. You, like the 45,000 police officers of this country, understand that the community are not interested in political rhetoric and point scoring. They don't differentiate between local, state/territory and federal responsibilities when it comes to theirs and their family's safety in their homes and on our streets. They are looking for leadership on this issue and co-operation between all levels of government and all policing agencies.

The PFA argues that there is the need for continued protocols for co-operation between all State, Territory and Federal jurisdictions, at the same time there is a need for a process of accessing federal funds to supplement State and Territory police budgets for important community policing initiatives. To that end we have recommended that a closer appraisal of the US system, implemented by the Clinton administration and still in place today under President Bush.

Whilst we argue for greater federal funding for all levels of policing, there is a continuing need to ensure that State and Territory Governments continue to commit sufficient funding to their respective police budgets.

As earlier indicated, we also see a role for the federal government in facilitating a review of the private policing industry including research into appropriate resource allocation of sworn police and co-coordinating negotiations between all jurisdictions to ensure consistency in legislation to better facilitate cross border investigations.

The PFA on behalf of its 45,000 members gives a commitment to work with this Standing Committee to ensure that the Australian community is provided with the best possible policing service available, in a co-ordinated approach through all levels of Government.

Mark Burgess
Chief Executive Officer

THE MOVE FROM THE NCA TO THE ACC
DISCUSSION PAPER FOR
POLICE FEDERATION OF AUSTRALIA EXECUTIVE

15 July 2002

Following the leaders’ summit on Terrorism & Multi-Jurisdictional Crime in April this year, the move from the National Crime Authority to the creation of the Australian Crime Commission was announced.

From the beginning, as the leaders left Parliament House in Canberra and gave their statements to the awaiting press, it was evident that one issue that was unclear from the deliberations was that of what, if any, investigative role the new body would perform. The Commonwealth representatives went to great lengths to play down a future investigative role for the ACC whilst the State and Territory leaders talked up the continuance of an investigative function. This still appears to be one of the key differences between the States and Territories and the Commonwealth.

In the wake of September 11 it would be thought that we would be keen to maintain a body with strong investigative powers not available to State, Territory or Federal Police, staffed by experienced police from all jurisdictions with specialist capabilities.

The rationale for having the ‘in house’ capabilities to investigate major organised crime is, ‘who else will do it’?

If it is left to individual State and Territory police forces, then it won’t happen. Apart from the fact that their resources are already stretched to the limit, much of their focus is on community crime & it is difficult to devote resources to wide ranging, resource intensive, lengthy operations targeting large scale organised crime targets. If it is left to the Federal Police, our argument is that likewise, their resources are also stretched they are numerically small, are already focused on a range of Commonwealth interests and cannot be expected to put State and Territory interests ahead of those of the Commonwealth. The ACC on the other hand will be a National body focused on National crime on behalf of the States, Territories and the Commonwealth as opposed to Federal crime. In this way it will allow the jurisdictions to participate equally in tackling the more complex and difficult organised crime on a systematic basis.

Another pertinent reason for ensuring investigations are undertaken by a select group of police attached to the ACC is to ensure that investigations, many of which go on for months if not years, do not have a ‘revolving door’ of police investigators working on them during their life, thus ensuring confidentiality and the security of operations are not compromised.

The concept of a national investigative body, staffed by police, with a focus on targeting those responsible for serious organised crime that crosses state and national boundaries, is not unique. A recent refocusing of the United States' FBI has recognised the significance of the globalisation of crime. In 1998, the UK Parliament established the National Crime Squad as a result of a UK Select Committee's report which stated, inter alia:

“If the response to serious and organised crime is to be sharpened and made more effective, the present structure of separate regional crime squads ... needs to be replaced by a more nationally co-coordinated structure.”

The UK model has a strong investigative focus, is staffed by police (over 1450 seconded from police agencies throughout the UK) and is overseen by the National Crime Squad Authority. This latter body has a majority representation from Chief Constables and police authorities.

Even countries with vastly greater available resources than Australia have recognised the need for a national investigative body to deal with serious crime and have seen the need to ensure staffing by skilled police investigators, under the control of other experienced police officers.

It is for these reasons that the PFA is firmly of the view that the ACC, as is the case with the NCA, should continue to have an intelligence & investigative function performed by sworn police and the ACC be staffed by employees of police services on secondment from all jurisdictions.

It is not the intention of this paper to delve into the Commonwealth's reasons to dismantle the NCA and replace it with more of an intelligence based agency except to say that the ill timed comments of the Chairman of the NCA last year in a paper “The Commentary – Organised Crime in Australia” where he raised the issue of alternative methods of dealing with drug addiction as opposed to one of the key target areas of the NCA, “drug trafficking”, have been widely attributed to the Commonwealth's decision.

It is the strong view of the PFA that the Chairman/CEO in the future should have a strong, lengthy law enforcement background, preferably being a current senior serving police officer.

The PFA also recognises that the ACC will continue to have coercive powers and that it would not be appropriate for these powers to be exercised exclusively by investigators. For this reason, the PFA supports the appointment of a judicial officer, or a person qualified for appointment as a judicial officer to the ACC to exercise the coercive powers of the ACC and perhaps to conduct hearings. The roles and responsibilities of this position, beyond that of the exercise of coercive powers should be the subject of further discussion, but should not involve control over the operational or investigative arm of the ACC.

It is interesting also to note, that a report into the efficiency & effectiveness of the NCA, commissioned by the Federal Government in late 2001 & reported to Cabinet,

has never been fully released to the States & Territories, who are key stakeholders in the NCA.

In respect to matters to be referred to the ACC for investigation, **the PFA is of the view that a Board, made up of all Police Commissioner's and the 'Commissioner of the ACC, receiving advice only from other State, Territory & Commonwealth agencies, should determine what major investigations are pursued by the ACC. Such Board should be chaired by the Commissioner of the AFP.**

We support the Commonwealth's proposal for an Intergovernmental Committee of State and Commonwealth Ministers providing a Ministerial oversight of the Board.

The current proposal by the Commonwealth to have the Board heavily weighted by Commonwealth groups such as Customs, the Australian Securities and Investments Commission, Attorney General's Department, the Director General of Security, the Australian Crime Commission and even Taxation would see the decision making of the Board leaning mainly towards issues affecting the Commonwealth as opposed to issues affecting the States and Territories as well as the Commonwealth. It is important though to ensure that all of these groups, including others that exist in various States and Territories be used to give advice to the ACC Board to assist them in their deliberations.

The PFA is concerned that the debate over the demise of the NCA and its replacement by the ACC has the potential to become merely a political debate between State and Territory Governments, and the Commonwealth. We believe that it is vital that individual political or jurisdictional interests be put aside. The decision on the future of the ACC is one that is important to all Australians and any decision we make must be in our best National interest.

KEY RECOMMENDATIONS:

- 1. The ACC have an intelligence & investigative function performed by sworn police and the ACC be staffed by employees of police services on secondment from all jurisdictions**
- 2. That the ACC have a judicial officer with the power to exercise the coercive powers of the ACC & to conduct hearings but not be involved or have control over the operational or investigative arm of the ACC**
- 3. The operational and investigative arm of the ACC be under the control of a senior police officer (the Chief Executive Officer) with extensive investigative experience. This position could be staffed on rotation among the Australian Police Forces or on selection by the ACC Board**
- 4. The precise roles, relationships and responsibilities of the ‘judicial officer’ and the ‘CEO’ be the subject of further discussion.**
- 5. The Board of the ACC be made up of all Police Commissioners plus the ‘judicial officer’ of the ACC. The Commissioner of the Australian Federal Police be Chair of the Board & the CEO report directly to the Board**
- 6. An Intergovernmental Committee of State and Commonwealth Ministers provide a Ministerial oversight of the Board.**
- 7. Commonwealth groups such as Customs, the Australian Securities and Investments Commission, Attorney General’s Department, the Director General of Security, the Australian Crime Commission, Taxation and any State or Territory based agency deemed appropriate, be used to give advice to the ACC Board to assist them in their deliberations.**
- 8. That legislation be enacted to allow for the sharing of information between the ACC and other federal agencies in circumstances where the information would assist in an ACC investigation and current law prevents the easy sharing of such information.**