

**SUBMISSION BY THE NATIONAL CRIME AUTHORITY
TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS:**

**INQUIRY INTO THE PRIVACY AMENDMENT
(PRIVATE SECTOR) BILL 2000**

The National Crime Authority has an interest in the Bill arising from its role in law enforcement.

By way of background, the principle function of the NCA is to investigate complex, organised criminal activity. In this sense, the role of the NCA differs from the major focus of police services, though of course those services have an interest in organised crime and work closely with the NCA on joint task forces.

An important aspect of organised crime is its multi-jurisdictional characteristics. Such crime pays little regard for national and international boundaries. Therefore the NCA has been established as the only Australian law enforcement agency which can investigate both State and Commonwealth offences. As a result, the Authority supports the national approach implicit in the Bill. The Authority supports and would welcome a similar national approach by governments to other legislation that impacts on criminal investigations so that a greater degree of uniformity is achieved.

Information is obtained by the NCA from a wide range of sources including private and public sector organisations. Of course, on occasion information is voluntarily given to the NCA by individuals ranging from informants to concerned members of the public.

Similar to other law enforcement agencies, the collection and analysis of information is essential to the NCA. This is recognised by legislation establishing the NCA which expressly makes this a function of the agency. It is essential in two general ways – first to current investigations, such as to establish the name, address or current whereabouts of persons subject to investigation or to establish the precise nature and extent of specific criminality and the identity of all those involved. Secondly, information is essential to longer term strategic analysis. This enables the allocation of the limited resources of the NCA to be strategically planned and focussed to achieve the maximum effect.

The Authority is very careful about the way it gathers, holds and uses information. Although the NCA is not bound by the *Privacy Act 1988*, it does its utmost to abide by the principles elaborated in that legislation. In particular, the Authority is careful to ensure such information is only used for the purpose for which it was obtained, is disclosed only in accordance with law, and that confidentiality is maintained and protected. There are provisions in the *National Crime Authority Act 1984* creating offences for the unauthorised disclosure of information. The Authority appreciates that 'information' is not an abstract concept but is vital to an individual's sense of privacy and self.

The *National Crime Authority Act 1984*, and its State and Territory underpinning legislation, provide the Authority with coercive powers to obtain information. For example, pursuant to section 29 of the NCA Act a person may be served with a notice requiring him or her to produce a document or thing to an officer of the NCA. Such powers are similarly conferred on a wide range of statutory agencies.

However, the Authority also relies on usual police methods to obtain information. It therefore has an active interest in the National Principles for the Fair Handling of Personal Information and other aspects of the present Bill.

The Authority notes clauses 2 and 6 of the National Principles concerning the disclosure by private sector bodies of information for law enforcement purposes. In particular, the Authority notes NPP 2.1(g) which permits use or disclosure of information where it is required or authorised by law. Also, paragraph 2.1(h) permits disclosure where the organisation reasonably believes that it is reasonably necessary for the prevention, detection, investigation, prosecution or punishment of criminal offences by enforcement bodies including the NCA.

In relation to the approval of industry codes, the Authority notes the obligations of the Privacy Commissioner to take into account human rights and social interests that compete with privacy. The Authority considers that such provisions provide a significant and essential protection for law enforcement interests.

It is noted that paragraph 187 of the Explanatory Memorandum speaks of 'important human rights and social interests that compete with privacy' that must be taken into account by the Privacy Commissioner prior to approving an industry code. The Authority sees those provisions as workable and as providing significant comfort to law enforcement concerns about future access to information held by the private sector.

In summary, the Authority considers that the Bill properly takes into account the interests of law enforcement in what appears to be an effective way that balances individual privacy with the requirement for information by law enforcement agencies. While on one level law enforcement agencies require a wide range of information in order to perform their functions, their role is ultimately to ensure and protect individual safety, security and privacy.

Should the Committee wish the NCA would be available to provide further information or assistance in relation to the inquiry by contacting: Brian Dargan on (03) 9412 1227 (telephone) or email B.Dargan@nca.gov.au.