

PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

EXAMINATION OF THE
ANNUAL REPORT FOR 1989-90
OF THE
NATIONAL CRIME AUTHORITY

Report by the Parliamentary Joint Committee on the
National Crime Authority

June 1991

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Examination of the 1989-90 Annual Report of the National Crime Authority

Scope of the Committee's Report

1. The Committee's report is confined to a narrow appraisal of the adequacy of the 1989-90 annual report of the National Crime Authority ('the Authority'). Broader issues arising from matters contained in the annual report will be dealt with in the Committee's report on its detailed evaluation of the Authority. The scope of this evaluation, which is nearing completion, includes the issues of accountability and parliamentary supervision of the Authority.

Duplication of Committees Reviewing the Annual Report

2. Under paragraph 51(1)(c) of the *National Crime Authority Act 1984* ('the Act') it is the duty of the Committee 'to examine each annual report of the Authority and report to the Parliament on any matter appearing in, or arising out of, any such annual report'. The Authority's annual reports are also referred by the President of the Senate for examination by the Senate Standing Committee on Legal and Constitutional Affairs, pursuant to a resolution of the Senate of 14 December 1989. Under this resolution, the annual report presented to the Senate from each government organisation is referred to the most appropriate Standing Committee for examination.

3. The Committee draws the Senate's attention to the question whether there is any need to refer the Authority's annual report to a Standing Committee, given this Committee's statutory duty in respect of such reports.

Reporting Procedures and Timeliness of the Report

4. The Authority reports to an Inter-Governmental Committee (IGC). This had as members in 1989-90 a Minister from each State, from the Northern Territory and from the Commonwealth. The Commonwealth Minister, who chairs the Committee, was the Attorney-General. Subsection 61(1) of the Act provides:

The Authority shall, as soon as practicable after each 30 June, prepare a report of its operations during the year that ended on that 30 June and furnish the report to the Inter-Governmental Committee for transmission, together with such comments on the report as the Committee thinks fit, to the Commonwealth Minister and to the appropriate Minister of the Crown in each participating State.

5. No time is specified within which the IGC must transmit the report to the Commonwealth Minister. However, once the Minister receives the report, he or she must have it tabled in both Houses of the Parliament within 15 sitting days (subsection 61(6) of the Act). Any comments made by the IGC on the Authority's annual report must also be tabled within this time.

6. The Committee considers it unsatisfactory that the Act does not specify a time limit within which the IGC must transmit the Authority's annual report to the Minister. The absence of such a limit means that the Act does not provide an overall time within which all the steps leading to tabling of the report must be accomplished.

7. It is also unsatisfactory in the Committee's view that the Minister who causes the report to be tabled in the Parliament is not required to state the date on which he or she received the report from the IGC. In the absence of this information, it is not possible to determine if the Minister has complied with the requirement that he or she table the report within 15 sitting days of receipt.

8. The report under consideration is the sixth annual report made by the Authority since it commenced operations in 1984 and covers the financial year ending 30 June 1990. It was transmitted to the chairman of the IGC on 22 October 1990. The report was tabled in the House of Representatives and the Senate on the 20 December 1990. No comments by the IGC on the report appear to have been made as none were tabled.

9. The Committee considers that the report was presented to the Parliament in a timely fashion. The *President's Report on Annual Reports, February 1991*, p. 54 and Appendix A is incorrect in stating

that the Authority's 1989-90 annual report was tabled after the reporting deadline. Those compiling the report on behalf of the President failed to allow for the fact that the Authority's annual report is presented to the IGC, not direct to the Commonwealth Minister.

Criteria for the Content of the Report

10. The Committee evaluated the Authority's annual report by reference to section 61 of the Act. This sets out the matters which shall and shall not be included in the report. In addition, the Committee had regard to the criteria set out in the *Guidelines for the Preparation of Departmental Annual Reports* which were tabled in the House of Representatives on 17 November 1987. These guidelines do not formally apply to a statutory authority such as the National Crime Authority. However, the Authority stated in a letter to the Public Accounts Committee dated 21 November 1989:

the Authority has since its inception adhered to the guidelines for the preparation of Departmental Annual Reports, rather than those for statutory authorities. The Departmental guidelines are, of course, far more comprehensive than those for statutory authorities and were recently the subject of review and amendment. In the interests of informing Parliament and the public of its on-going activities, the Authority will continue to adhere to the Departmental guidelines, as well as those imposed by its own Act. This is particularly important for a body such as the Authority, which for operational reasons is frequently unable to comment publicly on its activities.

Adequacy of the Content of the Report - Subsection 61(2) Matters

11. The Committee considers that the report provides in a satisfactory manner the information which subsection 61(2) of the Act requires.

12. Some of the information required to be provided is included in narrative description of the Authority's activities, rather than in a

'scorecard' format explicitly linked to the paragraph of the Act which requires the information. The Committee suggests that the Authority give consideration to whether the latter format could usefully be adopted. Two examples illustrate what the Committee has in mind.

13. The first example arises in relation to the Authority's obligation to report on recommendations for changes to laws or administrative action that, as a result of its activities, the Authority considers should be made (paragraph 61(2)(c) of the Act). The report deals with recommended amendments to the Act in one clearly marked section on pages 51-52. The report's very useful index assists in locating other recommendations on changes to laws which occur elsewhere in the report. However, there is no index heading which enables the reader readily to locate recommendations on administrative action.

14. A second example relates to the obligation to report on the general nature and extent of any information furnished by the Chairman during that year to a law enforcement agency (paragraph 61(2)(d) of the Act). A statement (or perhaps a table) in the report which explicitly addressed this obligation would assist the reader. In the report under review, the relevant information is scattered in various parts of the narrative. In contrast, Table 1 in the report lists the approximate number of pages of material received by the Authority from the Australian Taxation Office and from other agencies.

15. Inevitably, in a report of the length of the one under review some typographical errors and minor inconsistencies in information will creep in. For example, on page 30 the report states that investigations conducted by the Authority from its establishment in 1984 to 30 June 1990 have led to 432 persons being charged with a total of 2242 offences. Addition of the figures for each year set out in Table 1 in the report gives totals of 448 persons charged with a total of 2265 offences. On page ix the report states that '\$8.7m in assessments' were raised by the Australian Taxation Office flowing from the work of the Authority. On page 33 the figure is put at 'more than \$8.7m' and in Table 1 the figure is put at \$8,938,396. On page 56 the number of public service staff at the Authority is shown as 278, but in tables on pages 61 and 62 the number is shown as 282.

Adequacy of the Content of the Report - Subsection 61(3) Matters

16. Subsection 61(3) of the Act provides that an annual report by the Authority:

shall not:

(a) identify persons as being suspected of having committed offences; or

(b) identify persons as having committed offences unless those persons have been convicted of those offences.

17. On page 26 of the Authority's annual report a description is given of a Hong Kong based heroin trafficking operation which used diplomats as couriers. A 1987 importation of heroin into Sydney is mentioned. The report continues:

Authority investigators believe that the person involved on that occasion was a Nicaraguan diplomat, William Tapia. He is also believed to be a central figure in the international drug trafficking operations of this Hong Kong syndicate.

In a footnote to this passage, the annual report states that Tapia was arrested in Tokyo and will face trial in the USA on drug trafficking charges: 'It is alleged that between April and November 1987 Tapia recruited and arranged for a fellow diplomat to smuggle a total of 125 pounds (62 kg) of heroin from Thailand into New York'.

18. This naming of Tapia in the Authority's annual report appears to breach subsection 61(3) of the Act. The Committee wrote to the Authority pointing this out. A copy of the letter and the Authority's response form Appendix 1 and Appendix 2 to this report.

19. The Committee is not concerned that the naming may have adverse effects on either Tapia or Authority operations. The fact of Tapia's arrest and the Authority's stated view of him were widely

reported in the press at the time.¹ Rather the matter illustrates that subsection 61(3) may not strike the appropriate balance between the need to preserve individual privacy and the need to inform the Parliament and public of the Authority's activities. It would prevent the Authority reporting to the Parliament facts which it had already provided to the media, or which have been widely reported in the media independently of information provided by the Authority (e.g. in reports of committal proceedings).

Adequacy of the Content of the Report - Guidelines

20. Subject to the following brief comments, the Committee considers that the report provides in a satisfactory manner the information which the *Guidelines for the Preparation of Departmental Annual Reports* require.

21. The Authority's report states: 'The Members and staff of the National Crime Authority are content to leave to others an assessment of the Authority's performance during the year to which this report relates' (p. ix). The Committee comments that assessment by others will be facilitated by appropriately presented information in the annual report. Guideline 9(d) of the *Guidelines for the Preparation of Departmental Annual Reports* requires an organisation's annual report to contain, in respect of each of its programs, an account of: the objectives; the results achieved; the resources used; and reasons for any significant delays, amendments, deferment or cancellation.

22. Apart from listing the objectives of the Authority's two programs (p. 63), the report under review does not provide information in this format. It states (p. 58) that work on drafting the Authority's Mission Statement and the Objectives, Goals and Strategies of its Corporate Plan was completed during the year. It noted: 'Further work ... needs to be done on developing specific implementation plans and performance indicators to meet the Objectives, Goals and Strategies of the Corporate Plan'.

¹ e.g. see *The Australian*, 19 July 1990, 'Alleged drugs kingpin to be tried in US court'; *The Sun-Herald*, 5 August 1990, 'NCA's 'major role' in the swoop'.

23. Guideline 1 requires, among other things, that annual reports should give special attention to changes that occurred during the year. The Committee considers that where statistics in the report reveal a major change in activity in the reporting year compared to previous years, the report should explain the reason for the change. The report under review does not always do this.

24. For example, section 19A of the Act empowers the Authority to request information from Commonwealth agencies. Table 1 in the report under review indicates that the Authority made 137 such requests in 1989-90, compared to 7 in 1988-89, one in 1987-88 and 8 in 1986-87. The report does not explain this major increase in resort to section 19A. As a second example, Table 1 also shows that the number of warrants issued under section 22 of the Act was 66 in 1989-90, compared to 19 the previous year and 7 the year before that. The reason for the increase is not explicitly addressed, although the narrative of events in relation to the investigation of Matter Eight states that 22 warrants were issued in April 1990 as part of that investigation.

25. The report identifies the number of staff working for the Authority (p. 56), but does not provide comparisons with staff numbers in previous years. The report for the 1988-89 year states (p. 54) that total staff at 30 June 1989 numbered 297. The report under review gives the number at 30 June 1990 as 426. This increase, which is about 43 per cent, is not explained in the section on staffing. Nor, according to the report's index, is it discussed elsewhere in the report. The Committee considers that a change of this magnitude should be explained in an annual report.

Statistics on Interception of Telecommunications

26. Under the *Telecommunications (Interception) Act 1979*, Part IX, Division 2, the Attorney-General is required to report to the Parliament giving statistics on interception of telecommunications for law enforcement purposes. The statistics include the number of applications to intercept made by the Authority. The Authority's annual report also provides statistics on this.

27. The Committee found it impossible to reconcile the figures from the two sources. The *Telecommunications (Interception) Act*

1979: Report in Compliance with Division 2 of Part IX for the year ending 30 June 1990, Table 1 states that in 1988-89 there were 33 warrants issued to the Authority authorising the interception of telecommunications: in 1989-90, 44 warrants were issued. The Authority's annual report, Table 1, states the number of warrants granted to it in each of these years was 45 and 35 respectively.

28. The Committee wrote to the Authority seeking an explanation for the differing figures. A copy of the letter and the Authority's response form Appendix 1 and Appendix 2 to this report. The Authority acknowledges that the figures in its Annual Report are incorrect.

Conclusion

29. Despite some minor criticisms, the Committee considers that the 1989-90 annual report of the National Crime Authority is satisfactory when evaluated against the statutory requirements and the relevant guidelines for the preparation of annual reports.

Timeliness of Quarterly Reporting to the Committee

30. The Authority provides quarterly operational reports to the Committee on a confidential basis to assist the Committee in monitoring and reviewing the Authority's performance. The quarterly report for January-March 1991 was not provided to the Committee secretariat until Friday, 17 May 1991. The Committee regards the delay by the Authority in providing this report as unsatisfactory.

E.J. Lindsay, RFD, MP
Chairman



PARLIAMENT OF AUSTRALIA

JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY
PARLIAMENT HOUSE, CANBERRA, A.C.T. 2600

APPENDIX 1

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Justice J. H. Phillips
Chairman
National Crime Authority
GPO Box 238E
MELBOURNE VIC 3001

16 May 1991

by fax 03 412 1399

Dear Judge,

NCA's Annual Report 1989-90

The Committee, as you are aware, has a duty under paragraph 55(1)(c) of the NCA Act to examine each annual report of the Authority. The secretariat has prepared a draft report on the Authority's 1989-90 Annual Report. The Committee intends to consider this at a private deliberative meeting on 30 May. A preliminary perusal of the draft indicated to members that it contained two items on which comment from the Authority would be welcome. I am writing to invite you to make such comment.

The first item arises from the identification on pages 26 and 27 of the Authority's annual report of William Tapia as a person suspected of having committed offences, including the importation of heroin into Sydney in 1987. The secretariat's draft report suggests that this naming by the Authority constitutes a breach of subsection 61(3) of the NCA Act.

The second item concerns statistics on authorisations given to the NCA for interception of telecommunications. The *Telecommunications (Interception) Act 1979: Report in Compliance with Division 2 of Part IX for the year ending 30 June 1990* is tabled in Parliament by the Attorney-General. Table 1 in the report states that in 1988-89 there were 33 warrants issued to the Authority authorising the interception of telecommunications: in 1989-90, 44 warrants were issued (copy of relevant pages attached). The Authority's annual report, Table 1, states the number of warrants granted to it in each of these years was 45 and 35 respectively. The secretariat's draft suggests that the differences cannot be reconciled and one or other of the annual reports is in error.

Yours sincerely,

E.J. Lindsay, RFD, MP
Chairman



NATIONAL
CRIME AUTHORITY

Mr. Justice J. H. Phillips
Chairman

NE11;NE86

28 May 1991

Mr E.J. Lindsay RFD MP
Chairman
Parliamentary Joint Committee on the
National Crime Authority
Parliament House
CANBERRA ACT 2600

Dear Mr Lindsay

I write in reply to your letter of 16 May 1991 concerning the Authority's Annual Report for 1989-90.

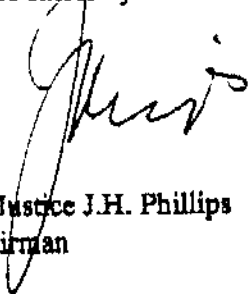
As the Committee's Secretariat suggests, upon their face, the comments on pages 26 and 27 of the Report concerning William Tapia contravene section 61(3) of the National Crime Authority Act. As is plain from other sections of the Act the purpose of that sub-section is to avoid publication of material which would be prejudicial to a person's safety, reputation or fair trial. The sensibilities within the Authority as to these matters, which have not previously proved deficient, would appear to have been affected by the circumstances that when the report was published Tapia had been arrested some months previously in Tokyo; that he was being held in custody in Tokyo and that proceedings against him were to take place, not in Australia, but in the United States of America.

As to the differing figures on the numbers of warrants issued to the Authority authorising the interception of telecommunications, the figures in the Telecommunications (Interception) Act Report are correct. The figures for 1988-89 and 1989-90 in the Authority's Annual Report were wrongly transposed, and were in any event inaccurate. The correct figures will be published in the Authority's 1990-91 Annual Report.

Both matters have been drawn to the attention of relevant staff.

The Authority of course regrets that this material was published, and is grateful to the Committee for bringing it to notice.

Yours sincerely



Mr Justice J.H. Phillips
Chairman