

PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

36th Parliament

EXAMINATION OF THE
ANNUAL REPORT FOR 1990-91
OF THE
NATIONAL CRIME AUTHORITY

Report by the Parliamentary Joint Committee on the
National Crime Authority

March 1992

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Examination of the 1990-91 Annual Report
of the
National Crime Authority

1. Under paragraph 55(1)(c) of the *National Crime Authority Act 1984* 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'.

2. The report under consideration is the seventh annual report made by the Authority since it commenced operations in 1984. The report covers the financial year ending 30 June 1991. Pursuant to subsection 61(1) of the NCA Act, the Authority sent the report to the chairman of the Inter-Governmental Committee on the National Crime Authority (IGC) on 7 November 1991.¹ The report was transmitted to the Attorney-General by the IGC on 5 December 1991 for tabling.² The report was tabled in the Senate on 18 December 1991 and in the House of Representatives on the following day.

3. The Committee considers that the report was presented to the Parliament in a timely fashion.

Absence of IGC Comment

4. Subsection 61(6) of the NCA Act provides for comments made on an Authority annual report by the IGC to be tabled with the

1. Section 8 of the NCA Act establishes an Inter-Governmental Committee consisting of a Commonwealth Minister and a Minister representing each participating State and Territory. All the States and Territories now participate. The functions of the IGC are set out in the Act. One of them is 'to monitor generally the work of the Authority' (s. 9(1)(e)). The Authority is required to furnish its annual reports to the IGC for transmission to the appropriate Commonwealth Minister (the Attorney-General): NCA Act, s. 61(1).

2. The date on which the IGC transmits the report to the Commonwealth Minister is not normally published. In this instance, it was disclosed in response to a question on notice: Senate, *Daily Hansard*, 27 February 1992, p. 436.

report.³ No comments by the IGC were tabled with the current report.

5. The Committee deplores the absence of IGC comments. In paragraph 6.36 of the Committee's report *Who is to Guard the Guards? An Evaluation of the National Crime Authority*, tabled on 28 November 1991, the Committee stated:

The IGC made comments amounting to less than a page on each of the first three annual reports of the Authority. Comments have not been made on subsequent annual reports. The lack of IGC comments strengthens the Committee's view that the IGC has not actively monitored the Authority.

Identifying Compliance with Reporting Requirements

6. Paragraphs 61(2)(a) to (g) of the NCA Act set out matters which the Authority must include in its annual report. In reviewing the Authority's 1989-90 annual report, the Committee asked the Authority to consider adopting a format which explicitly linked the information provided in its annual reports to the paragraph of section 61 which required that information to be provided.⁴ The Committee considered that such a format would assist in verifying that the information required by the NCA Act had in fact been provided.

7. In the annual report currently under review, the Authority explains that 'it has not been possible to set out the annual report

3. The Government, in answering a question on notice relating to tabling arrangements for a number of annual reports, stated in relation to the Authority's annual report:

The Report is distributed to the jurisdictions [represented on the IGC] so that they can provide the Commonwealth with comments on the achievements of the NCA and offer constructive criticisms on the direction of the NCA. (Senate, *Daily Hansard*, 27 February 1992, p. 436)

4. Parliamentary Joint Committee on the National Crime Authority, *Examination of the Annual Report for 1989-90 of the National Crime Authority*, June 1991, para. 12.

precisely in the way suggested by the Parliamentary Joint Committee'.⁵ This is because of the need to structure the report around the Authority's corporate objectives and because the report covers additional matters not required by subsection 61(2) of the NCA Act.

8. As an alternative to the format suggested by the Committee, the report contains an index showing where in the report each item of information required by subsection 61(2) is to be found.⁶ The Committee finds this format acceptable.

Information on Complaints against Police Working for the NCA

9. The then-Chairman of the Authority, the Hon. Justice John Phillips, appeared before the Committee at a public hearing on 29 July 1991. The Committee suggested to him that it would be useful if future Authority annual reports contained summary information on:

- the number of complaints of misconduct made by members of the public against police officers working with the Authority;
- how those complaints were handled; and
- the outcome of any investigations.

Justice Phillips told the Committee that he thought this a good idea and that it would be done.⁷

10. The report under review contains a section summarising the Authority's procedures for investigating complaints against those working for it.⁸ In addition, a brief description is given of the

5. p. 136.

6. pp. 136-37.

7. Parliamentary Joint Committee on the National Crime Authority, *Reference: Evaluation of the National Crime Authority, Hansard*, 29 July 1991, p. 1685.

8. p. 106.

handling of one complaint that was made.⁹ The investigation of this complaint was incomplete at the end of the period covered by the report.

11. The Committee welcomes the inclusion of this additional information in response to the Committee's suggestion, which was made late in the annual reporting cycle. In future reports, when this time-constraint will not exist, the Committee would expect the Authority to include the total number of complaints received during the reporting period, how each was handled, and the outcome in each case where investigation was deemed to be warranted.

Performance Indicators

12. The Authority has developed a Corporate Plan for the period July 1991 to June 1994. The Plan was released to the public in August 1991. It contains a mission statement and nine key objectives. The Plan sets out action strategies to achieve each of the nine objectives and describes the ways it is proposed to measure performance in achieving the objectives.

13. The annual report under review is structured according to the objectives in the Corporate Plan although, as the report notes,¹⁰ the Plan only came into effect after the end of the period covered by the report. Both the Committee¹¹ and the Authority¹² have recognised the difficulty of accurately measuring the performance of law enforcement agencies such as the Authority. However, the Committee anticipates that, by providing the data specified in the Corporate

9. p. 106.

10. p. 3.

11. e.g. see Parliamentary Joint Committee on the National Crime Authority, *The National Crime Authority - An Initial Evaluation*, May 1988, paras. 4.1 to 4.5; Parliamentary Joint Committee on the National Crime Authority, *Who is to Guard the Guards?: An Evaluation of the National Crime Authority*, November 1991, paras. 5.81 to 5.85.

12. In addition to p. 3 of the report under review, see National Crime Authority, *Corporate Plan July 1991-June 1994*, pp. 1, 6-7.

Plan's performance measures, future annual reports will improve the ability of the Parliament and the public to assess the Authority's performance.

Statistics

14. The report under review states that at 30 June 1991 \$29,002,000 was frozen or secured by Authority action under the *Proceeds of Crime Act 1987*.¹³ Part of this total, an amount of \$10 million, relates to Authority investigations under Matter No. 2. The Authority's annual report for 1989-90 showed the amount frozen for this Matter as \$19.1 million. The current report explains: 'The decrease resulted from a decision by the Commonwealth Director of Public Prosecutions to release certain property which was then sold, so as not to disadvantage a mortgagee'.¹⁴

15. The current report shows an amount of \$2,802,000 as frozen or secured under Matter No. 8. A footnote, however, cautions: 'This is the total value of orders obtained ...; the value of all identified assets may not equal this amount'.¹⁵

16. The Committee draws attention to these points solely to illustrate the need to interpret with caution all statistics on amounts frozen or secured under proceeds of crime legislation. It cannot be assumed that the figures represent amounts that will eventually flow to Consolidated Revenue.

17. In reviewing the Authority's 1989-90 annual report, the Committee drew attention to minor inconsistencies in the figures provided.¹⁶ In one area, small apparent inconsistencies remain in the report under review. On page 80, the report states that Authority

13. pp. 80 and 81.

14. p. 81, note 1 to Table 4.

15. p. 81, note 2 to Table 4.

16. Parliamentary Joint Committee on the National Crime Authority, *Examination of the Annual Report for 1989-90 of the National Crime Authority*, June 1991, para. 15.

investigations since its creation in 1984 have resulted in 448 persons being charged with a total of 2230 offences, with 273 persons convicted. Addition of the year-by-year figures in the table on the previous page gives a total of 463 persons charged with a total of 2305 offences, with 270 persons being convicted.

18. The Committee sought an explanation from the Authority staff responsible for compiling the statistics. The Committee was told that the differences in totals arise because the figures in the table on page 79 present a 'snapshot' as at the end of each financial year. The figures on page 80 incorporate events that have occurred after year-end (e.g. where charges have been withdrawn and substitute charges laid in a subsequent year).

19. The Committee considers that it would assist the reader if the reasons for the apparent inconsistencies were to be explained more fully in future annual reports. Alternatively, the data could be presented in such a way as to eliminate the apparent inconsistencies.

NCA Staffing and Morale

20. At the time when the Committee was completing this report, a press report stated: 'it is no secret that morale among the staff of lawyers and police [at the Authority] is low, with 55 police quitting last year alone'.¹⁷ Police are seconded to work with the Authority. Secondments are for varying periods, with about two years being the average. If there are one hundred police on secondment at any one time, the departure of about fifty in any twelve-month period merely represents normal rotation of secondees.

21. The annual report under review notes that 'the level of police staff [at the Authority] was significantly down on the 30 June 1990 total of 145'.¹⁸ At 30 June 1991, the total had fallen to 95. The Authority's annual report explains:

17. Don Petersen, 'The rise and rise of Australia's top cop', *Brisbane Courier-Mail*, 25 February 1992, p. 9.

18. p. 87.

This fall reflected the effect of the NCA's New Directions, with the emphasis placed on the NCA conducting investigations in partnership with other law enforcement agencies (for example, in task force arrangements), rather than conducting investigations separate from those agencies using police formally seconded to the NCA.¹⁹

22. The Committee took the media claim up with the Authority and confirmed that the press report was incorrect in citing low morale as the reason for the reduction in the number of police on secondment to the Authority.

23. The Committee notes that the same press report stated: 'For much of its life under three chairmen - Mr Justice Donald Stewart, Mr Peter Faris QC and Mr Justice John Phillips - it has operated beneath a veil of obsessive secrecy'. There might be some merit in this criticism in relation to the early years of the Authority's existence. However, the criticism is both inaccurate and unfair in relation to the more recent past, especially the period when Justice Phillips was chairman.²⁰

Court Delays

24. The Committee wishes to draw attention to the impact of court delays on matters arising from Authority investigations. The report under review states:

The NCA has noted in previous annual reports that prosecutions arising from charges laid as a result of its investigations can frequently take

19. p. 87. For description of, and comment on, the Authority's New Directions, see Parliamentary Joint Committee on the National Crime Authority, *Who is to Guard the Guards?: An Evaluation of the National Crime Authority*, November 1991, Chapter 5.

20. The Committee dealt with the claims that the Authority was too secretive in some detail in its report *Who is to Guard the Guards? An Evaluation of the National Crime Authority*, tabled on 28 November 1991.

many years to complete, due in part to the complexity of the matters being prosecuted and the experience of court delays in some jurisdictions. For example, of the 40 convictions obtained in 1990-91, some 70 per cent related to charges laid more than 12 months before. Of this 70 per cent of convictions, 30 per cent were completed between two and three and a half years from the date of charging. In addition, of the 60 persons against whom charges are pending, approximately half were charged more than two years ago.²¹

Conclusion

25. Despite some very minor criticisms, the Committee considers that the 1990-91 annual report of the National Crime Authority is excellent. It is fully satisfactory when evaluated against the statutory requirements and the relevant guidelines for the preparation of annual reports. The report contains a comprehensive index to its contents.

26. Some critics of the Authority have argued that the Authority provides the public with insufficient information about its activities. The Committee considers that the detail in the report under review clearly refutes this argument.

Statistics on Interception of Telecommunications

27. Under the *Telecommunications (Interception) Act 1979*, the Authority is required to maintain specified records relating to its activities under that Act. The Ombudsman is required to inspect the Authority's records at least twice a year to ensure that the Authority has complied with the record-keeping provisions.²² The Ombudsman reports on these inspections to the Attorney-General. The

21. p. 80.

22. *Telecommunications (Interception) Act 1979*, ss. 82-83.

Ombudsman also inspects and reports on the records maintained under the Act by the Australian Federal Police.

28. In January 1992 the Senate Standing Committee on Finance and Public Administration reported on its review of the Ombudsman's Office. One of the report's recommendations was:

that the telecommunications intercept auditing function be removed from the Ombudsman and placed with the Privacy Commissioner, the Inspector-General of Intelligence and Security, or some other appropriate body.²³

The Ombudsman told the Senate Committee it was questionable whether in principle it was appropriate for a complaint-handling agency like his Office to have this auditing function.²⁴

29. In the November 1991 report of its evaluation of the Authority, the Committee recommended that the Inspector-General of Intelligence and Security be given jurisdiction to investigate complaints against the Authority, its staff and those seconded to work for it.²⁵

30. Accordingly, the Committee **RECOMMENDS** that, if the auditing function is to be removed from the Ombudsman, the function should be given to the Inspector-General of Intelligence and Security.

E.J. Lindsay, RFD, MP
Chairman
March 1992

23. Senate Standing Committee on Finance and Public Administration, *Review of the Office of the Commonwealth Ombudsman*, para. 4.73.

24. *ibid.*, para. 4.73.

25. Parliamentary Joint Committee on the National Crime Authority, *Who is to Guard the Guards?: An Evaluation of the National Crime Authority*, November 1991, para. 6.77.