

**Parliamentary Joint Committee on the
National Crime Authority**

**Inquiry Into The Australian Crime
Commission Establishment Bill 2002**

Submission No:2

**Rev. Bruce Ballantine-Jones OAM Mr
Bob Bottom OAM**

62 Esplanade

NINGI QLD 4511

☎02 9964 9733 📄02 9964 9924

E-mail:

From: Bob & Judy Bottom [bobnjudy@mail.cth.com.au]
Sent: Monday, 7 October 2002 9:31 AM
To: NCA, Committee (SEN)
Subject: Joint Submission
ATTENTION
Maureen Weeks
Herwith copy of Joint Submission for tomorrow's hearing in Sydney

Joint Submission

Re: Australian Crime Commission Establishment Bill 2002

Tuesday, 8 October, 2002

The Secretary
Parliamentary Joint Committee on the National Crime Authority,
Parliament House,
Canberra, Australian Capital Territory, 2600,
Australia
Phone 02 6277 3565
Fax 02 6277 5866
E-mail: nca.committee@aph.gov.au

As long time advocates for crime commissions, we welcome the Australian Crime Commission Establishment Bill 2002.

The reformation of the National Crime Authority into the Australian Crime Commission more appropriately fulfils the vision of concerned citizens and community interest groups who actively campaigned and lobbied governments in the 1970s and 1980s.

Australians will more easily identify with a commission, rather than an organisation designated as an "authority".

The term "commission" in the context of combating organised crime evolved from the concept of a standing commission, as distinct from ad hoc Royal Commissions.

Such an innovation for Australia was first recommended in 1978, in a report to the New South Wales Government titled "Report Upon Organised Crime In New South Wales" compiled by Bob Bottom, then engaged by that government to advise on measures to combat organised crime.

The concept initially received mixed reaction in government circles, at both state and federal levels, but attracted significant community support, and led to the formation of a series of citizen advocacy groups, resulting in a historic deputation (led by the Rev Bruce Ballantine-Jones) to the then Prime Minister, Mr Malcolm Fraser, who agreed to the establishment of such a commission at a national level. Legislation for what was then titled a National Crime Commission was passed in late 1982 but the legislation was not formally proclaimed before an early election was called at the beginning of 1983 and the legislation lapsed with a change in government.

The commission legislation was re-evaluated at a National Crime Summit in July 1983 (Bruce Ballantine-Jones and Bob Bottom were delegates) and the commission concept was reshaped into what became the National Crime Authority, which began operations in July 1984.

Symbolically, therefore, aside from any current legislative changes or amendments to re-badge or reform the NCA, we believe the reinstatement of commission in the title is welcome and appropriate.

In general terms, we have no significant criticisms to make of the Australian Crime Commission Establishment Bill 2002 as presented to Parliament.

In particular, we endorse the new emphasis agreed upon by the Commonwealth and States and Territories to strengthen the law enforcement component of management of the commission.

Whilst we do not intend using this submission or occasion to outline matters where we believe the NCA may have gone wrong, it is fair to say that lawyers have not always been able to serve it well.

Perhaps the most incisive exposition of this factor was given in a speech to a Joint NCA / Victorian Council of Civil Liberties Conference, Melbourne, on 18 April, 1993, by which time the NCA had been operating for nearly a decade.

The speech, delivered by M Rozennes and J McCarthy from the office of Director of Public Prosecutions, noted back then that, "in considering the future direction and role of the NCA it will be suggested that the time has come for consideration to be given to substantial upgrading the role of the police component of the NCA to the extent that the Authority might become more police driven rather than being lawyer driven". Rozennes and McCarthy were mindful of an Initial Evaluation Report by the Joint Parliamentary Committee on the NCA which had already recommended that "in the management of investigative teams the Authority (should) give greater recognition to the expertise of experienced police officers."

"However, what we have in mind, " Rozennes and McCarthy stated, "goes beyond the modest change contemplated by the Joint Parliamentary Committee. Not only should it be the norm for an investigative team to be headed by a police officer, with lawyers and other specialists performing the role of advisers to the police component of the team, but indeed the police should be significantly involved in making the key policy decisions for the Authority. This may eventually involve the appointment of senior police officers as members of the Authority.

"While in its 1991 Report the Parliamentary Joint Committee was to state that its earlier recommendation 'was not based upon a conclusion that lawyers were either unable to manage or contribute effectively to investigations' there is no need to be so circumspect. As a general proposition lawyers do not make good investigators.

"We are quite good at assessing what evidence is needed to support a successful prosecution, but we are not so good at deciding how to go about getting that evidence and actually getting it. Such work requires the skills of a trained investigator, not a lawyer. Lawyers have little experience of investigative methods, and as a consequence they will tend to make operational decisions from their limited, and largely irrelevant, perspective as lawyers. Indeed, while the existing structure of the NCA reflects its philosophy that lawyers rather than police are the most appropriate people to run the NCA, there is some evidence that the dominance of lawyers within the Authority has in fact had an adverse effect on its performance.

"A number of other benefits would flow from such a change in the Authority's structure. Conventional police forces would be more disposed to treat the Authority as a colleague rather than something of an amateur in law enforcement. It would also present an opportunity to demonstrate to police forces the advantages of the multi-disciplinary approach to the investigation of sophisticated crime - but this time with police providing the direction and control of the investigation and with the role of the lawyers and other specialists being essentially that of advisers.

"The NCA is now a rather different body to what it was in its early years, but it at last seems to have found a worthwhile niche for itself in the structure of law enforcement in Australia which is consistent with the reasons for establishing it in the first place. It

was never feasible for the Authority to operate as Australia's 'ninth police force', and the Authority is likely to prove to be a more long term proposition in performing a co-ordinating role in conjunction with the conventional police forces, with less emphasis being placed on conducting its own discrete investigations. While the need for coercive powers in the attack on organised crime seems to have provided one of the main reasons for establishing the NCA, its adoption of the multi-disciplinary approach to the investigation of sophisticated crime and its ability to conduct investigations largely unaffected by cross-jurisdictional problems are likely to prove to be of more long term value to the Authority.

"However, the Authority is unlikely to realise its full potential until the structure of the Authority generally, and that of its investigation teams in particular, reflect the fact that it is an investigative agency, albeit a specialist one, and not some sort of standing Royal Commission."

What Rozennes and McCarthy had to say, and the changes now provided for in the current legislation, more appropriately reflect the evolutionary process leading to the establishment of the NCA in the first place.

As a result of the first Royal Commission into organised crime in Australia - the Moffitt commission in NSW in 1973 - improved crime intelligence was recognised as the main priority. A police crime intelligence unit was set up in NSW and formalised crime intelligence bureaus followed in other states.

As a result of further Royal Commissions in the late 1970s, emphasis was placed on exchange of crime intelligence between all law enforcement agencies and the Australian Bureau of Criminal Intelligence was established in 1981.

Likewise, joint Commonwealth-state taskforces were introduced.

The combination now of these concepts into the one organisation with the incorporation of the ABCI, as well as the Office of Strategic Crime Assessments (OSCA) into the ACC should provide for a more co-ordinated and more effective framework in tackling organised crime and transnational crime

Just as significantly, the new commission under the new structure should work more closely with similar state commissions - the NSW Crime Commission and the Queensland Crime and Misconduct Commission (which, from 1 January, 2002, has incorporated the Queensland Crime Commission, established in 1997 as a result of a Cabinet submission compiled by Bob Bottom). Recently, it was announced that the Victorian Government is now considering setting up a crime commission modelled on the one in NSW.

All existing commissions have access to coercive powers

Their structure for the use of these powers vary, from relying on in-house statutory officers to conferring the powers on qualified lawyers appointed for special inquiries.

The concept now proposed for the Australian Crime Commission is a historic development for Australia, in that "examiners" will be appointed to exercise the coercive powers, and the powers will now be available for use for both intelligence and investigation purposes.

The term "examiners" is akin to the concept applying for examining magistrates under the European system of justice - as against the Australian or British system which tends to operate on an adversarial basis.

Coercive powers for crime commissions are derived from the British concept of confining such powers to Royal Commissions which, unlike the adversarial justice system, are commissioned to find out the truth of a matter. Examining magistrates under the European system do it as a matter of course.

In Australian terms, the use by the ACC of "examiners" equates with the examination - or compulsory powers - available under the Australian Securities and Investments Commission. Coercive powers are not therefore such a big deal, just as there is no longer knee-jerk objection to telephone interception powers.

We therefore see no grounds for objection to the new structure for authorising the use of coercive powers by 'examiners', provided they are exercised by qualified lawyers and there is oversight.

We particularly note that the existing Parliamentary Joint Committee on the National Crime Authority is to continue but as the Parliamentary Joint Committee overseeing the Australian Crime Commission.

We would, however, make one suggestion.

The PJC should have access to operational details where appropriate.

This was argued by Bob Bottom when he last gave evidence to the PJC in May, 1997. As argued then, the climate of political corruption that prevailed in the 1960s, 1970s and early 1980s thankfully no longer applies in Australia, either at state or federal levels, and there is no longer any justification for excluding parliamentarians from access to information that may otherwise be made available to lawyers.

Parliamentarians as much as anybody else should be entrusted with access for inquiry purposes.

In simple terms, on a scale of one to ten, there is ample evidence to demonstrate that in modern times there has been far more disquiet about transgressions by lawyers than dishonesty or corruption involving parliamentarians. That may be said in favour of parliamentarians from all sides of politics.

Whereas in times past some politicians knowingly facilitated the interests of organised crime, that nowadays is not the case (notwithstanding the recent successful prosecution by the NCA of former federal parliamentarians Andrew Theophanous). If it were deemed acceptable to incorporate in the legislation provisions to give the PJC access to operational details when deemed necessary for any particular inquiry into ACC operations, it might be mandated that such access may only be enforceable by a unanimous vote of the Committee.

In this context, it may be noted that Bob Bottom served on the steering committee that devised legislation for the NSW Independent Commission Against Corruption and that Bruce Ballantine-Jones subsequently served for four years on the Operational Review Committee overseeing the ICAC and the sort of secrecy safeguards that apply for that Committee should be applied to cover the PJC.

One other suggestion we would like to make is that consideration be given to re-including the original charter for the NCA in the definition for functions for the ACC. To ensure adequate future funding for the ACC, for investigations for specific targets nominated by either the Commonwealth or States or Territories, the emphasis should be on joint or co-ordinated taskforces in accordance with the original vision.

We refer to Section 11 of the National Crime Authority Act, Part 11.

(c) where the Authority considers it appropriate to do so for the purpose of investigating matters relating to relevant criminal activities:

- (i) to arrange for the establishment of Commonwealth Task Forces;
- (ii) to seek the establishment of a State, or the joint establishment by 2 or more States, of State Task Forces, and
- (iii) with the concurrence of the States concerned, to arrange for the establishment of joint Commonwealth and State Task Forces, or for co-operation between the Commonwealth Task Forces and State Task Forces: and

(d) to co-ordinate investigations by Commonwealth Task Forces, and, with the concurrence of the States concerned, to co-ordinate investigations by State Task Forces, being investigations into matters relating to relevant criminal activities, but not so as to preclude the making of separate bilateral or multilateral arrangements between such Task Forces.

In its own literature, the NCA has proclaimed that "the core business of the NCA has been to conduct investigations into complex organised crime on a national basis, including through the establishment and co-ordination of multi-agency National Task Forces; as well to collect and analyse intelligence and to share this information amongst law enforcement agencies".

However much the Commonwealth has guaranteed continued funding for the ACC in the short term, in accordance with the Agreement with the States and Territories, there should be a clear reaffirmation for the ACC of the original charter to co-ordinate taskforces.

That, indeed, was the catchcry during years of campaigning backed by a series of royal commission recommendations leading to the establishment of the NCA in 1984, following in particular public concern over organised crime arising from the murder anti-drug crusader Donald Mackay, at Griffith, in July 1997.

Thus it was that the first reference given to the NCA was to investigate Italo-Australian organised crime, which dominated the marijuana trade not only around Griffith in the Riverina in NSW but right across Australia, and especially in Queensland; and, over the next ten years, the NCA chaired a co-ordinating committee that ran what became known as Operation Cerberus, a taskforce including police from Queensland, NSW, Victoria, Tasmania, South Australia and Northern Territory, along with federal police, the Queensland Criminal Justice Commission, the Australian Bureau of Criminal Intelligence, Australian Tax Office, Customs, Immigration, Australian Tax Office and Australian Transaction Reports and Analysis Centre. In a report published in 1995, the NCA reported that the task force had conducted 156 operations, resulting in 271 persons being charged with 771 offences. More significantly, the NCA proclaimed that the operation "demonstrated the benefits of a co-operative national approach" and "established a model for co-ordinated national organised crime investigations".

That very model should be the bottom line for a true multi-jurisdictional crime commission.

And, as originally envisaged, the Commonwealth and States should be prepared to share future costs, as was the case originally.

It is not a case of cost-shifting by the Commonwealth but a return to what previously applied.

Until 1995, the States and Territories did pay the cost of the salaries of their staff seconded to the NCA to serve on taskforces, just as they still do for their component of the ABCI.

On the composition of the Board, we welcome the appointment of the Commissioner of the Australian Federal Police as Chairman, and inclusion of the five Commonwealth agency heads as provided for in the legislation - particularly the inclusion of the Director General of Security, which brings Australia into line with the United Kingdom.

When the UK established a National Criminal Intelligence Service in 1997, subsequently supported by a National Crime Squad established a year later in 1998, it was decreed that MI5 must assist.

Lastly, and most importantly, we wholeheartedly endorse the change providing for the Chief Executive Officer of the ACC to be an "individual with a strong law enforcement background".

During the bargaining process between the Commonwealth and the States and Territories over the blueprint for the ACC, we took our concerns to the Prime Minister, Mr John Howard, and had the privilege of making various representations to him, at a meeting in Sydney on 31 July, 2002.

Bruce Ballantine-Jones presented the following written submission at that meeting:
WHY ACC CEO SHOULD BE A PERSON WITH OPERATIONAL EXPERIENCE

* Investigation and prosecution of criminals is the ACC's core business. The man in charge should have first hand experience of this. A bureaucrat without that knowledge and experience will never be part of the essential culture of the ACC. He will always be an "outsider".

* A bureaucrat from a public service has other factors, bearing in on him or her, eg., career prospects post ACC appointment, the question of independence from departmental and ministerial authorities.

* An operational CEO will have more credibility with the law enforcement community than a bureaucrat ever will and credibility is the essential currency of this proposed organisation.

* A deputy CEO with public service experience would be able to free up the CEO to focus on ACC core business while he or she concentrated on administrative matters.

* If the government was prepared to appoint a CEO there is no better man than Geoff Schuberg. He has experience as a serving police officer as well as with NCA and ICAC. He has the respect and trust of his peers. He has been an assistant Police Commissioner in NSW and is presently advisor to the NSW Police Minister which means he would be acceptable to the government in the largest jurisdiction. His long experience in fighting organised crime and his detailed knowledge would allow him to set the culture of the ACC in the right direction.

One suggestion previously made to both the Prime Minister as well as State representatives involved in the ACC negotiation process was that the person appointed to manage the ACC should be titled Director not CEO.

Chief executive officer is a title more appropriate for bureaucratic or corporate entities, whereas director is a generic title for non-police law enforcement agencies that facilitates ready identification for standing and liaison purposes.

In conclusion, we would recommend that the Parliamentary Joint Committee undertake a formal Evaluation of the performance and direction of the ACC after it has been operational for three years.

Rev. Canon B.A. (Bruce) Ballantine-Jones OAM

Bob Bottom OAM