

PARLIAMENTARY JOINT COMMITTEE ON  
THE AUSTRALIAN CRIME COMMISSION

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Mr Jonathan Curtis  
Secretary  
Joint Committee on the Australian Crime Commission  
Parliament House  
Canberra

Dear Mr Curtis

Thank you for the opportunity to make a belated submission to the Committee's Review of the *Australian Crime Commission Act 2002*.

The submission is attached.

By way of background, I was the first - and as it turned out, the only - Chief Executive Officer of the National Crime Authority (1984-91). In that capacity I accompanied successive Chairmen and Members to all the meetings they had in that period with the Joint Committee on the NCA. The position of CEO was abolished in 1991 and replaced with the position of General Manager (Operations), in which I acted for a few months pending the arrival of the successful applicant, Mr Peter Lamb. In 1993 I did some consulting work for the Authority on information management.

Subsequently I was Information Manager for the NSW Police Royal Commission (1994-96), and successively Information Manager, Analyst and consultant to the NSW Police Integrity Commission (1996-2002). I retired in 2002.

Although it is now more than ten years since I worked for the NCA, I have maintained an interest in it and its successor organisation the Australian Crime Commission. I made a submission in a private capacity to the Joint Committee on the NCA's inquiry into the Impact on the NCA of changes in Commonwealth Law Enforcement, and gave evidence to the Committee on 21 October 1994. I also made a submission to that Committee's inquiry into the Australian Crime Commission bills in 2002.

Should the Committee so wish, I would be happy to elaborate on the attached submission.

Yours sincerely

Denis Lenihan

**Submission to the Joint Committee on the Australian Crime Commission: Review of**

## ***the Australian Crime Commission Act 2002***

In preparing this submission I have had the benefit of reading - somewhat hastily - the other public submissions, and also the transcripts of the Committee's hearings in August and September. Lack of time has prevented me covering as much ground as I would have wished and I have concentrated on what seem to me to be a few major issues.

### **1. The Commission's Intelligence Function**

In its submission, the AFP describes the Commission's 'primary mission' as an 'operational national criminal intelligence agency' and this seems to be a fair reflection of the Act. The Commission's Annual Report for 2003-4 at page 24 lists criminal intelligence services and criminal intelligence operations as its two primary outputs, ahead of investigations into federally relevant criminal activity. Bearing in mind the Committee's terms of reference, an observer's first question might therefore be: are the structures of the Commission effective so far as the Commission's intelligence function is concerned?

The Commission's Annual Report for 2003-4 answers in the affirmative, as does its submission to the Committee's current inquiry - although in less detail than the Annual Report, and with more emphasis on outputs rather than outcomes. The critical answers, however, are those which come from the consumers or users of the intelligence which is produced by the Commission, and the primary users (the 'major stakeholders' in the ugly language of the day) are the eight police services. So what do they say?

Except for the AFP, submissions to the Committee's review from the police services are either non-existent (NSW, SA, Tasmania, the Northern Territory) or cursory (Victoria, WA) or in the case of Queensland somewhere in between. This is a very disappointing response and makes the task of the Committee virtually impossible. It would appear to be the case that the majority of the police services are happy to avail themselves of the Commission's services (and particularly its coercive powers) when it suits them, but do not see themselves as being in any way obliged to respond to invitations from the national parliament to comment on the Commission.

As an aside, it is depressing to see the Australian Federal Police Association still bellyaching in essentially the same way as it did 20 years ago. It was never clear to the NCA whether such submissions from police associations reflected the views of senior officers or even the members of the associations. One very negative submission to the Joint Committee on the NCA from a (state) police association so concerned those members of the association working with the NCA (who had not been consulted) that they wrote separately to the Committee contradicting much of what the association's submission had said.

The absence of comments from the primary users about the Commission's intelligence output is particularly unfortunate given the chequered history of the predecessor national intelligence

organisation, the Australian Bureau of Criminal Intelligence. For reasons largely outside its control, it was widely regarded as ineffectual. Most of its staff were seconded police officers, not all of whom had previous background in intelligence. Some Commissioners of Police regarded Canberra as the antipodean equivalent of Coventry, and the Bureau as a convenient sin-bin to which fractious officers might be despatched, even if only temporarily. Some Commissioners who did do the right thing and second their rising intelligence officers never saw them again, the officers finding that employment opportunities were greater with other organisations. The spouses of some officers found Canberra a very congenial place in which to live, with good employment opportunities available for them also, and were reluctant to return home.

The Bureau's greater difficulty however was that most forces would not give it current information and intelligence, so that it was nearly always a long way behind the game. What must have made it more frustrating for Bureau officers was that some forces used the Bureau's ACID database to store their current intelligence, embargoed from all other users; so the Bureau minded the data but could not see it, much less use it.

I infer from the admirably frank evidence given to the Committee by Det Supt Gollschewski of the Queensland Police that the Commission's intelligence analysts, or at least some of them, are civilians, and this is to be applauded as a great improvement over the old Bureau. I note however from his evidence that some jurisdictions do not contribute to the serial sexual and violent offenders database (ViCLAS). There can hardly be any operational considerations preventing such contributions - as there may be in other areas - and the unwillingness to share such information is puzzling and disturbing. The Committee may wish to pursue with the Commission the general question of intelligence cooperation from police services.

I have no knowledge or experience of the work of the former Office of Strategic Crime Assessments.

## **2. Independence and Supervision**

The Commission's Board meets infrequently (three times in 2003-4, according to the Annual Report), as does the Strategic Directions Committee (six times in 2003-4). It is hard to see that the Board in particular exercises any effective supervision of the Commission, nor, given his other responsibilities, that Commissioner Keelty would be able to keep a sufficiently vigilant eye on the Commission in his role as Chairman. Those members of the Board who are police commissioners may also be faced with possible conflicts of interest between their duties as commissioners and their duties as Board members.

Some witnesses before the Committee (Messrs Crooke QC and O'Gorman are examples) noted that the Commission is not independent of police services and thus cannot be independent of governments.

The Commission would gain some independence and also be more effectively supervised if a

suitably qualified person - say a retired judge, who would have no conflicts of interest - were to be appointed part-time chairman. Such an appointment would have other advantages. It would serve to reassure those of us who have a concern about police officers being in charge of an organisation (as Mr O'Gorman rightly calls it, 'a law-enforcers' club') which not only exercises coercive powers but does so in secret. It would also bring some balance to the Commission and provide a safeguard against any tendency not to look at matters which might expose police corruption or incompetence, or corruption by other public figures (which police services are notoriously reluctant to investigate). Presumably no such tendency has emerged thus far; but the Committee might find it useful to inquire whether the CEO has taken any prospective operations or investigations to the Board or broached them with the chairman only to have them ruled out of consideration.

An independent chairman would also provide some reassurance that the Commission is not being saddled by the police services with tasks of dubious relevance. Is vehicle rebirthing of sufficient significance for the Commission to be undertaking? Why are ordinary police methods apparently not up to this task?

### **3. The Commission's Public Profile**

Even to those like me who take a close interest in the Commission, it is evident that it keeps a very low public profile. This is unfortunate both for its own reputation and because if it were better known it would surely get more assistance from the public. As was suggested to the NCA Committee in 1991, and as the Committee itself subsequently proposed in its report *Who is to Guard the Guards?*, provision should be made in the Act for the Commission to hold public hearings. Such hearings could expose types of organised crime and encourage members of the public who have relevant information to come forward. Pages 45-47 of the Commission's Annual Report for 2003-4 record activity about vehicle rebirthing, including a media campaign. Public hearings with Commission staff or appropriate police officers or industry representatives giving evidence would surely have assisted such a campaign without running any risks of infringing anyone's rights or putting prosecutions at risk, which were the reasons advanced by governments in 1992 for not accepting the NCA Committee's recommendations.

The Commission might also raise its profile by releasing more material. Presumably some kind of intelligence assessment was made by the Commission following its work on vehicle rebirthing. Could not an edited version of that document have been made public? Given that the Director General of ASIO feels able to make speeches about the terrorist threat facing Australia, could not the Chairman of the Commission make speeches about the threat posed by organised crime, drawing upon the *Picture of Criminality in Australia* (pp 33-4 in the Annual Report for 2003-4)?

#### **4. Whether the roles, powers and structure granted to the Commission remain appropriate and relevant to meeting the challenge of organised crime in the 21st century.**

The short answer is that it is too early to say. Australian governments have so far met the challenge of organised crime in the late 20th and early 21st centuries in three ways:

- initially, by relying primarily on the police services but eventually holding Royal Commissions or other inquiries into particular manifestations of organised crime, initially at state but subsequently at Commonwealth and national levels; some such inquiries (Williams, Stewart, Costigan) called for a national approach;
- a national approach emerged in the final months of the Fraser Government in the shape of the National Crime Commission, to be replaced under the Hawke Government with the National Crime Authority which was eventually given legislative support by all nine Australian governments; the Authority concentrated on operations leading to the gathering of admissible evidence, was independent, run by lawyers and empowered to act in specific matters by one or more governments;
- a different national approach was taken under the Howard Government, again supported by all the other governments, under which the Australian Crime Commission is essentially controlled by the police services and some Commonwealth agencies, is primarily an intelligence organisation and empowered to act in specific situations by its board.

The present approach combines some elements of the early approach - particularly its reliance on police services - and some elements of the second approach, with a national body capable of exercising coercive powers. One marked difference between now and the first approach is that the powers and capabilities of police services, including in the areas of telephone interceptions and listening devices, have increased. Another is that at least in some States the police services have been cleaned up and powerful watchdogs put in place to diminish the possibility of systemic corruption recurring.

If the present approach does begin to fail, on past performance one family of signs will be police incompetence of the sort and on the scale which suggests corruption; continued denial by the relevant authorities that problems exist; and continued assertions that such problems as do exist can be dealt with by existing structures, notably the police service. Another family of signs will be the sudden emergence of some type of organised crime new to Australia but not to overseas countries, in a form and on a scale which indicates that it has been present here for some time but was not known to the authorities.

#### **5. Seconded police officers**

Short of all police officers being paid the top rates of salaries and allowances, which would be very expensive, the points raised about officers seconded from different services being on

different rates are insoluble in a practical sense. In my experience of them, a greater problem with

seconded police was loyalty to the Authority during and after the time of their secondment. Some saw it as their duty to keep their parent force regularly informed of what the Authority was doing - secrecy provisions notwithstanding - while others had no hesitation in making wild accusations about the Authority after their term of secondment had concluded. That having been said, where any conflict of interest arises between parent force and organisation of temporary secondment, it is understandable that loyalty to parent force will prevail.

The Committee might wish to explore whether the Commission is experiencing the same problems.

The way to overcome these difficulties - and related difficulties such as seconded officers missing promotion opportunities, working outside their jurisdictions and turning over regularly - is to enable the Commission to recruit its own investigators from members or former members of the police services and establish its own career structure. Such investigators could be given the powers of AFP officers. This is the model which has been adopted by the NSW Police Integrity Commission and to my knowledge it works well. Should the exercise of particular State powers be required, the use of task forces including officers from the State concerned should meet the need.

## **6. Questions about the Future**

In my submission to the Joint Committee on the NCA in 1994, I suggested that the time would come when consideration might be given to replacing the AFP with an organisation like the FBI. The Attorney-General's Department at that time had made such a proposal to the Review of Commonwealth Law Enforcement Arrangements and suggested that such an organisation might be known as the National Investigative Agency. Both the Department's submission to the Review, and mine to the Committee, fell on stony ground.

The AFP has never been a conventional police service (its only 'beat' is the ACT), and it is less conventional now than it was a decade ago. As with the FBI, its staff are now called 'Federal agents' and much of its work in the international sphere and with terrorism has little or no parallel with the other police forces in Australia. Precisely because of the rise of terrorism however, the question of 11 years ago needs to be revisited. Put in another form, the question is whether it is appropriate in this day and age for the Commonwealth front line against terrorism to be a police service rather than a body such as the FBI.

An FBI-type body would also be a more natural partner for the Crime Commission and the two might reasonably be merged.