

CHAPTER 1

BACKGROUND TO THE INQUIRY

Decision to Commence the Present Evaluation

1.1 In mid-1990, the Committee decided to make a comprehensive evaluation of the Authority. Its decision was based on a number of factors:

- . The Committee has a statutory duty ‘to monitor and to review’ the Authority and to report its findings to the Parliament.¹
- . The *Initial Evaluation* report, tabled in May 1988 by the Committee's predecessor, recommended that a comprehensive evaluation should be conducted seven years from the establishment of the Authority.² This recommendation was not opposed by the Government.³
- . There were major concerns about the Authority's management, strategic direction and operations, including the concerns which had led to the Arthur Anderson report.⁴
- . The NCA Act contained a provision that the Authority would cease to exist at the end of June 1989. This ‘sunset’ provision was repealed in June 1988.⁵ The repeal did not, however, involve any public assessment of the continued need for the

1. NCA Act, s. 55(1). Section 55 is set out in full on p. xiii above.

2. Parliamentary Joint Committee on the National Crime Authority, *The National Crime Authority - An Initial Evaluation*, May 1988, para. 4.31.

3. *Government Response to the Report of the Parliamentary Joint Committee on the National Crime Authority Entitled ‘An Initial Evaluation’*, tabled in the House of Representatives on 3 November 1988 and in the Senate on 7 November 1988, p. 3.

4. Arthur Andersen & Co, *National Crime Authority: Strategic Organisational Review: Final Report*, July 1989. The reason for the report and its conclusions are set out in chapter 3 below.

5. *Crimes Legislation Amendment Act 1988*, s. 6.

Authority or of the provisions of the NCA Act.⁶

A significant body of information has become available over the past few years.

Conduct of the Evaluation

1.2 In July 1990, the Committee placed advertisements in the following newspapers calling for written submissions: the *Adelaide Advertiser*, *Melbourne Age*, *Australian*, *Australian Financial Review*, *Canberra Times*, and *Sydney Morning Herald*. The Committee also wrote to interested parties and invited them to make submissions or meet with the Committee.

1.3 The Committee requested that written submissions address the following issues:

(1) the constitution, role, functions and powers of the authority, and the need for a body such as the Authority, having regard to the activities of other Commonwealth and State law enforcement agencies;

(2) the efficiency and effectiveness of the Authority;

⁶ In repealing the sunset clause, the Government stated:

The decision to continue the Authority beyond 30 June 1989 is a recognition of the valuable and innovative role which the Authority has played thus far in the fight against organised crime. In the last four years, the Authority has demonstrated the effectiveness of the task force approach in this fight. This approach uses teams of highly skilled lawyers, accountants and police investigators endowed with special powers beyond those available to police. The impact of the NCA has been felt in the areas of drug trafficking, white collar crime and the corruption of public officials. The other critical aspect of the NCA's operations is the support it enjoys from all States and the Northern Territory which participate in the Inter-Governmental Committee on the National Crime Authority chaired by the Commonwealth. (House of Representatives, *Hansard*, 24 February 1988, p. 627 (Hon. C. Holding, 2nd Reading Speech, Crimes Legislation Amendment Bill))

(3) accountability and parliamentary supervision of the Authority; and,

(4) the need for amendment of the *National Crime Authority Act 1984*.

The Committee received 56 submissions. The persons and organisations who made submissions are listed in Appendix 3.

1.4 Between November 1990 and October 1991, the Committee held a total of 12 public hearings in Adelaide, Brisbane, Canberra, Hobart, Melbourne and Sydney. A total of 64 individuals appeared to give evidence at these hearings. All were held in public with the exception of two short periods at the first hearing. Those who appeared are listed in Appendix 4.

1.5 The public hearing with the Authority held in Canberra on 29 July 1991 was the first occasion since its creation that the Authority has appeared before the Committee to give evidence in public. The hearing provided an increased opportunity for the Authority to respond in public to questions about its performance.

1.6 In addition to submissions and the evidence given at the hearings, the Committee has been able to draw on information provided by the Authority at the regular briefings it gives the Committee. The Authority responded in writing in July and August 1991 to questions from the Committee. The Committee also had discussions between June and September 1990 with:

- . the Commissioner, the Secretary and the Director of Operations of the Independent Commission Against Corruption;
- . the Director of the Cash Transaction Reports Agency;
- . the Commissioner of the Australian Federal Police;
- . officers from the Australian Taxation Office;
- . the Chief Commissioner of the Victoria Police; and
- . the Acting Commissioner and senior officers of the South Australia Police Department.

Changes at the Authority - Effect on the Evaluation

1.7 Since the Committee began its evaluation, important changes have occurred involving the Authority. These include:

- . the appointment of a new Chairman, the Hon. Justice John H. Phillips from the Victorian Supreme Court, on 14 August 1990;⁷
- . the preparation by Justice Phillips of *Chairman's Proposals for Future Directions: A Submission to the Inter-Governmental Committee*, 15 November 1990, which proposed a major reorientation in the direction and form of the Authority's work;⁸
- . the endorsement of Future Directions on 23 November 1990 by the Inter-Governmental Committee of Commonwealth, State and Territory Ministers who monitor the work of the Authority;⁹
- . the opening of newly-established Authority offices in Perth on 1 August 1991 and Adelaide on 2 August 1991;¹⁰ and
- . the publication on 1 August 1991 of the Authority's *Corporate Plan July 1991-June 1994*, which represented the culmination of a process that began with the Arthur Andersen report.

1.8 On 21 September 1990, the Hon. Michael Duffy MP, the Attorney-General and Chairman of the IGC, replied to the Committee's invitation to make a submission.¹¹ He told the

7. On 11 November 1991, when preparation of this report was virtually complete, it was announced that Justice Phillips would be leaving the Authority to take up the position of Chief Justice of Victoria on 17 December 1991.

8. See Appendix 1 for the text of this 'Future Directions' submission.

9. See paras. 6.20 - 6.23 below for the composition and functions of the Inter-Governmental Committee (IGC).

10. On 21 August 1990, the Attorney-General announced that the Commonwealth Government had approved the establishment, during the next three years, of permanent Authority offices in Adelaide, Brisbane and Perth, to supplement existing permanent offices in Melbourne and Sydney: NCA submission, p. 9. The Authority had operated temporary offices in Perth (1985-87) and Adelaide (1989-91).

11. Letter from the Attorney-General to the Committee dated 21 September

Committee that the request for submissions had been discussed by the IGC at its meeting in Melbourne on 31 August:

The IGC unanimously held the view that, in light of the very recent appointment of the Hon Mr Justice J H Phillips as Chairman of the NCA, it is most inappropriate for the PJC to be undertaking a review at this time. ... The IGC also agreed that neither the IGC members nor their respective agencies would be providing individual submissions to the PJC review. It was decided that the IGC would put in a joint submission after the November IGC meeting, which would reflect the IGC's consideration of the NCA Chairman's November report.

1.9 The Governments represented on the IGC did not make submissions. State and Federal agencies, however, did provide submissions and appeared before the Committee at hearings.¹²

1.10 The IGC's submission, dated April 1991, noted the IGC's August 1990 view that the timing of the Committee's evaluation was inappropriate:

All members of the IGC still are of this view, and particularly now that the new Chairman of the NCA has announced plans for the future directions of the Authority which constitute significant adjustments of former arrangements and strategies. Conducting a 'root and branch' review prior to the implementation of these plans would seem to be of academic, historical interest only, and carries with it the real risk that the PJC's evaluation will therefore be based on irrelevant, dated material. A flawed evaluation is most likely to adversely affect the effectiveness of the NCA and wider law enforcement efforts.¹³

1990.

^{12.} See Appendixes 3 and 4 for details.

^{13.} pp. 1-2.

1.11 The Committee rejected the IGC's view, which conflicted with the Committee's statutory duty. The Committee recognised that there is no ideal time to exercise this duty, as changes will always be occurring at the Authority.¹⁴ Moreover, as the Authority noted: 'it is in some respects essential to consider the past effectiveness and efficiency of an agency when considering its future role and activity'.¹⁵

1.12 Over half the submissions were received and one hearing was held before Future Directions, and the IGC's approval of it, were made public. Not all subsequent submissions and witnesses took Future Directions into consideration. The Committee recognised the need to take this into account in relying on the evidence it received.

^{14.} For example, see para. 5.82 below on the fact that the Authority's Corporate Plan is subject to annual review and updating.

^{15.} NCA, Written Answers, July 1991, A2.