

CHAPTER 2

OVERVIEW OF THE NATIONAL CRIME AUTHORITY

Creation of the Authority

2.1 The impetus for the Authority was generated in the late 1970s and early 1980s by widespread community and political concern about the impact of organised crime upon Australian society. A series of Royal Commissions conducted by Justices Moffitt, Woodward, Williams, Stewart and Mr Frank Costigan QC were instrumental in identifying the existence of organised crime in Australia.¹⁶

2.2 In its *Initial Evaluation* report, the Committee's predecessor¹⁷ highlighted several reasons why existing law enforcement agencies were in the early 1980s believed to lack the capacity to deal with organised crime:¹⁸

- . criminal investigation was traditionally reactive rather than proactive;
- . organised crime was able to transcend administrative, jurisdictional and even national boundaries, while Australian law enforcement efforts were fragmented, with a failure to exchange information between agencies, or even within single

16. See the discussion paper by the Hon. M.J. Young, Special Minister of State, and Senator the Hon. Gareth Evans, Attorney-General, *A National Crimes Commission?*, AGPS, Canberra, 1983, p. 3 for a list of the reports from these Royal Commissions and from other pertinent inquiries.

17. The Committee ceases to exist when the House of Representatives is dissolved for an election: NCA Act, s. 53(4). A new Committee is created at the beginning of each new Parliament. The Committee was initially created in 1984, and has been re-established by newly-elected Parliaments in 1985, 1987 and 1990.

18. Parliamentary Joint Committee on the National Crime Authority, *The National Crime Authority - An Initial Evaluation*, May 1988, para. 2.23.

agencies;

- . police forces lacked the resources and specialist expertise, such as lawyers, accountants and computer specialists, needed to attack criminal syndicates; and
- . police forces lacked the coercive powers needed to secure evidence and documents.

2.3 As a reflection of community concerns, governments in Australia began to consider the need for a new law enforcement agency at the national level, equipped with special powers, skills and resources, to lead the fight against organised crime. In December 1982, Parliament enacted the *National Crimes Commission Act 1982*. This Act was not brought into operation before the change of Government in March 1983. The in-coming Government decided to review the legislation.¹⁹

2.4 As part of the review a discussion paper was issued,²⁰ and a two-day national conference was held.²¹ A National Crime Authority Bill was introduced into the Senate on 10 November 1983. On 17 November, the Bill was referred for examination to a Senate Committee, which tabled its report on 1 May 1984.²² Many of the amendments recommended by the Committee were accepted by the Government.²³ Further amendments were made by the Senate, and

19. The new Government argued that the legislation gave no role to and lacked the support of the States; had ill-defined functions; had insufficiently defined and limited powers; and lacked over-riding safeguards like oversight by the Ombudsman and regular judicial audits: Senate, *Hansard*, 10 November 1983, p. 2492 (Senator the Hon. Gareth Evans).

20. The Hon. M.J. Young, Special Minister of State, and Senator the Hon. Gareth Evans, Attorney-General, *A National Crimes Commission?*, AGPS, Canberra, 1983.

21. National Crimes Commission Conference, Parliament House, Canberra, 28-29 July 1983.

22. Senate Standing Committee on Constitutional and Legal Affairs, *The National Crime Authority Bill 1983*, AGPS, Canberra, 1984.

23. See Senate, *Hansard*, 10 May 1984, p. 1969 (Senator the Hon. Gareth Evans QC, Ministerial Statement): 'Of the total of 49 recommendations of

the legislation came into effect on 1 July 1984. The National Crime Authority created by the legislation was supported by the State and Northern Territory Governments, which all passed legislation to underpin the Commonwealth legislation.

Structure and Powers of the Authority

2.5 The following section gives a brief outline of the Authority's structure, functions and powers. It is intended for readers unfamiliar with these matters. Other readers may prefer to move directly to paragraph 2.17.

2.6 The Authority commenced operation in July 1984. At present it consists of a full-time Chairman and three full-time members. All are lawyers. The longest period that the NCA Act permits a Chairman or member to serve on the Authority is four years.²⁴ The Authority uses the services of police seconded to it from Federal, State and Territory police forces. It does not employ any police itself.²⁵

2.7 The Authority is accountable in most respects to the Commonwealth Attorney-General. In some respects the Authority is also accountable to an Inter-Governmental Committee whose structure and functions are explained in paragraphs 6.20 - 6.23 below. The IGC provides a means for relevant State and Territory Ministers to participate in the supervision and monitoring of the Authority.

2.8 The functions of the Authority are limited to matters relating to 'relevant criminal activity'. Section 4 of the Act defines this as: 'any circumstances implying, or any allegations, that a relevant offence may have been, or may be being, committed against a law of the Commonwealth, of a State or of a Territory'.

the Committee, 31 are supported wholly or without any significant change, and 8 are supported with some modifications'.

24. NCA Act, s. 37.

25. Evidence, p. 1683 (NCA).

2.9 To interpret this it is necessary to have regard to the meaning of the term 'relevant offence'. Section 4 also defines this term in a definition which takes up four-fifths of a page in the Act. In summary, a relevant offence is one which:

- . is punishable by imprisonment for three or more years;
- . involves two or more offenders and substantial planning and organisation;
- . ordinarily involves sophisticated methods, and is committed in conjunction with other offences of a similar kind; and
- . involves theft, fraud, tax evasion, currency violations, illegal drug dealings or gambling, obtaining financial benefit from vice engaged in by others, extortion, violence, bribery or corruption of public officials, bankruptcy and company violations, harbouring of criminals, forging of passports, armament dealings or illegal international trade in fauna, or that involves matters of the same general nature as one or more of the foregoing, or that is of any other prescribed kind.

2.10 The functions of the Authority are defined in section 11 of the NCA Act and are divided into two categories: general functions and special functions. The Authority may only use certain of its coercive powers in relation to its special functions. These powers include the ability to hold private hearings at which persons can be required to attend and give evidence and to require persons to provide documents to the Authority.

2.11 Special functions consist of the investigation of matters referred. References may be made in two ways. Under section 13, the Commonwealth Minister, after consulting the IGC, may refer a matter. Under section 14, the relevant State or Territory Minister may, after obtaining the approval of the IGC, also refer a matter.

2.12 Section 10 provides for the Authority to approach the IGC and request approval for a matter to be referred by a Minister or Ministers. The Authority has stated that it does not usually seek a special reference unless it considers that the special powers are

needed.²⁶ Since its establishment in July 1984, the Authority has sought references for 12 matters, all of which it has been given. A given matter may be investigated pursuant to both Commonwealth and State references where the alleged offences involve both Commonwealth and State laws.²⁷

2.13 The general functions of the Authority are listed in subsection 11(1) of the NCA Act. As with special functions, all must relate to 'relevant criminal activity'. In summary, they are:

- (a) to collect, analyse and disseminate to law enforcement agencies criminal intelligence;
- (b) to investigate any subject of its own choosing;
- (c) to seek or arrange for the establishment of investigative Task Forces of various kinds: Commonwealth, State, or Joint Commonwealth-State; and
- (d) to coordinate investigations by Commonwealth Task Forces, and, with the concurrence of the States concerned, Joint Commonwealth/State or State Task Forces.

2.14 Section 17 of the NCA Act requires the Authority to work with other agencies:

(1) In performing its functions under this Act, the Authority shall, so far as is practicable, work in co-operation with law enforcement agencies.

(2) In performing its functions under this Act, the Authority may co-ordinate its activities with the activities of authorities and persons in other countries performing functions similar to functions of the

26. NCA, *Annual Report 1989-90*, p. 24.

27. For example, Matter Ten, involving company law and fraud offences, is being carried out pursuant to Commonwealth Reference No. 9 (21 December 1989), Victorian Reference No. 4 and South Australian Reference No. 3 (both approved by the IGC on 9 March 1990): NCA, *Annual Report 1989-90*, p. 22.

Authority.

2.15 Subsection 12(3) of the NCA Act provides that the Authority may, as a result of performing its functions, make a recommendation to the Commonwealth Minister or relevant State Minister for reform of the law relating to relevant offences in the following areas: evidence and trial procedure; offences involving or relating to corporations; taxation, banking and financial frauds; reception by Australian courts of evidence obtained overseas as to relevant offences; and maintenance and preservation of taxation, banking and financial records. In addition, the subsection provides that the Authority may recommend reform of administrative practices, including those of courts in relation to trials of relevant offences.

2.16 In carrying out or coordinating an investigation under either its special or general functions, the Authority may obtain evidence that would be admissible in a prosecution for offences against relevant laws. When it does so, it must provide the evidence to the appropriate Attorney-General, prosecuting authority or other law enforcement agency. The Authority must similarly provide information to assist in the taking of appropriate civil remedy actions against offenders.

Statistical Profile of the Authority - 1984-91

2.17 The following tables and graphs set out statistics provided by the Authority, which provide a useful insight into its activities since 1984. The Committee cautions, however, against using the statistics in a simplistic way to make definitive conclusions about the Authority. The use of statistics to measure law enforcement agency performance is controversial. The Committee received many differing views on the issue.²⁸ The predominant view was that the

28. See for example Evidence, p. 656-57 (Police Association of NSW); p. 698 (NSW Bar Association); p. 818 (NSW Law Society); p. 1178 (Tasmania Police); p. 1280 (Assistant Commissioner Graham Sinclair); pp. 1500-01 (Mr Russell Hogg); p. 1679 (NCA); submission from Mr Paul Delianis, p. 2; submission from the IGC, p. 13. See also C. Corns, 'Evaluating the

Authority's worth should not be assessed, for example, primarily by statistics on arrest and conviction rates.

2.18 There has been some involvement of other law enforcement agencies with many of the Authority's investigations. In using the statistics, the difficulty of separating the Authority's contribution from that of other agencies needs to be kept in mind.²⁹

TABLE 1: AUTHORITY STAFFING

As at 30 June	<u>1984-5</u>	<u>1985-6</u>	<u>1986-7</u>	<u>1987-8</u>	<u>1988-9</u>	<u>1989-90</u>	<u>1990-1</u>
Approved Average Staffing Level	134	226.5	258.7	266.4	283.5	296.1	302.2
Actual Staff	207	320	320	354	397	426	377

2.19 Seconded police are included in the 'actual staff' figures in the table. However, provision is not made for seconded police in calculating the 'approved average staffing level'. Therefore the numbers of police seconded to the Authority can be roughly estimated by assuming that the Authority was staffed to its approved level and subtracting the 'approved average staffing level' figure from the 'actual staff' figure for the corresponding year. At 30 June 1990, the 426 staff were based as follows: Sydney, 224; Melbourne, 158; and Adelaide, 44.³⁰

2.20 Table 2 on the next page shows Authority expenditure and receipts from 1984 to 1991. The following comments relate to the

National Crime Authority', *Law Institute Journal*, September 1991, p. 829.

29. cf. Evidence, p. 395, where Mr Henry Rogers, a member of the Authority's staff, told the Committee on 5 November 1990: 'There is a suspicion within the staff of the Authority that figures are being claimed as NCA successes that the NCA has had virtually nothing to do with'.

30. NCA, *Annual Report 1989-90*, p. 56.

Table:

- Dollar amounts show historic costs and receipts: they have not been adjusted for inflation.
- The 'revenue' item in Table 1 shows the amounts paid by the States and Northern Territory. Seven of the twelve Matters

TABLE 2: AUTHORITY EXPENDITURE AND REVENUE

Year ending 30 June	Expenditure (\$000)					Revenue (\$000)	Total Outlays (\$000)
	Salaries O/time	Administrative	Plant and Equipment	Property	Total		
1985	2,431	3,381	-	-	5,812	-	5,812
1986	6,713	5,009	800	-	12,522	4	12,518
1987	8,204	6,781	242	-	15,227	694	14,533
1988	8,740	7,152	471	-	16,363	1,907	14,456
1989	10,390	9,096	1,515	-	21,010	5,735	15,275
1990	11,350	11,977	-	4,122	27,449	7,333	20,116
1991	12,214	12,573	-	4,272	29,059	6,654	22,405
Total	60,042	55,969	3,028	8,394	127,442	22,327	105,115

investigated by the Authority are subject to cost-sharing arrangements between the Commonwealth and one or more States or the Northern Territory.³¹ For example, Authority Matter Number Ten, an investigation into alleged violations of company law and fraud offences, is being conducted under a

31. NCA, *Annual Report 1989-90*, pp. 63-64 states that cost-sharing arrangements apply to Matters One, Six to Ten, and Twelve. The basic cost-sharing formula is set out on p. 63, and is subject to negotiated variations for individual Matters.

cost-sharing arrangement between the Commonwealth, South Australia and Victoria.³²

- . Costs associated with the establishment and operation of the Authority's temporary office in Adelaide and with South Australian Reference No. 2³³ are fully reimbursed by the South Australian Government, rather than being subject to a cost-sharing agreement.³⁴ These costs between 1 January 1989 and 30 June 1991 totalled nearly \$8.3 million.³⁵ The reimbursement is included in the 'revenue' figures.

- . The Table does not show the full cost of the Authority to the taxpayer. Until 1989-90, property expenses were not charged to the Authority's appropriation. They were met from funds allocated to the Department of Administrative Services. Costs of monitoring the Authority by the IGC and this Committee are not included in the Table.

- . In addition, the Table does not reflect the fact that the salaries of most police seconded to the Authority are met by their home forces.³⁶ These salaries costs are considerable. The Committee was told that in 1989-90 Victoria paid the Authority \$1.174 million under cost-sharing agreements. It also bore the \$1.181 million cost of the salaries of 40 Victoria Police officers

32. NCA, *Annual Report 1989-90*, p. 64.

33. This reference was issued on 24 November 1988. It concerned allegations of bribery and corruption of, or by, police officers and other South Australian officers, illegal gambling, extortion and prostitution, drug offences, and murder or attempted murder: NCA, *Annual Report 1989-90*, p. 21.

34. NCA submission, p. 25.

35. Figure supplied to the Committee by the Authority.

36. The services of seconded police are used by the Authority pursuant to ss. 49 and 58 of the NCA Act. In performing services for the Authority, seconded police remain officers of their home force and retain the associated powers and liabilities: NCA submission, p. 41.

seconded to the Authority.³⁷

- . minor capital items (less than \$250,000) are now included under 'administrative' expenditure; prior to 1990, they are shown under the 'plant and equipment' expenditure.

37. Evidence, p. 1257 (Assistant Commissioner Graham Sinclair).

TABLE 3: STATISTICS RELATING TO ALL AUTHORITY INVESTIGATIONS

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>	<u>1990-91</u>
Requests made for information (s.19A)	-	(3) ¹	8(9) ¹	1	7	137	-
Requests made for documents (s.19A)	-	(9) ¹	(21) ¹	3	-	3	-
Requirements to furnish information (s.20)	-	1	-	-	-	-	1
Requirements to produce documents (s.20)	-	-	-	-	-	1	1
Orders made under s.16(4HD) Income Tax Assessment Act for disclosure of information	-	-	-	-	-	7	-
Orders made under s.3D(7) Taxation Administration Act for disclosure of information	-	-	-	-	-	-	2
Approx total pages received from the ATO pursuant to s.16(4)(m) ITAA and s.3D(1) Taxation Admin Act	37000	67000	33000	20400	9970	6167	4363
Number of files created	344	739	489	300	205	276	118
Search warrants granted under s.22	-	-	-	7	19	66	-
Applications by telephone for search warrants (s.23)	-	-	-	-	-	-	-
Search warrants granted otherwise than under NCA Act	11	99	98	140	105	139	200
Warrants granted for telecommunications interceptions	-	15	15	21	45	35	28

Warrants granted authorising use of listening devices ²	-	38	30	104	102	57	24
Public sittings	1	-	-	2	1	1	-

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>	<u>1987-88</u>	<u>1988-89</u>	<u>1989-90</u>	<u>1990-91</u>
Orders granted authorising monitoring of financial institution accounts	-	-	-	-	-	8	-
Witnesses examined at s.28 hearings	100	236	237	336	159	144	171
Exhibits received in s.28 hearings	155	915	359	323	659	441	388
Approximate total pages	24000	83000	27000	22000	45041	19267	6065
Notices issued under s.29	-	190	265	499	378	418	381
Documents produced to NCA under s.29	-	942	936	1100	1410	1992	695
Approximate total pages	-	55000	68000	80000	43825	19374	11462
Documents seized under search warrant (pages)	700	550000	50000	213000	54820	14462 ³	12935
Approx total pages provided to NCA by other agencies	536000	762300	299000	339000	8700 ³	147250 ³	48851
Number of files created	5292	9066	6399	9467	5232	7902	2162
Witnesses protected (s.34)	-	2	5	9	5	10	5
Persons charged with breach of secrecy provision (s.51)	-	-	-	-	-	-	-
<u>Applications for orders of review pursuant to AD(JR) Act⁴</u>	-	-	-	3	-	-	-

1. The figures in brackets represent additional requests for information from agencies falling within the ambit of s.19A, but for which it was unnecessary formally to invoke its provisions.

2. Includes renewals of existing warrants.

3. Figure is understatement; unpaginated documents recorded as having only one page by the Authority's computerised registry system.
4. One not proceeded with. In addition, there were six applications to the Federal Court pursuant to s.32 of the Act in 1987/88.

**TABLE 4: TAXATION AND PROCEEDS OF CRIME RESULTS
at 30 June 1991**

Matter No.	Understated/ undeclared income notified to ATO ³⁸	Material assistance given to ATO in issue of assessments	Assessments issued by ATO ³⁹	Proceeds of crime (amounts frozen or secured) ⁴⁰
One	4,105,000	several million ⁴¹	2,955,000	
Two	6,860,000	-	4,454,841	10,000,000 ⁴²
Three	-	-	3,544,754	7,200,000 ⁴³
Four	1,185,000	14,700,000	5,096,531	
Five	4,400,000	-	-	
Six	5,000,000	-	542,421	
Seven	469,191	-	11,552,951	
Eight	607,121	-	4,855,198	2,802,000 +US\$84,800
Twelve	-	-	14,000,000+	9,000,000

38. Notification of understated/undeclared income by the Authority to the Australian Taxation Office can and has led to the issue of taxation assessments. The figures shown in this column do not include matters where taxation assessments have later been issued by the ATO.
39. The figures in this table show the total assessments issued as at 30 June 1991 by the ATO. Where assessments previously issued as a result of Authority investigations have been amended or withdrawn by the ATO, only the latest figure (as at 30 June) is shown.
40. Includes the value of assets seized under the *Customs Act 1901* as well as under proceeds of crime legislation.
41. No assessment has been issued to date as a result of this information and precise figures cannot be provided at this time.
42. This amount is less than the \$19.1m shown in the Authority's Annual Report for 1989-90, p. 33. The decrease resulted from a Commonwealth Director of Public Prosecutions decision to release certain property which was then sold, so as not to disadvantage a mortgagee.
43. This is the total value of orders obtained against Bruce Richard Cornwell and Barry Richard Bull, the two principals convicted as a result of investigations under Matter No. Three. The value of identified assets may not equal this amount.

Total	\$22,626,312	\$14,700,000 + several million	\$47,001,696	\$29,002,000 +US\$84,800
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2.21 The amounts listed in Table 4 under 'Assessments issued by ATO' are unlikely to be recovered in full. For example, in Matter Number Three, by late 1987 assessments had been issued against eight taxpayers for a total of \$1,535,975.⁴⁴ Of this amount, \$469,513 (30.6%) had been received by the ATO. Two of the taxpayers had paid in full. Two who still owed money to the ATO had no assets, and two others had no assets in Australia.⁴⁵

2.22 Table 4 does not show the total amount actually recovered by the Commonwealth as a result of Authority activities. It is not possible to say whether the Authority 'pays its way' - that it recoups more than it costs to run. In any event, the Committee does not consider it appropriate that law enforcement bodies like the Authority should aim for full cost-recovery or be judged by this criterion.

2.23 The graph below shows the number of people charged as a result of Authority investigations. The Authority's December 1990 submission set out the types of charges involved. Fifty-four per cent of persons arrested were charged with drug-related offences. The next largest category was taxation and fraud offences, with twelve per cent of those arrested. Other categories were: theft and goods in custody, ten per cent; firearms offences, eight per cent; passport and immigration offences, five per cent; bribery and secret commission offences, four per cent; murder and serious assault, three per cent; and other offences, four per cent.⁴⁶

44. National Crime Authority, *Operation Silo: Report of the Investigation*, AGPS, Canberra, 1987, p. 27.

45. *ibid.* The Report does not indicate if the two remaining taxpayers had sufficient assets to enable to ATO to recover the amounts assessed as owing.

46. NCA submission, p. 28. The submission notes that persons charged with more than one category of offence have been included in the figures for each relevant category.