

CHAPTER 4

THE NEED FOR A NATIONAL CRIME AUTHORITY?

Views that the Authority should be Abolished

4.1 The Queensland Council of Civil Liberties told the Committee in November 1990: 'we consider that if the National Crime Authority is not prepared to make itself more accountable then it should simply be abolished'.¹⁴¹ In November 1990 and again in February 1991 the Victorian Council for Civil Liberties also called for the abolition of the Authority in its present form.¹⁴² It was highly critical of what it perceived as a lack of effective scrutiny of the Authority, the consequent dangers posed by the Authority's special powers to the rights and liberties of Australian citizens and the Authority's lack of success in prosecuting offenders.¹⁴³

4.2 The South Australian Council for Civil Liberties made similar criticisms when its representative appeared before the Committee on 4 February 1991.¹⁴⁴ It argued that 'based on the available information, the retention of the NCA as an independent instrumentality is difficult to justify'.¹⁴⁵ The submission from the

141. Evidence, p. 537.

142. Evidence, pp. 341, 342, 347, 1384-85, 1388. See also Evidence, p. 822 where Mr John Marsden, Senior Vice-President of the NSW Law Society, expressed personal support for the Victorian Council's view on abolition, although he noted that the Law Society had not expressed a view on the issue.

143. Evidence, pp. 1436-40.

144. Evidence, pp. 932-34.

145. Evidence, p. 933.

New South Wales Council for Civil Liberties, dated January 1991, called 'for the repeal of the National Crime Authority Act on the basis that there is no information to assess the efficiency or effectiveness of the Authority'.¹⁴⁶

4.3 Mr Henry Rogers, an employee of the Authority, gave evidence in an individual capacity on 5 November 1990. He pointed to what he regarded as the highly inefficient duplication among Federal law enforcement agencies. As a solution, he proposed that the Authority should be merged with the Australian Federal Police and other agencies to create a single Federal investigatory agency.¹⁴⁷ The submission, dated 20 December 1990, from Mr Michael Holmes, another Authority staff member, made a similar proposal.¹⁴⁸

4.4 The Police Association of South Australia was highly critical of the Authority's record, and asserted that the Authority had 'failed' to achieve the objectives for which it was designed.¹⁴⁹ The Association told the Committee on 4 February 1991 that, in comparison to the situation when the decision was made to establish the Authority, police forces in Australia were now more proactive, more competent, better trained, had far less corrupt officers, and possessed somewhat greater powers.¹⁵⁰ The work of the Australian Bureau of Criminal Intelligence had 'changed the face of intelligence collection and assessment and inter-jurisdictional data exchange and cooperation'.¹⁵¹ The ABCI was the appropriate body to assume the Authority's intelligence role.

To summarise, the Police Association of South Australia

146. p. 1.

147. Evidence, pp. 397-98, 401. The agency envisaged would investigate federal offences and 'those major offences of organised crime which cut across State borders'.

148. p. 29.

149. Evidence, p. 897.

150. Evidence, pp. 898-99.

151. Evidence, p. 898.

believes that the criteria necessary for the setting up of the NCA can be easily and successfully met by State forces and believes that consideration should be given to disbanding the NCA in its present form.¹⁵²

The Association also asserted that if the Authority were abolished, Authority resources could be distributed and duplication ended.¹⁵³

4.5 The Police Association of New South Wales took a similar view: 'Most definitely the optimum result would be for the phasing out of the National Crime Authority and the distribution of its resources and powers to police forces of Australia'.¹⁵⁴ The Association referred to 'the enormous changes that the State and Federal police have undertaken internally in the past five years' as removing the need for the Authority.¹⁵⁵

4.6 The submission from the Queensland Law Society, dated 27 September 1990, noted:

Since the creation of the NCA there have been other legislative steps designed to inhibit and detect the operations of major organised crime, e.g. (by the Commonwealth) the tax file number system and the Cash Transaction Reports Agency and, (by the States) in the formation of permanent corruption inquiries. In all the circumstances there appears to be no persuasive case that the National Crime Authority has fulfilled its objectives or that it is operating as an efficient, effective and accountable investigatory body.

152. Evidence, p. 899.

153. Evidence, p. 899. See also the submission from the Police Federation of Australia and New Zealand, dated 21 October 1990, p. 2: 'Since 1984 Police organisations have been and continue to be developed and legislatively encouraged in the investigation of large scale, and indeed all crime, to a stage that today there is little, if any, professional need for the NCA'.

154. Evidence, pp. 642-43.

155. Evidence, p. 655.

On behalf of the Council of the Society it is submitted that serious consideration should be given to the need and desirability of the continued existence of such a permanent authority.¹⁵⁶

Arguments that the Authority Should Continue

4.7 The majority of submissions and evidence expressed support for the continued existence of the Authority. For example, in his submission dated 7 November 1990, Mr R.F. Redlich QC stated that nothing that had happened since 1984 'has caused me to reconsider the view that I expressed ...[then] that the need for a National Crime Authority is beyond debate'. Although there was considerable criticism of the Authority's focus in the past and of some of its activities, there was wide support for the general reasons for which the Authority was established. For example, the Hon. Athol Moffitt CMG, QC, a former President of the New South Wales Court of Appeal, told the Committee:

I agree the Authority has substantially failed to perform its intended purpose as a national body, but I strongly disagree with those who argue that in consequence it should be disbanded. On the contrary, some such body is essential. Planned corporate and planned tax crime, organised crime otherwise and institutional corruption extending across the nation, often with offshore connections, was and still is, in my view, so extensive it cannot be dealt with by conventional police methods.¹⁵⁷

4.8 Mr Frank Costigan QC said in September 1990 that it was clear there was a need for a national body. However, the Authority had to alter its role: 'Quite frankly, unless the Authority is prepared to take that course, it cannot justify its continued existence and

156. p. 4.

157. Evidence, p. 761.

should be abolished'.¹⁵⁸

4.9 On 5 November 1990, the Hon. Justice Frank Vincent told the Committee he thought there was a need for a national body, but that the Authority had to re-focus its activities.¹⁵⁹ The Police Federation of Australia and New Zealand made a similar point on 21 November 1990: the Authority should not be abolished but it needed to have its emphasis changed and its direction clearly defined.¹⁶⁰

4.10 The general view expressed in submissions and evidence on the issue was that organised crime, despite the efforts of the Authority and other law enforcement agencies, remains a major law enforcement problem in Australia. The Committee was not presented with any evidence that suggested organised crime would, in the foreseeable future, cease to be a priority of law enforcement efforts.

4.11 The Authority's submission, dated December 1990, argued for its continued existence on the following grounds:¹⁶¹

- . the continuing problem of organised crime at the national level in Australia;
- . the fact that conventional police work is directed towards individuals and individual crimes, rather than towards detecting patterns of illegal activity.
- . police capacity, although greatly improved, was still

158. Frank Costigan QC, 'Anti-Corruption Authorities in Australia', text of an address to the Labor Lawyers' Conference in Brisbane on 22 September 1990, p. 16. See para. 5.90 below for an outline of what Mr Costigan thought the Authority's role should be.

159. Evidence, pp. 373, 376. See para. 5.91 below for Justice Vincent's views on how the Authority should alter its direction.

160. Evidence, pp. 497-98, 499.

161. p. 7. The submission noted that the reasons for its continued existence are much the same as those identified by the Royal Commissions which preceded its establishment: p. 44.

- insufficient to deal with organised crime;
- . the jurisdictional and statutory problems of the Australian federal system; and
- . the coercive powers to compel the appearance of persons and production of documents which are needed to combat organised crime are not likely to be granted to other agencies.

4.12 The Authority further stated in its submission:

The National Crime Authority believes it is positioned to act as a national partner and, on occasions, co-ordinator of law enforcement agency efforts against organised crime, and can offer unique services (resources and powers) to complement the work of its fellow agencies.¹⁶²

4.13 The Authority conceded that although there was scope for debate about the precise role and functions of the Authority the experience of the past six years 'establishes beyond doubt the need for such a body in Australian law enforcement'.¹⁶³

4.14 Strong support for the Authority was also expressed in the submission by the IGC, dated April 1991, which noted: 'The unanimity of purpose that led to the establishment of the NCA continues to exist'.¹⁶⁴ The IGC's submission stated:

The IGC is of the view that the NCA remains the most effective national vehicle for countering organised crime that can be devised, given the division of responsibilities amongst the Australian jurisdictions and the need to balance effectiveness with accountability and regard to individual liberties.¹⁶⁵

162. p. 7.

163. NCA submission, p. 8.

164. p. 8.

165. pp. 8-9.

The submission also stated: 'The IGC agrees with the conclusion of a previous report of the PJC that the achievements and unique functions of the NCA justify the continuing support of parliaments and governments'.¹⁶⁶

4.15 In the 17 September 1990 submission of the Western Australia Police, Commissioner Brian Bull said that from his force's perspective, there were 'no serious concerns' in relation to the constitution, role, functions and powers of the Authority:

The need for the Authority as a National mechanism of investigation, inquiry and a disseminator of information and intelligence to agencies is endorsed in the recognition that law enforcement agencies would not singularly be resource capable of addressing this function.¹⁶⁷

4.16 The submission from the Tasmania Police, dated 17 September 1990, stated:

This submission is made on the basis that Tasmania Police is totally supportive of the concept of a National Crime Authority established for the purposes of combating organised crime where the existing circumstances are such that resources and powers of the conventional law enforcement agencies of this country are considered inadequate.¹⁶⁸

The submission argued that the need for the Authority has been well recognised. It arose from the fragmented law enforcement structure brought on by a federal political structure; the need for an organisation to coordinate matters which cross State and national boundaries and are of national significance; the capability to operate

166. p. 3.

167. p. 1.

168. p. 1.

with resources not available to State police forces; and the ability to exercise coercive powers not available to traditional law enforcement agencies.¹⁶⁹

4.17 The submission from the Australian Customs Service, made in September 1990, stated:

It is the view of the Australian Customs Service that a body such as the Authority is in a position to make a positive contribution in the fight against criminal activity, particularly organised crime. The NCA activities are seen to be complimentary to those undertaken by the ACS in its law enforcement activities.¹⁷⁰

4.18 The South Australian Police Commissioner, Mr David Hunt, told the Committee:

I fully support the concept of an independent investigative body, adequately empowered and resourced, which has the unqualified backing of government and which is dedicated to the task of combating corruption and sophisticated criminal activity of an organised character. Accordingly, the NCA, a body which most closely approaches this ideal, has my full support.¹⁷¹

4.19 In general, Australia's divided and often fragmented system of jurisdictions and legislation was portrayed before the Committee as a major obstacle to combating organised criminal activity, which in Australia crosses boundaries and jurisdictions. Consequently, a body with a national focus like the Authority, was generally perceived as essential in overcoming this obstacle. State and Territory based law enforcement agencies were regarded as still lacking the capacity to deal with organised crime in Australia.

169. p. 5.

170. p. 5.

171. Evidence, p. 956.

The Committee's View

4.20 A suggested alternative to the retention of the Authority would be to upgrade other agencies so that they could take over the functions of the Authority.¹⁷² As examples, the Authority's function of collecting, analysing and disseminating intelligence might be transferred to an upgraded Australian Bureau of Criminal Intelligence;¹⁷³ and the Authority's functions relating to coordination of investigations and joint task forces might be taken over by an upgraded Australian Federal Police.¹⁷⁴ The Committee was told that the powers and abilities of police had improved considerably since 1984 when the Authority was established.¹⁷⁵ The upgrading required for police to take on the Authority's functions might well be less than it would have been in 1984.

172. See the views of the South Australian and New South Wales Police Associations quoted in paras. 4.4 and 4.5 above. See also the comment made to the Committee by Mr Russell Hogg, a Sydney academic: 'Some of the things that the NCA has been doing, clearly the principal things it has been doing, probably could be done by other law enforcement agencies, if they were resourced the way the NCA is, to a degree, and through cooperative arrangements like joint task forces and so forth': Evidence, pp. 1505-06.

173. Evidence, pp. 646, 659 (Police Association of NSW). See paras. 5.44 - 5.46 on the role of the ABCI and the extent which its activities overlap with those of the Authority.

174. Evidence, pp. 391-92 (Mr Henry Rogers).

175. See the views of the Police Associations of South Australia and New South Wales set out in paras. 4.4 and 4.5 above. See also the submission from the Australian Federal Police Association, p. 3. The NCA submission, p. 7 commented:

the capacity of police forces to combat organised crime has increased somewhat since 1984, through the provision of increased powers (to intercept telephone conversations and to gain limited access to tax records, for example), the recruitment of persons with accounting and legal skills, and through improvements in co-operation between agencies, for which the NCA believes it can claim some credit, and to which it intends to devote

4.21 The Committee was not given any detailed evidence that transferring Authority functions to other agencies would result in a net reduction in law enforcement costs or lead to overall increases in efficiency and effectiveness.

4.22 The Committee considers that the evaluation revealed broad-based support for the concept of the Authority and its continued existence as a nationally focused law enforcement agency, given the limits of the federal system and State-based law enforcement.

4.23 An advantage enjoyed by the Authority over traditional law enforcement agencies is its power to compel witnesses to appear and documents to be produced. The 1983 discussion paper noted: 'It is very doubtful that the community would be prepared at the present time to accord powers of this nature to the police'.¹⁷⁶ The Authority's December 1990 submission to the Committee stated: 'the coercive powers available to the NCA, which have been shown to be necessary to deal with organised crime, will on present indications not be made available to police forces'.¹⁷⁷

4.24 The Committee accepts that these coercive powers are necessary in combating organised criminal activity.¹⁷⁸ At the same time, the Committee does not consider that such powers ought to be conferred on police forces generally. Civil liberties groups indicated

increased resources.

176. 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. 6.

177. p. 7. Mr Lloyd Taylor, Secretary of the Police Association of NSW, told the Committee that, if history was any guide, there was still a reluctance to give the powers to the police. However, he also suggested that the public at large might support conferral of the powers on the police: Evidence, pp. 647-48.

178. See for example National Crime Authority, *Operation Silo: Report of the Investigation*, AGPS, Canberra, 1987, p. 6 for a description of the use of these powers in a particular investigation.

to the Committee that they were opposed to giving further coercive powers to police.¹⁷⁹

4.25 The transfer of the Authority's functions to other agencies would, in the Committee's view, weaken the national effort against organised crime. The 1983 discussion paper stated: 'There is an argument that the body tasked with the attack on organised crime must be out of the mainstream free of other pressures upon its resources or calls upon its time'.¹⁸⁰ At present, there is considerable pressure on the resources of police forces. This pressure might well limit their ability to address organised crime adequately, if they were asked to take on the Authority's functions.

4.26 The evaluation received cogent evidence of major deficiencies in aspects of past Authority activities. However, the deficiencies identified by those arguing for abolition can, to the extent that they are real, be remedied by less drastic means than abolishing the Authority. Indeed, many of them have already been addressed by the Authority.

4.27 The Committee believes that the Australian federal system, with its complex political, administrative and legal frameworks, makes the Authority an essential part of Australian law enforcement. The Committee accepts that the reasons that led to the establishment of the Authority remain valid. The continuing presence of organised crime in Australia, able to use sophisticated methods and cross jurisdictional boundaries, convinces the Committee of the need for the Authority.

4.28 The Committee supports retention of the Authority. It recognises, however, that the Authority's role and functions should be critically evaluated.

179. Evidence, p. 360 (Victorian Council for Civil Liberties); pp. 538-39, 564 (Queensland Council of Civil Liberties); p. 745 (NSW Council for Civil Liberties); p. 936 (South Australian Council for Civil Liberties).

180. 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. 6.