

CHAPTER 5

FUTURE DIRECTIONS FOR THE NATIONAL CRIME AUTHORITY

Future Directions and the Corporate Plan

5.1 In November 1990, the Hon. Justice Phillips made public his Future Directions paper. The changes set out in the paper are reflected in the Authority's *Corporate Plan July 1991 - June 1994*, which it publicly released on 1 August 1991.¹⁸¹ The Authority told the Committee in its submission: 'The Corporate Plan and the Future Directions are the NCA's best expression of what it perceives as its role in Australian law enforcement...'.¹⁸²

5.2 The Authority's change of focus was prompted in part by the criticisms levelled at the Authority.¹⁸³ Justice Phillips told the Committee in July 1991, however, that the change in emphasis he had brought to the Authority was in no way a reflection on the work of his predecessor, Justice Stewart:

His record stands for itself and, as a previously constituted committee of this sort found, he was responsible for putting some very desperate criminals behind bars. No-one can deny him that achievement. But circumstances changed, I felt. What was right for the early 1980s was not necessarily right for the

181. The NCA submission contains an earlier version of the main part of the Corporate Plan.

182. p. 18.

183. NCA Corporate Plan, p. 20.

1990s.¹⁸⁴

5.3 The change of focus was adopted by the Authority without public consultation or consultation with the Committee.

5.4 Before considering the focus provided by Future Directions and the Corporate Plan, the Committee notes the fact that for the first time there is a Corporate Plan. Its existence provides a basis for more constructive, informed and open debate on what the Authority's objectives and strategies ought to be. Moreover, the performance indicators built into the Plan will make the task of the Committee and others easier when it comes to assessing the Authority's efficiency and effectiveness.

5.5 The Committee stresses, however, that Future Directions and the Corporate Plan cannot alter the NCA Act. The basic criterion by which the Authority must be examined is how well it carries out the functions given to it in the Act. In assessing Future Directions and the Corporate Plan, the key issue is how well they assist the Authority to carry out these functions.

The Authority's Mission Statement

5.6 The Corporate Plan contains the Authority's mission statement:

The NCA's mission is to counteract organised criminal activity and reduce its impact on the Australian community, working in co-operation and partnership with other agencies.¹⁸⁵

5.7 The NCA Act does not use the phrase 'organised crime'. Instead the Act relies on the expression 'relevant offence', a phrase whose meaning was explained in chapter 2. The Authority is able, within the Act's definition of that phrase, to select its strategies.

184. Evidence, p. 1667.

185. p. 3.

Because of the breadth of the definition, the Authority has considerable latitude in doing so.

5.8 The Corporate Plan sets out the Authority's current working definition of organised crime:

The establishment of the NCA in 1984 was prompted by concern within the community about the level and impact of *organised crime* - a term which is frequently used, but which is rarely defined to everyone's satisfaction. For the purpose of describing the broader criminal environment, the NCA defines *organised crime* as *a systematic and continuing conspiracy to commit serious offences*.¹⁸⁶

5.9 The Authority told the Committee:

The definition of 'relevant criminal activity' in the NCA Act provides a reasonable benchmark against which to assess the type of crime the NCA should be investigating. The definition is neither overly restrictive nor too prescriptive. It was clearly the intention of the Parliament when the NCA legislation was enacted that the organisation should be involved in counteracting organised crime; however, the difficulty lies in the interpretation of what priorities the NCA should pursue in selecting matters for investigation or intelligence assessment.¹⁸⁷

5.10 The Committee recognises that there is no single definition of organised crime that is generally accepted.¹⁸⁸ The

186. p. 5, italics in original.

187. NCA, Written Answers, July 1991, A6. In its submission, p. 9, the NCA stated: 'The term 'organised crime' does not appear in the Act; the definition of relevant criminal activity contained in the Act can be considered as the legislature's way of defining this problematical term'.

188. On the lack of agreement on a definition, see for example, C. Corns, 'The National Crime Authority: An Evaluation', *Criminal Law Journal*, vol.

Authority's definition is not the only one that it could adopt. However, the Committee considers that the Authority's definition is consistent with the NCA Act and is an acceptable definition for the Authority to base its objectives and strategies upon.

5.11 The following are the main strands in the Authority's new emphasis:

- (a) a shift in the subject matter of its activities away from drug-related matters to serious white collar/corporate crime;
- (b) a more balanced emphasis on the various functions given to the Authority by the NCA Act, rather than the emphasis given by the Authority to the investigative function in the past;
- (c) a change in working methods, with coordination, cooperation and joint efforts replacing the more individual and isolated approach adopted by the Authority in the past; and
- (d) a greater emphasis on accountability and being less secretive than in the past.

De-emphasising Drug-Related Matters

5.12 The Authority has substantially reduced the emphasis it gives to direct drug-related investigations.¹⁸⁹ Since the Authority's shift in focus, no drug-related references have been given to it. Justice Phillips told the Committee:

although the NCA will continue to be involved in drug related inquiries, it will do that in a specialist way, concentrating on particular aspects of them like strategic intelligence, money laundering, the transfer of

13(4), August 1989, p. 241. An attachment to the submission from the Australian Federal Police Association listed 10 different definitions of 'organised crime'. The Fitzgerald Report commented: 'an exhaustive definition of organized crime is both impossible and unnecessary': Queensland, *Report of a Commission of Inquiry Pursuant to Orders in Council Dated (i) 26 May 1987 (ii) 24 June 1987 (iii) 25 August 1988 (iv) 29 June 1989*, Government Printer, Queensland, 1989, p. 162.

189. Future Directions, p. 5.

moneys internationally to support this criminal conduct, the identification of relevant law reform and the provision of ethnic officers as interpreters.¹⁹⁰

5.13 Justice Phillips asserted that police services have greatly increased their expertise in the area of drug related inquiries.¹⁹¹ He also commented that the shift in direction by the Authority away from drug investigations has improved the relationship between the Authority and other law enforcement agencies.¹⁹²

5.14 Some witnesses regarded the Authority's justification for changing its emphasis as inadequate.¹⁹³ In addition, Inspector John

190. Evidence, pp. 1667-68.

191. Evidence, p. 1667.

192. 'NCA's brave new face', *The Age*, 30 August 1991, p. 11.

193. Mr Carl Mengler, an Assistant Commissioner of the Queensland Police attached to the CJC who had previously worked at the Authority, criticised the Authority for handing back drug-related investigations to police forces:

you told us you were going to show us the way in investigating traditional organised crime and it is out there and it is big. If anyone thinks for one moment it is not alive and well, they are kidding themselves. What have they done? They say, 'We are going to give it back to you'. For two, three, five or seven years - has it been going seven years? - they say, 'We are giving it back', effectively because it is too hard. Whether it is too hard or not, I do not know, but that is the perception of every police officer in this country at the moment. It is too hard for them and they will give it back. (Evidence, pp. 1594-95)

The submission from the Police Federation of Australia and New Zealand, dated 21 October 1990, stated (p. 5): 'Unfortunately from current activities and public statements, it seems that the NCA have now found that narcotics are either too hard or that for some reason the rivalry and contention in its investigation is to be avoided'. The Secretary of the Police Association of NSW, Mr Lloyd Taylor, told the Committee: 'I really cannot quite follow the emphasis changing from drug-related matters to fraud': Evidence, p. 648. The submission from the Australian Federal Police Association, p. 16 observed: 'In the Association's view the NCA's new focus

Johnston of the Tasmania Police suggested that the change of emphasis by the Authority might leave a void in the area of high level drug investigation.¹⁹⁴ He considered that if the change of emphasis were to remain, 'then there should be some review of resource allocation so that there is some remaining attention in that area'.¹⁹⁵

5.15 Other evidence received by the Committee did not raise any problem of a potential void. The submission from the Australian Federal Police Association, dated 22 February 1991, suggested that police forces were adequately resourced and competent to carry out the type of direct, drug-related investigations in question.¹⁹⁶ The Police Association of South Australia expressed a similar view.¹⁹⁷

does not reflect a reduction in the incidence of drug related organised criminal activity ...'. Mr Ron Merkel QC of the Victorian Council for Civil Liberties asked:

What justification can there be for moving away from what we have been hearing about for seven years - illegal drug dealings and organised crime? It has not solved the problem because it has achieved hardly any convictions. No-one believes for a minute that the problem has gone away. (Evidence, p. 1386)

194. Evidence, p. 1217. See also Evidence, p. 1317, where Detective Superintendent R.C. McAllan of the Victoria Police was asked if the NCA's change of emphasis would leave a gap. He responded:

Yes and no. There will be a gap because the NCA was able to contribute things that a State could not do. And I do not know whether the State would readjust by establishing joint task forces and those sorts of things and in any case there would still be things not there that the NCA did have at its disposal. Yes, there will be a gap and it will be difficult to provide resources from the State police forces to fill that gap.

195. Evidence, p. 1217.

196. pp. 6, 14. See also Evidence, p. 1230 (Australian Federal Police Association).

197. Evidence, p. 921. See also Evidence, p. 663 where the Police Association of New South Wales gave a more tentative view.

The Committee notes that those police officers with drug-related expertise who have been seconded to the Authority take their expertise back to their home forces when they return.

5.16 The Committee **RECOMMENDS** that the re-allocation of resources required by police forces to compensate for the Authority's changed emphasis be given urgent attention.

The Emphasis on White-Collar Crime

5.17 The Authority's previous emphasis on drug-related crime has been replaced with an emphasis on serious white-collar crime. In Future Directions, Justice Phillips stated:

I propose that in each State and Territory a Serious White Collar Crime Task Force be set up. Essentially, these task forces would be involved in investigations into the sort of activities in the corporate area which have caused so much adverse comment in recent years.¹⁹⁸

The task forces would include representatives of other agencies.¹⁹⁹ Justice Phillips stated:

task forces would be formed when a particular matter which apparently warranted investigation transcended State and Territory boundaries and thus posed jurisdictional problems for the agencies of those States and Territories. Alternatively, if a pattern of apparent offences, not necessarily connected, was occurring in various States and Territories so that a national rather than a State or Territory problem was indicated, then that was an appropriate matter for the formation of white collar task forces.²⁰⁰

198. Future Directions, p. 4.

199. Evidence, p. 1657; Future Directions, p. 4.

200. Evidence, p. 1657.

5.18 Justice Phillips argued for the new emphasis by saying:

It must be accepted that in the last decade there has not been a single body which was in fact responsible for combatting serious white collar corporate crime or perceived by the public to have such a role. That must change.²⁰¹

5.19 Justice Phillips further argued that control of such activity was beyond the means of any one agency, State or Federal. The task was, however, within the capacity of a cohesive combination of existing agencies using joint task forces, and Justice Phillips proposed that the Authority could perform both coordinating and participatory roles in this area in partnership with existing agencies.²⁰²

5.20 The Victorian Council for Civil Liberties criticised the shift in emphasis by the Authority:

It is difficult to identify any supposed vacuum that is about to be filled by the NCA's new direction. There is absolutely nothing in the NCA's past history that suggests that its officers have, or its structure has, an expertise or capacity which is lacking in other law enforcement agencies that will enable it to tackle corporate crime.²⁰³

5.21 In contrast, Mr Christopher Corns argued that one issue arising from the new emphasis:

is how the new directions of the NCA will affect the role of conventional police forces in the investigation of organised crime. The Federal and State police forces are

201. Future Directions, p. 4. See also Evidence, p. 1689 (NCA).

202. Future Directions, p. 4.

203. Evidence p. 1441.

likely to welcome the expansion of the NCA into white-collar crime investigations. These types of investigations have historically proved problematic for police forces who have not possessed sufficient resources or skilled personnel to tackle highly sophisticated frauds particularly those of a multi-jurisdictional nature. For many police, white-collar crime, rather than drug trafficking, is precisely the type of offence that the NCA should be investigating, leaving police forces to investigate the more conventional crimes.²⁰⁴

5.22 Mr John Marsden of the New South Wales Law Society told the Committee he thought the new focus:

certainly would be a step in the right direction and in achieving some reasonable result for the NCA, because our policing authorities do not have the resources, the skills or the expertise to chase white-collar criminals. They do not have the persons who are trained in that area. If that were to be part of the arm of the NCA, I think it could be of great value throughout the whole community.²⁰⁵

5.23 The new emphasis on money laundering and white collar crime was described in the submission from the IGC, dated April 1991, as 'a logical and necessary progression for a body charged with the task of investigating all forms of organised crime'.²⁰⁶ At its November 1990 meeting, the IGC approved a reference to the Authority to investigate money laundering, a reference seen by the IGC as a broadening of the role of the Authority.²⁰⁷

204. C. Corns, 'New directions for the NCA', *Legal Service Bulletin*, vol. 16(3), June 1991, p. 115.

205. Evidence, p. 824.

206. p. 9.

207. IGC submission, pp. 9-10.

5.24 The shift in focus to white collar and corporate crime was further demonstrated with the report at the end of August 1991 that the Authority would ask the Federal and State Governments to approve a special reference to investigate a multi-state corporate fraud matter. The investigation would also involve staff from the Western Australian Police Force and the Australian Securities Commission. The press report noted that the special reference had already secured support from State police.²⁰⁸

5.25 The Committee notes that the Authority appears to be doing two things in relation to white collar crime. One is investigating it as a distinct form of organised crime. The other is investigating white collar activities as a means of picking up the money trail created by other forms of organised crime.

5.26 The Committee acknowledges that following the money trail is as effective a way to reach the organisers behind, say, illegal drug importing as working up the chain from street drug dealers through wholesalers to the organisers.²⁰⁹ Some have argued that it is a far more effective strategy.

5.27 The Committee notes that the mix of skills required by an agency to follow the money trail shares many elements with that required to pursue corporate crime generally. However, a number of witnesses expressed concern that this focus on corporate crime was taking the Authority into what 'is already an overcrowded field':²¹⁰ the Authority might duplicate the work of other agencies,²¹¹ and

208. 'NCA to seek reference for fraud inquiry', *The Age*, 30 August 1991.

209. On what is meant by 'following the money trail' see for example the extract from Mr Frank Costigan QC's 1983 Sir John Barry Memorial Lecture which was quoted in the second reading speech accompanying the introduction of the National Crime Authority Bill: Senate, *Hansard*, 10 November 1983, pp. 2492-93.

210. Evidence, p. 1388 (Victorian Council for Civil Liberties).

211. Evidence, pp. 809-10 (Mr Arthur King); p. 1559 (Mr R.E. Dixon); p. 1594 (Mr Carl Mengler); submissions from the Police Association of South Australia, p. 4; and the Australian Federal Police Association, pp. 15-16, which noted that the AFP is specifically tasked with investigation of major

compete with them for scarce expertise.²¹²

5.28 Mr Bill Coad, the Director of the Cash Transaction Reports Agency, told the Committee that he thought there were important gaps between what the ASC was likely to do and what police forces did.²¹³ He thought the Authority was acting to fill these gaps, rather than duplicate the work of existing agencies.²¹⁴

5.29 The Australian Securities Commission is the principal agency established by the Commonwealth and the States for the purpose of enforcing corporate regulations. The Authority intends the ASC to be a partner in many of the task forces under Future Directions.²¹⁵ The Committee therefore sought the ASC's views on Future Directions.

5.30 Mr Charles Williams, the Deputy Chairman of the ASC, told the Committee in March 1991 that the ASC had not suggested to Justice Phillips that his new emphasis was inappropriate.²¹⁶ Mr Williams saw cooperation between the ASC and the Authority as offering four main benefits in what he characterised as the ASC's campaign against corporate fraud. One benefit was training. Mr Williams told the Committee:

we will be very pleased to collaborate in the setting up of educational facilities for enforcement people - a matter in which Mr Justice Phillips is very keenly interested and which we, as a new enforcement agency, badly

fraud against the Commonwealth.

212. Evidence, pp. 614, 622 (Mr B. Partridge). See also Frank Costigan QC, 'Anti-Corruption Authorities in Australia', text of an address to the Labor Lawyers' Conference in Brisbane on 22 September 1990, pp. 6-7.

213. Evidence, p. 1473.

214. Evidence, pp. 1472-73.

215. Future Directions, pp. 4-5.

216. Evidence, p. 1487.

need.²¹⁷

5.31 A second benefit was to investigate or to form bodies, task forces or working groups to examine ‘unfocused matters’ and provide broad overviews of areas of criminal activity.²¹⁸ Money laundering using corporations and securities markets was given by Mr Williams as an example of an area where cooperation with the Authority would be useful.²¹⁹ Mr Williams said:

I believe the ASC, in the pursuit of individual matters, would be greatly advantaged by the ability to discern a pattern which has been investigated by others, as the NCA charter requires it to do.²²⁰

5.32 A third benefit was the provision by the Authority of an important link between the ASC and the police forces in Australia, and a forum for collaboration between them.²²¹ Mr Williams was asked by the Committee whether the Australian Federal Police could not do these things, rather than the Authority. He responded that he thought the Authority would be more useful in this role.²²²

5.33 The fourth benefit was a role as coordinator with overseas agencies. Mr Williams said:

where there are foreign markets used [for improper corporate or securities activity], the availability of the resources of agencies with the appropriate connections with foreign enforcement agencies can be very valuable. In this respect both the NCA and the AFP are very important to us. ...

217. Evidence, p. 1480.

218. Evidence, p. 1480.

219. Evidence, pp. 1480-81.

220. Evidence, p. 1489.

221. Evidence, p. 1482.

222. Evidence, p. 1488.

The international side is something where I think the NCA can provide assistance. We have no formal links with any body external to Australia in relation to exchange of information. We may do one day but that is up to the Attorney-General's Department.²²³

5.34 The Committee considers that these benefits to the ASC from its relationship with the Authority are useful and appropriate. The Committee was concerned at the possibility of overlap and duplication between the Authority's work and that of the ASC. It asked Mr Williams if there was a formal memorandum of understanding between the two bodies, like the one about to be completed between the ASC and the Australian Federal Police. He responded:

I think that the analogy is not perhaps an exact one, because the memorandum of understanding with the AFP is at an operational level in relation to the use of certain resources, where they are going to work, who is going to pay for them and so on. It is not a policy memorandum of understanding. That leads me to say that I am not sure, given that the responsibilities of our respective agencies are laid down by Parliament, that it would be for us to decide to sign a memorandum of understanding of our own volition.²²⁴

5.35 The Committee asked if a memorandum could be done on the basis of an operational understanding, covering liaison, coordination, and elimination of duplication.²²⁵ Mr Williams replied:

I think that, in fact, we are likely to get a de facto memorandum of understanding, in the sense that we will be talking through the consultative committee and

223. Evidence, pp. 1481, 1483.

224. Evidence, p. 1486.

225. Evidence, p. 1486.

at other levels and that we will agree on who is going to do what in particular areas. I cannot imagine a situation where, having decided to take action on a particular matter, we are going to stumble over the NCA dealing with the same matter, except perhaps as part of a general reference. But, as far as specifics are concerned, I cannot see it happening.²²⁶

5.36 The Committee proposes to keep the issue of possible overlap under review as part of its regular monitoring of Authority activities.

5.37 The Committee notes that since Mr Williams appeared before the Committee the ASC and the Authority have entered into a memorandum of understanding in relation to a particular investigation. Justice Phillips told the Committee on 29 July 1991 that the agreement was: 'to investigate a particularly grave white collar matter involving task forces in Western Australia, South Australia, Victoria and New South Wales. Certain police services will also be involved.'²²⁷

Emphasis on Other Functions - Intelligence

5.38 Section 11 of the NCA Act sets out the functions of the Authority. The first function listed is the collection, analysis and dissemination of criminal intelligence information. In December 1989, before Future Directions, the Authority decided to establish a Strategic Intelligence Unit and it commenced operation in Sydney in February 1990.²²⁸ The IGC submission regarded the SIU as essential for the Authority, as it would be of assistance in developing long-term strategies.²²⁹ The Authority presented its first major SIU assessment to the IGC at the IGC's November 1990 meeting. The

226. Evidence, pp. 1486-87.

227. Evidence, p. 1657.

228. NCA, *Annual Report 1989-90*, p. 38.

229. p. 15.

IGC's submission stated: 'The IGC is impressed with the quality of the analysis presented, and believes that future assessments will not only contribute to the effectiveness of the NCA, but also benefit agencies receiving advice from the NCA'.²³⁰

5.39 Justice Phillips told the Committee he regarded as significant the order in which the Authority's functions were set out in the NCA Act.²³¹ The Committee notes that in the Authority's Corporate Plan, Objectives One and Two both deal with the Authority's intelligence function:

Objective One

Identify current and emerging trends and patterns in organised criminal activity and contribute to the effective targeting of individuals, companies and activities by investigative agencies.

Objective Two

Foster liaison and other initiatives which facilitate the effective development and exchange of information and intelligence on organised crime, both between Australian agencies and with overseas agencies.

The Action Strategies in the Plan give emphasis to the need to share intelligence with other agencies, and to develop strategic assessments of the organised criminal environment in Australia.

5.40 The Committee regards as appropriate the increased weight now given by the Authority to its intelligence activities. This, together with the Authority's readiness to share intelligence information with appropriate agencies, should answer the past criticisms levelled at the Authority.

5.41 The Committee sees the lead given by the Authority as important in helping break down the perceived reluctance of other

230. p. 15.

231. Evidence, p. 1659.

Australian law enforcement agencies to share intelligence.²³² The following statement by Justice Phillips at the Committee's public hearing on 29 July 1991 indicated the process at work:

I report that in November last an operational conference concerning a particular aspect of organised crime was organised and conducted by the National Crime Authority in Canberra. It was attended by representatives of every law enforcement agency in Australia, together with representatives of the FBI, Hong Kong and the United States drug agencies. It was an intensive conference, taking up 2½ days.

I gave instructions before the conference that my staff were to make disclosure of our entire intelligence stocks concerning this particular aspect of organised crime. This was done in the opening session of that conference. I am pleased to report that this was followed by equally full disclosure by each of the other agencies represented. I was informed by a number of people that there had not previously been a conference where such a wide-ranging dissemination from such a large number of agencies had occurred. Care was taken to see that the results of this conference were translated into positive action. A working party was formed and has almost completed its work, which includes the establishment of a national database with respect to this particular area of organised crime.²³³

232. On the reluctance to share intelligence, see for example Australia, Royal Commission of Inquiry into Drug Trafficking: Commissioner: The Hon. Mr Justice D.G. Stewart, *Report: February 1983*, AGPS, Canberra, 1983, pp. 522-26; and Australia, Office of the Special Prosecutor, *Annual Report 1982-83*, AGPS, Canberra, 1983, p. 48. The submission from Mr Michael Holmes, dated 20 December 1990, commented (p. 15): 'There continues to be a lack of true co-operation between Law Enforcement Agencies in Australia. There still is territorial jealousy and mistrust which inhibits the flow of information.'

233. The Committee was told in early October 1991 that this work was still continuing.

Another conference, directed towards a different area of organised crime, will be held shortly.²³⁴ All Australian law enforcement agencies and at least two from overseas have indicated an intention to send representatives. Again, I am sure there will be a full and complete dissemination between the agencies of their intelligence stocks.²³⁵

5.42 In relation to the Authority's new emphasis on intelligence functions, the submission from the Australian Federal Police Association, dated 22 February 1991, expressed concern at 'the real potential for duplication of effort, in particular with the established and recognised strategic intelligence capability of the AFP and the continually developing capacity of the ABCI'.²³⁶

5.43 The Committee notes this potential for unnecessary duplication has existed since the Authority was created. It has since increased, both because the Authority is now giving greater attention to its intelligence functions and because other agencies are doing likewise. For example, the Australian Federal Police Association told the Committee that the AFP has been developing its strategic intelligence capacity since 1986.²³⁷ The Association questioned the wisdom of the Authority also developing this capacity in its Strategic Intelligence Unit, rather than relying on cooperation with other

234. This conference took place in August 1991 in Canberra.

235. Evidence, pp. 1652-53.

236. p. 10. The submission from the Police Association of South Australia, dated 4 February 1991, also highlighted the risk of duplication (p. 4).

237. Submission, p. 10. See Senate, *Hansard*, 9 October 1991, p. 1662, where the Minister for Justice and Consumer Affairs, Senator the Hon. Michael Tate, stated that the Australian Federal Police's national intelligence division was compiling a report into allegations that Japanese businessmen were laundering the proceeds of overseas crime into Australian real estate and tourist developments. The Committee notes that the Authority was at the same time also doing a special investigation into the extent and avenues of money-laundering in Australia.

agencies and sharing of established capacities.²³⁸ The submission from Mr Michael Holmes, dated 20 December 1990, suggested that the ABCI should be merged with the Authority in order to improve efficiency, effectiveness and coordination.²³⁹

5.44 The Australian Bureau of Criminal Intelligence was set up by agreement between the Commonwealth, the States and the Northern Territory in 1981. Its role is:

to provide facilities for the collection, collation, analysis and dissemination of criminal intelligence of national interest with a view to providing such intelligence to the police forces of the Commonwealth, the States and the Northern Territory to enable them to combat organised crime in Australia and, in particular, to assist them to combat illicit drug trafficking.²⁴⁰

5.45 The ABCI is administered by a management committee which is comprised of all the Australian police commissioners. This meets twice a year and reports to the Australian Police Ministers' Council.

5.46 The ABCI's Annual Report 1989-90 describes the formation of a Strategic Intelligence Section within the Bureau. The aim of this Section is:

238. Australian Federal Police Association submission, dated 22 February 1991, p. 10.

239. p. 22.

240. Australian Police Ministers' Council, *National Common Police Services Annual Report 1989-90*, AGPS, Canberra, 1991, p. 16. (The ABCI's annual reports are published as part of the National Common Police Services Annual Reports.) In evidence to the Committee, the ABCI's Director, Mr Keith Askew, said that the ABCI's client group had widened in more recent times to include Federal agencies such as Customs, Immigration, the Australian Quarantine Inspection Service and the National Parks and Wildlife Service, and State agencies such as the NSW Crime Commission, ICAC and the Queensland CJC: Evidence, p. 1701.

to provide an integrated overview of criminal activity (especially organised crime) in terms of patterns and trends, for the purpose of providing intelligence which will identify law enforcement priorities and strategies for combating such criminal activity.²⁴¹

The Annual Report also states: 'Close liaison between the ABCI and the NCA is essential to avoid costly and counter productive duplication of effort'.²⁴²

5.47 The Senate Standing Committee on Constitutional and Legal Affairs, which reported on the NCA Bill in 1984, noted a suggestion that the ABCI could be subsumed by the Authority.²⁴³ The then-Director of the ABCI expressed his concern about duplication of effort unless there was close cooperation with the Authority.²⁴⁴ The Senate Committee recommended: 'The ABCI should not be subsumed within the Authority at this stage. The Committee strongly urges co-operation, consultation and, where provided under their respective charters, exchange of intelligence between the two bodies.'²⁴⁵

5.48 The Government's response stated that this recommendation 'was strongly supported by State Ministers'.²⁴⁶ The NCA Act, subsection 12(2), provides: 'The Authority shall, in performing its functions, co-operate and consult with the Australian Bureau of Criminal Intelligence'.

241. Australian Police Ministers' Council, *National Common Police Services Annual Report 1989-90*, AGPS, Canberra, 1991, p. 22. See also Evidence, pp. 1726-27.

242. p. 24.

243. Senate Standing Committee on Constitutional and Legal Affairs, *The National Crime Authority Bill 1983*, AGPS, Canberra, 1984, para. 3.12.

244. *ibid.*, para. 3.13.

245. *ibid.*, para. 3.14.

246. Senate, *Hansard*, 10 May 1984, p. 1972 (Senator the Hon. Gareth Evans QC, Ministerial Statement).

5.49 The committee sought the view of the ABCI's Director, Mr Keith Askew, at a public hearing on 7 October 1991. He said: 'I do not see too much conflict or overlap - duplication, if you like - between what the NCA are doing and what we are doing'.²⁴⁷ Mr Askew said that working relations between the ABCI and the Authority were currently very good.²⁴⁸ He commented:

I think up until Mr Justice Phillips arrived on the scene, there was some reluctance on the part of the NCA to share data not only with the ABCI but generally. However, that has absolutely and totally changed.²⁴⁹

An electronic link joining the ABCI and Authority databases is due to come into operation in the near future.²⁵⁰

5.50 An ABCI Management Compliance and Efficiency Audit Review Committee reported on the ABCI in March 1990.²⁵¹ Mr Askew told the present Committee that the Review concluded that the ABCI should retain its present form, and not become part of the Authority or the Australian Federal Police.²⁵²

5.51 The Committee RECOMMENDS that there be continuing review of the potential for duplication of intelligence functions between the Authority, the Australian

247. Evidence, p. 1704.

248. Evidence, p. 1705. In addition to the two-way passing of intelligence, the ABCI has hosted conferences for the NCA and the agencies cooperate on training: Evidence, pp. 1706, 1728, 1733.

249. Evidence, p. 1714.

250. Evidence, p. 1719. Various security features will operate to prevent access from one end of the link to the full database holdings at the other.

251. Australian Police Ministers' Council, *National Common Police Services Annual Report 1989-90*, AGPS, Canberra, 1991, p. 19. The Committee was chaired by the then Commissioner of the Tasmania Police, Mr Bill Horman. Its report has not been publicly released.

252. Evidence, pp. 1713-14.

Federal Police and the Australian Bureau of Criminal Intelligence.

Emphasis on Other Functions - Law Reform

5.52 Subsection 12(3) of the NCA Act, which empowers the Authority to make recommendations on reforms to administration and laws, was described in paragraph 2.15 above. Objective Four of the Authority's Corporate Plan reads:

Identify and promote reform of those laws, regulations, administrative practices and other environmental factors which:

- . provide opportunities for or encourage organised criminal activity; or
- . hinder the effective investigation or prosecution of organised criminal activity.

5.53 The Authority's submission stated: 'The NCA has been trying to devote increased attention to its law reform function in recent years ...'.²⁵³ The Authority has set up a law reform unit to look at law reform issues that emerge from NCA operations.²⁵⁴ Justice Phillips told the Committee that part of the follow-up work for each of the intelligence conferences (described in paragraph 5.41 above) included the examination of issues for relevant law reform. In addition, he has undertaken that each year a public conference on a criminal justice theme will be organised by the Authority.²⁵⁵ The first to be convened dealt with 'The Presentation of Complex Corporate Prosecutions to Juries'. It was held in Melbourne in July 1991, and was open to the public and the media. Justice Phillips told the Committee: 'In a closing session of the conference, concrete plans

253. p. 30.

254. Senate, Estimates Committee E, *Hansard*, 5 September 1991, p. E76. The example given was the question of what powers police working outside their own jurisdiction should possess (e.g. a State policeman from Tasmania working in NSW).

255. Evidence, p. 1656.

were made for the translation of what we had learned during its proceedings into positive action'.²⁵⁶

5.54 The Committee supports the Authority's more vigorous pursuit of a law reform role. However, the Committee does not interpret the NCA Act as requiring the Authority to undertake law reform activities as specific, free-standing activities. In the Committee's view, the intention expressed in the Act is that the power to make recommendations on law reform is very much subordinate and ancillary to the Authority's principal functions, which are set out in section 11 of the Act.

5.55 The Committee notes the view of Mr Christopher Corns, who referred to criticism of the Authority in the past for not being sufficiently active in law reform: 'The NCA should not, however, be expected to act as a law reform agency. This was not the primary, or indeed secondary, reason for its establishment.'²⁵⁷

Cooperation and Coordination

5.56 The Authority's mission, as defined in its Corporate Plan, involves 'working in co-operation and partnership with other agencies'. This aspect was a key element in Justice Phillips' Future Directions paper, the opening sentences of which stated:

Essentially, I envisage the Authority as a body which should act as a partner to the other law enforcement agencies. It should not be - or appear to be - a competitor. Rather, it should follow the roles of a co-ordinator and an agency offering complementary services to the other agencies. (emphasis in original)

5.57 The Committee has been told of a number of steps that the Authority has taken to improve cooperation and coordination. In

256. Evidence, p. 1655.

257. C. Corns, 'New directions for the NCA', *Legal Service Bulletin*, vol. 16(3), June 1991, p. 115.

Future Directions, Justice Phillips suggested that a Consultative Committee become the primary vehicle for the selection of references and inquiries and that it become an integral part of the twice yearly Police Commissioners' Conference.²⁵⁸ The Consultative Committee was formed in January 1991.²⁵⁹ It is comprised of the Chairman of the Authority, the police commissioners from the various forces in Australia, and representatives from the Australian Bureau of Criminal Intelligence, the Australian Securities Commission, and the Cash Transaction Reports Agency. Other agencies are invited to attend where necessary. The Consultative Committee is advisory only: the IGC retains ultimate responsibility for granting references to the Authority.²⁶⁰

5.58 In proposing the establishment of this Consultative Committee, Justice Phillips identified three particular advantages he considered would flow from it:

Firstly, being a national body, its composition should help to identify references/inquiries of a national character and thus appropriate for the attention of the NCA. Secondly, its composition should ensure that duplication of effort is avoided. Thirdly, its composition should assist to remove the 'territorial' disputes and tensions which have occurred in the past.²⁶¹

5.59 Justice Phillips told the Committee that the participants, including senior police, had indicated enthusiasm and support for the Consultative Committee.²⁶² The IGC also welcomed the establishment of the Consultative Committee to assist in identifying the need for investigations in particular areas.²⁶³ The IGC accepted

258. Future Directions, p. 1.

259. Evidence, p. 1651.

260. IGC submission, p. 11.

261. Future Directions, p. 2.

262. Evidence, pp. 1651-52.

263. IGC submission, p. 2.

that the Consultative Committee would be of great assistance to the IGC in determining the nature and extent of references, as well as monitoring the progress of existing ones.²⁶⁴ The IGC, however, reaffirmed that the IGC should continue to bear 'ultimate responsibility for referring matters to the NCA for investigation'.²⁶⁵

5.60 The Committee sees benefit in having the Consultative Committee as a means of avoiding the poorly drafted references that have sometimes been given to the Authority by the IGC in the past.

5.61 The Australian Securities Commission's Deputy Chairman, Mr Charles Williams, is a member of the Consultative Committee. He told the Committee in March 1991 after the Consultative Committee's first meeting:

the police commissioners who were present for that consultative committee meeting and for the other function that was taking place at that time in Adelaide, the police commissioners' conference, were unanimous that the level of cooperation and understanding between them all was far, far better than it had ever been before. I am not saying that that solely related to their cooperation with the NCA, but what I am saying is that the new consultative committee has started in a much better environment, even as between State police forces and the States and the Commonwealth police force than has ever existed before. So I think it is coming to birth under a favourable star and I detect a willingness to make it work.²⁶⁶

5.62 White-collar crime task forces are also being established under Future Directions. These have as a principal focus corporate crime and the use of corporate entities to disguise criminal activities or launder proceeds of crime. Future Directions proposed that such

264. IGC submission, p. 11.

265. IGC submission, p. 11.

266. Evidence, pp. 1494-95.

task forces would be established in each State and Territory. On 29 July 1991, Justice Phillips reported to the Committee on progress in implementation of Future Directions. In the course of this, he said:

It is with great pride that I furnish my next report in this segment. The National Crime Authority is currently pursuing an investigation into the alleged fraudulent evasion of certain statutory charges by companies and individuals. For this investigation the National Crime Authority has assembled a multi-agency task force which it coordinates and which involves agencies from every State and Territory in Australia except the Australian Capital Territory. Only the lack of relevant legislation in the Australian Capital Territory prevents agencies from it being included. This is the very first time in the history of law enforcement in Australia that such a national multi-agency task force has ever been formed and operated.²⁶⁷

5.63 As further evidence of the increased emphasis now being given by the Authority to coordination and cooperation, Justice Phillips told the Committee:

In addition, the National Crime Authority is seeking to establish in each State and Territory a white collar crime liaison committee comprising representatives of relevant agencies to act as a single point of contact and as a coordinating mechanism for the investigation of white collar crime. I report that such committees have already been established in South Australia and Tasmania and are at an advanced stage of planning in Queensland, Western Australia and the Northern Territory.²⁶⁸

5.64 There is a possibility of the Authority duplicating the work

267. Evidence, pp. 1656-57.

268. Evidence, p. 1658.

of specialist State crime-fighting agencies. Three of these agencies are the Independent Commission Against Corruption and the Crime Commission in New South Wales, and the Criminal Justice Commission in Queensland.

5.65 The Committee asked the Authority what steps it had taken to coordinate its activities with the activities of these three State bodies. The Authority responded:

The Authority works closely with all three bodies. It has membership of the Management Committee of the NSW Crime Commission (the body which issues references to the Commission) and has worked closely with it since its inception. It also works closely with the CJC and the NSW ICAC ... The CJC will be a member of the White Collar Crime Liaison Committee in Queensland. The Authority will be considering at its regular meeting next week a proposal from the CJC that a Memorandum of Understanding be entered into. The Authority considers that the present level of coordination is satisfactory.²⁶⁹

5.66 All the evidence received by the Committee welcomed the increased emphasis by the Authority on cooperation and coordination.

5.67 There is a potential for overlap and duplication between mechanisms for cooperation and coordination.²⁷⁰ However, the

269. NCA, Written Answers, August 1991, Part 2, A1. The NCA submission, p. 17 also referred to NCA quarterly Operations Conferences attended by representatives of a large number of Commonwealth, State and Territory agencies with an interest in law enforcement: these conferences 'provide a forum for communicating to other law enforcement agencies a sufficient understanding of NCA activities to enable them to avoid as far as possible action which might cut across NCA operations, to exchange relevant information and intelligence, and to discuss matters of mutual concern' (p. 18). For criticism of the effectiveness of these Operational Conferences in the past see para. 3.24 above.

270. Other mechanisms for this purpose include:
. the Australian Police Ministers' Council, which comprises the police

Committee has no evidence that this has in fact occurred. It mentions the possibility as one which the Committee and Ministers monitoring the Authority need to keep in mind.

Future Directions and Accountability

5.68 In his Introduction to the Corporate Plan, Justice Phillips stated:

The mission statement,²⁷¹ objectives and strategies set out in this Plan will provide a framework for the development of future budgets, operational planning, performance appraisal and reporting to governments on the NCA's work. The question of how well the NCA is fulfilling its mission, and meeting its key objectives, is one of the most difficult to answer, but an attempt has been made in this Plan to grapple with the issues.

5.69 The Committee notes that role-definition assists the development of criteria against which to assess performance. This is true to some extent irrespective of the particular role which is defined: any role, once clearly defined, provides a basis for formulating objectives, strategies and performance measurement indicators.

5.70 However, the particular role adopted by the Authority in Future Directions and the Corporate Plan does have specific benefits for both assessing its efficiency and effectiveness and on other

-
- . ministers of all States and Territories and the Minister for Justice;
 - . a related body, the Senior Officers' Group, which comprises the police commissioners of all States and Territories and several senior officials;
 - . the Law Enforcement Policy and Resources Committee, which is chaired by the Attorney-General and includes the heads of all federal law enforcement agencies; and
 - . the Heads of Commonwealth Operational Law Enforcement Agencies Committee, which discusses operational matters of mutual concern.

271. The Mission Statement is set out at para. 5.6 above.

aspects of its accountability. For example, one impact of Future Directions is to reduce the emphasis on the Authority's investigative role. This in turn can be expected to diminish the Authority's need to maintain such extensive secrecy about its activities. Coordinating, cooperative and law reform activities can be conducted in a more open manner than investigations.

5.71 Coordination and cooperation also of necessity involve a type of accountability. The Authority has no power to compel other agencies to work with it. It must convince them of the value and legitimacy of a cooperative or coordinated action. The use of the Consultative Committee on which many agencies are represented to recommend new references and inquiries similarly adds an element of this type of accountability.

5.72 The Australian Federal Police Association's submission regarded the open-ended references and inquiries conducted in the past by the Authority as one area in which it lacked adequate accountability, being free of 'the disciplines of cost and definite timeframes or competing emerging priorities'.²⁷² Under Future Directions, no more open-ended references or inquiries are to be started.²⁷³ This, like the development of performance indicators, will improve the Authority's accountability.

5.73 Accompanying Future Directions and other changes is a clear awareness by the Authority of the need to be seen to be accountable. For example, Justice Phillips was quoted earlier this year as saying:

I have said a number of times since my appointment and particularly since my new directions were approved, that any operational success we achieve will be either diminished or ignored as long as it can be said that the NCA is a secretive and unaccountable body.²⁷⁴

272. p. 14.

273. Future Directions, p. 2.

274. Quoted in C. Mitchell, 'In open partnership', *Law Institute Journal*, March

5.74 While in these respects the new emphasis reduces the scope for criticism of the Authority's accountability, in one aspect the new emphasis may heighten concerns. The new emphasis involves greater attention to the intelligence-gathering role and greater openness in disseminating intelligence to other law enforcement agencies. This clearly increases privacy concerns.²⁷⁵

5.75 Overall, therefore, the adoption of Future Directions and other changes should reduce the basis of the current widespread public concern about the Authority's accountability. There is, however, a continuing need for Authority secrecy and its special powers, and hence for special measures to ensure the accountability of the Authority. The new emphasis has not been accompanied by any suggestion from the Authority, the IGC or the Attorney-General that the NCA Act should now be amended to remove those of the Authority's special powers which are of particular concern to civil libertarians.

5.76 On the contrary, the Authority still anticipates a need to rely on these powers. The Authority argues the fact that it has such powers is a reason for other agencies to cooperate with it.²⁷⁶ Only time will reveal the extent which the powers are actually used in the future. Moreover, the Authority will still need to retain a large measure of secrecy vis-a-vis the public in relation to operational matters, albeit it is now more open with other law enforcement agencies.

5.77 As already noted, the Corporate Plan will help in assessing the Authority's efficiency and effectiveness in the future. Difficulties will however remain. In 1988, the *Initial Evaluation* observed:

The Authority freely admits that it does not as yet have

1991, p. 122.

275. See paras. 6.83 - 6.84 below.

276. e.g. see NCA Corporate Plan, p. 5.

an overall strategic view of organised crime in Australia. Its selection of targets to become the subject of references is not animated by some grand plan which will result in the progressive suppression of organised crime in this country.²⁷⁷

5.78 The Committee considers that this is still valid.²⁷⁸ The mechanisms put in place under Justice Phillips avoid duplication of investigative effort. They also reinforce existing measures to ensure the Authority does not undertake matters able to be dealt with by other agencies. In other words, they identify what matters the Authority should not undertake. The measures do not, however, identify in a positive, rigorous way what targets the Authority should pursue.

5.79 Justice Phillips told the Committee on 29 July 1991:

I report that the National Crime Authority has commissioned Dr Grant Wardlaw to design a course for the training of senior intelligence officers in strategic intelligence. The term 'strategic intelligence' is used in contradistinction to the term 'operational intelligence'. It connotes a broad overview of intelligence matters. This commissioning, together with the series of intelligence conferences I have described, is directed towards being able to give this Committee and, through it, the Australian Parliament and people an overview of organised crime in Australia.²⁷⁹

277. para. 3.9.

278. e.g. see Evidence, p. 517 (Mr Chris Eaton, Police Federation of Australia and New Zealand): 'There has to be a strategic overview of crime in Australia, which does not exist at present, clearly. We have not seen the National Crime Authority provide, to my knowledge anyway, this Committee or any other jurisdiction, or any other government, a strategic overview of organised crime in this country.'

279. Evidence, p. 1659. See Grant Wardlaw, 'Conceptual Frameworks of Organised Crime - Useful Tools or Academic Irrelevancies?', paper delivered at the Australian Institute of Criminology Conference: *Organised*

5.80 The Committee comments that assessment of the Authority's target selection and impact on organised criminal activity will only be possible when this overview is available to provide a benchmark.²⁸⁰ Without this overview, the Authority will not be able to demonstrate that in choosing to pursue target X rather than Y it has made the right choice - that X is more important in Australian organised crime than Y. An Authority investigation may result in the target suspect being convicted. The benchmark provides a way of assessing the impact of this conviction on organised criminal activity. It also provides a means of addressing the more

Crime: 5-7 September 1989, Canberra. In this paper Dr Wardlaw noted the difficulty caused by lack of an agreed definition of organised crime, and how law enforcement agencies have proceeded without one (pp. 2-3). He commented:

The difficulty with this attitude is that 'getting on with the job' necessarily involves either an idiosyncratic approach to the problem or little more than 'target-of-opportunity' enforcement, there being no strategic vision to guide the development and implementation of empirically-based strategies. The result is a running series of sniping attacks between one enforcement agency and another (especially between traditional police forces and new investigative agencies established primarily on the basis of the perceived need for novel means of combating organised crime), an emphasis on arrests for arrest's sake (primarily a response by investigative agencies to the absurd pressure they are placed under to 'prove' their worth), and an over-emphasis on enforcement strategies to the detriment of serious consideration of economic, political and social strategies designed to impact on the conditions which allow organised crime to develop and prosper. (p. 3)

Mr Russell Hogg, who teaches at Macquarie University, made a broadly similar argument to the Committee on 25 March 1991: Evidence, pp. 1499-1502, 1504-05.

280. cf. the conclusion in the *Initial Evaluation*, para. 4.3 that the lack of a statistical base made it impossible to say whether the work of the National Crime Authority had led to a discernible diminution in the extent of criminal activity.

general question of what inroads the Authority's activities have made on the level of organised criminal activity.

5.81 The question whether hard data such as numbers of arrests and conviction rates are a viable means of assessing Authority performance has been controversial.²⁸¹ Provision of such data for performance assessment will be difficult for many areas of Authority activity which receive increased emphasis under Future Directions. Objective measurement of activities such as intelligence gathering, coordination, cooperation, and law reform is not easy.²⁸² Even where clear results can be defined, it may be difficult to ascertain the Authority's contribution, given the Future Directions emphasis on acting in partnership. As the Corporate Plan states, much of the evaluation of the Authority must be qualitative, using quantitative measures where possible to assist in the assessment.²⁸³

5.82 The Committee has not tried to evaluate the performance measures set out in the Corporate Plan. The Committee sees this as a task for the future. It notes that the Authority will review and update the Plan towards the end of each financial year, so that at the beginning of each financial year there will be a revised Mission Statement, Objectives and Action Strategies for the Authority as a whole.²⁸⁴

281. See footnote 13 in chapter 2 for references to some of the differing views.

282. The Authority pointed out in its *Annual Report 1989-90*, p. ix:

It will be appreciated that, in terms of combatting organised crime, the benefits flowing from such activities as the Authority's cooperation with other agencies and the gathering and dissemination of relevant intelligence do not permit of any precise measurement. Similar considerations apply to research and proposals for operational and legal reform.

283. p. 7. See also Evidence, p. 1680, where Justice Phillips indicated that 'anecdotal material' such as reports of the views of media NCA-watchers will often form part of the material for assessment of the Authority's performance.

284. NCA, Corporate Plan, p. 22.

5.83 The Committee welcomes the fact that performance measures are now available. As data is supplied in annual reports and elsewhere in accord with the measures, the usefulness of individual measures will become more apparent. The Committee will be particularly interested in indicators that reveal:

- . to what extent results achieved by the Authority could have been achieved in the absence of its special powers to compel the attendance of witnesses and the production of documents;²⁸⁵ and
- . the cost of an achieved result, not merely the fact that it has been achieved.²⁸⁶

5.84 The Committee noted the Australian Federal Police Association's criticism of the Authority's statement: 'It is likely that many

285. The Australian Federal Police Association's submission, p. 6 refers to the Authority's special powers and states there is a requirement for 'some measure of their incremental investigative utility leading to the assembling of admissible evidence beyond that which could be obtained utilising conventional police investigative methods in the absence of such powers ...'.

286. The submission from the Australian Federal Police Association, p. 8 commented (in relation to the draft performance measures in the Authority's submission, not those in the Corporate Plan, which was not then complete):

What is not evident are the requisite detailed performance indicators necessary to more properly measure efficiency, that is, the cost of producing these results. In this respect such detailed costings need to incorporate the major and ongoing contribution of the attachment of police officers, access to intelligence holdings including the AFP's established overseas liaison network, the additional secondment of AFP/State/Territory police officers to NCA joint task forces and the provision of telephone interception and witness protection services. In other words a detailed analysis of inputs and outputs.

of the performance indicators relating to its intelligence and investigative objectives will have to remain confidential...'.²⁸⁷ The Association argued:

It is difficult to see how such a position could be sustained and that performance indicators could not be devised to ensure the necessary protections, yet be available for external review and audit by appropriate authorities. The alternative is continuous self assessment of performance, a proposition unlikely to be publicly acceptable.²⁸⁸

5.85 The Committee accepts that providing information publicly against some performance indicators may be difficult. It asks the Authority to do as much as possible to devise publicly available performance indicators. The Committee considers that where this is not possible, it would be useful if the methodology of the assessments could be made available, without the actual data.

General Reaction to Future Directions

5.86 The Committee observes that Future Directions has received encouraging support from Australian law enforcement agencies. The new focus fits far better than the old with police views on how the Authority can best contribute to improving law enforcement. For example, Commissioner Hunt of the South Australian Police told the Committee on 4 February 1991:

The role the National Crime Authority should play though, is one for which it was originally designated and that is to look at the national scene with complementary task forces and investigations being conducted by local law enforcement authorities in conjunction and in co-operation and full communication with and with the

287. The Authority's statement was made in its submission, p. 19.

288. Australian Federal Police Association submission, p. 8.

active assistance of one party to another.²⁸⁹

5.87 The submission from the Australian Federal Police Association, dated 22 February 1991, stated that a legitimate role did exist for the Authority but that its jurisdiction and role needed a more definitive framework:

Consistent with these conclusions the Association recognises that the new [Future] Directions Paper issued by the current NCA Chairman contains the most promise, to date, of the NCA actually establishing itself as a truly cooperative and coordinating component of the national law enforcement machinery. In this respect the commitment of the Chairman to the NCA adopting a partnership role as opposed to a competitive one and the Paper's cooperation initiatives are laudable.²⁹⁰

5.88 The Police Association of New South Wales, which advocated abolition of the Authority, nonetheless conceded: 'The new Chairman, Justice Phillips, certainly appears to understand what is required of the National Crime Authority'.²⁹¹ The Association's Secretary, Mr Lloyd Taylor, commented on 30 January 1991: 'perhaps Justice Phillips can bring it back to what I think the police would like to see it doing: being a cooperative body rather than a

289. Evidence, p. 984. See similarly the submissions from the Tasmania Police, the Western Australia Police Department and the Police Federation of Australia and New Zealand, all of which were written before Future Directions was adopted. The Chief Commissioner of the Victoria Police, Mr Kel Glare, was reported as responding to Future Directions by saying:

I am absolutely delighted at the direction the NCA is going to take. I think it's what the NCA was originally set up for, and without wishing to criticise those who have preceded Mr Justice Phillips, I'm very keen on the proposal. ('Police welcome new direction for the NCA', *The Age*, 27 November 1990, p. 18.)

290. p. 2.

291. Evidence, p. 644.

competitive body which it appears to be now ...'.²⁹²

5.89 Mr Christopher Corns, a Melbourne academic, has observed that the shift in focus adopted by Justice Phillips 'signals a new strategic approach' to the task of targeting the principals, and their close associates, who are the architects of organised crime: 'This strategy involves analysing the economic and institutional systems and methods which have been used to facilitate money laundering and other abuses of business practices'.²⁹³ Mr Corns also noted that this new strategy was very much in line with what was advocated by critics of the Authority's past focus, such as Mr Frank Costigan QC in his address to the 1990 Labor Lawyers Conference in Brisbane.

5.90 The view of Mr Costigan was that the Authority's role should be one of a coordinator and facilitator, acting as a conduit for Commonwealth-State, and inter-agency, cooperative activities:

What the Crime Authority should be doing is really, in essence, quite simple. It should maintain good relations with all police forces and should have one liaison officer from each force available to it to maintain proper communication. That liaison officer should be able to bring to the Crime Authority matters which the local police force finds, for good reason, beyond its jurisdiction. The Crime Authority can then use its powers to assist the particular investigation, to collect material interstate and perhaps overseas, and when the material has thus been collected and analysed, give it back to the law enforcement agency who made the request, for that body to continue with its investigations and, in due course, if arrests are to be made, to make those arrests and to have the appropriate Director of Public Prosecutions take over the prosecution of the

292. Evidence, p. 652.

293. C. Corns, 'New directions for the NCA', *Legal Service Bulletin*, vol. 16(3), June 1991, p. 113.

matter. The Crime Authority can also be a very useful coordinating body when there are task forces to be set up which cross jurisdictions. In addition there are also some roles which it can perform which are appropriate to it and probably no other body. For example, for the Crime Authority to do an investigation into the techniques of money laundering in this country would be of inestimable value to the whole community.²⁹⁴

5.91 Justice Vincent indicated that his envisaged role for the Authority was formed during the debate in 1983 and 1984 leading to the Authority's establishment:

what I envisaged as being the appropriate role of the Authority, whatever it was called, was to provide a reserve power to deal with those kinds of problems which were not appropriately dealt with by State or Federal police agencies within their own ambit. I envisaged that it should be accessible to those bodies as a specialised body of skilled individuals.

... It was also envisaged by me that the body would be able, in appropriate cases and where specific decisions were made by a monitoring agency, to exercise reserve powers - powers of interrogation, of investigation - which might need to be called on. One would not have anticipated that this would occur often, or that it was simply to be an adjunct to the ordinary investigative activities of the body, but that there was open to the community an avenue to protect itself in the relatively small variety of circumstances within which extra intrusions into civil liberties might be justified in order to deal with very difficult matters. ...

294. Frank Costigan QC, 'Anti-Corruption Authorities in Australia', text of an address to the Labor Lawyers' Conference in Brisbane on 22 September 1990, pp. 14-15. The submission of the NSW Bar Association, 3 October 1990, p. 5 endorsed the Costigan paper's view of what functions the Authority should perform.

The body could then additionally, and perhaps peripherally, exercise a monitoring control in order to develop a profile of criminal activity in Australia - to gain a general picture - so that much of the rhetoric to which we had been subjected could be placed into an appropriate perspective.²⁹⁵

5.92 Prior to the announcement of Future Directions, Mr Ron Merkel QC, President of the Victorian Council for Civil Liberties, described a body which he thought should replace the Authority:

It would be, in effect, a supervising body, not with statutory power to direct State or Federal police, but with the power to try to coordinate their activities, try to take over from them the investigations that are just too big, too national or too international for them to handle within themselves. It should be a body that liaises with, supervises and works with the existing law enforcement agencies.²⁹⁶

This description fits the Authority under Future Directions more closely than the pre-1990 Authority.

Other Matters

5.93 A suggestion was made to the Committee that the NCA Act should be altered to enable the Authority to investigate matters such as serial murders or 'thrill' murders.²⁹⁷ The Committee rejects this suggestion. It believes that police forces are capable of investigating such matters.

295. Evidence, pp. 370-71.

296. Evidence, p. 352.

297. Submission from the Police Federation of Australia and New Zealand, p. 8: the definition of 'relevant offence' in the NCA Act 'should be extended to include any serious indictable offence that in the public interest warrants the exercise of special powers, such as serial or thrill murders as an example'. See also Evidence, p. 648 (Police Association of NSW).

5.94 Another suggestion was that the Authority be given an anti-corruption role in relation to the Commonwealth public service like that which the Independent Commission Against Corruption has in New South Wales.²⁹⁸ The Committee notes that the NCA Act empowers the Authority to investigate serious official corruption.²⁹⁹ The Committee does not consider it necessary to alter the Act to permit the Authority to investigate less serious corruption or to take on an educational role in combating such corruption.

Conclusions

5.95 Future Directions and the Corporate Plan set down clear directions for the Authority in its task of combating organised crime. The Committee regards this as valuable and consistent with the NCA Act. The changes adopted are important measures to:

- . avoid excessive focus by the Authority on its investigative function, to the detriment of its intelligence and other functions under the NCA Act;
- . improve the means by which targets for Authority investigations are selected;
- . enable the Authority to cooperate and coordinate its activities with other law enforcement agencies, rather than operate in isolation;
- . enable the Authority to play a significant role in helping other law enforcement agencies to work together on complex matters; and

298. Evidence, pp. 723-24 (Mr John Hatton MP); submission from Mr Malcolm Mackellar, p. 1. In support of his argument, Mr Mackellar raised a specific complaint involving the Department of Immigration, Local Government and Ethnic Affairs. The Committee sought a response from the Department to this complaint. The Committee was satisfied by the response that the specific complaint was unfounded.

299. NCA Act, s. 4(1): the definition of 'relevant offence' includes bribery or corruption of or by a Commonwealth, State or Territory officer, provided some organisation, planning or series of offences is involved and the offence is punishable by imprisonment for a period of three or more years.

- . improve the ability of the Committee and the public to assess how well the Authority is operating and what it is achieving.

5.96 The Committee has commented on some areas in which the Authority's work has the potential to result in overlap and duplication of law enforcement effort. It considers that careful attention and ongoing monitoring is required to ensure that this does not occur.