CHAPTER 6

ACCOUNTABILITY
ROLE OF THE COMMITTEE AND OTHER BODIES

ADEQUACY OF EXISTING ACCOUNTABILITY MECHANISMS

The Existing Mechanisms

6.1 The Authority's submission described its accountability as follows:

> The NCA is subject to a high level of monitoring and review. Decisions taken by the Authority are subject to review under the *Administrative Decisions (Judicial Review) Act 1977*. Section 32 of the National Crime Authority Act provides that applications may be made to the Federal Court for an order of review in respect of particular decisions. As a national body, the Authority is accountable to the constituent Governments and Parliaments through the Inter-Governmental Committee, to representatives of those Governments on that Committee and particularly to the Commonwealth Minister (the Attorney-General) chairing the Committee. The NCA's work is monitored both by the Inter-Governmental Committee and, of course, by the Parliamentary Joint Committee on the NCA, established by the Commonwealth Parliament expressly for that purpose. Further scrutiny of the NCA is provided through the Estimates and other Committees of the Commonwealth Parliament, and the NCA is of course accountable to the Courts. Finally, like other Commonwealth agencies, the NCA is subject to the

provisions of the *Freedom of Information Act 1982*.[300]

6.2 The Authority's submission added: 'Another form of accountability to which the NCA is subject is, of course, to the media'.[301] The Committee notes that Authority records relating to its interception of telecommunications are inspected at least twice a year by the Commonwealth Ombudsman.[302] As a further aspect of accountability, the Authority is audited by the Australian National Audit Office.

Lessons on Accountability from the Experience to Date

6.3 The adequacy of the accountability of the Authority since 1984 emerged as a major issue during the evaluation. In order to determine if changes to existing accountability mechanisms are needed, it is helpful to assess the validity of the criticisms of those mechanisms and the extent of any problems that have emerged since 1984.

6.4 When the creation of the Authority was being considered in 1983-84, it was argued that the special powers and degree of secrecy proposed for the Authority would require special measures to ensure that it remained properly accountable. This view was so widely accepted by those contributing to the current evaluation that the Committee saw no reason to question it.

6.5 Accordingly, the Committee evaluated the issue of accountability on the basis that some special measures were required. The issues for the Committee were the adequacy of the existing measures and the merits of various suggested improvements.

6.6 In assessing these matters, the Committee was conscious

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300. p. 35.

301. p. 37.

302. NCA, *Annual Report 1989-90*, p. 36.

that provision of information lies at the heart of accountability. But the objective of securing appropriate accountability has to be balanced against the need to meet other objectives, best served by some measure of secrecy. These include the need to ensure that premature publicity does not undermine the effectiveness of Authority investigations, and the need to safeguard individual privacy. The challenge is to achieve the correct balance when these objectives compete.

6.7 The Committee received differing views on the adequacy of the current position. The submission from Mr Paul Delianis, dated 16 August 1990, stated:

> For a number of years, in a management capacity, I was concerned with operations involving senior staff from the Authority. At all times I had total confidence in the integrity of these people and the extent of accountability of the Authority. I know of no reason to change.[303]

6.8 The submission from Mr Christopher Corns, dated 13 August 1990, stated:

> The NCA is clearly subject to a greater range of accountability mechanisms than any police force in Australia and possibly than any government department. ... Subject to the limited information available, I submit that the NCA is indeed adequately accountable. I have been surprised by the range and details of matters provided by the NCA to, inter alia, the PJC.[304]

6.9 In contrast, Mr Mark Findlay, the Director of the Institute of Criminology at Sydney University, compared the Authority and the general police. He concluded that the NCA was not subject to

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303. p. 3. Mr Delianis retired in 1987 as Deputy Commissioner of the Victoria Police.

304. p. 9. See similarly the submission from Mr Michael Holmes, p. 25.

several accountability mechanisms that apply to police forces.[305] He referred to the rank structure of a disciplined police service, the requirement on the police to report to external agencies such as Ombudsmen, Complaints Tribunals, Privacy Committees, Judicial Audits etc., and the potential intervention of police tribunals to investigate specific allegations of police indiscipline and excess. The Police Association of New South Wales made the same point, saying: 'On the accountability question, the National Crime Authority, we believe, certainly does not have the same accountability as other police'.[306]

6.10 The views of civil liberties groups that the Authority lacked adequate accountability were set out in paragraphs 4.1 and 4.2 above. Mr John Hatton, MP described the Authority as 'relatively unaccountable'.[307] The Queensland Law Society told the Committee: 'the secrecy surrounding the NCA has brought with it distrust, deserved or otherwise'.[308] The South Australian shadow Attorney-General, the Hon. K.T. Griffin MP, told the Committee at its Adelaide hearing on 4 February 1991: 'I come to the hearing out of a sense of frustration at the way the National Crime Authority appears to have been operating and its lack of public accountability'.[309]

6.11 The Committee has some strong concerns about the lack of Authority accountability which it considers later in this chapter and in the next chapter. Views such as those in paragraphs 6.9 and 6.10 have to be balanced, however, against the operation of the mechanisms described in paragraphs 6.1 and 6.2 above. The Authority, for example, has provided a large amount of pertinent information each year in its annual report, and its staff have

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305. Submission, p. 3.

306. Evidence, p. 644. See similarly, Evidence, p. 496 (Police Federation of Australia and New Zealand); p. 901 (Police Association of South Australia).

307. Evidence, p. 710.

308. Evidence, p. 577.

309. Evidence, p. 989.

answered questions before Senate Estimates Committees. The Law Society of New South Wales stated: 'The Annual Reports of the National Crime Authority appear to be comprehensive and of some value in understanding the claims for which the Authority itself contends'.[310]

6.12 In many cases, the information provided may not be very attention-getting in media terms, simply because the Authority's actions have been quite proper. For example, the Authority's submission points out that there have been few court challenges to Authority decisions and none had been successful until an August 1990 matter was resolved (in an out of court settlement) in favour of the applicant. This is despite the fact that the Authority's decisions are subject to review under the *Administrative Decisions (Judicial Review) Act 1977*. In addition, a person wishing to challenge a decision by the Authority that he or she must provide information to it may seek review of the decision in the courts pursuant to sections 32 and 32A of the NCA Act.

6.13 The Authority argues that this 'strong record in relation to judicial review, combined with the fact that there have been no criticisms of the Authority in this regard from either the IGC or the PJC, is a vindication of the fairness of its actions'.[311]

6.14 Investigations by the Authority have frequently led to charges being laid and subsequent court cases. The Committee is aware of only one case in which the court has criticised the actions of the Authority. This was in the comments of Magistrate J.S. Williams on 13 May 1988 in the committal stage of DPP v. Grassby and others. When the court proceedings involving Mr Grassby are concluded, the Committee may regard it as useful to evaluate the merits of this criticism.

6.15 Mr Andrew Male, an Adelaide journalist whose work has involved a critical watch over a long period on the Authority's

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310. Submission, 22 October 1990, p. 8.

311. NCA submission, p. 37. See similarly, Evidence, pp. 1675-76 (NCA).

activities, was asked by the Committee if he knew of any evidence to suggest that the Adelaide Office of the Authority had acted illegally, as opposed to ineffectively. He replied: 'I do not believe there is any evidence of illegal activity'.[312]

6.16 Material held by the Authority is subject to the access provisions of the *Freedom of Information Act 1982*. In the first six years of the Authority's existence (ie. to the end of June 1990) the Authority's annual reports show that it received a total of 33 requests for access under the FOI Act. A number of these related to material inherited from the Royal Commission to which the Authority was a successor.

6.17 The Committee itself has received only a very small number of credible complaints that the Authority may have unduly trespassed on individual rights and liberties. The Committee accepts that not all aggrieved persons will have approached the Committee. Some may have been unaware of its existence. Others may have assumed, from the media reports of the Committee's difficulties with the secrecy provision in the NCA Act, that the Committee was constrained by the terms of the NCA Act from dealing satisfactorily with the complaints.

6.18 The Committee also notes the comment by the Queensland Council of Civil Liberties that some are reluctant to raise grievances against bodies like the Authority.[313] To complain risks further publicity in a situation where one element of the initial grievance is that the individual has unfairly been linked publicly with an Authority investigation.

6.19 In addition to concern with individual rights and liberties, accountability involves the ability to assess whether the Authority has provided value for money by operating efficiently and effectively in ways not related to rights and liberties. The Committee accepts that in the past there have been grounds for concern on this aspect of

312. Evidence, p. 893.

313. Evidence, pp. 548-49.

accountability. At the same time it notes that particular criticisms of the Authority made to the Committee have been based on detailed information made public by the Authority. Freedom of Information requests could have been made to supplement this information.

ROLE OF THE INTER-GOVERNMENTAL COMMITTEE

Structure and Functions

6.20 One avenue of Authority accountability is to the IGC. The Minister administering the NCA Act is referred to in the Act as the 'Commonwealth Minister',[314] who at present is the Attorney-General. In addition, the Act establishes an Inter-Governmental Committee consisting of the Commonwealth Minister, and a Minister from each State and the Northern Territory.[315] The latter are nominated by their Premier or Chief Minister, and are usually either an Attorney-General or Police Minister. The Table on the following page shows the title of the Minister from each State and the Northern Territory who has been the member of the IGC as at 30 June each year since the Authority commenced operations in July 1984. At present, a Minister representing the Australian Capital Territory participates in the IGC as an observer. Commonwealth legislation to permit the Australian Capital Territory to become a full member of the IGC has been passed.[316] The necessary Australian Capital Territory legislation is expected to be passed before the end of 1991.[317]

6.21 The Authority reports in some respects directly to the Commonwealth Minister, in others to the IGC. Under section 9 of the NCA Act, the IGC is given the specific functions of:

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314. NCA Act, s. 4(1).

315. NCA Act, s. 8.

316. *Crimes Legislation Amendment Act (No. 2) 1991*, s. 36.

317. The National Crime Authority (Territory Provisions) Bill 1991 was introduced into the ACT Legislative Assembly on 12 September 1991.

recommending persons for appointment as Authority members; consulting with the Commonwealth Minister in relation to proposed Commonwealth references to the Authority; considering whether approval should be given for a reference proposed by a State or Territory; and receiving reports from the Authority.

6.22 In addition the IGC is required 'to monitor generally the work of the Authority'.[318] The Authority is required to provide the IGC, on request, with information about specific investigations and the general conduct of its operations.[319] The Authority told the Committee in December 1990:

> At the IGC's request, the NCA now provides quarterly Operational Reports to the IGC pursuant to section 59(3) of the Act. These reports include details of each matter

318. NCA Act, s. 9(1)(e).

319. NCA Act, s. 59(3)-(5).

TITLE OF THE STATE AND TERRITORY MINISTER ON THE INTER-GOVERNMENTAL COMMITTEE

as at 30 June

	1985	1986	1987	1988	1989	1990
NSW	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services
QLD	Minister for Justice & Attorney-General	Minister for Justice & Attorney-General	Deputy Premier & Minister for Police	Deputy Premier & Minister for Police	Minister for Police & Minister for Emergency Services & Adminis-trative Services	Minister for Police & Emergency services
SA	Attorney-General	Attorney-General	Attorney-General	Attorney-General & Minister for Corporate Affairs	Attorney-General & Minister for Corporate Affairs	Attorney-General & Minister for Corporate Affairs
TAS	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services
VIC	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services
WA	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services	Minister for Police & Emergency Services

NT	Chief Minister	Chief Minister	Chief Minister	Chief Minister	Chief Minister & Treasurer	Chief Minister & Treasurer

under investigation, financial details, and comprehensive statistical details.[320]

6.23 The IGC meets in private, but also transacts much of its business by correspondence, without meetings being necessary. The Chairman and members of the Authority attend virtually all IGC meetings, although they may occasionally be asked to withdraw during discussion of particular agenda items. The Authority told the Committee:

> As well as the granting of references, discussion at IGC meetings typically covers a wide range of topics, including amendments to the National Crime Authority Act, cost-sharing and secondment arrangements, resource questions and reports on investigations. ... The NCA views its relationship with the IGC as an effective one and does not see a need for any change to the nature of that relationship.[321]

Reasons for Creation of the IGC

6.24 The Government in 1983 considered that the Authority would only be effective with the participation and cooperation of the States and Northern Territory.[322] Extensive inter-governmental

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320. NCA submission, p. 36.

321. NCA submission, p. 36.

322. The 'Submission by the Attorney-General and the Acting Special Minister of State to the Standing Committee on Constitutional and Legal Affairs in relation to its reference concerning the National Crime Authority Bill and the National Crime Authority (Consequential Amendments) Bill 1983', para. 24 explained:

> However appropriate its blend of powers and safeguards in any other respect, the Crime Authority will not be effective without the participation and co-operation of Governments of the States and Northern Territory. The Commonwealth's constitutional power to authorize the Crime Authority to investigate, using coercive powers, offences against State laws is effectively non-existent.

discussions occurred between July and October 1983 to secure this participation and cooperation.[323] The Government took the view that 'State co-operation is only likely to be forthcoming on other than a grudging basis, in a wholehearted way, if the States feel that they are genuinely part of the operational role or the governing structure of the Authority'.[324]

6.25 The States initially advocated joint ministerial accountability for the Authority, as an alternative to the IGC.[325] The Commonwealth Government rejected this on the ground that 'when you have joint accountability you really cannot pin the responsibility

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In oral evidence to the Senate Committee, the Attorney-General, Senator the Hon. Gareth Evans QC, identified three relevant factors:

> One is the constitutional imperative. The second is the practical imperative - if you want to get on-the-ground co-operation from the States you have to give them a place in the sun in the institutional organisational machinery ... The third consideration is the political imperative, when it comes to the actual determination of whether or not a particular State is going to lend its assent to a proposed reference. You have three separate pressures operating and they are all combined to produce the particular model which, despite its Heath Robinson appearance to many people, including initially myself, is the only model which I believe satisfies the various pressures that are operating and produces those results. (Senate Standing Committee on Constitutional and Legal Affairs, Reference: National Crime Authority Legislation, *Hansard*, 15 February 1984, p. 281.)

323. The submission referred to in the previous footnote, para. 5 details the steps taken. The States were also consulted when the Government prepared its response to the 1984 Senate Committee report: Senate, *Hansard*, 10 May 1984, p. 1969 (Senator the Hon. Gareth Evans QC).

324. Senate, *Hansard*, 5 June 1984, p. 2551 (Senator the Hon. Gareth Evans QC).

325. Senate Standing Committee on Constitutional and Legal Affairs, Reference: National Crime Authority Legislation, *Hansard*, 15 February 1984, p. 278 (Senator the Hon. Gareth Evans QC).

on any particular government'.[326] The Government preferred a Commonwealth-created Authority accountable to a Commonwealth Minister and through that Minister to the Parliament.[327] The Government accepted some alteration to its preferred model. One step taken:

> to meet the reasonable requirements of the States was provision for an Inter-Governmental Committee to monitor generally the work of the Authority. ... The Committee will provide the States with a very effective window into the operations of the Authority.[328]

Operation of the IGC

6.26 Because the IGC issues no reports or public statements, the Committee cannot readily assess how well it has carried out its functions. In submissions and evidence the Committee received virtually no comment on the IGC's performance. It appeared that there was little public awareness of the existence of the IGC.

6.27 The Victorian Council for Civil Liberties commented that it saw the Committee, not the IGC or the Minister, as the body to which the Authority was accountable.[329] Assistant Commissioner Graham Sinclair of the Victoria Police made a similar point:

> I think the National Crime Authority needs to be seen to be accountable, and not just accountable to the IGC. In my view, the IGC is a body that has a greater vested interest in the National Crime Authority. I do not mean

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326. ibid.

327. ibid.

328. 'Submission by the Attorney-General and the Acting Special Minister of State to the Standing Committee on Constitutional and Legal Affairs in relation to its reference concerning the National Crime Authority Bill and the National Crime Authority (Consequential Amendments) Bill 1983', para. 26.

329. Evidence, p. 348.

> that disrespectfully. You are talking about relevant Ministers and so forth, some of whose staff are employed with the Authority from time to time. To me, this Committee stands much further away from any taint of vested interest in the Authority.[330]

6.28 In contrast, the submission from the IGC stated in relation to the Committee:

> The IGC is firmly of the view that the IGC itself provides a better line of responsibility to ensure both the protection of civil liberties and the effective oversight of the operational and functional activities of the NCA.[331]

6.29 This claim by the IGC is difficult to reconcile with the limited activities of the IGC. In the period July 1984 to October 1991, the IGC met on only 16 occasions. This suggests to the Committee that the IGC has taken only a very limited role in monitoring the Authority.

6.30 For example, in the 1989-90 financial year the IGC met only once.[332] Yet during this period the Authority was embroiled in major controversies, including those relating to the operation of its Adelaide office and the abrupt resignation of its Chairman.[333] The Committee is alarmed at the infrequent meetings of the body claiming to provide 'effective oversight' over the Authority. More adequate supervision by the IGC would have prevented the controversies arising in the first place.

6.31 Situations have arisen where the Authority has been publicly criticised or public concern has emerged over some aspect of its activities. The Committee considers that the IGC should have

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330. Evidence, p. 1285.

331. p. 3.

332. NCA, *Annual Report 1989-90*, p. 11. The meeting was in Darwin on 9 March 1990.

333. See paras. 3.61 and 3.65 to 3.102 above.

done more to make public its findings in relation to these matters, so as to provide some reassurance to the public about the Authority.

6.32 The Committee is not aware of any material that the IGC has received from the Authority that the IGC has made public, even with sensitive material removed. Yet the IGC has received, either on request or at the Authority's initiative, reports on many of the issues concerning the Authority which have caused public disquiet. Not all concerned operational matters: see for example the discussion on the Arthur Andersen report in paragraph 7.85 below.

6.33 The Committee considers that IGC should have paid greater regard to the need to maintain public confidence in the Authority, and to make public more of the material the IGC receives from the Authority.

6.34 As indicated in chapter 3, the Authority's history has not been problem-free. The IGC appears to have done little if anything to address the problems. As far as the Committee can determine, the IGC made no contribution to giving the Authority strategic direction.[334] Future Directions seems to have originated quite independently of the IGC. No management reviews have been initiated by the IGC. No formal assessments have been made by the IGC of the Authority's performance.

6.35 Subsection 61(6) of the NCA Act provides that the IGC may comment on the Authority's annual report, and any comments made are required to be tabled in the Parliament with the report. The Government explained in 1984 that this provision 'was suggested by State Ministers in discussion with Commonwealth Ministers and the Government sees no objection to it. It serves to

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334. For example, there is no evidence that the IGC acted on claims in the 1980s that the Authority was not following the strategy envisaged at its creation. One such claim was made by Mr Frank Costigan QC: 'NCA not doing its job, says Costigan', *Sydney Morning Herald*, 3 May 1988, p. 4. There is no evidence that the IGC addressed the question whether a different strategic direction for the Authority might have avoided the need for some of the specialist State bodies, including Royal Commissions, to deal with corruption and organised criminal activity.

underline the co-operative scheme of the Bill.'[335]

6.36 The IGC made comments amounting to less than a page on each of the first three annual reports of the Authority. Comments have not been made on subsequent annual reports. The lack of IGC comments strengthens the Committee's view that the IGC has not actively monitored the Authority.

6.37 There is no evidence that the IGC has taken a role in initiating the references given to the Authority: all proposals for references have come from elsewhere.[336] The IGC seems to have acted as no more than a rubber stamp. Criticisms of the way in which terms of reference have been drafted are noted in chapters 3 and 8. A more active IGC scrutiny might have removed the basis of these criticisms.

6.38 The NCA Act provides that the IGC 'shall, before approving a reference, consider whether ordinary police methods of investigation into the matter are likely to be effective'.[337] During Senate debate in 1984 on the wording of the provision the Attorney-General, Senator the Hon. Gareth Evans QC, stated his concern that:

> in taking into account the question of the adequacy of police resources, there be a genuine consideration of the

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335. Senate, *Hansard*, 6 June 1984, p. 2665 (Explanatory note on amendment moved by the Government).

336. NCA, *Annual Report 1989-90*, p. 6 states: 'From the time of its establishment in July 1984, the Authority has sought references in relation to twelve matters and has been granted references in relation to eleven ...'. The twelfth matter has since been referred.

337. s. 9(2). This provision arose from the need to secure State and Territory cooperation and 'the understandable concern of the State police forces and Ministers that their particular role in fighting organised crime be not downgraded; that their role be fully appreciated and understood, and that, where appropriate, the State police forces continue to play their traditional crime investigation role'. (Senate, *Hansard*, 6 June 1984, p. 2594 (Senator the Hon. Gareth Evans QC))

> possibility of effective police action, rather than merely formal consideration of it, and that there really be some close attention paid by the committee [ie. the IGC] to the possibility of getting there by police action rather than escalating it to the coercive action of the kind that is involved in the granting of a reference.[338]

6.39 It would seem that the IGC has not given the genuine consideration to the possibility of effective police action that Senator Evans hoped it would. Where more detailed consideration has occurred, it has apparently taken place outside the IGC. The Authority told the Committee:

> In relation to the first six matters referred to the NCA, the question of whether ordinary police methods were likely to be effective was not raised with the NCA. This was not surprising, as one reference was sought at the suggestion of a police force; another at the suggestion of a government and a police force; in three other cases, ordinary police methods had been shown to be ineffective; while in the remaining case, the matter was of such complexity that the question was susceptible to a ready answer had it been raised. The question was likewise not raised in relation to Matter Nine (the NCA's South Australian reference), again for reasons which are readily understandable (the reference involved, inter alia, alleged police corruption).
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> In the case of Matters Seven and Eight, however, the NCA did receive representations from relevant police forces that their investigative methods were adequate to the task, or to part of the task. In each case the matter was settled by negotiations with the Governments or police forces concerned, and the references granted. In only one case was the scope of the reference changed.[339]

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338. Senate, *Hansard*, 6 June 1984, p. 2594.

339. NCA submission, p. 7.

THE ROLE OF THE COMMITTEE

Introduction

6.40 Part III of the NCA Act, which provides for the role of the Committee, was inserted during the passage of the NCA Bill through the Senate in 1984. Part III replaced a provision for judicial audit. The submission to the Committee from the IGC advocated reversing this process: the Committee should be replaced by a judicial audit.[340] It is therefore useful to indicate briefly the features that in 1984 were envisaged for such an audit.

6.41 At intervals of not more than three years, the Attorney-General was to be required to appoint a judge of the Federal Court or a State or Territory Supreme Court to audit the Authority. The judge was to be required to examine the operations of the Authority and was given unrestricted right of access to Authority documents and records. The judge was to report to the relevant Minister whether, during the period covered by the report, the Authority had effectively performed its functions and had done anything contrary to law or trespassed unduly upon the rights and liberties of individuals. The judicial auditor was to be appointed only for the purpose of conducting the audit: the Bill did not confer any on-going complaint-investigation role on the judicial auditor.

6.42 The majority report of the Senate Committee which examined the NCA Bill in 1983-84 considered that neither a judicial audit nor a permanent parliamentary committee to oversee the Authority would provide effective accountability.[341] The Senate

340. p. 3.

341. Senate Standing Committee on Constitutional and Legal Affairs, *The National Crime Authority Bill 1983*, AGPS, Canberra, 1984, paras. 8.7 and 8.26. Senator Missen, in a dissent to the report, agreed with the rejection of judicial audit but supported the use of a parliamentary committee. Senator Chipp's dissent supported Senator Missen on the use of a parliamentary committee. The dissents by Senators Bolkus and Crowley supported judicial audit.

Committee preferred the ordinary methods of Parliamentary supervision coupled with speedy access to the courts. It was also influenced by the presence of a 5-year sunset clause in the Bill.[342]

6.43 In making its recommendation that the provision for judicial audit be deleted from the Bill, the Senate Committee referred to the evidence it received from senior lawyers who had worked with royal commissions into crime and corruption. Their experiences suggested that it would be a mammoth task for someone to examine the Authority's records and documents covering a three-year period and successfully determine if any individual rights or liberties had been unduly trespassed upon.[343] The Senate Committee commented:

> Even if undertaken successfully, it would be well after the event and of little consolation to those affected. A more immediate remedy for actual or apprehended illegality is required and recommended.[344]

6.44 In the light of the Senate Committee's view in 1984 on the limits to what a judicial auditor could accomplish, it is relevant to note the more recent experience of the Inspector-General of Intelligence and Security, who monitors the Australian intelligence and security agencies. On page 4 of his 1989-90 Annual Report he stated:

> As my main responsibility is to help Ministers ensure that the agencies act legally and with propriety, it is reasonable to expect me in my annual report to address this question. However, after a year as Inspector-General, I have concluded that it is simply not feasible to give an unequivocal assurance that the agencies are indeed acting totally legally and properly and that they do completely comply with Ministerial guidelines and directives. The reason I cannot give such an assurance

342. ibid., para. 8.25.

343. ibid., paras. 8.3 and 8.4.

344. ibid., para. 8.4.

is that I cannot be sure that I have seen everything of relevance in every agency. Indeed, I doubt that I or any other person in my Office could ever give such an unequivocal assurance.

Abolition of the Committee?

6.45 The *Sydney Morning Herald* editorial on 8 November 1990 referred to the Committee as:

> the primary watchdog established by Parliament to monitor the performance of the NCA. As Mr Lindsay correctly observes, the parliamentary committee is the only body capable of making the Authority publicly accountable.

6.46 Others have expressed similar views. The Hon. Justice Frank Vincent told the Committee:

> I regard the real protection which we have for civil liberties arises from the work of this Committee, because it is clear enough that we cannot have all of the kinds of investigations which the body conducts performed in public. We cannot even have all of the hearings conducted in public for a variety of reasons. Therefore there has to be a means by which those questions can be addressed, the real work of the Commission can be assessed, and the real exercise of its powers can be evaluated. You are the only people who can do that.[345]

6.47 Mr Frank Costigan QC told the Committee:

> I think the role of this Committee is crucial to the National Crime Authority. I think unless you have a parliamentary committee which is able to supervise the

345. Evidence, p. 377.

> Authority in a responsible way then the dangers of having a crime authority are very great.[346]

6.48 The New South Wales Council for Civil Liberties stated: 'It is the Council's policy that the NCA should only continue if there is effective parliamentary oversight of the National Crime Authority'.[347] The South Australian Council for Civil Liberties referred to the Committee as 'a principal safeguard built into the Act to ensure that the NCA did not abuse its extraordinary powers and position ...'.[348]

6.49 In contrast to these views, the submission from the IGC stated:

> the IGC is firmly of the view that the PJC should be abolished. The IGC supports the establishment of a Judicial Audit model to examine the operations of the NCA at regular intervals to determine whether the NCA has effectively performed its functions and whether it has acted contrary to law or trespassed unduly upon the rights and liberties of individuals. Some consideration may need to be given to the Judicial Audit being empowered to act as an ombudsman in relation to particular complaints against the NCA. The IGC believes that the Judicial Audit model, in conjunction with the direct Ministerial responsibility held by each of the members of the IGC, provides the most effective form of accountability for the NCA.[349]

6.50 The IGC submission failed to substantiate this proposal. The IGC acknowledged, by advocating a judicial auditor, that some special accountability mechanism is required for the Authority. One

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346. Evidence, p. 423.

347. Evidence, p. 747. See also Evidence, p. 348 for the Victorian Council for Civil Liberties' view on the importance of the Committee's role.

348. Evidence, p. 933.

349. pp. 18-19.

reason given for preferring the judicial audit to the Committee was that:

> The proposition that a Parliamentary Committee with extraordinary powers, but without direct responsibility or accountability, is in some way a greater protection for the civil liberties of the public than the principle of Ministerial responsibility (plus the Statutory provision for a judicial audit) has not been proved over the last six years.[350]

6.51 The IGC did not explain what is meant by the reference to 'extraordinary powers'. As is made clear in discussing sections 51 and 55 of the NCA Act in the next chapter, the Committee's work has been bedevilled since 1984 by its lack of power to acquire adequate information from the Authority (or, as some would argue, by the refusal of the Authority and Government to acknowledge that the NCA Act actually conferred such power).

6.52 The IGC notes that it is essential that those privy to sensitive NCA operational information 'are directly accountable for their actions to Government and the Parliament'.[351] This proposition can not be reconciled with the IGC's advocacy of a fully independent judicial auditor. Moreover, the inference is that Committee members using sensitive information are not accountable to Parliament for the use of that information. This inference is incorrect. Parliamentary Standing Orders and the *Parliamentary Privileges Act 1987* ensure that Committee members are accountable for their use of information.

6.53 Apart from parliamentary accountability, committees have ultimately to answer to the community. Mr Peter Beattie, Chairman of the Parliamentary Criminal Justice Committee of Queensland, told the Committee in relation to inappropriate committee use of sensitive information: 'the final arbiter to that is

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350. IGC submission, p. 5.

351. IGC submission, p. 6.

the community and the community's reaction. If we get it wrong then we wear the political consequences both individually and collectively.'[352]

6.54 The IGC submission states: 'The IGC considers that, as a matter of principle, it is not appropriate for the NCA to be accountable on an operational level to a body such as the PJC'.[353] Reference is also made to the need for discretion and restraint on the part of those entrusted with the task of monitoring the Authority's performance. The submission states: 'Unless there is evidence of significant breakdown in police administration or procedures, Governments would not involve themselves in the details of police investigations'.[354] It adds: 'it is of grave concern to the IGC that the PJC has in the past requested access to sensitive information held by the NCA'.[355]

6.55 The Committee has never sought information to which it is not entitled under the NCA Act.

6.56 On the advantages of judicial audit, the IGC submission stated:

> The proposal in the original draft NCA Bill for the NCA to be subject to a judicial audit provides both the semblance and substance of impartial review and accountability. There would not, nor could there be, criticism of the operations of the audit on the basis of political interest. This cannot be said without qualification for all of the activities of the PJC to date.[356]

The IGC failed to provide examples of such activities.

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352. Evidence, p. 1123.

353. p. 3.

354. pp. 5-6.

355. p. 7.

356. p. 6.

6.57 The IGC's proposal that the Committee should be abolished because it had acted on the basis of political interest[357] was not made in any other submission to the Committee, nor by any witness who appeared before it.[358]

6.58 The Committee rejects the IGC's proposition that the Committee should be abolished. The Committee does not consider that the IGC has advanced any cogent reasons to support this proposition.

6.59 In reaching this conclusion the Committee notes that special parliamentary committees have been established by the Queensland Parliament to monitor that State's Criminal Justice Commission, and the New South Wales Parliament to monitor the Independent Commission Against Corruption. The fact that other Parliaments in Australia have concluded that law enforcement agencies having special powers ought to be monitored by special

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357. In Parliament on 15 October 1991, the Attorney-General, the Hon. Michael Duffy MP, referred to problems that existed between the IGC, the Authority and this Committee: House of Representatives, *Hansard*, p. 1965. He referred also to the 25 July 1991 meeting between this Committee and the IGC and stated (p. 1966):

> However, in starting negotiations with what was a very difficult Committee in the sense of the independence of its members on both sides of the House - I will put it no stronger than that - I think the ante was raised when the abolition of the Committee was put forward by the Inter-Governmental committee. The atmosphere at the time was so bad - this was the view of all the State Attorneys on the Inter-Governmental committee as well as my own view - that the abolition of the Committee was put forward as a very serious and considered position. I would be very surprised if that matter is pushed any further. It arose, I think, because of all of the matters that I have mentioned. The atmosphere is now different.

358. The Police Association of South Australia indicated that the fact that the Committee consisted of politicians raised doubts as to its independence: Evidence, pp. 903-4, 906-7. Mr Frank Galbally also noted that such doubts might arise in the future: Evidence, p. 1309.

parliamentary committees reinforces the Committee's view that it should continue to have a role in monitoring the Authority.

Other Criticisms of the Committee's Performance

6.60 Although in the views put to the Committee there was a general acceptance that it had a significant role to play in ensuring the Authority's accountability, some criticisms did emerge of the performance of the Committee and its predecessors in previous Parliaments. Most criticisms related not to the Committees so much as to the secrecy provisions which had restricted the information that was provided to them, and hence hindered their activities. These provisions are considered in the next chapter.

6.61 The Queensland Council of Civil Liberties regarded what it saw as the frequent turnover in Committee membership as weakening the ability to scrutinise the Authority, although it recognised that there was no easy solution to this.[359] The Council also referred to the Committee's relative lack of resources leading to the result that it was overly dependent on the Authority itself as a source of information.[360] Both the Queensland Council and its Victorian counterpart considered that the Committee should have counsel assisting it in its work.[361]

6.62 The Committee does not see any need for counsel to assist it on a permanent basis. The Committee has access to funding to enable it to engage counsel for specific purposes, should the Committee consider this to be necessary. It has done so in relation to its current inquiry into the Authority's relationship with James McCartney Anderson.

6.63 The Committee received some criticism that the previous

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359. Evidence, pp. 549, 556, 559.

360. Evidence, p. 554.

361. Evidence, pp. 348, 1418 (Victorian Council for Civil Liberties); p. 562 (Queensland Council of Civil Liberties).

Committees had held too many of their hearings *in camera*.[362] The Committee has since October 1990 operated on the basis that all its hearings are to be in public unless there are compelling reasons to sit in private. Similarly, it authorises the publication of submissions received wherever possible. Almost all the evidence taken in the inquiry leading to this report has been taken in public and most submissions released to the public. It was during the course of this evaluation that the members of the Authority first appeared at a public hearing of the Committee. In contrast, the hearings for the Initial Evaluation in 1988 were held *in camera* and the submissions were not publicly released.[363]

6.64 The Committee will continue to receive briefings in private from the Authority. However, the Committee sees considerable merit in holding at least one public hearing each year with the Authority. An examination of the Authority's annual report could provide the focus for such a hearing.

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362. Evidence, pp. 1104-05 (Australian Federal Police Association); p. 1390 (Victorian Council for Civil Liberties). See also Evidence, pp. 1082 and 1088-90 where Mr Malcolm Kerr, MP, Chairman of the NSW Parliamentary Committee that oversees ICAC, explained the advantages of an oversight committee holding its hearings in public.

363. Twenty two submissions were received; hearings were held on two days and ten witnesses appeared, including four from the Authority: *Initial Evaluation*, appendixes 2 and 3.

MONITORING ROLES FOR OTHER AGENCIES

Resolving Individual Complaints against the Authority

6.65 It was suggested that, in addition to the Committee, other agencies should have a role in resolving individual complaints against the conduct of those working for the Authority. Suggestions included conferring jurisdiction on the Commonwealth Ombudsman, on a police complaints authority, creation of a position along the lines of the Inspector-General of Intelligence and Security, who monitors Australian intelligence and security agencies,[364] or creation of some other mechanism.[365] The submission from the Police Association of South Australia criticised the fact that: 'There is no provision for complaint to the Ombudsman, State or Federal, a Police Complaints Authority or the like'.[366]

6.66 There is no police complaints authority publicly identified as having jurisdiction over Authority police.[367] In practice, most

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364. The Inspector-General of Intelligence and Security has differing responsibilities in relation to each of Australia's five intelligence and security agencies. The IGIS has a complaint-investigating role in relation to some of the agencies, including the Australian Security Intelligence Organization. In addition, for each agency, the IGIS can inquire into the legality and propriety of its activities and the effectiveness and appropriateness of its procedures that are designed to ensure that it acts legally and with propriety. The IGIS has wide powers to obtain access to premises, compel production of documents, and require persons to attend and answer questions on oath.

365. For examples of discussion of the various alternatives, see Evidence, pp. 522-23 (Police Federation of Australia and New Zealand); pp. 806-07 (Mr Arthur King); p. 987 (Commissioner D.A. Hunt); pp. 1060-61 (Law Council of Australia); p. 1106 (Australian Federal Police Association); pp. 1289, 1299, 1309-10 (Mr Frank Galbally).

366. p. 4. See also Evidence, p. 662 (Police Association of NSW); pp. 1358-59 (Mr D. Berthelsen).

367. All police working for the Authority are on secondment from another police force. They retain the powers of arrest, pay and conditions they had as members of their home force. Equally, they are subject to whatever police complaints authority or mechanism exists in relation to officers of their home force. Thus, a complaint about the conduct of a member of the

complaints against Authority staff (including police) have been taken to the Authority, and dealt with by *ad hoc* mechanisms. The Committee's predecessor was told in 1988 that complaints received by the Authority had been referred to the officer's home force for investigation.[368] In 1989, the Authority's counsel[369] was used to investigate and report on an allegation relating to Authority staff in South Australia.[370] The Committee was told that more recently investigations into complaints have been conducted by officers from a force other than the one to which the officer subject to the complaint belongs.[371]

6.67 The Committee considers that the mechanism by which individual complaints against the Authority are investigated and resolved needs to be improved. The Committee lacks the time and the investigative staff necessary to deal adequately with individual complaints.[372] Moreover, the most effective way of dealing with some

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Australian Federal Police on secondment to the Authority can be made using the mechanism, including recourse to the Ombudsman, provided by the *Complaints (Australian Federal Police) Act 1981*. The fact that such jurisdiction exists appears not to be widely known. A person having a complaint against an 'NCA policeman' may well not know from which force the officer is seconded. Even if this is known, the complainant may be unaware of the police complaints mechanism applying to members of that force. The police complaints mechanisms do not cover Authority staff who are not seconded police.

368. *Initial Evaluation*, p. 70. All completed investigations at that time had found the complaints to be without merit.

369. Section 50 of the NCA Act provides that the Attorney-General may appoint a legal practitioner to assist the Authority as counsel, either generally or in relation to a particular matter or matters.

370. NCA Press Release, 28 July 1989, 'NCA Drug Inquiry'. The counsel was assisted by an Australian Federal Police officer and a Victorian Police officer, both on attachment to the Authority in Melbourne. Counsel found no evidence of impropriety by Authority staff.

371. Evidence, p. 1684 (NCA).

372. One complaint received by the Committee involved Mr Mehmed Skrijel. Having heard evidence from Mr Skrijel and others (Evidence, pp. 1356-82, 1627-45), the Committee referred the matter to the Attorney-General.

individual complaints would be for the investigator to visit the Authority and inspect all the relevant files. This mode of investigation is difficult for a Committee.

6.68 Justice Phillips told the Committee on 29 July 1991 that he favoured a system of inquiry outside the Authority for handling serious complaints. He said he had not given any particular thought to an appropriate vehicle 'but, in principle, I would support somebody or some organisation independent of the Authority handling them'.[373]

6.69 The agency to take on the complaint-investigation role could be:

- the Commonwealth Ombudsman;
- the Inspector-General of Intelligence and Security;
- a new agency, created specifically for the task; or
- provision could be made for a special investigator (e.g. a barrister) to be appointed for each complaint meriting detailed investigation.

6.70 The Committee does not think there will be sufficient numbers of complaints to justify setting up a new agency.

6.71 The use of a special investigator might resemble the Authority's use of its counsel in 1989 to investigate complaints,[374] modified to make the counsel fully independent of the Authority. The system for investigation of complaints against the Queensland Criminal Justice Commission is one model of how this might work.[375]

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373. Evidence, p. 1682. See similarly, Evidence, pp. 1696-97 (NCA).

374. See para. 6.66 above.

375. The system is described in Queensland, Criminal Justice Commission, *Submission on Monitoring of the Functions of the Criminal Justice Commission*, April 1991, p. 175 (submission made to the Queensland Parliamentary Criminal Justice Committee):

> The Commission recognised ... that there would be

6.72 The Committee does not favour such a system involving special investigators for the following reasons:

- it lacks the public profile and ease of public access of the Ombudsman or Inspector-General;
- it does not provide a ready mechanism for filtering complaints to determine which ones appear prime facie to warrant the appointment of an investigator; and
- one-off investigators do not have the chance to build up any expertise about the Authority.

6.73 A clause in the NCA Bill to confer jurisdiction on the Commonwealth Ombudsman over the Authority was deleted, despite Government objection, when the Bill was before the Senate in 1984. The Senate Committee which had examined the Bill recommended deletion.[376] A major reason for removing the Ombudsman's jurisdiction was that given by Senator the Hon. Don Chipp:

> Organised crime is of such dimensions and has such cohesion that smart, expensive lawyers could well use the Ombudsman's office to unduly hamper or harass inquiries ... Even if one goes to the stage of saying that

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> complaints against its officers in the course of performing their duties. With a view to accountability, the Commission was concerned to establish an independent mechanism to deal expeditiously with such complaints. To this end, discussions were had with the Attorney-General, the Director of Prosecutions and the Commissioner of Police, whereby such a mechanism was established. This involves an investigation by a Senior Crown Prosecutor, nominated by the Director of Prosecutions and a senior police officer or officers, nominated by the Commissioner of Police service. They report to the Chairman of the Commission, the Attorney-General and the Minister for Police and Emergency Services.

376. Senate Standing Committee on Constitutional and Legal Affairs, *The National Crime Authority Bill 1983*, AGPS, Canberra, 1984, para. 8.12. Senators Bolkus and Crowley dissented from the recommendation.

> the Ombudsman could not totally stop an inquiry, he could delay it to such an extent that would allow the criminal or criminals to get off the hook.[377]

The establishment of the Parliamentary Joint Committee was seen by Senator Chipp and the majority in the Senate as providing a better alternative than the Ombudsman.

6.74 The Committee disagrees with the view of the Senator Chipp. It notes the views of the then Ombudsman, Professor Jack Richardson, that the 1984 Senate Committee's recommendation was based on:

> some remarkably ill-informed views put to it by others, who have had nothing to do with my office, about the impact on the Authority's effectiveness should its actions be subject to review by the Ombudsman. ... I believe fears voiced before the Senate Committee that my office might have been used by sinister and powerful interests to obstruct legitimate investigation by the Authority are exposed as fanciful by the failure of the identical interests to achieve frustration of any Australian Federal Police investigation through complaint to me.[378]

6.75 The Police Federation of Australia and New Zealand told the Committee on 21 November 1990:

> we have come to recognise the value of having the Ombudsman in terms of the public acceptability and credibility of the organisation and in terms of the members' perception of their own organisational health too. So we would suggest that the Ombudsman should

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377. Senate, *Hansard*, 6 June 1984, p. 2646.

378. Commonwealth Ombudsman and Defence Force Ombudsman, *Annual Reports 1983-84*, p. 9.

have a role in oversighting the NCA.[379]

6.76 The Committee does not accept this suggestion. The Committee considers that the Inspector-General of Intelligence and Security would be more suitable to take on the role of investigating individual complaints against the Authority. The Committee notes that the Inspector-General will require extra resources to perform this additional function.

6.77 Accordingly, the Committee **RECOMMENDS that the Inspector-General of Intelligence and Security be given jurisdiction to investigate complaints against the Authority, its staff and those seconded to work for it.**

6.78 The Committee envisages that complaints could be taken directly to the Inspector-General. Provision would also be made for the Committee, the Attorney-General, the IGC or Ministers who are members of the IGC to refer complaints to the Inspector-General. Complaints brought to the Committee would only be referred to the Inspector-General where the Committee considered that the Committee itself could not readily resolve them.[380]

6.79 The Inspector-General would have a right of access to all Authority files, and to require persons to attend and answer questions on oath and to produce documents.[381] He would also have the power to refuse to take investigative action on any complaint that he deemed to be frivolous, vexatious or trivial.

6.80 In keeping with the Committee's role as general monitor of the Authority, provision should be made for the Inspector-General

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379. Evidence, p. 523. See also Evidence, p. 1106, where the Australian Federal Police Association stated: 'The Commonwealth Ombudsman is a most satisfactory avenue for accountability as far as we are concerned and we would recommend it to the National Crime Authority'.

380. The Committee's ability to investigate complaints fully will be affected by its access to information from the Authority - a matter addressed in the next chapter.

381. cf. *Inspector-General of Intelligence and Security Act 1986*, s. 18.

to notify the Committee of the general terms of each complaint made, and whether the Inspector-General considered that the complaint warranted investigation. In addition to informing the complainant of his conclusion, the Inspector-General should present a report to the Committee on each completed investigation. These reports should describe in general terms what steps the Inspector-General took in his investigations, the conclusions he reached and the basis for those conclusions. The reports should not, however, contain 'sensitive information'.[382]

The Privacy Commissioner

6.81 Unlike the Australian Federal Police, the Authority is expressly excluded from the coverage of the *Privacy Act 1988*.[383] When the Privacy Bill was being debated by the Senate this exclusion was questioned by Senator Haines. Responding for the Government, Senator the Hon. Michael Tate referred to the special status of the Authority in that it was underpinned by State and Territory as well as Commonwealth legislation. He also referred to:

> the Joint Parliamentary Committee on the National Crime Authority which provides a means and a process by which any abuse of the powers which it has can be exposed to democratically elected representatives. ... If we had a report from the Joint Parliamentary Committee on the National Crime Authority which indicated that that Authority might be brought within the purview of this sort of legislation, that might give material which would require a response and reflection and deliberation. But at this stage the Government, having not heard any real argument that the NCA ought to be brought within this privacy legislation, has determined that with the concurrence of the Parliament it ought to be excluded from the scope and ambit of the

382. See paras. 7.32, 7.46 and 7.59 below for the meaning of 'sensitive information'.

383. *Privacy Act 1988*, s. 7(1)(a)(iv).

legislation.[384]

6.82 In addition to a complaint-investigating role, the Privacy Commissioner has audit, compliance, advising and consulting roles in relation to agencies subject to his oversight. The Privacy Commissioner can grant requests from agencies for variations and waivers in relation to the operation of the Act.

6.83 The Committee is not aware of any specific cases in which it has been shown that the Authority has breached privacy principles. It notes the statement on page 43 of the Authority's 1989-90 Annual Report: 'notwithstanding its exempt status under the [Privacy] Act, the Authority applies procedures to ensure that the collection, use and security of information is strictly controlled'.

6.84 Some general privacy-related concerns were, however, put to the Committee by, amongst others, the Victorian Council for Civil Liberties.[385] These were based primarily on the large number of files created by the Authority and the number of documents seized by it or passed to it.[386] In addition, the Committee notes that the Authority's current commitment to a larger intelligence role and greater sharing of intelligence with other agencies increases privacy concerns.

6.85 The Privacy Commissioner, Mr Kevin O'Connor, told the Committee: 'The privacy issues raised by the VCCL, I feel, are significant'.[387] He noted the comments of Justice Phillips on the need for change to make the Authority more open and commented: 'One element of that change which I view as desirable should, I feel, be the adoption of an internal privacy code, the operation of which is

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384. Senate, *Hansard*, 22 November 1988, p. 2541.

385. Evidence, p. 353. See also Evidence, p. 561 (Queensland Council of Civil Liberties); p. 799 (Mr Arthur King); p. 1038 (NSW Council for Civil Liberties); pp. 1531-32 (Mr Mark Findlay).

386. The statistics set out in Table 3 in chapter 2 above give some indication of the Authority's document holdings.

387. Evidence, p. 1540.

subject to external monitoring'.[388] He explained:

> It seems to me that, in principle, it is not a highly desirable situation to have personal information in the hands of some Commonwealth law enforcement authorities which is subject to detailed regulation and another law enforcement authority in a very separate position.[389]

6.86 The Committee considers that the Authority should be subject to some external scrutiny to ensure that the Authority gives appropriate protection to privacy. In the Committee's opinion, there are two options are available:

- amend the Privacy Act to remove the Authority's present exemption from coverage, thereby placing the Authority in the same position as bodies such as the Australian Federal Police; or
- devise a special mechanism to cater for privacy concerns relating to the Authority.

6.87 The Privacy Commissioner expressed no preference between these options, telling the Committee:

> I am not averse to a model which might leave the Privacy Act as it is but strengthens the level of external scrutiny of the agency. That model seems to have been explored by the Government in relation to ASIO; and I would think that, if it is thought good enough for ASIO, it is probably hard to make a different case for the NCA.[390]

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388. Evidence, p. 1540.

389. Evidence, pp. 1544-45. See also Evidence, p. 1731, where the Director of the ABCI questioned why the Authority appeared to be the only law enforcement agency exempt from the operation of the Privacy Act.

390. Evidence, p. 1543.

6.88 The 'ASIO model' consists of ASIO-specific guidelines on record-keeping involving personal information.[391] These are to be drafted by the Attorney-General's Department in consultation with the Privacy Commissioner and the Inspector-General of Intelligence and Security. Adherence to the guidelines is to be monitored by the Inspector-General, having regard to general guidance on policy matters from the Privacy Commissioner. Although the model was adopted in 1989, the Committee was told in September 1991 that drafting of the guidelines was not yet complete.

6.89 The Committee accepts that the Privacy Act's requirements cannot be applied in full to a body such as the Authority. Some exemptions would have to be made.[392] If the Authority were made subject to the Privacy Act, the scope of these exemptions would have to be determined by the Privacy Commissioner.[393]

6.90 It appears to the Committee that, rather than make the Authority subject to the Privacy Act, the better solution is to adopt the 'ASIO model' - that is, for the Attorney-General's Department in consultation with the Privacy Commissioner to develop NCA-specific privacy guidelines.

6.91 The Committee would be able to comment on the adequacy of the guidelines. The Committee would use the guidelines

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391. See Evidence, p. 1542 where the Privacy Commissioner describes the model.

392. cf. Australian Federal Police, *Annual Report 1989-90*, AGPS, Canberra, 1990, pp. 89-90 on the difficulties caused by the Privacy Act for the AFP, and the fact that negotiations were continuing between the Privacy Commissioner and the AFP to resolve these difficulties. See also Privacy Commissioner, *Second Annual Report on the Operation of the Privacy Act: for the Period 1 July 1989 to 30 June 1990*, pp. 30-31 on the negotiations.

393. See Privacy Commissioner, *Second Annual Report on the Operation of the Privacy Act: for the Period 1 July 1989 to 30 June 1990*, pp. 18-19 for a description of the process by which an agency can apply to the Privacy Commissioner for a variation or waiver in relation to the operation of the Privacy Act to the agency concerned.

in carrying out its duty to monitor the Authority.[394] In dealing with complaints concerning privacy, the Inspector-General would assess whether the guidelines had been breached.

6.92 Accordingly, the Committee **RECOMMENDS that the Attorney-General's Department, in consultation with the Privacy Commissioner, develop specific privacy guidelines to cover the Authority's activities.**

Monitoring of Telecommunication Interception Activities

6.93 The Commonwealth Ombudsman was given a role in relation to the Authority under 1987 amendments to the *Telecommunications (Interception) Act 1979*. He is required to inspect at least twice a year the documents and records the Authority is obliged to keep under the Act. He is required to ascertain the extent to which the Authority has complied with provisions of the Act relating to the keeping and destruction of records and documents concerning telecommunications interceptions. The Ombudsman reports to the Attorney-General, as Minister administering the Act. This report is not made public. The Attorney-General is, however, required under the Act to report to the Parliament giving statistics on interceptions under the Act.

6.94 The Committee received no criticism of this method of scrutiny of the Authority. Accordingly, the Committee makes no recommendation that it be altered.

394. The Privacy Commissioner noted that the Committee might be the means of scrutiny of the Authority on privacy matters: Evidence, p. 1548.