CHAPTER 8

# OTHER MATTERS CONSIDERED BY THE COMMITTEE

## Introduction

8.1 In this chapter the Committee considers certain proposals to amend the operation of the NCA Act. In section one, the Committee examines proposals to amend the special powers of the Authority. Section two of this chapter examines proposals to modify the existing procedure of granting references to the Authority for special investigations. In section three the Committee considers matters relating to the membership and staffing of the Authority.

## SECTION ONE : THE SPECIAL POWERS OF THE AUTHORITY

### Statutory Provisions

8.2 When granted a reference to pursue a special investigation, the Authority is able to exercise coercive powers. These coercive powers are not available to the Authority when exercising its general functions. The Authority's statutory powers to conduct private hearings and require persons to appear and/or produce documents are the most significant coercive powers available to the Authority under Act.[483]

8.3 Under section 28 of the Act the Authority can summons a

483. The Authority does possess other significant powers, such as the abilities to obtain search warrants and to seize passports under sections 22 and 24 of the NCA Act. The Committee's inquiry, however, did not receive substantial evidence on special powers other than those relating to the coercive powers under sections 28 and 29 of the NCA Act.

person to appear at a hearing to give evidence and/or produce documents. Subsequent failure to attend the hearing may render that person liable to prosecution. A witness who fails to attend or appear as required in the summons, or to continue to attend as required, or who refuses to take an oath or make an affirmation without reasonable excuse, or to produce documents or things as required, is guilty of an offence. If convicted the person will be liable to a fine not exceeding $1000 or six months imprisonment.[484]

**Statutory Protections and Safeguards**

8.4 A person appearing before the Authority is entitled to representation.[485] A person appearing is not required to answer any question or produce any document that may incriminate him/her. This protection can only be removed where the person has been given a grant of indemnity from either the Commonwealth DPP or the relevant State authority.[486]

8.5 Subsection 25(5) requires that the hearing be conducted in private. The issue of whether or not the Authority should hold its hearings in public is considered in chapter 7. Until that question is answered, the Committee considers that hearings will continue to be held in private. The remainder of this section considers issues relating to private hearings.

8.6 Under subsection 25(9) a Member may direct that:

* any evidence given;
* the contents of any document produced to the Authority;
* any information that might enable a person who has given evidence before the Authority to be identified; or
* the fact that any person has given or may be about to give evidence at a hearing;

shall not be published.

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484. Section 30 of the NCA Act.

485. See subsections 25(4) and 25(6) of the NCA Act.

486. A person under a grant of indemnity commits an offence under subsection 30(5) if he/she refuses to answer a question.

8.7 The Act requires that such a direction be given where publication might prejudice the safety or reputation of a person or prejudice the trial of a person who has been or may be charged with an offence.[487]

8.8 Under section 29 the Member may give notice in writing for a person to appear and produce documents. A failure to comply without reasonable grounds may result in a fine or imprisonment.

8.9 Controls over the Authority's conduct of hearings and demands for the production of documents are contained in sections 32 and 32A of the Act. A person dissatisfied with a decision of the Authority can apply to the Federal Court or Supreme Court of a State for review.[488] Decisions of the Authority are also subject to review under the *Administrative Decisions (Judicial Review) Act 1977*.

**Proposed Amendments to the Authority's Special Powers**

8.10 The following amendments to the Authority's special powers were proposed:

Procedural Amendments to Existing Powers.

* The issuing of a warrant under section 28
* Non-disclosure provisions in sections 28 and 29
* Allowing the Authority improved access to documents

Substantive Amendments to Existing Powers

* Removing the privilege against self incrimination
* The granting of indemnities under section 30
* Extension of special powers to general functions

Amendments to Create New Powers

* Granting a prosecutions function to the Authority

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487. See subsection 25(9) of the NCA Act.

488. See sections 32 and 32A of the NCA Act.

## The Committee's View of Special Powers

8.11 The Committee considers that the Authority's special powers are of great significance. The Authority's possession of coercive powers, what use the Authority makes of them, and proposals to amend or enhance their effect, are issues of public concern.

## Background to the Powers

8.12 The Royal Commissions of the 1970s drew government and public attention to the problems of organised crime in Australia. The eventual grant of special powers to the Authority was a direct result of Royal Commission conclusions that normal police investigative methods were not sufficient to bring organised criminals to justice.[489] The effectiveness of these Royal Commissions was partly attributed to their powers to summons witnesses and demand the production of documents.[490]

8.13 Consequently, the Authority was invested with a range of special powers - coercive in nature - which were intended to redress this weakness. Coercive powers that had been previously restricted to royal commissions were given to the Authority, a permanent law enforcement body. It was evident during the Committee's inquiry that the Authority's ability to use special powers remains the central and controversial distinction between the Authority and other

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489. Mr Michael Holmes, submission, p. 3. The South Australia Police Commissioner's 4 February 1991 submission to the Committee observed that at the time of the NCA's inception police departments were encountering difficulties in tackling organised crime. The submission identified two causes for this: lack of resources and lack of powers: p. 18. See the Authority's Annual Report, 1984-85, p. 6. See also the discussion paper by the Hon. M.J. Young, Special Minister of State, and Senator the Hon. Gareth Evans, Attorney-General, *A National Crimes Commission ?*, AGPS, Canberra, 1983, paras. 2.1 - 3.3.

490. Other factors included Commissions' use of specialist personnel with professional expertise and access to more sophisticated intelligence gathering systems: NCA Annual Report, 1984-85, p. 6.

permanent law enforcement agencies.[491]

8.14 A major debate that preceded the Authority's establishment concerned the need for special powers and whether or not such powers posed an unacceptable threat to civil rights.[492] The Committee is aware that special powers have remained the subject of controversy since the Authority's establishment in 1984.

8.15 The Committee notes that this debate has involved conflicting perspectives: those of civil liberties and those of law enforcement. Law enforcers took the view that the seriousness of organised crime demands the use of extraordinary measures. Under extreme conditions it was necessary to modify or abrogate certain rights and liberties for the greater good of the community. Law enforcers argued that special powers were essential to combat the threat posed to Australian society by organised crime. This argument drew much of its force from a widely held perception that organised crime had reached a crisis level, and unless stopped, threatened to undermine the foundations of Australia's democratic society.[493]

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491. The Authority has observed that sections 28 and 29 of the NCA Act 'are the two main additional powers which distinguish the Authority from police agencies': NCA, *Annual Report 1989-90*, p. 51. The Australian Federal Police Association submission stated that 'the only real need for the NCA, in its current form, is as a medium to gain access to coercive powers, and as an occasional coordinator of cross-jurisdictional joint investigations': p. 6. The Hon. Athol Moffitt CMG, QC told the Committee that the Authority was set to be an elite body up because, inter-alia, it could exercise special powers: Evidence, p. 766.

492. NCA, *Annual Report 1984-85*, p. 8. Also see the remarks of the Hon. Justice Vincent, Evidence, p. 369.

493. A leading proponent of this argument has been the Hon. Athol Moffitt CMG, QC. For example see Chapter One, 'A Society Under Challenge', in his book *A Quarter to Midnight*, Angus and Robertson, Sydney, 1985, pp. 3-24. In his 'Anti-Corruption Authorities in Australia', an address to the Labor Lawyers' Conference in Brisbane on September 22 1990, Mr Frank Costigan QC discussed the perception held in the 1970s and 1980s that organised crime posed a serious threat to Australian society: pp. 2-5.

8.16 Civil libertarians have disputed the extent of the threat of organised crime. They have also challenged the view that extreme situations necessitate qualifications upon civil rights and liberties. Further, Civil Liberties organisations argued that the nature of the powers granted to the Authority created a potential for the Authority to abuse or misuse its coercive powers, with grave consequences for the rights and liberties of Australian citizens.[494]

8.17 The Committee believes there is need to strike an appropriate balance between the public need to identify criminals and their activities and the public interest in protecting the rights and liberties of citizens.[495] The Committee also recognises the difficulty in attempting to strike an appropriate balance between these contending approaches.

8.18 The Committee bases its assessments on the principle that the Authority's special powers make it unlike other law enforcement agencies. This distinction carries added responsibilities - both in regard to the use of existing powers and to any suggested alterations to those powers. The Committee notes the concern of various civil liberties groups that there has been a gradual increase in the powers of police services in Australia and that giving further powers to the Authority only continues this trend.

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494. The South Australian Council for Civil Liberties noted that 'intense debate' centred upon the nature and extent of safeguards needed to govern the coercive powers contained in the NCA Bill (1983): Evidence, p. 936. See also the evidence of Mr John Marsden, Senior Vice-President, Law Society of New South Wales, Evidence, pp. 816-18.

495. The need to strike this balance was referred to during the inquiry. Dr Allan Perry, Vice-President of the South Australian Council for Civil Liberties said: 'To what extent, in a free society, should the basic rights of privacy, due process of law and the other associated civil liberties be allowed to frustrate its battle against organised crime and political corruption?': Evidence, p. 936. See also the views of the Hon. Justice Vincent, Evidence, p. 379.

**Special Powers : The View of Law Enforcement Agencies**

8.19 The Authority's coercive powers, not available to other police services, were viewed by law enforcement agencies as important weapons in the Authority's efforts to deal effectively with organised crime.[496]

8.20 The Australian Federal Police Association submission described the coercive powers contained in the NCA Act 'as an essential tool for successfully combating certain levels of organised criminal activity and pursuing individual targets'.[497]

8.21 Mr Graham Sinclair, an Assistant Commissioner of Victoria Police, said: 'The major benefit of a national body should be derived from the exercise of special powers of investigation, principally the power to summon witnesses to answer questions and to produce documents'.[498]

8.22 The Police Federation of Australia and New Zealand told the Committee: 'The situation is that we believe the National Crime Authority's main reason, in fact its sole reason, for existence is the access to coercive powers'.[499] The Federation further argued that the Authority's coercive powers were an essential element for the effective investigation of organised crime. One of the Authority's failings had been its use of normal police methods - investigations that could have been done by police forces themselves.[500]

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496. Mr Robert McAllan, a Detective Superintendent in the Victoria Police, said that one of the Authority's 'attractions' included 'coercive powers and the appropriate carriage of coercive powers': submission, p. 11. The South Australia Police Association submission, February 4 1991 noted that the department lacked the requisite special powers to investigate organised crime: p. 12. See also Mr R.E. Dixon, Evidence, p. 1558.

497. Submission, p. 2.

498. Evidence, p. 1255.

499. Evidence, p. 510.

500. Evidence, p. 510. Although the Police Federation of Australia and New Zealand submission contained criticisms of the Authority, it identified the primary value of the Authority to be its inquisitorial powers: p. 4.

8.23 The Australian Federal Police Association argued that the coercive powers of the Authority were not as strong as they should be and that existing restrictions on their use, such as the privilege against self incrimination, should be removed.[501]

8.24 Mr Henry Rogers, an employee of the Authority appearing in a private capacity, said that **if** the Parliament decided to continue with the Authority and wished it to be effective, then the Authority would have to be given greater powers. The Committee notes that despite this assessment Mr Rogers said: 'I personally do not believe that that is an appropriate way to go about things in our society'.[502]

**Special Powers : The Concerns of Civil Liberties Groups**

8.25 Submissions and evidence, especially from civil liberties groups, expressed serious concern over the Authority's ability to use special powers. The Authority's special powers were seen as a danger to citizens fundamental rights and liberties.[503] Civil liberties groups questioned the real need for the Authority, or any other permanent law enforcement body, to possess special powers. They also questioned the perception that the threat of organised crime was such that encroachment on liberties was needed to ensure the protection of society.[504]

8.26 The Queensland Law Society submission argued that extraordinary powers were usually given only to commissions of

501. Submission, p. 6.

502. Evidence, p. 401.

503. Dr Allan Perry, Vice President of the South Australian Council Civil of Liberties, Evidence, p. 932. See also the South Australian Council for Civil Liberties, submission, p. 1; Australian Civil Liberties Union submission, p. 1. The New South Wales Council for Civil Liberties submission, p. 1 was critical of the combination of excessive powers and a lack of effective scrutiny of the Authority.

504. South Australian Council for Civil Liberties, submission, p. 1. The Australian Civil Liberties Union expressed concern about the ability of permanent commissions to threaten civil liberties: submission, p. 1.

inquiry for specific purposes and for limited time frames. The Society submission observed:

> It is a concern of this society that to depart from the traditional use of Commissions of Inquiry for specific tasks and to create instead permanent investigatory bodies with powers similar to those normally enjoyed by specific Commissions of Inquiry is to remove many safe-guards. It is the submission of the Society that there is no fail safe mechanism that will ensure that a permanent Commission does not fall victim to the ills which were examined and identified in agencies of the Queensland Government by the Fitzgerald Commission of Inquiry.[505]

8.27 Mr Ron Merkel QC of the Victorian Council for Civil Liberties and Mr Terry O'Gorman of the Queensland Council of Civil Liberties both questioned the need for the Authority to be allowed even greater powers.

8.28 Mr O'Gorman said that when the establishment of the Authority was being debated in the early 1980s civil libertarians were aware that whenever greater powers were given to such a body they inevitably had a trickle down effect.[506] Mr O'Gorman argued that police forces would always seek extension of their powers: 'it is in the nature of the beast'. Mr O'Gorman stressed that when this occurs it was important to draw the line and that the Committee had to make some 'fairly significant deliberations'.[507]

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505. Submission, p. 3.

506. Evidence, pp. 538-539.

507. Evidence, p. 539. Mr O'Gorman told the Committee that police support for the Authority's special powers was not a surprise because police wanted these powers taken out of the 'so-called super crime class and brought down to your ordinary crime class': Evidence p. 564. The Committee notes that Mr Taylor, representing the New South Wales Police Association, stated that police would like the powers currently held by the Authority: Evidence, p. 643.

8.29 Mr O'Gorman said:

> Our simple position is that if you give police forces, whether it be the NCA or any other force, greater powers, and there is no way by which you can measure whether those greater powers are producing results, then the greater powers should either be taken away or there certainly should be no greater extension of those powers.[508]

8.30 Mr Merkel questioned the need to grant further powers to the Authority: 'no explanation has been given and no facts are put forward as to why these extensions of power are going to resolve any of the problems of the past'.[509]

8.31 It was also argued that special powers were no longer necessary, as police forces could now perform the Authority's role. The submission from the Australian Civil Liberties Union stated:

> Federal and State Police forces which now have more than adequate powers including access to bank records and to phone tapping facilities, to combat crime, including organized crime, are more likely to keep the balance between combatting crime and the protection of civil liberties than permanent crime Commissions.[510]

8.32 The Committee was told that the urgency of the organised crime threat had been overstated, and used to erode a range of civil rights and liberties. The Hon. Justice Frank Vincent stated:

> One of the problems which seems to me to arise out of the political rhetoric which was employed in the early 1980s was that it was slowly but surely going to produce an environment of such fear and apprehension in the

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508. Evidence, p. 539.

509. Evidence, p. 1396. See also Evidence, p. 356.

510. p. 1.

> community that our fundamental legal rights would seem to be less and less significant. There was such a war that it was necessary to act, as it were, in a wartime manner.[511]

8.33 His Honour went on to observe that over recent years civil liberties had been increasingly threatened by a gradual extension of police powers, the proliferation of investigative bodies and challenges to fundamental rights, including that of the privilege against self-incrimination: 'I regard all of that as manifesting a measure of subversion of our democratic process'.[512]

8.34 Mr Peter McClellan QC, appearing as a private citizen, told the Committee:

> From my point of view, I think what has probably happened is that there has been a perception that the conventional mechanisms have not worked efficiently, in some instances, and that the record of royal commissions is such that they are perceived to be a more effective way of getting to the heart of the problem.[513]

Mr McClellan observed that this perception had led to the establishment of special bodies with royal commission-type powers. A consequence had been the erosion of traditional protections.[514]

8.35 Civil liberties groups also raised the lack of knowledge about the exercise of such powers and deficiencies in accountability mechanisms needed to safeguard the interests of the community. Civil liberties groups argued that knowledge and effective accountability were indispensable - given the coercive nature of the

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511. Evidence, p. 378.

512. Evidence, p. 378.

513. Evidence, p. 669.

514. Evidence, p. 670.

Authority's powers. In the absence of adequate safeguards the Authority should be stripped of special powers.

8.36 Justice Vincent told the Committee that he had always been uneasy about the granting of such powers to a body not properly monitored or controlled and which 'could possess the capacity to subvert the democratic process in a variety of different ways'.[515]

## PROCEDURAL AMENDMENTS

### A Summons to Appear : The Issue of a Warrant

8.37 The Authority's submission argued that the punitive provision in subsection 30(11) of the NCA Act was not enough to secure the attendance of persons at hearings. The Authority observed that despite being served with summonses several witnesses had still failed to attend Authority hearings. The Authority proposed that the Act be amended to allow the issuing of a warrant where a person refuses to comply with a summons. The Authority proposed that the decision to issue a warrant would be a judicial decision and not an administrative one. The Authority referred to section 31 of the NCA Act as a possible model.[516]

8.38 Under the NCA Act a person sent to prison for not answering a section 28 summons cannot be brought before the Authority. The Authority's submission also proposed that section 28 be amended so that a person sent to jail for not answering a summons could be brought before the Authority.[517]

8.39 The South Australian Police Commissioner's submission, dated February 4 1991, addressed the situation where a person ignored a summons to appear at a hearing. Commissioner Hunt

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515. Evidence, p. 369.

516. Submission, p. 40.

517. Submission, p. 40.

observed that although this constituted an offence (in the absence of a reasonable excuse) and possible imposition of penalties: 'that person is no closer than before to attending a hearing'.[518]

8.40 The submission rejected the counter-argument that compelling a person to attend by issuing a warrant would achieve little because the person had had no intention of responding to the summons and answering questions. The submission said:

> Experience in criminal investigations demonstrates, however, that often, even the most unco-operative witness will subsequently answer some, if not all, questions, thereby providing information which may be of value. In any event, the issue of whether or not a person will answer questions or provide any information of value at a hearing will remain unresolved unless and until the person can be brought before the Authority.[519]

8.41 Commissioner Hunt argued that allowing the Authority to issue a warrant under the circumstances and conditions he described would be of assistance to the Authority effectively performing its functions.[520]

**Non-Disclosure : Amendments to Sections 28 and 29**

8.42 In May 1990 the Authority first suggested to the Commonwealth Attorney-General that certain amendments be made to sections 28 and 29 of the NCA Act. These amendments concerned the issue of disclosure. These amendments were raised during the inquiry.

8.43 The Authority proposed that section 28 of the NCA Act be amended to prevent a summonsed person disclosing the existence of the summons to appear or information about it, except for the

518. p. 16.

519. Submission, p. 16

520. ibid., p. 17.

purposes of complying with that summons.[521]

8.44 In respect of section 29, requiring the production of documents, the Authority proposed a similar amendment prohibiting disclosure of requests for documents. The Authority stressed the importance of this power in conducting white collar crime investigations and pursuing the proceeds of crime.[522]

> Section 29 does not include a non-disclosure provision, and it is now becoming apparent that some institutions such as banks are on occasion advising clients that the NCA has required the production of records relating to their banking transactions, thereby alerting targets and their associates of the NCA's interest in them. Some institutions consider that, in the absence of any non-disclosure provision in the Act, it is their duty to inform clients that confidential information relating to their affairs has been produced under compulsion of law, and that they have no protection if they do not do so.[523]

8.45 These proposals received support from the IGC. The IGC submission noted that when undertaking complex investigations the Authority often obtained documents from financial institutions. These institutions have indicated that they consider it to be their duty to disclose the existence of the Authority's activities to their clients, unless they have a clear legal obligation not to do so. Such a disclosure has the clear potential to damage the Authority's investigations.[524]

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521. Submission, p. 39. The Authority noted that numerous provisions of this type already exist in various Commonwealth and State Acts and that section 74 of the *Proceeds of Crime Act 1987* provided a model for the proposed amendment.

522. Submission, p. 39.

523. ibid., p. 40.

524. The IGC submission, p. 22 observed: 'This, of course, can result in the target of the investigation, or related parties, being 'tipped-off' about the NCA's activities and taking measures to conceal relevant evidence'.

8.46 The IGC submission stated:

> The proposed minor amendments to sections 28 and 29 would have the effect of deterring these financial institutions and other persons receiving process under these provisions from disclosing the NCA's interest in the affairs of the target, except in limited circumstances. Similar non-disclosure provisions are present in other Commonwealth legislation.[525]

**Amendments to Sections 28 and 29 : The Committee's Conclusion**

8.47 On the 12 September 1991 a Bill to amend the NCA Act was presented and read a first time in the House of Representatives. Included in the Bill were proposed amendments to sections 29 and 31 of the NCA Act. The Committee notes that these amendments substantially incorporate the proposals made by the Authority and the IGC.[526] The Committee, therefore, does not intend to make any further assessment of these proposals. The Committee notes, however, that the proposed amendments retain certain safeguards.[527]

**The Authority's Access to Documents**

8.48 Mr Bruce Partridge, formerly the Authority's Chief Financial Investigator,[528] made further criticisms of section 29 of the

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525. p. 22.

526. See sections 29A, 29B and the additional wording added to section 31 in the Bill (1991). See further the Explanatory Memorandum, pp. 1-2.

527. On the issue of disclosure see subsection 29A(2) and the exceptions under subsection 29B(2). The Committee notes that section 31 under the Bill requires judicial approval for the issuing of a warrant to secure a person's appearance at a hearing. This safeguard was also suggested to the Committee during it inquiry: Mr McClellan QC, Evidence, p. 679; Commissioner Hunt, Evidence, p. 965.

528. Mr Partridge was employed by the Authority between September 1985 and

NCA Act. His assessment was that the section did not allow the Authority sufficiently quick access to the documents or materials needed to chase the money trail in investigations. Mr Partridge observed that if the Authority wished to obtain documentation - from a bank, solicitor or accountant - it had to issue a notice and then allow 14 days for production. Following this, the documents would then spend two days going through the system before they can be assessed. The Authority would then re-contact the bank for the specific documents needed.[529] Mr Partridge said that this process could take a month and 'Naturally you get absolutely nowhere on a time basis for an investigation'.[530]

8.49 One remedy suggested by Mr Partridge was to allow the Authority to physically compel the immediate production of documents. Mr Partridge identified the Tax Act as an example of legislation which allowed unfettered access to documents.[531] Mr Partridge's alternative proposal was that the Authority could pay for the documents - for example as an ex gratia payment.[532]

8.50 Mr Partridge argued that the Future Directions emphasis on white collar crime would be frustrated unless section 29 was amended: 'There has to be some method of overcoming the time consuming method of getting documentation because you cannot do anything until you have the documents'.[533]

8.51 The Committee does not support the proposals put by Mr Partridge. The Committee refers Mr Partridge's views to the Authority for consideration.

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July 1989: Evidence, p. 602.

529. Evidence, pp. 604-05.

530. Evidence, p. 605.

531. Evidence, p. 607.

532. Evidence, p. 607. Mr Partridge referred to his experience with the Woodward Royal Commission where the Commission paid for access to documents: Evidence, p. 605.

533. Evidence, p. 620.

## SUBSTANTIVE AMENDMENTS

### The Protection Against Self-Incrimination

8.52 It was proposed to the Committee that the privilege against self incrimination contained in the NCA Act either be removed or restricted. It was alleged that this would allow the Authority to investigate organised crime more efficiently.

8.53 The Tasmanian Police Force submission argued that people called before an Authority hearing should not have the protection of the right against self-incrimination. The Authority needed to be able to identify principals in large scale criminal activity through the hearing process. The Committee notes the Tasmanian Police Force submission's observation that there was no empirical evidence to establish the extent to which the Authority is hindered by the right of witnesses to refuse to answer questions.[534]

8.54 Mr Graham Sinclair, Assistant Commissioner of the Victoria Police, told the Committee: 'Experience to date has indicated that the NCA is not able to deliver maximum benefits because witnesses have the right to refuse to answer questions on the grounds that they may incriminate themselves'.[535]

8.55 Mr Sinclair was also critical of subsection 30(5) of the NCA Act. He observed that Directors of Public Prosecutions were reluctant to grant indemnities until they were aware of the value of the witness's proposed evidence. The witness was similarly reluctant to divulge important information before an indemnity is granted.[536] Mr Sinclair stated:

> Moreover, this provision [s.30(5)] cannot logically be

534. p. 5.

535. Evidence, p. 1255.

536. Evidence, p. 1255.

> used to require major targets to answer questions. Its value is also limited in regard to lesser witnesses who, whilst answering questions as required, may prefer the penalties of perjury to the potential retribution of their criminal colleagues.[537]

Mr Sinclair concluded that the Authority would be in a stronger position if it were empowered to require witnesses to answer questions.[538]

8.56 The Police Federation of Australia and New Zealand submission noted that taxation, customs and the New South Wales ICAC legislation conferred the power to compel answers irrespective of self-incrimination.The Committee was told that as other legislation had already qualified the privilege, the Authority should also be allowed to qualify the operation of the privilege.[539]

**The Dual Mode**

8.57 Assistant Commissioner Sinclair suggested that the National Crime Authority should be able to alternate between a royal commission mode and an investigative mode. Mr Sinclair proposed that the Authority be able to declare at the outset it was in royal commission mode and able to compel answers. Other than that it would be in an investigatory mode and subject to the traditional right against self-incrimination.[540] Mr Sinclair observed:

> As Moffitt points out - and many others have done, too - if you really want to attack the issues in respect to organised crime, the ones that have really successful are the royal commissions; and it is based on that ground of forcing people to answer questions.[541]

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537. Evidence, pp. 1255-56.

538. Evidence, p. 1256.

539. Submission, p. 6.

540. Evidence, p. 1274.

541. Evidence, p. 1274.

**Continuing Safeguards**

8.58 The importance of continuing to afford protection to witnesses was recognised in submissions and evidence that suggested modifications to the privilege. The Tasmania Police submission asserted that a balance between the public need to identify criminals and the public interest of protecting individual rights could be achieved in two ways. First, that incriminating answers given by witnesses at hearings could not be relied upon in subsequent legal proceedings. Second that the 'incriminating' questions be asked *in camera*.[542]

8.59 Mr Graham Sinclair agreed that where the Authority was able to compel answers those answers could not be used against the person in subsequent proceedings. Mr Sinclair took the view that if the Authority were granted this power then the Authority's ability to gather meaningful intelligence on organised crime in Australia would be improved. This would allow the Authority to gather intelligence in the way that former royal commissions had.[543]

8.60 The Police Federation of Australia and New Zealand suggested that such answers be given *in camera* and could not be subsequently used in legal proceedings involving the person. The Federation said that the ICAC legislation was the most successful and sensible current model.[544]

8.61 In his 1988 submission to the Committee Mr Frank Costigan QC argued that answers to any questions should not be used in subsequent criminal proceedings.[545] Mr Costigan considered, however, that the protection to answers not be given to documents and papers: 'I can see no basis for providing protection in the case of

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542. Submission, p. 5.

543. Evidence, p. 1255.

544. Evidence, pp. 526-27.

545. Evidence, p. 435v (1988 submission, p. 8).

documents'.[546]

**Safeguards : The Granting of Indemnities**

8.62 The proposals to qualify the privilege against self-incrimination also included consequent changes to the procedure of granting indemnities. The Authority has no independent power under the NCA Act to grant indemnities.[547]

8.63 The Hon. Athol Moffitt CMG, QC argued that the Authority's ability to override the privilege against self-incrimination could be made more workable by removing the existing requirements of government approvals and undertakings.[548] Mr Moffitt specifically identified the ability of royal commissioners to override the privilege as the principal reason why their inquiries were able to penetrate and reveal the operations of organised crime - where ordinary law enforcement agencies had failed to do so.[549]

8.64 Mr Moffitt observed that the indemnity procedure in the NCA Act was the result of a compromise which had taken into account civil liberties concerns:

> The compromise when the bill was framed was to place the exercise of the power under the control of Governments, under the undertaking system. In so doing, the utility of the power was almost entirely destroyed.[550]

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546. Evidence, p. 435v (1988 submission, p. 8).

547. Subsection 30(6) of the NCA Act. Upon recommendation from the Authority the Commonwealth Director of Public Prosecutions may grant protection to witnesses appearing before the Authority who might otherwise incriminate themselves in answering questions. Similar provisions exist in the State underpinning legislation in relation to offences against State laws, for example section 19 of the Victorian, New South Wales and South Australian Acts: NCA, *Annual Report 1989-90*, p. 35.

548. Submission, p. 3.

549. Submission, p. 23.

550. Submission, pp. 23-24.

8.65 Dr Allan Perry, Vice-President of the South Australian Council for Civil Liberties, argued that it would be 'functionally expeditious' for the Authority Chairman to be able to grant immunities. Dr Perry said that the existing process of going to the relevant Director of Public Prosecutions or Attorney-General was 'a particularly cumbersome and ineffective mechanism'.[551]

8.66 Dr Perry also argued that the Authority would benefit from this change. First, proceedings could continue without the lengthy disruption occasioned by getting the approval of perhaps seven different authorities before the testimony can continue. Second, this would to some extent remove the investigatory process from what Dr Perry referred to as 'partisan politics' within the different State and Commonwealth governments.[552] Dr Perry noted that any use of this power should only be under extraordinary circumstances and subject to close review and scrutiny.[553]

8.67 Dr Perry viewed the granting of indemnities by the Chairman as preferable to a situation where the privilege was removed without subsequent indemnity. He told the Committee:

> What we do object to is the situation where efforts are made to compel the testimony of witnesses in situations where immunity is not given. We see that as being inherently a great danger which will tend to distort and corrupt the process far more than it will lend itself to achieving the truth.[554]

551. Evidence, p. 942.

552. Evidence, p. 943.

553. Evidence, p. 944; p. 946.

554. Evidence, p. 942.

**Submissions Supporting the Privilege**

8.68 The Committee heard that any further erosion or qualification of the privilege against self incrimination would be an unacceptable violation of individual rights and liberties.

8.69 The Hon. Justice Frank Vincent opposed the suggestion that certain circumstances could require any qualification or erosion of this right, saying rights:

> are not absolute but there are some rights which the community has regarded as integral to the democratic process. There are points beyond which governments should not be permitted to go and this right against self-incrimination really represents one of those.[555]

8.70 Mr Ron Merkel QC, President of the Victorian Council for Civil Liberties, argued that although inroads have been made on this privilege such inroads should never be extended to essentially what are and will remain police and criminal investigations.[556] Mr Merkel told the Committee that the privilege against self-incrimination was a fundamental aspect of law in a free and democratic society:

> We would think that it is unthinkable that what really is a statutory police force could be given the power to dispense with that privilege. We think that would constitute one of the most serious erosions of freedom in a democratic society that one can think of.[557]

8.71 The South Australian Council for Civil Liberties submission also described the privilege against self incrimination as one of the most fundamental, but also most consistently attacked, of civil liberties. The submission rejected any further diminution of the right beyond the existing situation where indemnities are granted to

555. Evidence, p. 379.

556. Submission, p. 11.

557. Evidence, p. 362.

individuals.[558]

8.72 Mr Merkel did not agree that qualifications to the privilege that had occurred in other legislation, such as corporations law, justified similar measures in relation to criminal investigation:

> Corporations law allows private investigators to, in effect, require incrimination. Some aspects of the Royal Commission legislation at the Federal level empower a Royal Commission to override self incrimination. Aspects of trade practices law allow that. No doubt there are many other laws that permit it but there is one factor in common that all those laws have which the NCA does not. Those laws are to give a body charged with the general regulatory function in a particular area with the power and the interest of the community to find what went wrong, not to use it to get a conviction against an individual, but to use it to redress the wrongs of part of the economic system - trade practices, anti competitive conduct, corporations, conduct that is affecting the free market that we are entitled to expect in the securities industry.[559]

8.73 The South Australia Police submission said that experience in criminal investigations suggested that hostile witnesses were a most unreliable source of information and the pursuit of inquiries based on information supplied by such witnesses was often unproductive.[560] The submission stated: 'It is suggested that compelling witnesses to answer questions under threat of punishment would not significantly advance an investigation'.[561]

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558. pp. 4-5.

559. Evidence, pp. 1397-98.

560. Submission, p. 17.

561. Submission, p. 17.

**Self-Incrimination : The Authority's View**

8.74 In 1989, the then Chairman of the Authority, Mr Peter Faris QC, proposed that the privilege against self-incrimination be modified during Authority hearings:

> This privilege against self-incrimination can hinder the Authority's investigations. When one has regard to the scale of the criminal activity engaged in by persons investigated by the Authority and the huge illegal profits made by those persons, a strong case can be made that the act should be amended to remove this privilege.[562]

8.75 In July 1991, Justice Phillips told the Committee that the Authority as a whole did not have a view about the privilege against self-incrimination. Justice Phillips personal view was 'that the privilege against self-incrimination should not be removed'.[563]

**Self-Incrimination : The Committee's View**

8.76 The Committee considers that the privilege against self incrimination is a fundamental right in the operation of the judicial system. The Committee rejects the argument that the privilege has somehow lost its appropriateness or that 'the original justification for it has probably been eroded today and we may need to review whether or not it should be allowed to remain in the future'.[564]

8.77 The Committee notes that the conflicting perspectives on the privilege against self incrimination are fundamentally incompatible. Mr Henry Rogers, an Authority employee appearing privately, told the Committee: 'To make the Authority effective, if it is to

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562. 'The Role of the National Crime Authority in Australian Law Enforcement', text of a speech delivered at Queen's Inn, University of Melbourne, 8 August 1989, p. 9.

563. Evidence, p. 1677.

564. Evidence, p. 681 (Mr Peter McClellan QC).

continue as an Authority, you would have to get rid of the right against self-incrimination'.[565] Mr Rogers then acknowledged that this may not be desirable for civil liberties and the basic structure of Australian society. Mr Rogers observed that such powers were acceptable for royal commissions into specified matters but not for a permanent law enforcement body.[566]

8.78 The Committee contrasts the Authority's role in criminal investigations with the essentially civil role of other investigatory bodies which, under certain conditions, may override or qualify the privilege.[567]

8.79 The Committee recognises the privilege against self incrimination as a central safeguard in the criminal justice system. The Committee considers that improved effectiveness is not a ground for the removal of or qualification to the privilege.

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565. Evidence, p. 391.

566. Evidence, p. 391.

567. The ASC has recently sought to amend the operation of immunities it can grant when exercising its power to override the privilege against self incrimination (see subsection 68(3) of the ASC Act and subsection 597(12) of the Corporations Law). The submissions on this matter to the Joint Parliamentary Committee on Corporations and Securities inquiry into the ASC proposal indicate that even in non-criminal areas the abrogation of the privilege remains highly controversial. See, for example, the submission from the Professional Development Committee of the Young Lawyers' Section of the Law Institute of Victoria, pp. 2-3; p. 10.

    The legislature does have the power to abrogate the privilege, but there is a presumption that, in the absence of explicit intent, it does not intend to alter so important a principle of common law. See Gibbs CJ in Sorby v. The Commonwealth of Australia (1983) 46 ALR 237 at p. 241.

**Indemnities : The Committee View**

8.80 Commissioner Hunt, although supporting the value of indemnities, did not agree that the Chairman of the Authority should be given this responsibility. Commissioner Hunt considered the requirement that someone outside the Authority grant indemnities was a safeguard against possible allegations of corruption being levelled at the Chairman and the Authority.[568]

8.81 Mr O'Gorman also rejected the suggestion that the Authority Chairman be allowed to grant indemnities.[569]

8.82 Mr Peter McClellan QC rejected the proposal that the Authority should possess a discretion to override the privilege against self-incrimination: 'I certainly do not think it appropriate to vest that as a matter of discretion in the body which is doing the investigating'.[570]

8.83 The Committee rejects suggestions that the Chairman of the Authority be given the power to grant indemnities. The Committee is also opposed to the suggestion that Members of the Authority be given a discretion to override the privilege against self incrimination.

568. Evidence, p. 975.

569. Evidence, p. 540.

570. Evidence, p. 680.

## PROPOSED NEW POWERS FOR THE AUTHORITY

### The Power to Prosecute

8.84 Under the NCA Act the Authority has no power to conduct or direct prosecutions that result from its investigative work. The Authority liaises with the Commonwealth Director of Public Prosecutions. Officers of the DPP or barristers briefed by the DPP regularly appear to prosecute matters arising from the Authority's work. The Authority also liaises with the respective State prosecution bodies in matters that involve State laws.[571]

### The Previous Committee's Position : Prosecutions Power

8.85 The 1989 *Third Report* considered the issue of the Authority having greater involvement in prosecutions. The Report acknowledged that the Authority was opposed to acquiring a prosecution function:

> Not only does the Authority not have any role in the conduct of prosecutions, it does not seek such a role. It recognises the importance of the principle that there should be a clear separation between investigative agencies such as the Authority and those agencies responsible for determining whether a prosecution should proceed.[572]

8.86 The *Third Report* also observed:

> Accordingly it is of the utmost importance that the decision to prosecute be taken by someone who has not been involved in the investigation, who has no preconceptions as to the guilt or innocence of the accused and who can make an impartial evaluation of the strengths and weaknesses of the evidence against

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571. NCA, *Annual Report 1989-90*, pp. 30-31.

572. *Third Report*, pp. 10-11, footnote omitted.

the accused.[573]

8.87 The *Third Report* nonetheless proposed a greater role for the Authority in the carriage of prosecutions arising out of its investigations. The Committee made the following recommendation:

> The Committee affirms the importance of the principle that there should be a clear separation between the functions of investigative agencies, such as the Authority, and those agencies responsible for determining whether a prosecution should proceed, such as the Federal and State Directors of Public Prosecutions. However the Committee does not believe that this principle would be eroded if, where the Authority and the prosecuting agency cannot agree on the selection of counsel to conduct the prosecution in a case arising out of an investigation undertaken by the Authority, the Authority were to be in a position to assist the relevant agency with the costs of briefing counsel upon whom both the Authority and the relevant agency could agree.[574]

8.88 The *Third Report* noted that this arrangement would still leave the decision whether to prosecute, and if so on what charges, as the sole responsibility of the relevant prosecuting agency.[575]

**Arguments Supporting a Prosecution Power**

8.89 The Tasmania Police submission argued that the Authority should be given the power to initiate prosecutions and assist the appropriate Director of Public Prosecutions in the carriage of those prosecutions. The submission proposed that the senior solicitor involved in an investigation would later become the briefing solicitor for the prosecuting counsel. This would allegedly lead to

573. *Third Report*, p. 11.

574. *Third Report*, p. 12.

575. *Third Report*, p. 12.

savings in both time and money. The submission argued that the Authority could then guarantee that matters seen to be important at least entered the judicial system. Additionally, the relevant Directors of Public Prosecutions would be better acquainted with both the prosecution and its significance in the fight against organised crime.[576]

8.90 Mr Michael Cashman, an Authority Legal Officer, suggested that the Authority be granted a prosecution power, despite the traditional opposition to combining investigative and prosecution functions. Mr Cashman's submission identified a range of alleged benefits that would result. First, the Authority would be able to make better use of its legal expertise. Mr Cashman argued that the lack of 'legal work' had led to a high turnover of qualified legal staff. Second, the Authority would also be able to secure greater control over prosecutions launched as a result of its investigations. Third, the establishment of a prosecution function would be cost effective in eliminating the double handling of briefs and the streamlining of prosecutions. Fourth, prosecutions resulting from Authority investigations should be conducted by people with expertise, specialisation and enthusiasm in those areas - attributes seen by Mr Cashman as absent in either State or Commonwealth Directors of Public Prosecutions.[577]

8.91 The Committee was told that it would be productive if the Authority had more involvement at the prosecutions stage. Mr William Horman, Commissioner of Tasmania Police, observed that royal commissions have addressed matters and then referred them to the Director of Public Prosecutions office or other special prosecutions office for prosecution: 'At times that has required an enormous amount of work that has already been done to virtually be redone'.[578] Although Mr Horman qualified his view by describing it as a 'perception', he suggested that the Authority lawyer could be of great assistance in the preparation of a matter going to court. The

576. Submission, p. 5.

577. Submission, pp. 4-5.

578. Evidence, pp. 1183-84.

Committee notes that Mr Horman did not suggest that the Authority lawyer should stand as the counsel prosecuting the matter.[579]

**Arguments Against the Prosecution Power**

8.92 The South Australian Council for Civil Liberties submission was opposed to giving the Authority a prosecution role. The submission argued that 'Combining the function of an investigator and prosecutor would remove an important safeguard in the prosecutory process'.[580] The decision to prosecute required an objective assessment of the evidence and cannot properly be undertaken by the person or agency which has pursued the investigation. The submission was concerned about abuses that might flow from a situation where the Authority could prosecute its own investigations:

> It would pursue the prosecution with the single-minded objective of conviction rather than as an officer of the Court attempting to find the truth and achieve justice. If the NCA were given the power to initiate prosecutions it might as well also be given the power of Judge and executioner and its transformation into a Court of Star Chamber will be complete.[581]

8.93 The Victorian Council for Civil Liberties told the Committee:

> No, we do not believe that a body that investigates criminal conduct should have the power to prosecute. We say that prosecution should be the independent decision of the directors of public prosecutions at State and Federal levels. We think that separation is vitally important.[582]

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579. Evidence, p. 1184.

580. Submission, p. 3.

581. Submission, p. 4.

582. Evidence, p. 352.

8.94 The ability of the Authority to act as both investigator and prosecutor was criticised as a violation of the principle of separating such functions.[583]

8.95 Mr Terry O'Gorman rejected the arguments in favour of a prosecutions power made by Mr Cashman and stated that the Queensland Council of Civil Liberties was 'absolutely opposed to the National Crime Authority being given the role to prosecute its own cases'. Mr O'Gorman further argued:

> The only current measure of supervision is the fact that prosecutions of National Crime Authority investigations are done by an independent body. If they were to be done by the same body, what little supervision exists of what the National Crime Authority does would go out the door.[584]

**A Prosecution Role : The Authority View**

8.96 The Committee notes that the Authority continues to oppose the exercise of a prosecutions role. In 1990 the Authority rejected the Third Report's recommendation regarding prosecutions. The Authority considered that the principle of separating investigative and prosecution functions would be eroded if the recommendation were put into effect.[585] In July 1991, Justice Phillips rejected proposals to grant a prosecution role to the Authority. Justice Phillips told the Committee that he saw this as an interference in the vital separation and division of functions in the Australian justice system and stated:

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583. Evidence, pp. 540-41.

584. Evidence, p. 540. Mr O'Gorman cited the Fitzgerald Report in Queensland and the 1981 report of the United Kingdom Royal Commission on Criminal Procedure as support for the separation of investigation and prosecution functions: Evidence, pp. 540-41.

585. NCA, *Annual Report 1989-90*, p. 13.

> I believe very strongly in the separation of functions in the criminal justice system. The NCA's function is primarily an investigative one. I think it is in the interests of justice that the NCA, having assembled admissible evidence, that that evidence is handed over to an entirely independent body, like the Director of Public Prosecutions for the Commonwealth or the State so they can make their own assessment of it and decide what charges are necessary. ... I would not want a prosecution section as long as I am chairman.[586]

**Prosecutions : The Committee View**

8.97 The Committee concludes that the Authority should not be granted a prosecution power. The Committee reached this conclusion on two grounds. First the principle of maintaining the separation of functions in the criminal justice system currently outweighs any potential benefits of giving the Authority a prosecutions function. Second, that the Authority has consistently opposed exercising a prosecution role.

**Civil Confiscation**

8.98 The Committee heard arguments that there was a need to substantially amend laws relating to the confiscation or freezing of assets regarded as the proceeds of criminal activity.[587] The Hon. Athol Moffitt CMG, QC's submission, for example, argued that to get at the capital base of organised crime it was essential to enhance the ability of authorities to pursue civil confiscation of assets.[588]

8.99 Mr Moffitt's proposal was that:

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586. Evidence, pp. 1670-71.

587. It was suggested to the Committee that the Proceeds of Crime Act be amended to reverse the onus of proof and oblige a person to explain the origin of certain income or possessions. See for example the Authority submission, p. 43.

588. Submission, p. 6.

> The NCA Act should be amended to make expressly clear that a relevant activity includes any money washing activity. Its powers should expressly extend to the assembly of evidence in aid of civil confiscation and allied proceedings.[589]

8.100 Mr Moffitt's second proposal was that the Authority should be given the power to recommend reforms relevant to confiscation proceedings and money laundering investigation.[590]

**Civil Confiscation : The Committee View**

8.101 The Committee does not intend to evaluate the specific reforms to legislation governing civil confiscation suggested by Mr Moffitt and others.[591] The Committee intends only to examine proposals that recommend direct changes or amendments to the functions or powers of the Authority under the NCA Act.

8.102 Apart from the requirement to gather admissible evidence and assist in civil matters, the Authority currently has no wider role under the NCA Act in this area of law. The Authority's investigatory role has been one of supporting and assisting other relevant agencies. The Authority has identified Operation Silo and Matter Eight as examples of Authority work that assisted in the identification and seizure of proceeds of crime.[592]

8.103 In the past the Authority has also been involved in proposals for relevant legislative reform, such as the Proceeds of

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589. Mr Moffitt proposed that subsections 11(1) and 12(2) be amended to make such powers and functions express: submission, p. 4.

590. Submission, p. 4. Mr Moffitt also noted that reform proposals by the Authority would be designed to counter the efforts of organised crime to avoid the effects of the legislation: submission, p. 7.

591. Also see the view of Commissioner Hunt: Evidence, pp. 973-74.

592. NCA, *Annual Report 1987-88*, pp. 25-26. See also NCA, *Annual Report 1989-90*, pp. 32-33.

Crime Act.[593]

8.104 In its submission the Authority referred to the importance of attacking the assets base of organised crime, notably the proceeds of crime. Although the Authority suggested certain amendments to the Proceeds of Crime Act 1987, the Authority did not request any extensions to its functions or powers in this area.[594]

**The Enhancement of General Functions : Special Powers**

8.105 The general functions of the Authority, such as intelligence gathering, do not attract the powers afforded 'special investigations'. The Hon. Athol Moffitt CMG, QC's submission to the Committee argued that because the Authority's compulsive powers only extended to special investigations the general functions were ineffective. Mr Moffitt proposed that the NCA Act be amended to allow the application of section 28 to general as well as special investigations.[595]

8.106 Mr Moffitt told the Committee that the section 28 power should be applied to subsection 11(1)(b) - which allows the Authority to inquire into any matter provided it is a relevant criminal activity - without the need for definition or government approval. Mr Moffitt argued that this would enhance the Authority's ability to conduct investigations.[596] Mr Moffitt argued that in so doing the Chairman of the Authority was still exercising the same power - 'only you are trusting him to decide where he needs to use it'.[597]

8.107 The Committee has not received arguments to support this extension of special powers to the Authority's exercise of general functions. Neither the Authority, law enforcement agencies or the

593. See NCA, *Annual Report 1985-86*, pp. 40-41.

594. p. 43.

595. Submission, pp. 1-3.

596. Evidence, pp. 768-69.

597. Evidence, p. 784.

IGC have suggested this extension of the Authority's powers.[598] The Committee considers that such an extension would inevitably create complex problems of accountability and supervision. The Committee also notes existing civil liberties concerns about the Authority's special powers. Any unrestricted extension of special powers to the Authority's general functions would constitute a clear risk to the public interest and civil rights.

8.108 The Committee therefore rejects any extension of the Authority's special powers to its general functions. The Committee considers that the NCA Act's present restriction of special powers to special references should be maintained.

## SECTION TWO : REFERENCES AND SPECIAL INVESTIGATIONS

### Introduction

8.109 The process by which matters are referred to the Authority was briefly set out in paragraph 2.11 above. The structure and role of the Consultative Committee created under Future Directions to assist with formulation of new references is described in paragraph 5.57.

8.110 The Committee considered proposals to reform the process of granting references to the Authority. Submissions and evidence identified two principal issues:

. the Authority's reliance upon references to conduct special investigations; and

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598. In its Annual Report for 1989-90, pp. 23-24 the Authority stated:

> The special powers conferred by the issue of a reference are not always necessary, particularly in the early stages of investigation, and the Authority does not seek a reference unless the special powers are clearly needed.

. the actual framing, or terms, of the references granted to the Authority.

**Political Interference with References**

8.111 One of the concerns raised in the debates surrounding the creation of the Authority and during the Committee's evaluation was that the Authority might be subject to political interference through the operation of the reference system. The perceived lack of independence of the Authority was identified as a cause for concern.[599]

8.112 The Hon. Athol Moffitt CMG, QC was critical of what he perceived as the Authority's lack of independence, which Mr Moffitt contrasted unfavourably with royal commissions:

> Royal commissions had proved to be politically unpredictable and, sitting in public, at times caused damage to political parties. The structure of the Authority conveniently minimises the chance of this happening. The wide powers of the Authority, similar to those of royal commissions can only be used to investigate subjects authorised and precisely defined by the political party or parties in government.[600]

8.113 Mr Moffitt argued that it is generally accepted that agencies dealing with organised crime and corruption needed to have wide discretion, a fair degree of independence from political direction and that the public needed to be kept informed of the agencies'

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599. Under the NCA Act, the Authority is unable to independently initiate its own special investigations. In 1984, the Senate Standing Committee on Constitutional and Legal Affairs raised the potential for political interference in the Authority's work where a reference might be withdrawn for political reasons. See *The National Crime Authority Bill 1983*, Canberra, AGPS, 1984, paras. 4.16-4.17.

600. Evidence, p. 762. Mr Moffitt also identified the 'extreme provisions designed to ensure absolute secrecy' as another problem in this regard: Evidence, p. 762.

activities.[601]

8.114 Mr Moffitt observed that an individual State, unlike the Commonwealth, could not initiate an inquiry. An individual State must secure the approval of three others first. Mr Moffitt argued that this could lead to problems where a single party was in government at both Federal and State levels.[602]

8.115 Mr Moffitt's submission also proposed that during the course of a special investigation the Authority should not be limited by the specific terms of the reference. He said that the Authority should be free to determine its own special investigations and 'exercise its compulsive powers on subjects of its own choosing, definition and redefinition... '.[603]

8.116 The submission from the South Australian Council for Civil Liberties also considered that the Authority's reliance on the IGC to grant or approve references seriously undermined the Authority's independence. Consequently, there existed a potential for political interference in the conduct of the Authority's investigations. The submission asserted that the Authority must be free to determine its own investigations so that its integrity can be protected.[604]

8.117 Dr Perry, Vice-President of the South Australian Council for Civil Liberties told the Committee:

> The issue of the NCA's independence arises also in the context of the existing Act, under which the NCA does not have the authority to independently undertake investigations. It may act only where reference is made by the Commonwealth or by a State with the approval of

601. Evidence, p. 762. The issue of accountability, including public accountability, is dealt with in chapter 7 of this report.

602. Submission, p. 22.

603. Evidence, p. 763.

604. p. 3.

> the Inter-Governmental Committee. This situation largely ensures that a matter which is politically embarrassing to a Commonwealth or State government may well not become a matter of NCA inquiry if a political party controls the majority of the relevant governments. The NCA must be free of this restriction on its independence and must be able to initiate investigations without the necessity for governmental references, as is the position in which the Independent Commission Against Crime operates. Otherwise its integrity will be consistently called into question and its operations will be an attractive target for partisan politics.[605]

8.118 Mr Frank Costigan QC's submission to the Initial Evaluation in 1988 argued that a structural problem flowed from the NCA Act's requirement to identify in advance of an investigation both the relevant criminal activity **and** the relevant offence. It was seriously restrictive, Mr Costigan asserted, for the IGC to know in advance what criminal activity or relevant offence it wants the Authority to investigate under its special powers before the IGC gives the Authority a reference.[606]

8.119 In his 1988 submission, Mr Costigan also argued that under the NCA Act, the IGC was unable to give the Authority references of sufficient width:

> It is not particularly useful to ask the Crime Authority to investigate whether Mr X has indulged in breaches of foreign exchange regulations or the Income Tax Assessment Act when a proper understanding of his activities will flow only from a general consideration of the area. Likewise, as Tony Fitzgerald has shown, an enquiry with broad terms of reference can certainly travel along unsuspected routes and can produce an overall picture

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605. Evidence, p. 935.

606. Evidence, p. 435s (1988 submission, p. 5).

> of institutional and public corruption which is not available to a body shackled by specific references.[607]

8.120 The NCA Act needed to be amended so that the Authority could seek, or be granted, references of a general nature in areas of criminal activity and not limit that search to known persons.[608]

8.121 In November 1990 Mr Costigan told the Committee:

> The fact is that if you are doing an investigation, you do not really know at the beginning of the investigation what the end is going to be and you get half-way down the track and you find that there is a bypath going off which suddenly becomes of immense interest because with your experience you realise that something very odd is happening and you decide to go down that path. I think the Authority ought to be free to do that any time provided it then reports back to this Committee what it is doing.[609]

8.122 One proposal put to the Committee by the Police Federation of Australia and New Zealand was to place a definition in the NCA Act of criminal or criminal organisation. Once the existence of a criminal or criminal organisation was ascertained, then the Authority could use its coercive powers to assist law enforcement agencies to prosecute.[610]

**Political Interference : The Authority's View**

8.123 The Committee notes that the Authority has rejected claims that it is subject to political interference. In a Public Bulletin issued on March 2 1990 the Authority stated:

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607. Evidence, p. 435t (1988 submission, p. 6).

608. Evidence, p. 435v (1988 submission, p. 8).

609. Evidence, p. 426.

610. Evidence, pp. 515-16.

> The Authority rejects any suggestion that it is subject to political control. There is a distinct difference between the exercise of ministerial and Parliamentary responsibil-ity for the Authority's work and 'political control'.
>
> While ministers can refer a matter to the NCA, it has been almost invariably the case that the NCA has exercised its right to seek references from State and Federal governments. Similarly the Authority made it clear in September 1984 that it would make public any attempt to thwart proper investigation by vetoing proposed references. It has never been necessary to take this step.[611]

8.124 The Committee notes, however, that Justice Phillips has criticised the Authority's past investigation involving allegations concerning the South Australian Attorney-General, the Hon. C.J. Sumner MP. Although Justice Phillips said the inquiry was worthwhile because 'such claims against a State's most senior law officer had to be investigated', the inquiry should have been done by a temporary body set up specifically for that purpose, such as a royal commission.[612]

8.125 Justice Phillips described the Authority's involvement in the inquiry as 'quite inappropriate' and: 'It was an inquiry that led to the NCA becoming a political football and there will be no more inquiries like that while I'm Chairman'.[613]

8.126 On the question of using of someone using the Authority to improperly inflict damage on someone's political career, Justice

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611. NCA, *Annual Report 1989-90*, p. 96.

612. Interview with Pilita Clark, *Sydney Morning Herald*, 30 March 1991.

613. ibid.

Phillips said that person would be 'shown the door'.[614] Although Justice Phillips conceded that the Authority Chairman did not have the right to veto references he did have the 'right of persuasion'.[615]

**Political Interference : The Committee's View**

8.127 The Committee has found no evidence of any political interference, either by the IGC or the Commonwealth Minister. The Committee notes that all references sought by the Authority have been granted.[616]

8.128 The Committee considers that the establishment of the Consultative Committee and its Secretariat further reduces any potential for inappropriate political interference in the granting of references and conduct of references.

8.129 The Committee notes the distinction between the views of the Hon. Athol Moffitt CMG, QC and Mr Frank Costigan QC. The conclusion reached by Mr Moffitt concentrated on the potential for political interference in the reference system. Mr Costigan, however, reached a different conclusion. Mr Costigan argued that the Authority's investigations would be more effective if it were able to independently define references.

8.130 Both views, the Committee notes, oppose the existing process requiring the Authority to seek or be granted a reference before initiating a special investigation. The most important consequence of permitting the Authority to independently determine references would be the removal of the existing restrictions on the use of special powers.

8.131 The Hon. Justice Frank Vincent told the Committee that he was opposed to the Authority possessing the ability to

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614. ibid.

615. ibid.

616. NCA, *Annual Report 1989-90*, p. 6. The 12th reference, concerning money laundering has since been granted to the Authority.

independently exercise its special powers. His Honour said these special powers should only be available on referral.[617]

8.132 The Committee agrees with this view and notes that the Authority was never intended to have unrestricted access to special powers. By making them available only in the course of a special investigation, reliant upon a reference, an important safeguard is maintained.[618] The Committee further stresses that the Authority's special powers are unique in law enforcement. These powers must therefore be exercised responsibly and subjected to adequate accountability. To grant the Authority the discretion to define its own special investigations would remove existing restrictions and mechanisms of accountability. The Committee rejects any suggestion that the Authority be permitted to independently initiate special references.

**The Terms of References Granted to the Authority**

8.133 The Committee recognises that the framing and contents of a reference may have a decisive effect upon the subsequent investigation. The terms of the reference must, therefore, be accurate and appropriate, so that the investigation's potential for success is maximised.

8.134 Mr R.E. Dixon, a former senior officer in the Australian Federal Police, contended that it was not possible to adequately evaluate the NCA against references granted which were inadequate, wrongly framed, or incorrectly identified. A consequence of these shortcomings was that the Authority's efficient operation

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617. Evidence, pp. 379-80. See further the views expressed by Mr Henry Rogers, Evidence, p. 399.

618. The Senate Standing Committee on Constitutional and Legal Affairs stated in 1984: 'However, the Committee cautions that coercive powers should only be exercisable against persons in those cases where a term of reference has been granted to the Authority with the concurrence of the Inter-Governmental Committee': *Report on the National Crime Authority Bill 1983*, AGPS, Canberra, 1984, para. 5.2.

was impaired.[619] Mr Dixon asserted: 'It is my view that those general and unspecific references which the NCA has been given militate against the efficiency of the NCA's operations and public support of the organisation'.[620]

8.135 The Committee heard other evidence opposed to wide or general references being granted to the Authority. On 3 July 1990, Commissioner McAulay of the Australian Federal Police criticised the references that were too widely drafted. Mr McAulay referred to a confidential operation where duplication and tensions between the Authority and other agencies had resulted from such a reference.[621]

8.136 The Police Federation of Australia and New Zealand submission observed: 'If a reference system is to be retained, it needs to be reworked into specific targets rather than their currently extremely wide form'.[622]

8.137 In response to a written question from the Committee, the Authority conceded that the wording of references issued by the IGC to the Authority had been a matter of 'considerable discussion and debate, mainly between legal advisers'.[623] The Authority also acknowledged that it was difficult to state with certainty whether the terms of a particular reference had struck the right balance between too broad or too narrow terms of reference. The application

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619. Submission, p. 1.

620. Submission, p. 1. Mr Dixon's submission also contained specific criticisms of certain types of references including those that were 'open investigations' into ethnic groups involvement in organised crime or 'types of crimes' which were too wide: submission, p. 2.

621. Meeting between the Committee and Mr McAulay, 3 July 1990, transcript, pp. 64-65; p. 73.

622. p. 4. The submission, p. 9 identified operation Iliad, passed to the NCA by the AFP, and said 'They [the Authority] have abused the reference and operated it purely as a mechanism for getting results, the type of results that the Authority was not set up to do'. Mr R.E. Dixon also identified problems with broadly drafted terms of reference: submission, p. 3.

623. NCA, Written Answers, July 1991, B5.

of time frames was identified as a possible solution to this problem. Earlier references issued to the Authority had perhaps been too broad as they tended to create undue expectations of what the Authority was capable of achieving, given its size. The Authority stated in conclusion: 'Experience since 1984 has enabled the Authority and governments to arrive at a form of words in most instances which strike the appropriate balance between flexibility and limitation'.[624]

8.138 The Committee notes that the shift in focus adopted by Justice Phillips is intended to avoid duplication with the efforts of other agencies. Responding to claims that the Authority's new emphasis on corporate/white collar crime would merely compete with existing police task forces and the ASC, Justice Phillips has said that the new structure of defining and identifying references was designed: 'to prevent duplication of effort, to inform everyone of what the others are doing and to stop the sort of territoriality problems which have occurred in the past'.[625]

**Committee Conclusion : Terms of Reference**

8.139 The Committee considers that Justice Phillips' reforms to the formulation of references go some way towards ensuring that future references will be appropriate and well defined. The Committee supports the establishment of a Consultative Committee and Secretariat. The Committee considers it is important that future references will be framed in terms that have support both from governments and law enforcement agencies. The direct involvement of law enforcement agencies in the identification and framing of possible inquiries must optimise support for the Authority's future investigations.

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624. NCA, Written Answers, July 1991, B5. The Committee notes that the Authority submission stated (p. 39) that the Authority had received a number of conflicting legal opinions concerning the validity of references and that some uncertainty remained in this regard. The submission stated that the Authority was considering seeking an amendment to subsections 13(2) and 14(2) to clarify this issue.

625. *The Age*, August 30, 1991.

## SECTION THREE : AUTHORITY MEMBERSHIP AND STAFFING

### The Position of Chairman

8.140 Mr O'Gorman told the Committee that the Queensland Council of Civil Liberties was opposed to the appointment of judges to the Authority. Mr O'Gorman's view was that the appointment of a judge allowed the Authority to escape deserved criticism because people were reluctant to criticise a judge.[626] The appointment of judges was also criticised by Mr Frank Costigan QC, Mr Barry O'Keefe QC, President of the NSW Bar Association, and Mr Ron Merkel QC, President of the Victorian Council for Civil Liberties.[627]

8.141 Justice Phillips told the Committee:

> If I may say so, the people advancing the view that it was inappropriate for a judge to hold my office did so without understanding just what it is I do and, perhaps more importantly, just what it is I do not do. I do not conduct hearings; I do not even issue any process under the National Crime Authority Act; nor am I directly involved in investigations. My role is one of policy formulation and administration. I believe I have been able to, I hope, scrupulously avoid any involvement in judicial conduct of the orthodox kind during my appointment. The fact is that the National Crime Authority Act specifically makes provision for a judge to be appointed. It is something that Parliament has considered and made a judgement upon.[628]

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626. Evidence, pp. 546-47.

627. See Evidence, p. 1349; p. 686; pp. 1414-15. See also the personal view of Mr Short, President of the Queensland Law Society, Evidence, p. 587.

628. Evidence, p. 1687.

8.142 In 1984, the Senate Standing Committee on Constitutional and Legal Affairs supported the appointment of a judge to preside over the Authority.[629] The Committee currently supports this view. The Committee also supports the existing requirement contained in subsection 7(9) of the NCA Act:

> A person shall not be appointed as Chairman unless: (a) he is or has been a Judge; or (b) he is enrolled as a legal practitioner, and has been so enrolled for not less than five years.

However, the Committee **RECOMMENDS that at an appropriate time in the future the appointment of Authority Chairman be formally reviewed.**

**Judicial Appointments by the Authority to Conduct Inquiries**

8.143 The Police Federation of Australia and New Zealand proposed that the Authority be allowed to appoint a judge to inquire into a specific reference, such as a particular public interest crime. The appointee would then be able to use the special powers of the Authority.[630]

8.144 The Committee does not support this proposal. Such an amendment would allow the Authority to independently set up ad-hoc inquiries of a quasi-judicial nature. The Committee considers this to be inconsistent with role designed for the Authority under the NCA Act.

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629. *Report on the National Crime Authority Bill 1983*, AGPS, Canberra, 1984, paras. 7.1-7.3.

630. The Police Federation of Australia and New Zealand submission, pp. 8-9 recommended that a new subsection 7(11) be drafted and amendments made to section 25 to include 'appointed judge'. For examples of powers under Part II, Division Three of the NCA Act, see subsections 39A and 45(5).

**The Role of Lawyers in the Authority**

8.145 The Committee considered criticisms that Authority investigations had relied too heavily on lawyers and that there was a corresponding need to give police a greater role in the Authority.

8.146 Mr Hunt, the South Australia Police Commissioner, observed: 'It is my impression that the management of investigations by solicitors at the operational level suffers due to a lack of management skills and experience especially as applied to an investigation'.[631] Mr Hunt proposed that experienced investigators be given the management of investigations.[632]

8.147 Mr Robert McAllan, a Detective Superintendent in the Victorian Police, stated: 'An investigation directed by a lawyer or an accountant is probably doomed'.[633] Although Mr McAllan supported the concept of multi-disciplinary investigations he saw the role of non-investigators, including lawyers and accountants, confined to a support role.[634]

8.148 The Committee notes that the submission from Mr Michael Holmes disagreed with view of Commissioner Hunt. Mr Holmes did not accept that lawyers involved were inexperienced in investigative work or that they made errors of judgement. Mr Holmes also disputed the view that only police were capable investigators.[635]

8.149 Although the 1988 Initial Evaluation supported a multi-disciplinary approach to investigations, it also considered criticisms

631. Submission, p. 3.

632. Submission, p. 3. See also Evidence, p. 960. Mr Robert McAllan's submission, pp. 7-8 outlined the requirements of investigations and concluded with the observation that 'lawyers should practise the law, ... and investigators should investigate'.

633. Submission, p. 8.

634. ibid., p. 9.

635. Submission, p. 20.

of lawyers acting as team leaders.[636] The *Initial Evaluation* stated:

> The Committee recommends that in the management of its investigative teams the Authority give greater recognition to the expertise of experienced police officers and ensure that they have a greater involvement in the relevant investigations.[637]

8.150 The Committee notes that the *Initial Evaluation* recommendation was not based upon a conclusion that lawyers were either unable to manage or contribute effectively to investigations. The *Initial Evaluation* found that the cause of difficulties lay elsewhere. The *Initial Evaluation* concluded that there was a need for greater consultation with police investigators in the management of investigations.[638]

8.151 The Committee supports the need for effective consultation with police in managing Authority investigations. The Committee notes that under Future Directions the Authority intends increasing its emphasis upon co-operation and co-ordination with police services and other law enforcement agencies.[639]

8.152 The Committee further considers that the processes implemented by Justice Phillips address past concerns that the Authority had failed to utilise the investigatory skills of police.

8.153 Justice Phillips has stressed the Authority's use of multi-agency task forces that use the skills of several disciplines in investigations. These include police, the Authority, accountants and representatives from relevant bodies such as the Australian

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636. para. 4.13.

637. para. 4.15.

638. para. 4.14.

639. Note the greater role of senior police in the Consultative Committee and Secretariat established under Future Directions. See Future Directions, pp. 1-3; see Evidence, pp. 1650-54.

Securities Commission and the Cash Transaction Reports Agency.[640] The Committee recognises the established value of multi-disciplinary approaches to investigation. The Committee notes Mr Holmes observation: 'The multi-disciplinary approach to investigations, where lawyers lead and co-ordinate investigations is utilized in the United States of America, Europe, and in England through the Serious Fraud Office'.[641]

8.154 The Committee, however, also recognises the importance of maintaining flexibility in managing multi-disciplinary, multi-agency investigations. The Committee notes the view of Justice Phillips that:

> In some States and Territories the task forces might be quite small; in others a larger group would be required. A leader might be a police officer, an NCA staff member, an ASC staff member or any other person deemed appropriate.[642]

8.155 The Committee supports this position. The Committee considers that it would be unduly restrictive to limit either team leadership or participation to one discipline, whether it be police, legal or financial.

**Police as Members of the Authority**

8.156 It was recommended to the Committee that the NCA Act be amended to allow the appointment of a police officer as an Authority Member. The Police Federation of Australia and New Zealand submission suggested that subsection 7(2) of the NCA Act be amended to include a retired or serving police officer.[643] The inclusion of a senior police officer in the Authority's membership was

640. Evidence, pp. 1652-53.

641. Submission, p. 20.

642. Future Directions, pp. 4-5.

643. p. 3; p. 8.

supported by Mr Horman, Commissioner of the Tasmania Police.[644] Commissioner Hunt also supported a greater role for senior police at the executive level.[645]

8.157 The *Initial Evaluation* stated: 'The Committee recommends that consideration be given to the appointment of a senior and respected serving or former police officer as a member of the Authority'.[646] The *Initial Evaluation* concluded that this would 'assure' police that someone was representing their views at the 'highest levels' in the Authority.[647]

8.158 The Committee restates it support for this view. The Committee **RECOMMENDS that consideration be given to appointing a senior police officer, either serving or retired, as a Member of the Authority.**

**Director of Investigations**

8.159 The Tasmania Police Force submission proposed that the current tenure provisions for the Director of Investigations should be changed from one year to three years. The submission also suggested that the future incumbent of this position should be a Deputy or Assistant Commissioner of substantive rank.[648]

8.160 The Committee notes that the Authority has already accepted this proposal. In March 1991 Mr Bill Horman, the Tasmania Police Commissioner, was appointed to the renamed position of Director of Criminal Justice and Investigations for a period of four years.

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644. Mr Horman suggested that this membership should be for a non-hearing purpose: submission, p. 2.

645. Mr Hunt described the Authority's decision to select Mr William Horman to work with the Authority as a step in the right direction: Evidence, p. 961.

646. para. 4.17.

647. para. 4.16.

648. p. 2.

## The Authority's Employment of Investigators

8.161 The submission from Mr Michael Holmes proposed that the Authority be permitted to employ its own investigators. Mr Holmes stated: 'It is essential that the Authority maintain a strong independent investigative arm with seconded police and supplemented with its own investigative staff'.[649]

8.162 Justice Phillips told the Committee he had found no evidence to support a view that the loyalty of police seconded to the Authority remained with their home force. Justice Phillips rejected the suggestion that the Authority should employ its own investigators.[650] The Committee also rejects that the Authority be allowed to employ its own investigators.

## Proposed Amendments to Subsection 12(4)

8.163 The submission from Mr Michael Holmes proposed that Authority staff should be granted the power to carry out arrests. Mr Holmes further argued that subsection 12(4) of the NCA Act be amended to allow non-police members of the Authority staff the same powers of investigation as police.[651]

8.164 The Committee rejects this proposal. To grant such powers to Authority staff would create a 'police' role for the Authority. This was not the intention under the NCA Act and is a role rejected by Justice Phillips and the Authority.[652]

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649. Submission, p. 9. Mr Holmes argued that police on secondment to the Authority had 'divided loyalties' and that the Authority would be better off with its own investigators with powers of investigation and arrest: submission, pp. 21-22.

650. Justice Phillips stated on this point 'All my experience has been to the contrary': Evidence, p. 1683.

651. Submission, p. 27.

652. Evidence, p. 1668. See also NCA submission, p. 42 and Future Directions, p. 1.

8.165 The Committee notes, however, the Authority's statement that subsection 12(4) does not effectively restrict the staff of the Authority in the way intended by Parliament.[653] The Authority referred to the South Australian Supreme Court decision in R v Carbone which considered the effect of subsection 12(4).[654] The case concerned two NSW Police Officers on secondment to the Authority. During an Authority investigation conducted in South Australia the officers questioned the appellant. On appeal it was argued that the officers had contravened 12(4) of the NCA Act. In considering the effect of section 12, the Chief Justice observed:

> It is not easy to understand the intention of those subsections. They appear to have been drafted upon the assumption that a police officer derives some power to interview persons from his capacity as a police officer. That, of course, is not so in South Australia nor, as far as I am aware, elsewhere in the country.[655]

8.166 The Committee **RECOMMENDS that the Attorney-General's Department consider the effect of section 12 of the NCA Act and address any ambiguities that may exist in subsection 12(4).**

**Special Constables**

8.167 Under the NCA Act the Authority can use the services of personnel seconded from Commonwealth, State and Territory bodies and law enforcement agencies.[656] The Authority noted:

> Because of the NCA's unique national jurisdiction, problems have continually arisen when NCA investi-

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653. Submission, p. 38.

654. (1989) 50 *South Australian State Reports* 495-502.

655. ibid., p. 499.

656. See sections 49 and 58 of the NCA Act.

> gators (that is, its seconded police officers) have been required to conduct investigations in other than their home State or the State in which they have been attached to the NCA.[657]

8.168 The Authority submission identified certain problems it had experienced in appointing Special Constables from State forces to the Australian Federal Police.[658] Because it was expected to effectively investigate relevant criminal activity at the national level, the Authority argued for reforms in this area.

8.169 The Authority submission noted certain difficulties would arise for any proposal for a full scale appointment of special constables in State and Commonwealth jurisdictions; different requirements for their appointments; the need for some if not all jurisdictions for personal appearance before each of the Police Commissioners; varying degrees of co-operation from each of the States and the Australian Federal Police; and the need to avoid disciplinary problems.[659]

8.170 The Authority stated that:

> More modest alternatives, such as the appointment of special constables as and when required or the appointment of a number of special constables when a matter is referred to the NCA, have the advantage of being more practical, but suffer from being only partial solutions to the underlying problem.[660]

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657. Submission, p. 41. In the latter situation they are usually sworn in as Special Constables under relevant Commonwealth and State laws. A Special Constable enjoys the same powers, authorities, advantages and immunities as a duly appointed constable by virtue of the common law or legislation.

658. p. 42.

659. p. 42.

660. NCA submission, p. 42.

8.171 Mr Graham Sinclair, Assistant Commissioner of Victoria Police, suggested that relevant legislation be amended to allow officers seconded to the Authority the same powers as members of the Australian Federal Police. Mr Sinclair told the Committee:

> if we sent police officers interstate they were really tourists, in the sense that they had no power in that State. Quite often, in order to execute warrants under Federal legislation, we would have to send a member of the AFP with the team. It may be that there was no AFP member who was part of the original investigating team.[661]

8.172 Mr Sinclair said that he was not aware of any operation that had been jeopardised because of this. Mr Sinclair did, however, indicate that a risk of an Authority operation being jeopardised existed.[662] Mr Sinclair said the situation had caused 'extremely difficult management problems' within both the Authority and the police component.[663]

8.173 The Committee notes that the Authority has not proposed a definite resolution to this problem. The Authority's submission stated:

> The NCA wishes to make it clear, however, that it has not at this stage given sufficient consideration to these matters to make recommendations on the wisdom or otherwise of such changes. Obviously, either change would require a great deal of thought and consultation, and while solving some problems, would create others

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661. Evidence, pp. 1263-64.

662. Evidence, p. 1265.

663. Mr Sinclair said that in the Melbourne Office of the Authority there had been a constant need to juggle AFP investigators so that Commonwealth related warrants could be executed by the various investigation teams: Evidence, p. 1264. See also Evidence, pp. 1265-66.

(not the least of which would be financial).[664]

8.174 The Committee does not support any changes to the current arrangements governing the secondment of police personnel to the Authority.

E.J. Lindsay, RFD, MP
Chairman

664. p. 42.