

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE NATIONAL CRIME AUTHORITY -
AN INITIAL EVALUATION

Report by the Parliamentary Joint Committee on the
National Crime Authority

Canberra 1988

MEMBERSHIP OF THE COMMITTEE

35th Parliament

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SUMMARY

The occasion for this report is the lifting of the 'sunset clause' in the National Crime Authority Act 1984 which would otherwise have terminated the life of the Authority on 30 June 1989. The Committee supports the lifting of the sunset clause although it considers that, because so many of the Authority's investigations and the resulting legal proceedings have yet to be completed, it can only make an initial evaluation of the Authority's performance at this time. Because legal proceedings are currently before the courts or are pending in relation to a number of matters the Committee has been obliged in its report to be circumspect and to confine itself to generalities.

Looking back on the debate leading up to the establishment of the National Crime Authority the Committee considers that there was a clear expectation that the Authority would get results. The primary objective for which the Authority was established was, the Committee believes, to put significant criminals behind bars. In those terms the Authority is beginning to demonstrate success. It has put the Cornwell/Bull drug trafficking syndicate out of business and it has obtained convictions of significant figures under two of its other references. The terms of imprisonment imposed on Cornwell and Bull - 23 years and 18 years respectively - indicate the gravity with which the courts viewed their activities. Terms of imprisonment of 24 years and 20 years have been imposed on principals under another reference, and the maximum term of imprisonment available for the offence concerned, 3 years, has been imposed on the principal under a third reference. Numerous other matters are before the courts at the moment.

The success of the Authority cannot merely be measured by the successful prosecutions resulting from its investigations, however. There was also an expectation that the establishment of the Authority would have a deterrent effect: that by its success in its investigations and, possibly, by its very existence, it would increase the fear of detection and apprehension in the minds of those who might be tempted to enter the field of organised criminal activity. It is too early to say whether the Authority has succeeded in this second objective. The Committee therefore recommends that a more comprehensive evaluation of the Authority's work and of the success of the law enforcement strategy underpinning the establishment of the Authority be undertaken in three years time. By that stage more of the Authority's investigations and more of the resulting legal proceedings should have been completed and it should be possible to make some judgement as to whether the Authority has in fact altered the climate in which organised crime operates.

The Committee does not recommend any changes to the Bill lifting the sunset clause, the Crimes Legislation Amendment Bill 1988, to which the House of Representatives has already agreed, nor does it recommend any changes to the legislation constituting the National Crime Authority at this stage. It has, however, identified the present limitations on the Authority's access to taxation records as a matter which it proposes to pursue in a further inquiry.

The Committee does, however, recommend some changes to the Authority's present handling of the police component of its staff. It became clear to the Committee in the course of this inquiry that there was considerable dissatisfaction in police ranks about their role in the Authority's investigations and the Authority's perceived attitude to police. The Committee recommends that the Authority give greater recognition to the expertise of experienced police officers and that they should be given a greater involvement in its investigations. The Committee also recommends that the police component of the Authority's staff should be given contracts rather than being seconded in order to overcome the problem of officers working together but being subject to different terms and conditions of employment and it recommends that consideration should be given to the appointment of a senior and respected serving or former police officer as a member of the Authority in order that police may be assured that their views are represented at the highest levels of the Authority. Finally the Committee has recommended that the Authority give greater consideration to the use of police task forces external to the Authority as a means of carrying on its investigations.

While rejecting much of the criticism made of the secrecy surrounding the Authority's operations the Committee has also recommended that the Authority give consideration to making greater use of its power to inform the public about the general conduct of its operations by holding public sittings and issuing public bulletins.

Certain of the fears expressed at the time of the establishment of the Authority, both as to the obstacles which might lie in the way of its effective performance of its functions and the potential threat to civil liberties which it posed, appear to date to have proven groundless. So far from being a '9th police force', as some have claimed, the Authority is a unique and novel investigative agency, combining elements of traditional law enforcement agencies with the powers of a Royal Commission and able to use the one to complement the other. The Committee believes that Mr Justice Stewart, the members and senior staff of the Authority deserve credit for having turned this experiment into a successful working reality.

LIST OF RECOMMENDATIONS

Recommendation: 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. (Paragraph 4.15).

Recommendation: 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. (Paragraph 4.17).

Recommendation: The Committee recommends that police officers attached to the Authority be employed on contract rather than being seconded from their parent forces. (Paragraph 4.19).

Recommendation: The Committee recommends that the Authority give consideration to the use of task forces external to the Authority to carry on investigations under the co-ordination of the Authority. (Paragraph 4.23).

Recommendation: The Committee recommends that a comprehensive evaluation of the Authority's work and of the need

for a body such as the Authority be undertaken on the expiration of seven years after the date of commencement of the Act. (Paragraph 4.31).

Recommendation: The Committee recommends that the Authority give consideration to making greater use of its power to inform the public about the general conduct of its operations by holding public sittings and issuing public bulletins. (Paragraph 4.34).

CHAPTER 1

INTRODUCTION

1.1 Section 63 of the National Crime Authority Act 1984 provides that, unless sooner repealed, the Act is to cease to be in force at the expiration of 5 years after the date of its commencement. Unless the Act is amended, therefore, the National Crime Authority will cease to exist on 30 June 1989.

1.2 During the course of the last election campaign the Prime Minister, the Hon. R.J.L. Hawke, A.C., M.P., announced that it was the intention of his Government, if re-elected, to renew the mandate of the National Crime Authority beyond the June 1989 sunset clause. The Crimes Legislation Amendment Bill 1988, introduced into the House of Representatives on 24 February 1988, would amend the National Crime Authority Act 1984 to repeal section 63, thereby ensuring the continued existence of the Authority. It would also make consequential changes to the provisions relating to the terms and conditions of appointment of the members of the Authority.

1.3 This Committee was established to monitor and review the performance by the National Crime Authority of its functions and to report to both Houses of the Parliament upon any matter appertaining to the Authority or any change which the Committee thinks desirable to the functions, structure, powers and procedures of the Authority. Although the Senate Standing Committee on Constitutional and Legal Affairs in its report on the National Crime Authority Bill 1983 recommended against the establishment of a permanent parliamentary committee to monitor the performance of the Authority, it did state that '[i]t may be

expected that the Senate would have the advantage of a parliamentary committee report on the Act, should it be engaged in debate concerning the continuation of the National Crime Authority.¹

1.4 This Committee has determined that it should put down a report making an initial evaluation of the National Crime Authority's performance of its functions so that the Parliament may have the benefit of this Committee's knowledge and views when it comes to consider the legislation lifting the sunset clause. The Committee believes that only an initial evaluation is appropriate at this time. The Authority has been in existence for little more than three and a half years and much of the first six months of that period was devoted to the establishment of the Authority and to the transfer of matters from the Royal Commission on the Activities of the Federated Ship Painters and Dockers Union (the Costigan Commission). In addition, the foundation Chairman of the Authority, Mr Justice Stewart, had commitments as a Royal Commissioner, inquiring first into the activities of the Nugan Hand Bank and subsequently into Alleged Telephone Interceptions, up until the presentation of his report on the latter inquiry in April 1986.

1.5 The nature of the Authority's work is such that it inevitably takes time to get results. Professor Jim Munro of the University of West Florida, an expert on law enforcement matters, told the Committee in July 1986:

'People in the political arena tend to have a reasonably short term perspective of the efficiency and effectiveness of crime fighting units. You want to be able to report to your constituents that we funded X organisation and it was able to make an impact. It is not very comforting to be able to report to your constituents that you have funded X organisation for the preceding 10 years and that you are still waiting for impact data. Constituents are not terribly happy with that

kind of expenditure of public funds. Unfortunately a lot of the impact of expenditure for organisations like the NCA is cumulative and so five, six and seven years down the track you are likely to find a larger impact than you find in the short term. It is almost impossible to effectively disrupt organised crime in one or two or three years.'²

1.6 At the time of writing, the Authority had completed only two special investigations - investigations pursuant to government references - and had another six in hand. As a result of its work, convictions of major significance had been obtained in three of these investigations, including one of the two completed investigations, but prosecutions were pending against many more individuals under the six uncompleted investigations and some of the convictions already obtained were under appeal. The incomplete nature of the Authority's investigations, and of the legal proceedings resulting from them, not only suggests that it would be premature for the Committee to attempt a comprehensive evaluation of the Authority's activities at this point in time; it also means that this report is of necessity less forthcoming about the subjects and details of the Authority's investigations than might be thought desirable in the interests of a fully informed debate about the Authority's performance to date. To identify the subject of a particular investigation or to set out details of the investigation could very possibly prejudice the legal proceedings against the individual concerned. The Committee is therefore obliged to be circumspect and to confine itself, in the main, to generalities.

1.7 In view of the initial nature of the evaluation, and because of the Government's decision to lift the sunset clause, the Committee has decided that it would not be appropriate for it to examine, at this juncture, the issue of the need for a body such as the National Crime Authority. This question was fully explored in the debate leading up to the establishment of the Authority and the Committee considers that it would be premature

to re-open that debate. The Committee has therefore identified the following as the key issues for the present evaluation:

- . whether the Authority is meeting the objectives for which it was established;
- . if not, where it has failed; and
- . whether any alteration to the legislation constituting the Authority or to its resources is desirable in order that it may better meet its objectives.

1.8 The Committee's evaluation is based primarily on the information provided by the Authority itself, both orally, at regular meetings between the Committee and the Authority, and in writing, in answer to specific questions or requests for detailed briefing on particular aspects of the Authority's operations. The relationship between the Committee and the Authority got off to a difficult start because of a difference of opinion between the two bodies as to the information which the Committee was legally entitled to request or, indeed, which the Authority, given the secrecy provisions in its Act, could within the law provide to the Committee. Those differences were resolved at a meeting with the then Special Minister of State, the Hon. M.J. Young, M.P., on 1 May 1986, at which the Committee and the Authority agreed to establish a working relationship.

1.9 In essence this involves a compromise: the Authority briefs the Committee on matters such as staff and resources, legislative constraints, completed investigations and operations which have entered the public domain but the Committee does not press the Authority for operationally sensitive information. Since the meeting on 1 May 1986 the Committee has met with the Authority on seven occasions to be briefed on its activities, such meetings lasting on average three hours. In addition the

Committee has received a wealth of written information including detailed briefs on each of the Authority's investigations. The Committee thus has a sound understanding of how the Authority views its task and how it goes about its work, without being privy to operational details of its investigations such as persons whom the Authority may have under surveillance, the identity of its informants and the like.

1.10 The Committee has not, however, confined itself to information provided by the Authority. Between September 1985 and November 1986 it met with each of the State and Territory Commissioners of Police - other than the Queensland Commissioner of Police, whom the then Premier of Queensland, the Hon. Sir Joh Bjelke-Petersen, M.L.A., declined to permit to address the Committee - and with representatives of the Australian Federal Police, the Australian Customs Service and the Australian Bureau of Criminal Intelligence. The purpose of these meetings was twofold: to enable the Committee to build up some picture of the law enforcement agencies' perception of organised crime in Australia and to find out how they viewed their relationships with the Authority.

1.11 Following its decision to put down this report, the Committee again wrote to the State Premiers and the Chief Minister of the Northern Territory seeking their co-operation so that it might approach the State and Territory Commissioners of Police seeking any comments or criticisms they might have in relation to the Authority's performance of its functions. The Committee also wrote to the Commissioner of the Australian Federal Police, to the State and Federal Police Associations and to selected legal academics and criminologists working in relevant fields, seeking any comments they might have on the key issues for the evaluation identified in paragraph 1.7 above and any specific criticisms they might wish to make in relation to the Authority's performance of its functions.

1.12 In February 1988, following the introduction into the House of Representatives of the Crimes Legislation Amendment Bill 1988 lifting the sunset clause, the Committee wrote again to the four State Premiers who had not at that time responded to its request for co-operation. It also wrote again to the State and Federal Police Associations and to the legal academics and criminologists whom it had previously contacted as well as extending an invitation to make submissions to the Law Council of Australia, Law Societies and Bar Associations, Councils for Civil Liberties, the Human Rights and Equal Opportunity Commission and certain judges, lawyers and an investigative journalist who had made substantial submissions to the original inquiry of the Senate Standing Committee on Constitutional and Legal Affairs into the National Crime Authority Bill 1983. Finally on 5 March 1988 the Committee placed advertisements in the national press calling on interested persons and organisations to make submissions to its inquiry by 31 March 1988.

1.13 A total of 61 persons and bodies were contacted and 21 submissions were received. The Committee held 2 in camera hearings in Canberra in April 1988. The Committee expresses its thanks to all the individuals and organisations who made submissions and presented evidence to the inquiry. The Committee also wishes to acknowledge the assistance of its Secretary, Giles Short, the present and former Research Officers, John Carter and Rosa Ferranda, and the Committee's Steno-Secretary, Chris Migus.

Chapter 1 - Footnotes

1. Senate Standing Committee on Constitutional and Legal Affairs, The National Crime Authority Bill 1983 (Parliamentary Paper No.30/1984, A.G.P.S., Canberra, 1984), p. 94.
2. In Camera Evidence, Meeting with Professor J.L. Munro, 31 July 1986, pp. 260-61.

CHAPTER 2

OBJECTIVES

Introduction

2.1 The National Crime Authority had its genesis in the Reports of the Williams, Stewart and Costigan Royal Commissions which pointed to the inability of existing law enforcement agencies to come to grips with a phenomenon which, for want of a better term, they called 'organised crime'. While this term is beloved by the press and by the authors of certain highly coloured accounts of the Australian underworld, its meaning has been the subject of considerable debate. Given the importance of the concept in any discussion of the objectives of the National Crime Authority it is perhaps desirable that the Committee should state at the outset what it understands 'organised crime' to mean.

Organised crime

2.2 The average Australian's view of organised crime has been moulded by Hollywood films such as The Godfather and Prizzi's Honour, which purport to portray the activities of the Mafia or, as law enforcement agencies in the United States prefer to call it, La Cosa Nostra. This organisation is divided into families, structured to survive changes in leadership, with a rigid hierarchy of boss, underboss, consigliere, capo regime and 'soldiers' or 'made men'. Membership is based on a shared ethnic background and elaborate initiation ceremonies confirm a lifetime commitment to the organisation.

2.3 The last two decades in the United States have been marked by an emerging awareness of organised criminal groups other than La Cosa Nostra, such as outlaw motorcycle gangs, prison gangs, Chinese Triads and Japanese Yakuza. These groups share the hierarchical structures of the La Cosa Nostra families, their initiation ceremonies and their continuity over time.¹

2.4 In Australia, until recently, there has been little evidence of organised crime on this 'American model'.² Thus, although the 'American model' emphasises the continuity of the organisation and a hierarchical structure designed to insulate the principals from illegal activity as characteristic of organised crime, the actual syndicates or groups identified in the reports of the Williams, Stewart and Costigan Royal Commissions do not display these characteristics. Even the Calabrian marihuana growing and distribution organisation identified by the Woodward Royal Commission, although it resembled the 'American model' in some respects, appears at the time of the Commission's report to have lacked the hierarchical structure necessary to insulate the principals from illegal activity.

2.5 Mr Justice Woodward found upon examining the records of police raids on marihuana plantations in the Griffith area and elsewhere in Australia, particularly South Australia, that a large number of those involved in the cultivation of the marihuana were of Calabrian extraction. Many came from the town of Plati and many were connected to each other by family ties. Evidence was received in camera of the existence of a secret Calabrian society known as 'L'Onorata Societa' or 'N'Draghita' and Mr Justice Woodward concluded that a cell of this society based in Griffith was engaged in the illicit commercial cultivation and trafficking of marihuana in New South Wales and had been so engaged since the early 1970s. The actual structure of the organisation remains obscure but according to Mr Justice Woodward the cultivation side of the operation was co-ordinated

by Antonio Sergi while Robert Trimbole handled the distribution of the product in Sydney and, through Gianfranco Tizzoni, in Melbourne. Organisational funds were provided to 'front men' to purchase the farms on which marihuana was cultivated and bail, fines and legal expenses were taken care of by the organisation. The profits were channelled into legitimate businesses such as the Sergis' winery which Mr Justice Woodward stated might be regarded as an organisational enterprise although the Sergis were its registered owners. Robert Trimbole's freedom in using organisational funds to support his betting on horse races led Mr Justice Woodward to the conclusion that he was the practical, if not the titular, leader of the organisation.³ However, as evidenced by the arrest of Gianfranco Tizzoni in 1982, the organisation continued to operate after Trimbole's flight overseas in May 1981.

2.6 The Woodward Royal Commission also examined cannabis and heroin importing ventures where it found a lack of formally structured groups surviving for any length of time.⁴ One of the more ambitious schemes noted by the Commission was the 'Anoa' importation arranged by Murray Stewart Riley. Riley was a former detective in the New South Wales Police who had resigned in the late 1950s after being charged with taking a communication to a person in gaol. The Moffitt Royal Commission recorded that in 1966 Riley was charged in New Zealand with attempting to bribe a police officer and sentenced to 12 months imprisonment. On his return he became associated with Walter Dean in defrauding various licensed clubs by obtaining payment for services not provided.⁵ In 1975, according to the Commonwealth-New South Wales Joint Task Force on Drug Trafficking, Riley became involved in a drug trafficking syndicate organised by Michael and Patricia Moylan. Using couriers, some of them recruited from among the female employees at an illegal gambling club, the 'Double Bay Bridge Club', the Moylan group made 30 to 40 importations of 'buddha sticks' into Australia in 1975 before the Moylans were forced to flee the country in November following the arrest of

some of the couriers.⁶

2.7 The Joint Task Force on Drug Trafficking stated that the Moylans sought Riley's involvement for two reasons. First, his reputation as a criminal 'heavy' would offer them protection against other criminals, and, secondly, it was believed that Riley had extensive American contacts and could establish a trafficking operation in the United States. Riley remained in Australia following the collapse of the Moylan syndicate and in 1976 arranged some importations on his own account using couriers recruited, once again, from the female staff at the Double Bay Bridge Club.⁷ Riley also travelled extensively at this time, associating, according to confidential evidence received by the Williams Royal Commission, with persons in the United States, Hong Kong, the Philippines and Thailand 'regarded by law enforcement authorities in those places as being engaged in organised criminal activities'.⁸

2.8 In August 1977 Riley began making arrangements for the importation by sea of almost 5 tonnes of buddha sticks, a venture involving a capital investment estimated by the Woodward Royal Commission at \$650,000 including \$50,000 per tonne for the buddha sticks. Riley put together a team comprising Reginald Parkin, Kenneth Derley, John Lawrence, Sterling McCallum, Wayne Thelander and Warren Porteous. A fishing vessel, the 'Choryo Maru' was chartered in New Zealand and sailed to Singapore, where Parkin, Derley and Lawrence joined it in mid-March 1978, travelling on false passports. (According to the Williams Royal Commission up to 25 false or forged passports were used to facilitate the movements of those involved in the venture.) By early April the 'Choryo Maru' had picked up its cargo of cannabis off the coast of Thailand and sailed south. Whether by design or because of engine trouble and other factors it off-loaded its cargo on a wreck on the Pocklington Reef, east of Papua New Guinea, and then sailed on to Honiara in the Solomons, arriving on 1 May. Riley flew into Honiara and attracted the attention of the local police

by unsuccessfully trying to charter a yacht to visit the Pocklington Reef. He then flew on to Brisbane.

2.9 Parkin had purchased a 40 foot motor cruiser, the 'Mashkee II', with the aid of a \$40,000 loan from Karl Bonnette, a prominent Sydney identity mentioned in the Moffitt Royal Commission report. Bonnette and another identity, Stanley John 'Stan the Man' Smith, were observed visiting McCallum and Mr Justice Woodward stated that he was satisfied that Bonnette was involved in the 'Anoa' importation as a financial investor. Smith's role was 'one of protection, whereby his name and reputation could reasonably guarantee that drug transactions could be effected without interference or "rip-offs"'.

2.10 However the 'Mashkee II' proved unsuitable for the voyage to Pocklington Reef and a yacht, the 'Anoa', was purchased in Cairns. With McCallum and Derley on board it left Cairns on 23 May 1978 and sailed to Pocklington Reef to pick up 2.7 tonnes of the cannabis. On 5 June Parkin and his wife, Riley and his girlfriend, Carol Dean (Walter Dean's wife), Porteous and Thelander all set out from Sydney for Bermagui, which was to have been the point of unloading. However the crew of the 'Anoa' became suspicious when buzzed by an unidentified aircraft and the cargo was unloaded on 9 June 1978 on the New South Wales North Coast. In a combined New South Wales Police and Narcotics Bureau operation some 2.7 tonnes of buddha sticks were seized and a further 1.9 tonnes were later recovered from the wreck on Pocklington Reef. Riley, Parkin, Lawrence and Thelander each received 10 years imprisonment, Derley and McCallum received eight and a half years and Porteous received 5 years.⁹

2.11 The Woodward Royal Commission identified a number of heroin trafficking groups which had been operating in New South Wales, each comprising a small core of individuals and none of them related to each other. Among these the Sinclair group was distinguished by the involvement of professional criminals and by

its use of established wholesalers in the market place. The origins of the group are unclear but the Woodward Royal Commission found that early in 1977 the licensee of an inner city hotel, an alleged SP bookmaker identified in the Royal Commission Report as Mr 'BY', introduced Warren Fellows to William Garfield Sinclair. Sinclair had been mentioned in the Moffitt Royal Commission report as an associate of Walter Dean in several companies dealing with clubs. According to the Woodward Royal Commission he was the founder and director of the notorious Wings Travel Pty Ltd and in that capacity gave Riley a letter of identification as an employee and provided him with cut price air tickets. Sinclair moved to Bangkok late in 1977 but he had already established the heroin trafficking operation involving Fellows as courier and a professional criminal identified in the Woodward Royal Commission report as Mr 'BL' as the Sydney distributor. Mr 'BL', subsequently revealed to be Arthur 'Neddy' Smith, had been sentenced to 12 years imprisonment on a charge of rape in 1968 but was released on parole in 1975. He involved his half-brother, Edwin William Smith, and his de facto brother-in-law, Paul Hayward, in the operation. According to the Woodward Royal Commission, Fellows carried considerable quantities of heroin on each run: in May 1977, for example, he brought in 12 kilograms. The Royal Commission of Inquiry into Alleged Telephone Interceptions found that in September 1978 the New South Wales Police Criminal Intelligence Unit had discovered from an unlawful telephone interception device placed on 'Neddy' Smith's telephone service that Smith was organising and financing a further heroin importation. They passed this information on to the Thai authorities and Sinclair, Fellows and Hayward were arrested in Bangkok on 11 October 1978 and charged with possession of 8.4 kilograms of heroin. All three were subsequently convicted but Sinclair appealed and was granted a new trial at which he was acquitted. 'Neddy' Smith was arrested in Sydney along with Edwin Smith in whose possession 1.6 kilograms of heroin were found. Edwin Smith pleaded guilty and was called as a Crown witness at 'Neddy' Smith's trial but he

changed his evidence and on the second day of the trial Mr Justice Muir directed that 'Neddy' Smith be acquitted.¹⁰

2.12 The 'Mr Asia' drug syndicate examined by the Stewart Royal Commission operated in Australia between 1976 and 1979. According to the Stewart Royal Commission, Terrence John Clark, a New Zealander, began his career by distributing cannabis imported into New Zealand by Christopher Martin Johnstone ('Mr Asia') and his associates. He then entered into importation himself, using couriers, particularly females, to carry first 'buddha sticks' and subsequently heroin. On 3 October 1975 he was arrested and charged with the importation of heroin. Having been granted bail he absconded and early in 1976 shifted his operations to Australia. Through his association with Johnstone, Clark had developed a connection with a native of Singapore, Choo Cheng Kui or 'Chinese Jack', who arranged for the purchase of heroin in Bangkok and brought it to Singapore where it was packed in tartan suitcases with false bottoms. The Stewart Royal Commission found that couriers were recruited by Clark himself, by two of his subordinates, Wayne Shrimpton and Harry Lewis, and by other couriers. Distribution of the heroin was initially handled by Gregory Paul Ollard, another New Zealander, based in Sydney, who in turn used fellow New Zealanders Philip McArtney, Duncan Robb and Mark Fitt as lieutenants. McArtney and Fitt were killed in a car accident in August 1977 and Clark murdered Ollard, whom he considered was becoming a risk to his organisation, in September 1977. Ollard was replaced by Patrick Norton-Bennett and Clark also recruited other distributors including Douglas Wilson, who had previously worked for him in New Zealand, and James Shepherd. Ian Henry acted as the syndicate's wholesale distributor in Brisbane.

2.13 The Stewart Royal Commission established that each courier in the Clark organisation could import approximately 3.5 kilograms of heroin in two suitcases. Allison Dine, who became active in organising the group's operations in mid-1978,

estimated that at least 55 kilograms had been imported into Australia in this fashion between 1976 and the time she became actively involved. Clark also attempted to arrange an importation by sea in March 1977 using the vessel 'Konpira'. Having taken on board a shipment of pottery as 'cover' the 'Konpira' was met in the Gulf of Thailand by a flat top boat crewed by Chinese who loaded 19 four gallon kerosene tins packed with heroin on board. Although the 'Konpira' delivered its shipment of pottery successfully there is controversy as to whether the heroin was safely imported. The heroin was placed on rafts to which marker buoys were attached and according to Douglas Wilson 200 kilograms of heroin were successfully picked up. However according to a confidential witness before the Stewart Royal Commission the rafts were smashed onto rocks and the heroin lost.

2.14 In June 1978 Clark was extradited to New Zealand to face the heroin importation charge from which he had earlier absconded. Shepherd took over the running of the organisation during this period. Clark was acquitted on 31 October 1978 and returned to Sydney within a few weeks. He left Australia for the last time on 26 April 1979 and shortly thereafter moved to the United Kingdom to expand the group's operations there. On 31 October 1979, however, he and other syndicate members were arrested for the murder of Christopher Martin Johnstone in Lancashire earlier that month. According to Allison Dine's evidence before the Stewart Royal Commission, Robert Trimbole took over some part of the syndicate's operations in Australia after Clark's departure. It was stated that he had already assisted in procuring the murders of Douglas and Isabel Wilson in April 1979 and that he arranged bail and false passports for Dine and other syndicate members. However the syndicate's method of importation was exposed by the arrest of a courier, Heather Joyce Allez, in May 1979, and the syndicate appears to have broken up following the arrest of Clark in October 1979.¹¹ Shepherd and Choo were extradited to Australia from the United States and Singapore and were sentenced in June 1986 to 25 years

imprisonment and 20 years imprisonment respectively for their parts in the syndicate's operations.¹²

2.15 The Costigan Royal Commission identified two drug trafficking groups which have since been the subject of successful investigations, the one conducted by the Australian Federal Police and codenamed 'Operation Lavender' and the other conducted by the National Crime Authority and codenamed 'Operation Silo'. Operation Lavender concerned an importation of about 7.2 tonnes of cannabis resin by sea organised by a Sydney doctor, Nicholas Paltos, a solicitor, Ross Karp, and Graham George Palmer, who, it is alleged, had previously been active in illegal gambling and SP bookmaking. It has been reported that Paltos was a friend of Robert Trimbole and that he may have met Trimbole overseas when arranging the drug importation in September 1983. He also had a personal and professional relationship with a prominent Sydney identity, George Freeman, with whom he shared a common interest in horse racing. Paltos owed Karp over \$300,000 which he had apparently dissipated in betting. Palmer owned a greyhound in partnership with Walter Dean and according to the Commonwealth-New South Wales Joint Task Force on Drug Trafficking knew Murray Stewart Riley through the licensed clubs with which Dean was associated.

2.16 Late in 1983 a ship, the 'Gulf Frio', was chartered in Greece with a Greek crew and travelled to Lebanon where it loaded between 4.8 and 7.2 tonnes of cannabis resin. Paltos arranged with a Darwin fisherman and another man, codenamed 'Lavender', to sail a fishing vessel chartered for the purpose, the 'Moray', to meet the 'Gulf Frio'. On 19 February 1984 the 'Moray' sailed from Darwin and met with the 'Gulf Frio' off Melville Island on 22 February. The cannabis resin was transferred, together with the crew, and the 'Gulf Frio' scuttled. The cannabis resin was subsequently landed near Darwin and taken by truck to Sydney where it is alleged that Daniel Chubb, murdered in November 1984, was to arrange its distribution. Paltos, Karp and Palmer were

arrested on 15 August 1985 and received sentences of 20 years imprisonment, 14 years and 14 years respectively.¹³

2.17 The 'Operation Silo' investigation concerned the drug trafficking activities of Bruce Richard Cornwell and Barry Richard Bull. Cornwell was mentioned as a drug trafficker by the Woodward Royal Commission. According to the Commonwealth-New South Wales Joint Task Force on Drug Trafficking, in 1975 Cornwell trafficked locally in drugs purchased from the Moylan group as well as engaging in importing ventures on his own behalf. Like the Moylans and Riley, Cornwell made use of the female employees at the 'Double Bay Bridge Club' as couriers. According to the National Crime Authority's report on 'Operation Silo', by 1977 Cornwell was regarded as a major drug trafficker engaged in the importation of buddha sticks and heroin from South East Asia. He remained a principal suspect in the murders of Terrance Basham and Susan Smith at Murwillumbah in 1982. He eluded police on two occasions. On 2 August 1978 he arrived at a meeting to supply heroin to a female who was working under cover for the New South Wales Police but as police moved in he escaped, exchanging shots with the police. In 1984 Customs officers and the Australian Federal Police intercepted a shipment from India marked imitation jewellery which was found to contain cannabis resin. The drugs were removed and substituted in part but on delivery of the shipment Cornwell and a confederate, Terrance William French, discovered the substitution and left. The Australian Federal Police were unable to gather sufficient evidence to prefer charges. Bull had been involved in an unsuccessful attempt to import cannabis by sea from Indonesia for which he was convicted in 1974 and he was also convicted in 1977 on charges relating to the possession and supply of Indian hemp.¹⁴ In 1978 he teamed up with Cornwell and established himself at Noosa Heads. It has been alleged that, among other ventures, Bull imported cocaine from the United States to feed a growing Australian market.¹⁵

2.18 In August 1985 the National Crime Authority located Cornwell and placed a listening device in a 'safe house' he was using at Edgecliff. Evidence gathered by the Authority indicated that in the latter half of 1984 Cornwell had arranged to import two tonnes of compressed cannabis from Thailand by sea using the yacht 'Raukawa'. The 'Raukawa' left Singapore early in 1985 and met a Thai fishing boat off the island of Phuket from which it took on board the two tonnes of compressed cannabis. In early May 1985 it met with the yacht 'Skylab', skippered by Bull, off the coast of New South Wales and the cargo was successfully transferred to the second yacht and brought to land. The Authority also learned that Cornwell was planning two further importations, each of two tonnes, for late 1985 or early 1986 but it appears that these did not eventuate. Cornwell and Bull left Australia through Darwin, travelling on false passports, on 25 September 1985. They were subsequently extradited from the United Kingdom and Austria and were sentenced on 16 September 1987 to 23 years imprisonment and 18 years imprisonment respectively.¹⁶

2.19 These examples suggest that in the field of drug importation loosely structured groups centring on one or two or three individuals are the norm. It is relatively easy for a principal like Riley to find other persons within the criminal world who are prepared to undertake tasks in connection with an importation provided the price is right. Even where importers build up networks of distributors these are fluid and a distributor may deal with more than one importer. None of the groups appears to have had a developed hierarchy: the principals remained intimately involved in arranging illegal activities rather than merely approving and financing ventures conducted by subordinates.

2.20 While the examples given above are drawn exclusively from the field of drug trafficking similar observations can be made in relation to the promoters of tax evasion schemes

identified by the Costigan Royal Commission. In other fields, such as the illegal gambling clubs in Sydney and Melbourne, SP bookmaking and organised prostitution, it is likewise easier to identify particular principals as constants rather than to identify organisations which have continued over a period of time or which have developed hierarchical structures or group loyalties. The description of the Australian criminal scene provided by the Commonwealth-New South Wales Joint Task Force on Drug Trafficking in 1982 encapsulates this view. The Joint Task Force reported:

'the existence of small scattered groups (or individuals) with ever changing relationships between one another. It is rather like a loose and relatively open confederation of people (some of whom might well form tight knit groups or organisations), whose activities are from time-to-time to some degree limited or assisted by their reputation within that confederation.'¹⁷

This description is also reflected in the findings of the Costigan Royal Commission. Having concluded that the members of the Painters and Dockers Union formed an association of hardened criminals whose services were available to certain 'employers', Mr Costigan found that those employers might be spoken of as a criminal organisation so long as care was exercised in the meaning given to that description. The organisation concerned was not hierarchical in structure and could not be compared, for example, to a company with a managing director, subordinate directors and managers, and divisional heads. Rather it took the form of a loose association of participants in criminal activity, the members of which supplied services and facilities according to their expertise and resources.¹⁸

2.21 'Organised crime' in the Australian context is therefore difficult analytically to define. To some it can mean hierarchically structured self-perpetuating organisations on the 'American model' while to others it can mean a loose

confederation of individuals and groups or syndicates engaged in conspiracies to perform illegal acts. Whatever may be the case, the potential for corruption in law enforcement agencies and in other government departments and the undermining of confidence in the criminal process is as great whether organised crime conforms to the 'American model' or whether it resembles the looser confederation of individuals and groups outlined above. The threat to the fabric of society is the same.

2.22 Moreover the National Crime Authority believes it has evidence of the existence in Australia of more highly structured criminal groups which have continued in operation for some time without interference from other law enforcement agencies. In particular, the National Crime Authority believes it has identified the Australian equivalent of the Mafia and Chinese Triad organisations existing in Australia.¹⁹ While the picture is still unclear, there is certainly evidence that groups in Australia have links with the more highly structured organisations operating in the United States, Hong Kong and Italy and there is little doubt that, if left unchecked, such groups would develop along the lines of the 'American model'. For the moment, however, it appears that the preponderance of organised criminal activity in Australia takes the more loosely structured form described above.

Genesis of the Authority

2.23 The Williams, Stewart and Costigan Royal Commissions all found that the existing law enforcement agencies had proved unable to identify the groups or syndicates involved in organised criminal activities or to disrupt those activities. Among the reasons advanced for this failure were that:

- . policing is traditionally reactive rather than proactive: that is, police respond to complaints that offences have been committed and regard their task as

having been completed when the person alleged to have committed the offence is apprehended rather than assembling intelligence which would enable individual offences to be seen as part of a pattern of illegal activity;

- . whereas the activities of criminal groups or syndicates transcended administrative, jurisdictional and even national boundaries, Australian law enforcement efforts had been fragmented, and there had been a failure to exchange information between agencies or even to disseminate information within single agencies;
- . police forces lacked the resources which were necessary for a full-scale attack on even a single criminal group or syndicate and they lacked the support of specialist expertise - accountants and lawyers - and the computer systems necessary to analyse vast amounts of documentary material; and
- . police lacked the power given to Royal Commissions to require persons to answer questions and to produce documents and they lacked the access to taxation records which was given to the Stewart and Costigan Royal Commissions.²⁰

2.24 The first three of these points have all been addressed to some extent by such steps as the provision of increased resources to police, the establishment of the Australian Bureau of Criminal Intelligence and the creation of special groups, targetting criminal syndicates, such as the Australian Federal Police Organised Crime Branch and various Joint Task Forces transcending organisational and jurisdictional boundaries. However, at the time a standing Royal Commission or crimes commission was being debated, it was generally conceded that the

Australian community was not prepared to give police the power to require persons to answer questions and to produce documents.²¹ Furthermore, the Federal Government has not been prepared to give police access to taxation records, despite the recommendation of the Williams Royal Commission to that effect.²² The National Crime Authority was therefore established as a body on which it would be appropriate to confer these powers, albeit with checks and balances intended to ensure that it did not exercise them in a manner prejudicial to personal rights and liberties.

Structure and functions

2.25 The National Crime Authority is established by section 7 of the National Crime Authority Act 1984. It consists of a Chairman (who must be a judge or a legal practitioner enrolled for not less than 5 years) and 2 other members. The members are appointed for terms not exceeding 4 years or the period ending at the expiration of 5 years after the commencement of the Act. The latter proviso ensures that terms of appointment do not extend beyond the date on which the Authority is to cease to exist by virtue of the sunset clause. The members are not eligible for re-appointment (section 37).

2.26 Section 11 of the Act in essence confers on the Authority four functions:

- (i) to collect and analyse criminal information and intelligence relating to 'relevant criminal activities' and to disseminate that information and intelligence to law enforcement agencies;
- (ii) to investigate, otherwise than pursuant to a reference granted by a Commonwealth or State Minister, matters relating to 'relevant criminal activities';

- (iii) to arrange for the establishment of Task Forces for the purpose of investigating matters relating to 'relevant criminal activities'; and
- (iv) to investigate a matter relating to a 'relevant criminal activity' in respect of which there is in force a reference granted by the Commonwealth Minister (insofar as the relevant offence is an offence against Commonwealth law) or a State Minister (insofar as the relevant offence is an offence against a law of the State concerned).

2.27 The first three of these functions are referred to in the Act as the 'general functions' of the Authority. An investigation pursuant to a reference is referred to as a 'special investigation' and in carrying out such an investigation the Authority is said to be carrying out its 'special functions'. The expression 'relevant criminal activity' is defined as any circumstances implying, or any allegations, that a 'relevant offence' may have been, or may be being, committed against a law of the Commonwealth, of a State or of a Territory. A relevant offence is defined as an offence:

- (a) that involves two or more offenders and substantial planning and organisation;
- (b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques;
- (c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and

- (d) that involves theft, fraud, tax evasion, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit by vice engaged in by others, extortion, violence, bribery or corruption, bankruptcy and company violations, harbouring of criminals, forging of passports, armament dealings or illegal importation or exportation of fauna into or out of Australia.

Offences which are not punishable by imprisonment or which are punishable by imprisonment for a period of less than three years are specifically excluded, as are offences the time for commencement of a prosecution for which has expired and offences committed in the course of a genuine industrial dispute. Notwithstanding that an offence does not fall within the above definition of a relevant offence, however, the Authority may deem an offence to be a relevant offence where (and for so long as) it suspects that the offence may be a part of a course of activity involving the commission of a relevant offence as defined (sub-section 4(2)).

2.28 In the performance of its general functions the Authority may require certain Commonwealth agencies to furnish information and may request information from other Commonwealth agencies which are subject to secrecy provisions (sections 19A and 20). The Taxation Commissioner may communicate information to the Authority for the purpose of an investigation related to a taxation offence (paragraph 16(4)(m) of the Income Tax Assessment Act 1936 and sub-section 3D(1) of the Taxation Administration Act 1953).

2.29 In carrying out a special investigation the Authority has a variety of coercive powers. It may seek an order from a Federal Court Judge requiring the Taxation Commissioner to disclose information which the Commissioner may have acquired that is relevant to the investigation (sub-sections 16(4HA)-(4HG)

of the Income Tax Assessment Act 1936 and sub-sections 3D(4)-(10) of the Taxation Administration Act 1953). It may obtain a search warrant in order to seize things connected with a matter relating to the relevant criminal activity which the Authority is investigating if it believes on reasonable grounds that these things may be concealed, lost, mutilated or destroyed (section 22). It may seek an order from the Federal Court requiring that a witness or potential witness in hearings before the Authority deliver up his or her passport if there are reasonable grounds for suspecting that the person intends to leave Australia (section 24). It may require persons to appear before it to give evidence and to produce documents (sections 28 and 29). Self-incrimination is an excuse for a failure to answer questions or produce documents but the Authority may recommend to the Commonwealth Director of Public Prosecutions or a State Attorney-General that the witness be given an indemnity, in which case self-incrimination ceases to be an excuse (sub-sections 30(4),(5),(6),(7) and (8)). Finally, the Authority may seek the arrest of a witness or a potential witness whom it believes to be likely to leave Australia notwithstanding that the person has been ordered to deliver up his or her passport (section 31).

2.30 The Commonwealth Minister may not refer a matter to the Authority for investigation unless he or she has consulted the Inter-Governmental Committee, comprising the Commonwealth and State Ministers, and a State Minister may not refer a matter to the Authority except with the approval of the Inter-Governmental Committee (sections 13 and 14). The Inter-Governmental Committee is required, before approving a reference, to consider whether ordinary police methods of investigation are likely to be effective in relation to the matter (sub-section 9(2)). The Authority may request the Inter-Governmental Committee to approve references and it may request the Commonwealth Minister to refer matters to it for investigation (section 10) but the Commonwealth Minister (insofar as a reference concerns offences against Commonwealth law) or a State Minister (insofar as a reference

concerns offences against the law of that State) retains the final power to decide whether a reference should be granted.

2.31 Although the distinction between general and special investigations is an important one, the Authority's powers to conduct investigations otherwise than pursuant to a reference are broader than might at first appear. At 30 June 1987 the Authority had 66 police officers from various State forces and the Australian Federal Police attached to it on secondment and a further 21 police officers on its permanent staff. Such officers retain their powers to interview persons and to apply for search warrants pursuant to the relevant provisions in State or Commonwealth legislation. They may also charge persons with offences which do not fall within the definition of 'relevant offence' when such offences come to light in the Authority's investigations.²³

2.32 Furthermore, the Authority is required to co-operate and consult with the Australian Bureau of Criminal Intelligence and to work in co-operation, so far as practicable, with other law enforcement agencies (sub-section 12(2) and section 17). A significant element of this co-operation is undoubtedly the interchange of information and it is suggested that ultimately the Authority's ability to obtain information relevant to its investigations from other Commonwealth and State agencies and from authorities in other countries is dependent less on formal legal constraints than on the degree to which those agencies or authorities are prepared to provide the information sought.

2.33 The Authority is required, in carrying out an investigation, whether special or general, to assemble any evidence of an offence, being evidence that would be admissible in the prosecution of a person, and to furnish that evidence to the Commonwealth or State Attorney-General or to the relevant law enforcement agency (paragraph 12(1)(a)). Similarly, in co-ordinating investigations by Task Forces, the Authority is

required to endeavour to ensure that any admissible evidence of an offence is assembled and furnished to the appropriate authority (paragraph 12(1)(b)). These provisions should not, however, be read as limiting the Authority's freedom of action in relation to investigations. The Authority may pass on to Commonwealth or State law enforcement agencies information concerning the commission or possible commission of offences whenever it considers it appropriate to do so (sub-section 59(7)). It may also furnish to authorities and persons responsible for taking civil remedies by or on behalf of the Crown in right of the Commonwealth, a State or a Territory information relevant for the purpose of taking such remedies (sub-section 59(8)).

2.34 The Authority may also make recommendations to Commonwealth or State Ministers:

- (a) for reform of the law relating to relevant offences, including:
 - (i) evidence and procedure applicable to the trials of relevant offences;
 - (ii) relevant offences in relation to, or involving, corporations;
 - (iii) taxation, banking and financial frauds;
 - (iv) reception by Australian courts of evidence obtained in foreign countries as to relevant offences; and
 - (v) maintenance and preservation of taxation, banking and financial records;
- (b) for reform of administrative practices; or
- (c) for reform of administration of the courts in relation to trials of relevant offences (sub-section 12(3)).

2.35 Finally, the Authority may sit in public or publish bulletins for the purpose of informing the public of the general conduct of its operations, provided that in so doing it does not divulge any matter the disclosure of which could prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence (section 60).

Objectives

2.36 The debate preceding the establishment of the National Crime Authority tended to focus on the perceived inadequacies of the existing law enforcement agencies in dealing with 'organised crime' and the powers that the Authority would require to deal with that phenomenon. Little attempt was made to formulate the objectives of the Authority in other than the most general terms.

2.37 Mr Costigan, in a chapter in his Interim Report No. 4 tabled in September 1982, argued that the ultimate objective must be to suppress organised crime:

'It would be better to state that it be destroyed. However, from what I have observed in Australia, and from what I have read of similar problems in other countries, it appears that its destruction is an unattainable goal.'²⁴

The Stewart Royal Commission, reporting in February 1983 against the background of the National Crimes Commission Act 1982, stated that the objects of a standing Royal Commission or crimes commission should be:

'to make governments and the public aware of the existence and extent of the activities of organised crime, to assemble material for the prosecution of conspirators and to make a public report at least annually.'²⁵

The Stewart Royal Commission also suggested that a most important function of the proposed Commission should be to investigate offences of kinds that other law enforcement agencies were experiencing special difficulties in investigating.²⁶

2.38 The Costigan Royal Commission, returning to the topic after the passage of the National Crime Authority Act 1984, once again argued that the elimination of organised crime was beyond our resources so that suppression of this type of crime was an appropriate goal. A strategy should be developed based on the selection of worthwhile targets and the concentration of all available resources on the suppression of the criminal activities of those targets. Suppression should be seen not merely in terms of the punishment of the criminals and the destruction of the profits of their criminality. It should also mean changing the environment in which the criminal activity is occurring, making it more difficult, more costly and more risky.²⁷

2.39 Senator Evans, then Attorney-General, stated in introducing the Bill to establish the Authority in November 1983 that the Authority was '[d]esigned to effectively coordinate and lead on a national basis the attack against organised crime'.²⁸ The Senate Standing Committee on Constitutional and Legal Affairs in its Report on the National Crime Authority Bill 1983 stated that there was a 'legitimate community expectation that a National Crime Authority will produce tangible results, by way of both civil and criminal remedies, resulting in a discernible diminution in the extent of criminal activity'.²⁹ Finally the Authority itself has stated that its primary aim is 'to take effective action to combat organised crime in Australia'.³⁰

2.40 The generality of these formulations poses problems when one comes to ask whether the Authority has met the objectives for

which it was established. If the objectives are vague then any assessment of the Authority's achievement of those objectives will also be vague. The Committee has concluded that, in creating the National Crime Authority, the Parliament conceived of it as a body which would make progress in the investigation of organised criminal activities in Australia where other law enforcement agencies had failed. If the objective underlying its establishment was expressed as 'to suppress', 'to attack' or 'to combat' organised crime, the reality was that behind this formulation lay the expectation that the Authority would get results: that it would put important or significant criminals behind bars. That, succinctly, was the primary objective for which the Authority was established.

2.41 Drawing upon the foregoing analysis of the genesis of the Authority and its legislative basis, it is suggested that the processes by which it was expected that the Authority would achieve this primary objective may be broken down as follows:

- . the development of an independent intelligence gathering function in relation to organised crime;
- . the identification of significant criminal groups or syndicates operating in Australia;
- . the investigation of such groups or syndicates and the assembly of admissible evidence in relation to their criminal activities; and
- . the taking of action to halt or disrupt the activities of those groups or syndicates and to punish their principals (by the preparation of briefs for prosecution, the referral of material to the Australian Taxation Office enabling the raising of a

taxation assessment and/or the preparation of material enabling proceedings to be taken for the forfeiture of assets acquired with the proceeds of crime).

2.42 Taking action against important or significant criminals should not, however, be seen in isolation. A secondary objective underlying the establishment of the Authority was that, by its very existence and by its visible success in achieving its primary objective, it would have a deterrent effect. There was a recognition on the part of the Parliament that merely to catch those presently involved in criminal activity would not be enough: that in order to suppress organised crime it would be necessary to increase the fear of detection and apprehension in the minds of those who might be tempted to enter the field. Just as it would be insufficient to secure the imprisonment of a principal if the syndicate he or she headed were to continue to operate, so it would be insufficient to disrupt the activities of one syndicate if another stood ready to take its place. There was, the Committee believes, an expectation that the establishment of the Authority and its success in its primary task would change the environment in which organised crime had up until then operated in this country, a step which the Costigan Royal Commission suggested was a necessary ingredient in any strategy to suppress organised crime. The Authority has informed the Committee that it considers that this secondary objective is articulated by its primary aim, 'to take effective action to combat organised crime in Australia'.

2.43 Finally, it is possible to list a number of further objectives, ancillary to the Authority's main purpose for existence, namely:

- . to cultivate informers who would not have come forward but for the existence of the Authority (because of distrust of the police or fear of

corruption in existing law enforcement agencies);

- . to improve co-operation between law enforcement agencies with special reference to organised crime;
- . to improve the capacity of existing law enforcement agencies to combat organised crime (by dissemination of intelligence, provision of training, computer systems and the like);
- . to make recommendations for the reform of the law, administrative practices and the administration of the courts as these relate to organised crime; and
- . to heighten public awareness of the nature and extent of organised crime in Australia.

Chapter 2 - Footnotes

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2. Australian Royal Commission of Inquiry into Drugs (Commissioner: The Hon. Mr Justice E.S. Williams), Report (A.G.P.S., Canberra, 1980), p. A327.
3. New South Wales Royal Commission into Drug Trafficking (Commissioner: The Hon. Mr Justice P.M. Woodward), Report (N.S.W. Government Printer, Sydney, 1979), pp. 99-119, 147-201, 991.
4. Ibid., pp.22-4.
5. Royal Commission into Allegations of Organized Crime in Clubs (Commissioner: The Hon. Mr Justice A.R. Moffitt), Report (N.S.W. Government Printer, Sydney, 1974), pp. 72-5.
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Chapter 2 - Footnotes (continued)

15. Wilson, D., Murdoch, L., and Bottom, B., Big Shots (Sun Books, Melbourne, 1985), pp. 9-15, 23-8.
16. National Crime Authority, op. cit., pp. 5, 13-14, 18-20.
17. Joint Task Force, op. cit., vol. 3, pp. 546-7.
18. Costigan, Interim Report No. 4, vol. 2, ch. 10, edited version tabled in Parliament, 7 September 1982, pp. 28-37.
19. In Camera Evidence, Meeting with Authority, 9 December 1987, pp.469-70.
20. Williams, op. cit., pp. A324, A339, B192; Stewart, op. cit., pp. 448, 451, 504, 511, 526, 771-4; Costigan, Interim Report No. 4, vol. 2, ch. 10, pp. 39-43.
21. Costigan, Interim Report No. 5 (A.G.P.S., Canberra, 1983), vol. 1, p. 27.
22. Williams, op. cit., pp. C376, F26.
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24. Costigan, Interim Report No. 4, vol. 2, ch. 10, p. 38.
25. Stewart, op. cit., p. 783.
26. Ibid., pp. 788, 791.
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CHAPTER 3

PERFORMANCE

Resources

3.1 The National Crime Authority came into existence on 1 July 1984. Its Chairman is the Hon. Mr Justice D.G. Stewart, whose term expires on 30 June 1988. Mr E.M. Bingham, Q.C., was appointed as a member on 16 July 1984 on the recommendation of the Police Ministers of the Commonwealth and the States. His term of appointment expired on 31 December 1987 and Mr L.P. Robberds, Q.C., was appointed as his replacement for a term beginning on 18 January 1988 and ending on 30 June 1989. The other foundation member of the Authority, Mr J.L. Dwyer, Q.C., was appointed on 23 July 1984 on the recommendation of the Attorneys-General of the Commonwealth and the States. His term expired on 31 December 1985 and he was replaced first by Mr R.F. Greenwood, Q.C., in an acting capacity, and then by Mr P.H. Clark, who was appointed in February 1987 for a term expiring on 30 June 1989.

3.2 The Authority's head office is in Sydney and it has an office in Melbourne under the supervision of one of the two members other than the Chairman. It also briefly established an office in Perth to carry out a particular investigation but when it finalised that investigation, it closed the office. Details of the Authority's staff are set out in Appendix 1 to this Report. Out of 320 staff at 30 June 1987, 233 were public servants and 87 were police officers, 21 on the Authority's permanent staff and 66 on secondment. The Committee understands that placements with the Authority are eagerly sought after by police officers who believe that the experience gained will be valuable to them in their careers. At the same time, the presence of a considerable number of experienced investigators on the staff of the Authority

represents a significant diversion of resources away from existing law enforcement agencies, particularly the three forces - New South Wales, Victoria, and the Australian Federal Police - which provide the bulk of the seconded officers.¹

3.3 Of the Authority's public service staff at 30 June 1987, 25 were lawyers, 10 were accountants, 7 were intelligence analysts and 2 were information systems experts. The Attorney-General may appoint counsel to assist the Authority either generally or in relation to a particular matter or matters (section 50) and 6 counsel were engaged under this provision at 30 June 1987. As is the case with other statutory authorities, the Chairman may engage consultants (section 48) and both accountants and information systems experts have been engaged under this provision at various times. Besides police officers, other Commonwealth and State public employees may be seconded to the staff of the Authority (section 49) and both Corporate Affairs Commission and Australian Taxation Office personnel have been utilised in this way.

3.4 The Authority has had persistent difficulty in attracting legal staff whom it regards as sufficiently well qualified. The Authority has two legal positions classified at Level 4 in the Senior Executive Service (\$65,910 per annum) and six legal positions classified at Level 2 (\$56,092 per annum) but it appears that these pay rates are insufficient to attract private practitioners. The Committee has been informed that a competent solicitor with a major firm would have no difficulty matching the lower of these two figures and would, in addition, have the prospect of a partnership.² The Director of Public Prosecutions has also commented on the disparity between public and private sector pay rates for legal personnel.³ The result is that the Authority finds itself competing with the Attorney-General's Department and the Office of the Director of Public Prosecutions for the services of the small number of lawyers in public service employment who have appropriate

qualifications and relevant experience. The Committee is aware that the problem of disparity between public and private sector pay rates is by no means confined to legal personnel but it considers that penny-pinching with regard to salaries and classifications in this area may prove to be a false economy in the longer term.

3.5 The Authority has an annual budget of over \$15 million, of which almost \$8 million is spent on salaries and approximately \$6.6 million on administrative expenses. The Authority does not pay the salaries of seconded police officers although it is responsible for their overtime and other allowances. To provide some basis for comparison with the resources afforded the Authority, the Australian Federal Police, with an establishment roughly ten times the size of the Authority, spent almost \$138 million in 1986-87. At the other end of the scale, the Costigan Royal Commission, with a staff which peaked at 103 in 1984, spent \$5 million in 1983-84. The Commonwealth would not appear to have been either unduly lavish or niggardly in the resources afforded the Authority. It should be added that cost sharing arrangements are in place to ensure that the Commonwealth recovers part of the expenditure by the Authority related to specific investigations under references where State as well as Commonwealth references have been granted.

Special investigations

3.6 The major part of the resources of the Authority are devoted to its investigative functions and, in particular, to its investigations of matters in respect of which there is a Commonwealth or State reference. Eight Commonwealth references have been granted, although the last is very recent, and there are a number of parallel State references. Details are set out in Table 1 below. Given the membership of the Authority, it believes that it can only handle six references at any one time. Two of

the special investigations have therefore been completed from the Authority's point of view and these are indicated in Table 1.

3.7 A reference may relate to the alleged criminal activities of an individual or individuals or a group or groups. References do not identify the subjects or targets involved, such matters being known only to the Minister granting the reference. The drafting of references is particularly important because, under sub-section 28(2), a person summonsed to give evidence at a hearing must receive a copy of the reference together with the summons. However, the manner of drafting references adopted by the Authority has not been the subject of legal challenge and has the desirable effect of preserving the anonymity of those persons against whom allegations have been made which are the subject of the investigation.

TABLE 1 - REFERENCES

Reference No.		Date Issued		Reported
Commonwealth	State	Commonwealth	State	
1	3 (NSW)	19.10.84	4. 4.86	
2	-	19.10.84		
3	1 (NSW)	12.12.84	30. 5.85	18.11.87
4	1 (Vic)	12.12.84	3. 6.85	
5	2 (NSW)	30. 5.85	30. 5.85	13. 6.86
6	4 (NSW)	4. 4.86	4. 4.86	
7	5 (NSW)	30. 5.86	30. 5.86	
	2 (Vic)		30. 5.86	
	1 (SA)		30. 5.86	
	1 (Qld)		13.11.86	
	1 (NT)		18.11.86	
	1 (WA)		21. 5.87	
8	6 (NSW)	26.11.87	18. 3.88	

3.8 Material generated by the Costigan Royal Commission has provided the starting point for 6 of the 8 references, the other two being derived from the Australian Federal Police and the New

South Wales Police respectively. The importance of the work done by the Costigan Royal Commission should not be overemphasised, however. Other law enforcement agencies had already performed considerable work on the subjects of four of the references and much of the information accumulated by the Costigan Commission was unverified and required analysis to determine its reliability.⁴ In the case of the most recent reference, for example, which as is publicly known relates to illegal activities on the waterfront, the Costigan Commission material provided the starting point for an ordinary investigation by the Authority which, together with the results of an investigation by the Australian Customs Service, provided a sufficient basis to support the Authority seeking a reference.⁵

3.9 The Authority freely admits that it does not as yet have an overall strategic view of organised crime in Australia. Its selection of targets to become the subject of references is not animated by some grand plan which will result in the progressive suppression of organised crime in this country.⁶ Rather, the Authority has determined certain priorities and within those priorities it pursues matters which, following consultation with other law enforcement agencies, it believes to be suited to its particular capacities. The Authority took the view, for example, that it should not be granted a reference on illegal bookmaking, principally because it believed that its resources should be devoted to more important matters such as the financing and importation of narcotics, large scale fraud and tax evasion.⁷ Nevertheless the Authority believes that its references cover the most significant of the higher level organised crime groups or syndicates in this country.⁸

3.10 At present the Authority's investigations appear to divide fairly evenly between so-called 'white-collar' crimes such as corporate fraud and tax evasion on the one hand, and drug trafficking on the other, with a smattering of bribery, corruption, murder and other criminal activities on the side. Its

methods of investigation, not unnaturally, are very much dependent on the type of criminal activity involved. Drug trafficking matters, for example, require good police work in the first instance: the use of informants, electronic and physical surveillance and the like. Once an investigation has advanced beyond its initial stages, however, the Authority's powers to hold hearings and require the production of documents come into play to assist in proceedings for the forfeiture of assets derived from the proceeds of crime. Corporate fraud and tax evasion, on the other hand, lend themselves to investigation solely or primarily by hearings using the Authority's coercive powers.

3.11 Details of the Authority's use of its powers to 30 June 1987 under each of the seven references granted up until that time are set out in Appendix 1. Usage of certain of the powers has been patchy: for example, there is a clear preference for search warrants to be obtained pursuant to the ordinary powers of police officers rather than under section 22 of the Act. It is also interesting to note that relatively few requests have been made for undertakings under section 30. A person may not be required to incriminate himself or herself in a hearing before the Authority unless such an undertaking granting an indemnity in respect of the incriminating evidence has been given by the Commonwealth or State prosecuting authorities. It had been suggested to the Committee early in its meetings with the Authority that there were real concerns as to whether the provisions in section 30 would prove workable⁹ but at its meeting with the Authority on 9 December 1987 the Committee was assured that there were no great problems with indemnities under those provisions.¹⁰

3.12 The Authority clearly regards the prosecution to conviction of offenders as the most desirable outcome of its investigations but it is prepared to see other avenues pursued at the same time. Thus, for example, a prosecution may be launched

for conspiracy to defraud the Commonwealth in respect of a systematic scheme to evade tax but at the same time other understated or undeclared income may be notified to the Australian Taxation Office in order that an assessment may be raised. Similarly, where a prosecution of a company promoter on a charge of stealing related to complex corporate fraud was dismissed, the Authority passed information obtained in the course of its investigation to the Australian Taxation Office, for use in a concurrent prosecution on charges of conspiracy to defraud the Commonwealth relating to a 'bottom-of-the-harbour' tax avoidance scheme.

3.13 The Authority is an investigative agency, not a prosecuting agency, and its role in relation to any charges arising under its investigations is complete when it hands a brief of evidence to the relevant prosecuting agency. The decision whether to prosecute, and, if so, on what charges, is one for the relevant prosecuting authority. Police officers attached to the Authority frequently arrest and charge people, although normally major charges would not be formulated by the Authority without consultation with the prosecuting authority which will take over the case. However even in such circumstances - where charges have already been laid - it remains the prerogative of the prosecuting authority to withdraw the charges altogether or to substitute alternative charges. The Authority's ability to influence the course of prosecutions is accordingly limited.

3.14 Nevertheless it is tempting to see the Authority's success or failure in terms of successful prosecutions. Where prosecutions resulting from its special investigations are concerned, the Authority presently has a success rate of roughly 87 per cent. Of its completed investigations, no charges resulted from one. The other, concerning the drug traffickers Cornwell and Bull, resulted in gaol terms of 23 years with a non-parole period of 14 years for Cornwell and 18 years with a non-parole period of

11 years for Bull. Among their associates Leslie Edward Scott was sentenced to 15 years with a non-parole period of 10 years, Theodore Darling Rogers was sentenced to 13 years with a non-parole period of 7 years, Mark Robert Rowell was sentenced to 12 years with a non-parole period of 7 years, Douglas Tiffany was sentenced to 12 years with a non-parole period of 6.5 years and James Craig Webster was sentenced to 10 years with a non-parole period of 5 years.

3.15 Of the Authority's uncompleted special investigations, five of the six have so far resulted in successful prosecutions, although appeals are pending against a number of these convictions. As a guide to the significance of the cases involved, under one reference a number of major figures have been sentenced to terms of imprisonment ranging from 7 years to 24 years, while in a case arising under another reference the maximum sentence available for the offence in question, 3 years, was imposed. Prosecutions are pending under all the uncompleted investigations and a wide range of charges are involved, including making fraudulent inducements to investors, trafficking in heroin, conspiracy to bribe a police officer, and attempted murder.

Ordinary investigations

3.16 Many of the comments made above concerning the Authority's special investigations also apply to its ordinary investigations, those conducted otherwise than pursuant to a reference. In determining whether to pursue a matter itself or to pass it on to another law enforcement agency, the Authority has been guided by the criterion which the Inter-Governmental Committee is required to consider before approving a reference, namely 'whether ordinary police methods of investigation into the matter are likely to be effective'. Particular factors which the Authority may take into account in this context include the complexity of the matter, the fact that the matter cuts across

organisational or jurisdictional boundaries, the need for the Authority's coercive powers in the short or long term, the ability of the Authority to devote considerable resources to a single investigation and any allegation that previous investigations into the matter have failed because of corruption within the law enforcement agency concerned.¹¹

3.17 The Authority has undertaken 7 ordinary investigations, two of which are now being dealt with under references and a further four of which are substantially complete from the Authority's point of view. Four of these investigations arose out of material generated by the Costigan Royal Commission, one was referred to the Authority by the Western Australian Police and one arose out of allegations made by an Australian imprisoned overseas who was interviewed by Authority officers. As is the case with its special investigations, the criminal activity at issue in the Authority's ordinary investigations ranges from corporate fraud to drug trafficking. Even in the absence of its coercive powers the Authority can, as noted in Chapter 2, obtain information from the Taxation Office in connection with tax-related investigations and it can obtain documents pursuant to search warrants granted to police officers in accordance with their ordinary powers.

3.18 As at 7 April 1988, 43 prosecutions arising out of ordinary investigations by the Authority had been dealt with by the courts and 39 convictions had been obtained, a success rate of almost 91 per cent. Although many of these matters were minor - resulting in one case, for example, in a \$10 fine - two of the ordinary investigations relate to drug trafficking and in one of these sentences of 18 years, 15 years and 15 years respectively have been imposed on 3 principals. To complete the picture, a further 13 prosecutions have been dealt with by the courts arising out of matters incidental to the Authority's investigations and 10 convictions have been obtained, although none of these matters was of any great significance.

Task forces

3.19 Paragraph 11(1)(c) empowers the Authority, where it considers it appropriate to do so for the purpose of investigating matters relating to criminal activities, to arrange for the establishment of Commonwealth Task Forces or joint Commonwealth and State Task Forces or to seek the establishment of State Task Forces. It is unclear whether the intention underlying this provision was that the Authority should establish separate Task Forces to carry out specific investigations in the manner in which, for example, the Woodward and Williams Royal Commissions established the Commonwealth-New South Wales Joint Task Force on Drug Trafficking, or whether it was intended that Task Forces should simply provide an additional tool for the conduct of investigations.

3.20 In any event the Authority has to date used task forces only as an adjunct to its powers to conduct ordinary and special investigations. Thus, although the Authority speaks in its Annual Reports of 'separate task forces' administered, serviced and maintained by the Authority, in effect such task forces are simply the investigative teams used by the Authority in the allocation of its resources to particular investigations. Such teams comprise lawyers, accountants and operational officers on the staff of the Authority, seconded police officers and other officers seconded from Commonwealth and State agencies.

Intelligence gathering and analysis

3.21 Paragraph 11(1)(a) empowers the Authority to collect and analyse criminal information and intelligence relating to relevant criminal activities and to disseminate that information and intelligence to other law enforcement agencies. While this paragraph would have given the Authority the power to develop its own stand-alone intelligence capacity, the Authority has not in

fact chosen to do so. It established its own intelligence branch early in 1987 but intelligence gathering is still viewed as incidental to the Authority's investigative functions rather than as an end in itself. It appears that in the near future, at any rate, the Authority will continue to rely on the Australian Bureau of Criminal Intelligence (ABCI) and, to a lesser extent, on other law enforcement agencies, for intelligence gathering. It also makes use of the ABCI for the dissemination of intelligence which has come into its possession but which is not relevant to its current investigations.

3.22 The intelligence analysis function carried out by the new intelligence branch has so far been directed primarily towards providing support for the Authority's current investigations. This may involve, for example, the identification of emerging features or weaknesses in target groups or the provision of advice at the executive level where it appears that two investigations may overlap or where information gathered under an existing investigation may more appropriately be referred to another agency for investigation.¹² In the longer term the Authority intends that the intelligence branch will assist in the identification of potential targets for investigation by the Authority. The ABCI has on-line access to the indexes to the Authority's database and may request information held by the Authority. Discussions are continuing on a reciprocal arrangement which would enable the Authority to have on-line access to the ABCI's database. The Authority presently has on-line access to a register of names and file numbers at the New South Wales Corporate Affairs Commission, access to the New South Wales Police and Australian Federal Police computerised records systems and the ability to add names to the Customs PASS (Passenger Automated Selection System) alert system so as to ensure that it is notified of the movements of certain individuals into and out of the country.

Law reform and educative functions

3.23 The Authority has the capacity, unusual in Australia's Federal system, to make recommendations to Commonwealth or State Ministers for reform of the law, administrative practices and the administration of the courts in relation to trials of relevant offences. Whereas the Australian Law Reform Commission has a relatively limited role in relation to criminal law because of the limitations on Federal jurisdiction in that regard, the Authority could play an important part in pursuing law reforms which cut across the jurisdictional boundaries which bedevil Australian criminal law. Similarly because Federal offences, are, in the main, tried in State courts, the Commonwealth Government's ability to influence the administration of the courts in relation to the trials of relevant offences is limited. The Authority, empowered to make recommendations to both Commonwealth and State Ministers, could press for significant reforms in this area also.

3.24 To date the Authority has not formally exercised this power, regarding it as a low priority compared to its investigative functions.¹³ The Authority takes the view that recommendations which are not the product of actual experience are of limited value. Furthermore, with regard to delays in the courts, for example, it believes that there are other bodies with a closer involvement in, and responsibility for, courts administration which are better placed to advise on solutions to the problem.¹⁴ The Authority has therefore contented itself with being consulted by the Commonwealth Government in relation to proposed legislation such as the recently enacted Proceeds of Crime Act 1987 and with making its views known in appropriate quarters. Thus it made a submission to the Joint Select Committee on Telecommunications Interception and it has raised with the relevant Federal and State Ministers its concerns in relation to the power of police officers to detain persons in custody for questioning following the decision of the High Court in Williams

v. The Queen.¹⁵ Similarly, at its meeting with the Committee on 9 December 1987 the Authority raised its concern that insufficient vetting was being undertaken of prospective immigrants to Australia and that persons with known criminal associations were being allowed into the country. Mr Justice Stewart informed the Committee that he had written to the Minister in relation to the matter and had offered to speak to him at his convenience¹⁶ but advantage was not taken of the avenues provided by sub-sections 12(3) and 59(9) to make formal recommendations with regard to this matter.

3.25 A similar situation appertains with regard to the Authority's educative function. Although the Stewart Royal Commission advocated that a national crimes commission should have the function of educating the public about organised crime¹⁷, the Authority has only taken advantage of the facility provided by section 60 to hold public sittings and publish bulletins to inform the public about its operations on two occasions: its public sitting on 13 December 1984 to issue a public bulletin concerning the handling of the matters transmitted to it by the Costigan Commission and its public sitting on 13 April 1988 to issue a public bulletin concerning a fraudulent investment scheme operating in Victoria and possibly in other States.¹⁸ Once again the Authority believes that other matters - specifically its investigative functions - have priority.¹⁹ The Authority has, however, attempted to inform the public about its operations through its Annual Reports and through the issue of a report on one of its completed special investigations.²⁰ Members and staff of the Authority have also addressed various seminars, conferences and educational courses on the work of the Authority and the Chairman has given occasional interviews to the print and electronic media.

Costigan Royal Commission matters

3.26 The Attorney-General stated in introducing the National Crime Authority Bill 1983 that one of the main objectives which the legislation was intended to meet was 'the need to maintain intact the resources and expertise of the Costigan Royal Commission on the Activities of the Federated Ship Painters and Dockers Union, and to ensure the continuation of its work'.²¹ The Authority took over many of the staff who had been associated with the Costigan Royal Commission and there were many initial morale problems due to the need for some temporary staff to be brought under the Public Service Act and due to the very different characters of the Commission and the Authority. A Royal Commission is essentially an exercise in gathering factual information and reporting that information to the commissioning Government whereas the Authority is an investigative body which gives primacy to the gathering of admissible evidence in relation to relevant offences. Both the Special Prosecutor, Mr R.F. Redlich, Q.C., and the Director of Public Prosecutions, Mr Ian Temby, Q.C., emphasised the difference between the information generated by the Costigan Royal Commission and the evidence sufficient to found a prosecution.²²

3.27 The 42 matters referred to the Authority by the Costigan Royal Commission were of widely varying nature, ranging from bare allegations recorded by the Commission to matters which had been the subject of detailed investigation. Mr P.D. Cummins, Q.C., was appointed under section 50 as counsel to advise the Authority in its decisions on the material transmitted by the Commission. Acting upon his advice the Authority resolved to take action on all except 3 of the matters: one in which the subject had been extradited to Canada to serve a lengthy term of imprisonment, one in which criminal proceedings had already commenced and one in which proceedings had concluded.²³ Of the 42 matters, 16 have now been taken up by the Authority under references and 4 are or have

been the subject of ordinary investigations. Some 16 matters are being or have been investigated by other agencies such as the Australian Federal Police, the Victoria Police and the Department of Immigration, while with regard to the remaining 6 matters, the Authority considered that there was insufficient material to warrant investigation or that the matters did not warrant consideration by it at this stage.²⁴

3.28 In his final report Mr Costigan urged that work begun by his Commission in the development of computer programmes to assist in the tracking of money and the uncovering of hitherto unrealised connections between individuals should be continued.²⁵ In particular, work was under way on the development of the 'Money Tracker' programme to permit the dissection of cash receipts and payments from financial records and the generation of ledgers and subsequently balance sheets. While the Authority has continued to develop the 'Money Tracker' programme, it believes that there is no immediate requirement for a specific programme to permit the generation of ledgers and balance sheets since inexpensive off-the-shelf computer programmes are available which are proving adequate for the Authority's current financial investigations.

3.29 Work was also apparently under way on a further development of the hierarchical analysis function of the 'Link Analysis' programme which would have enabled the drawing of matrices by computer indicating the links between persons and entities. The Committee has been informed that use of the Link Analysis programme by Authority staff has been minimal because of the high degree of scepticism which exists within the Authority as to the usefulness of the results of this type of analysis. In essence the Authority argues that insufficient discrimination was exercised in feeding the original information onto the Costigan Commission database with the result that the associations thrown up by Link Analysis are so tenuous and unreliable as to be meaningless. An Australian software option is presently being

evaluated by the Authority which it is hoped will assist analysts in 'pattern analysis' of relevant criminal activity. The design features of the product include the ability to produce output in graphical or textual format although not necessarily in the form of a matrix.²⁶

Chapter 3 - Footnotes

1. Submission from the Australian Federal Police, p. 1.
2. In Camera Evidence, Meeting with Authority, 12 March 1987, p. 338.
3. Director of Public Prosecutions, Annual Report 1986-87 (A.G.P.S., Canberra, 1987), p. 109.
4. Royal Commission on the Activities of the Federated Ship Painters and Dockers Union (Commissioner: Mr F.X. Costigan, Q.C.), Final Report (A.G.P.S., Canberra, 1984), Vol. 2, p. 43.
5. In Camera Evidence, Meeting with Authority, 9 December 1987, p. 472.
6. Ibid., p. 470.
7. In Camera Evidence, Written Answers to Questions on Notice, 25 November 1987, p. 10.
8. In Camera Evidence, National Crime Authority, pp. 247-9.
9. In Camera Evidence, Meeting with Authority, 5 June 1985, p. 20.
10. In Camera Evidence, Meeting with Authority, 9 December 1987, p. 525.
11. In Camera Evidence, Meeting with Authority, 6 August 1986, pp. 146, 152; In Camera Evidence, Paper on 'Ordinary Police Methods' provided by Authority, 12 May 1987.
12. In Camera Evidence, Meeting with Authority, 10 November 1986, pp. 258-61.
13. Ibid., pp. 247, 249-50.
14. Written comments provided by the Authority, 1 February 1988, pp. 7-8.
15. (1986) 66 ALR 385; National Crime Authority, Annual Report 1986-87 (Parliamentary Paper No. 353/1987, A.G.P.S., Canberra, 1987), pp. 39-40, 44-5.
16. In Camera Evidence, Meeting with Authority, 9 December 1987, p. 489.
17. Royal Commission of Inquiry into Drug Trafficking (Commissioner: The Hon. Mr Justice D.G. Stewart), Report (A.G.P.S., Canberra, 1983), p. 789.
18. National Crime Authority, Annual Report 1984-85 (Parliamentary Paper No. 39/1986, A.G.P.S., Canberra, 1986), pp. 19, 61-3.
19. In Camera Evidence, Meeting with Authority, 10 November 1986, pp. 249-51.
20. National Crime Authority, Operation Silo: Report of the Investigation (Parliamentary Paper No. 369/1987, A.G.P.S., Canberra, 1987).
21. Senate Hansard, 10 November 1983, p. 2492.
22. Office of the Special Prosecutor, Annual Report 1982-83 (Parliamentary Paper No. 192/1983, A.G.P.S., Canberra, 1983), pp. 12-13; Humphries, D., 'Temby backs crimes body', The Age, 15 October 1984.

Chapter 3 - Footnotes (continued)

23. National Crime Authority, Annual Report 1984-85, p. 10.
24. In Camera Evidence, Written Answers to Questions on Notice, 25 November 1987, Attachment, 'The 42 Matters'.
25. Costigan, Final Report, Vol. 2, pp. 73, 90.
26. In Camera Evidence, 'Matters of Interest Arising From the NCA's Second Annual Report 1985-86', provided by the Authority on 12 May 1987, p. 3; 'ADP Questions', answers provided on 18 May 1987, p. 2; Written Answers to Questions on Notice, 25 November 1987, p. 11.

CHAPTER 4

EVALUATION

Introduction

4.1 The success or failure of the Authority in meeting its objectives is not susceptible to evaluation in quantitative terms. The traditional measurement of the effectiveness of law enforcement agencies, for example, is their clearance rates: the percentages of reported crimes solved by the apprehension of offenders. The essence of organised crime, however, is that there is no complaint and therefore no readily ascertainable index of its nature or extent.

4.2 Estimates of the turnover or the profits to be obtained in illegal markets in Australia and of the extent of revenue and corporate crime are at present little better than guesses. The basic research has not been done which would enable the development of reliable measures of illegal activity in these areas and hence some evaluation of the impact of different law enforcement strategies on such activity. Australia is not unique in this regard: a study on the income of organised crime in the United States commissioned by the President's Commission on Organized Crime noted the unreliability of many of the estimates that had been utilised in that country.¹ Nevertheless there is an urgent need for more basic research on illegal activity in this country so that public policy decisions on strategies to combat organised crime can be taken on a more informed basis.² The Committee applauds the work already being done by the Australian Institute of Criminology in this area and supports the provision of appropriate resources to enable that work to be continued.

4.3 The lack of a statistical base makes it impossible to say whether the work of the National Crime Authority has led to

'a discernible diminution in the extent of criminal activity'.³ Moreover, even if there were such a diminution measurable in quantitative terms, it would still be difficult to isolate the impact of the National Crime Authority from the impact of the other changes that have taken place in Australian law enforcement over the past decade. Changes such as the abolition of the Federal Narcotics Bureau and the creation of the Australian Federal Police, the establishment of State Bureaux of Criminal Intelligence and the Australian Bureau of Criminal Intelligence, the setting up of various Task Forces and the New South Wales State Drug Crime Commission and the provision of increased resources to police forces may all be expected to have had an impact on organised crime.

4.4 At first sight statistics on numbers of persons charged, charges laid and convictions obtained may seem to provide a ready quantitative indicator of the Authority's effectiveness. However there are two objections to this method of evaluation. In the first place such statistics cannot provide an objective measure of the Authority's success or failure since it is impossible to set targets for prosecutions, charges, or convictions against which performance may be assessed on any rational basis. Told that in the three years to 30 June 1987 the Authority had charged 194 persons with 540 offences and had obtained 46 convictions, the observer is no further advanced unless he or she has some yardstick to determine whether that is a good or a bad performance.

4.5 Secondly, as the Williams, Stewart and Costigan Royal Commissions all stressed, in the area of organised crime it is the significance of the persons convicted rather than the mere number of convictions that is of importance. Indeed, as the Williams Royal Commission noted in the context of drug law enforcement, emphasis on mere numbers of convictions may be positively counter-productive, leading to a concentration on users or minor pushers at the expense of any attempt to 'move up

the hierarchy'.⁴ The Committee's evaluation is therefore based on a qualitative assessment of the Authority's effectiveness in meeting the objectives identified in Chapter 2.

Evaluation: Primary objective

4.6 Has the Authority then been successful in what the Committee considers to be its primary objective, namely in putting important or significant criminals behind bars? As was noted in Chapter 1, there are problems with making any judgement at this point in time because many of the legal proceedings arising from the Authority's investigations and, indeed, many of those investigations, are far from complete. However, it is fair to say that, with the convictions it has obtained in the last year, the Authority is beginning to demonstrate success in this objective.

4.7 As noted in Chapter 3 the Authority has obtained convictions of major figures under three of its references. The terms of imprisonment imposed - 23 years and 18 years for Cornwell and Bull, 24 years and 20 years for two other drug traffickers under the second reference and the maximum term of imprisonment available for the offence concerned under the third reference - indicate the gravity with which the courts have viewed the actions of the Authority's targets. Over \$17 million in understated or undeclared income has been assessed by the Australian Taxation Office as a result of the Authority's investigations and an additional \$13 million has been notified to that Office by the Authority in order that it might raise assessments. In addition proceedings have been taken for the forfeiture of assets deemed to be the proceeds of crime under the Customs Act 1901 which, if successful, will result in a further gain of \$3.3 million for the revenue. The Cornwell/Bull drug trafficking syndicate has clearly been put out of business and the activities of another group of drug traffickers under investigation have been severely disrupted.⁵ If this record of

success seems biased towards drug trafficking matters, it should perhaps be noted that many of those whom the Authority has investigated for drug trafficking have pleaded guilty, whereas prosecutions against other principals for fraud and tax evasion are still pending, in part because the subjects have pleaded not guilty.

4.8 There was some dispute in the evidence given to the Committee as to the significance of the Authority's targets and, more particularly, of its success. It was suggested, for example, that Cornwell and Bull were merely middle level operators, marihuana smugglers, and not worthy of the attention they had been accorded.⁶ The Committee is obviously not in the possession of intelligence which would enable it to make an independent assessment of the significance of Cornwell and Bull. However it believes that the sentences imposed on the two drug traffickers and their associates provide an important indication of the weight to be attached to their successful prosecution. It is worth noting that the principals investigated under 'Operation Lavender', whom the Australian Federal Police regards as top level, received sentences of 20 years, 14 years and 14 years respectively.

4.9 The investigative journalist Mr Bob Bottom argued in his submission to the Committee that the Authority had yet to target the 'so-called Mr Bigs' who form 'the known hierarchical structure that has dominated the Sydney underworld for two decades, with relative impunity'.⁷ The Authority, however, although aware of the activities of these persons, regards them as middle level operators only.⁸ The Australian Federal Police also suggested that there were more significant groups in existence than those which the National Crime Authority had targetted.⁹ As noted in Chapter 3 above, the Authority is satisfied that its references cover the major high level organised criminal groups or syndicates in Australia.¹⁰ The Committee suggests that if the Australian Federal Police holds a

contrary view it is incumbent upon it to make that view known to the Minister for Justice if it lacks the resources to investigate the groups concerned itself. The Minister may then make a determination whether, in the context of the Government's overall law enforcement strategy, additional resources should be made available to the Australian Federal Police or additional references and, possibly, additional resources, should be granted to the National Crime Authority.

4.10 An important aspect of the Authority's success in pursuing this primary objective is that it has obtained convictions where other law enforcement agencies had previously investigated but had failed even to collect sufficient admissible evidence to mount a prosecution. Bruce Cornwell, for example, had been known to police as a drug trafficker since the late 1970s. He was named in the Woodward Royal Commission Report¹¹ but somehow eluded all efforts by law enforcement agencies to trap him. In one incident in 1978, Cornwell was caught selling heroin to a woman who was working undercover for the New South Wales Police. He escaped, exchanging shots with police officers. In fairness he eluded the Authority's investigators too for a while, escaping overseas to London from where he was extradited to face trial. Other Authority targets have similarly been the subject of longstanding police suspicions without successful prosecutions resulting and in three cases the Authority has taken matters over at the request of law enforcement agencies whose investigations did not seem to be making progress.

4.11 The Australian Federal Police, however, argued that the successes achieved by the National Crime Authority could have been achieved by the police forces, given the necessary resources.¹² The Committee cannot agree. This should not be taken as a reflection on the competence or probity of Australia's police since the Authority's investigators are themselves police officers and they do not magically change their character when they join the Authority. The Committee believes that the

arguments which led to the creation of the National Crime Authority have not diminished in force over the intervening four years. The law enforcement effort in Australia remains fragmented and, despite evidence from the Australian Federal Police to the contrary,¹³ the Committee considers that there continues to be a lack of co-operation between law enforcement agencies. The Committee received ample evidence in its inquiry on witness protection, conducted contemporaneously with this inquiry, to support the view that mistrust and territorial jealousy continue to inhibit co-operation and the free interchange of information between law enforcement agencies in this country.

4.12 The Authority cuts across the territorial and jurisdictional barriers which hamper other law enforcement agencies. It is able to concentrate its resources on a small number of targets and to pursue its inquiries wherever they may lead. Work on a group involved in drug trafficking, for example, may lead to the uncovering of financial fraud just as the Costigan Commission's investigation of the Painters and Dockers Union took it into the area of tax avoidance. The Authority appears to have established the good working relationships with other law enforcement agencies which are necessary for its success. The only agency contacted by the Committee which criticised the Authority was the Australian Federal Police. The Chief Commissioner of the Victoria Police, for example, informed the Committee that that agency's relationship with the Authority had been quite sound.¹⁴

4.13 The Authority itself believes that much of its success is due to its multidisciplinary team approach to investigations. Teams are led by members of the Authority's senior legal staff and may comprise police investigators, accountants and other specialists as well as the Authority's support staff. The concept of investigative teams led by lawyers has, however, been criticised in evidence given to the Committee. It was suggested that the lawyers concerned are often inexperienced in

investigative work and that they make errors of judgment as a result, for example in assessing the credibility of informants.¹⁵ The Committee considers that it is clear that the present management approach to the police officers serving the Authority as investigators is creating problems. The Committee has been told, for example, that investigators are being sent out to conduct interviews without knowing the full detail of the investigation on which they are ostensibly working. This is frustrating for the police officers concerned and may also be damaging to the success of the investigation if the officer, by reason of not having the full picture, neglects to ask certain vital questions.¹⁶

4.14 The problem appears to be not with the concept of lawyers as team leaders as such, but rather with the way in which the concept is operating within the Authority. Despite the implications of the term 'team approach', police officers feel that they are not consulted and perhaps are not trusted: they are simply there to carry out the directions of the lawyers.¹⁷ The Committee considers that there would be benefits from a management point of view if a more consultative approach were to be developed with the experienced investigators given a greater involvement and greater recognition being given to their expertise.

4.15 Recommendation: 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.

4.16 The Committee also considers that the National Crime Authority would have better acceptance from police if one of the members of the Authority were to be a senior and respected serving or former police officer. The Authority has moved some way in that direction by creating a position of Director,

Investigations, at Assistant Commissioner level. However the Committee was informed that the title is misleading since the direction of investigations is entirely in the hands of the lawyers as team leaders. The 'Director, Investigations' is therefore restricted to dealing with matters relating to the administration of the police component of the Authority's staff such as personnel and disciplinary matters.¹⁸ The Committee considers that the appointment of a respected police officer as a member would assure police that someone was representing their views at the highest levels of the Authority.

4.17 Recommendation: 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.

4.18 A further problem which has also been raised with the Committee relates to the fact that the police officers seconded from different police forces serve under differing terms and conditions and this not unnaturally causes friction and dissatisfaction. Thus, for example, officers of the Victoria Police receive a payment in lieu of overtime whereas New South Wales Police officers are paid overtime by the hour. There are also problems where disciplinary issues arise since these are handed back to the officer's parent force to pursue and the secrecy provision in the National Crime Authority Act 1984 (section 51) may prevent the internal security unit of the parent force from being fully informed. The solution that has been suggested to the Committee is that police officers should be employed by the Authority on contract (as 21 of the police officers attached to the Authority are at present) rather than by secondment.¹⁹ This would have an immediate impact on the Authority's budget because it does not at present meet the base salaries of seconded officers, but in the context of programme

budgeting this may not be undesirable: the Parliament would be given a better understanding of the real cost of the Authority's operations.

4.19 Recommendation: The Committee recommends that police officers attached to the Authority be employed on contract rather than being seconded from their parent forces.

4.20 The attention which the Committee has given to policing matters in the preceding paragraphs should not be taken as support for the view which was put to the Committee that the Authority has come to resemble a '9th police force'. It was clearly contemplated in the legislation establishing the Authority that it was to be an investigative agency and that it would have police officers attached to it who would interview, arrest and charge people. The visibility of these officers and the prominence accorded to their activities in the print and electronic media appears to have created an impression that the Authority is giving undue attention to ordinary police investigations.²⁰ The Committee is satisfied that this is not the case and that police powers are simply called upon in support of the Authority's investigative functions as, indeed, are the Authority's coercive powers.

4.21 It was suggested to the Committee that the success of the Authority in certain of its special investigations was attributable solely to traditional police methods of investigation.²¹ The Committee does not consider that to be the case. Even in investigations relating to drug trafficking, where much of the Authority's success clearly rests on what may be regarded as 'good police work', the Authority has been able to make extensive use of its coercive powers to 'follow the money trail', discovering how drug importations were financed and where the proceeds have been hidden. The allegation that the Authority has become a '9th police force' is based on a failure to grasp that it is a unique and novel investigative agency, combining

elements of traditional law enforcement agencies with the powers of a Royal Commission and able to use the one to complement the other. The members and senior staff of the Authority deserve credit for having turned this experiment into working reality.

4.22 At the same time, however, the Committee believes that there is merit in the proposal made to the Committee that greater consideration should be given to the use of task forces to conduct investigations on behalf of the Authority.²² As noted in chapter 3, although paragraph 11(1)(c) of the National Crime Authority Act 1984 would enable the Authority to establish task forces, it has not done so except as an internal management device. The Committee considers that at least two of the Authority's ordinary investigations could have been passed to police task forces co-ordinated by the Authority and that in the longer term it may be possible for the Authority to hive off aspects of its special investigations in this fashion. This course would relieve pressure on the Authority's own resources and it would also demonstrate a greater degree of confidence in the capacities of police forces than the Authority has hitherto manifested. The Committee notes in this regard that the Authority has given consideration to shedding part of an investigation presently being carried out under a reference but that it decided against this course on the ground that the State police force to which it would have been passed lacked the resources to carry on the investigation and that it had ramifications which crossed State boundaries.²³

4.23 **Recommendation:** The Committee recommends that the Authority give consideration to the use of task forces external to the Authority to carry on investigations under the co-ordination of the Authority.

4.24 Finally, it was suggested to the Committee by the former Royal Commissioner, Mr F.X. Costigan, QC, that the Authority could have been more successful had it been structured as he

proposed in 1984, namely as a free-ranging intelligence agency with the power to inquire into whole areas of criminal activity such as money laundering and public corruption. It should not require references before undertaking such inquiries and the task of collecting admissible evidence of offences should be left to the existing law enforcement agencies. There was also value in hearings being held in public, as evidenced by the course of the Fitzgerald Commission of Inquiry in Queensland.²⁴

4.25 The Parliament rejected this model when it established the National Crime Authority and nothing has occurred since to change the fundamental considerations of principle which underpinned that rejection. The Authority was conceived of as an investigative agency tied to the collection of admissible evidence because the Parliament considered that this constraint would mean that the Authority would show tangible results. Without the requirement for references the States would not have co-operated in the establishment of the Authority and it would have lacked the ability to investigate offences against State as well as Commonwealth laws, severely diminishing its ability to combat organised crime. The requirement that hearings be held in private was inserted to protect the reputations of those under investigation, a consideration that is also raised by the example of the Fitzgerald Commission of Inquiry where all sorts of allegations have been aired but no one has yet been charged with any criminal offence.

Evaluation: Secondary objective

4.26 Although the Authority is beginning to demonstrate success in meeting what the Committee considers to be its primary objective - putting important or significant criminals behind bars - it is clearly too early to reach any conclusions about its success in meeting the secondary objective formulated by the Committee, namely changing the environment in which organised crime operates in this country. It is too early, for example, to

say whether the successful prosecutions resulting from the Authority's investigations will deter new players from entering the field or whether the existence of the Authority has in fact made organised criminal activity in this country more difficult, more costly and more risky.

4.27 The Committee has two concerns in this regard. The first is that, in the absence of its own stand-alone intelligence capacity, the Authority is dependent on intelligence generated by other law enforcement agencies to supplement its own perceptions about the emergence of new organised criminal groups or syndicates. Given the thrust of the Royal Commission reports which led to the establishment of the Authority and the Authority's own belief that it has uncovered evidence of the existence in Australia of more highly structured criminal groups which have been operating for some time without interference from other law enforcement agencies, the lack of its own independent intelligence function may prove a weakness in the longer term.

4.28 Secondly the Committee is concerned that as yet the Authority lacks a strategic overview of organised crime in Australia. The picture of such activity formed by the Committee, as outlined in chapter 2, comprehends not only hierarchically structured groups on the 'American model' but also a looser confederation of individuals and groups engaged in criminal endeavours. The Committee put to the Authority its view that the Authority's selection of targets has not been animated by some overall strategy or grand plan for the progressive suppression of organised crime. The Authority responded that it knew where it was going and that its selection of targets was determined by an order of priorities which was constantly under review. However, while on the one hand the Authority emphasises its freedom in setting its priorities, on the other hand it recognises the pressures which may require it to pursue certain matters not of its own choosing: for example the expectation that it would pursue the matters generated by the Costigan Royal Commission and

the willingness of governments to refer politically troublesome matters to the Authority for investigation.

4.29 The Authority has stressed that it does not see the successful conclusion of a single investigation as an end in itself and that the lifting of the sunset clause will enable it to develop its strategic intelligence capacity further. It is not clear, however, that the Authority's present investigations form a coherent whole or that in structuring its investigations the Authority is looking beyond immediate success to the consequences of that success. What for example, has been the effect of putting the Cornwell/Bull syndicate out of business? If the head of a criminal organisation is gaoled for three years for tax evasion what effect will that have on the organisation he heads? The Committee believes that these sorts of questions will have to be addressed if in the longer term the Authority is to succeed in this secondary objective of changing the environment in which organised crime operates, an objective which the Authority has told the Committee is comprehended in its primary aim of taking effective action to combat organised crime in Australia.²⁵

4.30 Although the Committee supports the lifting of the sunset clause in the National Crime Authority Act 1984, therefore, it does not believe that the establishment of the Authority as a permanent part of Australia's law enforcement machinery should be regarded as a foregone conclusion. The final determination of that question should at least be delayed until a picture can be obtained not only of the Authority's success in its investigations but also of the deterrent effect of that success and, possibly, of the very existence of the Authority itself. It was suggested in some submissions that the sunset clause should be retained, but with a new date, perhaps 3 or 4 years distant.²⁶ The Committee does not support this course. It believes that the uncertainty created by a sunset clause would be undesirable. The lack of a sunset clause should not, however, prevent a more comprehensive evaluation of the Authority's work

and of the need for a body such as the Authority at a time when more of the Authority's investigations have been completed and more of its work is in the public domain.

4.31 Recommendation: The Committee recommends that a comprehensive evaluation of the Authority's work and of the need for a body such as the Authority be undertaken on the expiration of seven years after the date of commencement of the Act.

4.32 A related issue which was also raised in a number of submissions is that the secrecy surrounding the Authority's operations makes any sensible comment difficult in an evaluation such as this.²⁷ The Committee recognises this problem and, as noted above, regards the lack of information in the public domain concerning the Authority's operations as a reason for confining itself at this stage to an initial evaluation of the Authority's activities. However the Committee regards much of the criticism concerning the Authority's secrecy as misplaced. The Parliament took a deliberate decision that the Authority should conduct its hearings in private rather than in public in order that persons' reputations and future legal proceedings should not be prejudiced. Moreover investigative agencies are by their nature secretive and it seems unfair to single out the Authority for this criticism simply because it has a higher public profile than other agencies.

4.33 At the same time the Committee believes that the Authority has perhaps been over-zealous in its application of the secrecy provision in its Act, section 51. The Committee was told, for example, that intelligence material provided to the Authority by the Australian Federal Police could not then be returned to that agency or sighted by its officers because of the operation of section 51.²⁸ If this is so the provision clearly requires review. It was also put to the Committee that section 51 constrains the ability of the Authority to issue public bulletins under section 60 of the Act.²⁹ The Committee does not believe

this to be a correct reading of the Act. Section 60 contains its own constraints concerning prejudice to the safety or reputation of any person and prejudice to any person's fair trial and the Committee suggests that it would negate its effect entirely if it were to be read as constrained also by section 51. The Committee believes that there is a need for the Authority to do more to inform the public about the general conduct of its operations as contemplated by section 60.³⁰ The Committee notes that since it made this view known to the Authority it has held a public sitting concerning certain investment schemes. The Committee was also told that the Authority intends to hold further public sittings on a particular reference in the course of this year.

4.34 Recommendation: The Committee recommends that the Authority give consideration to making greater use of its power to inform the public about the general conduct of its operations by holding public sittings and issuing public bulletins.

Evaluation: Side-effects

4.35 There is some evidence that the existence of the Authority has led to improved co-operation between other law enforcement agencies with specific reference to organised crime. The Authority's operations conferences have proved a valuable forum for the exchange of information concerning matters being pursued by individual agencies and have assisted in forming useful networks of inter-agency contacts.³¹ The turnover in seconded police officers means that the experience achieved while working with the Authority is being disseminated throughout Australia and the promotions some of these officers have obtained indicate that this experience is seen as valuable by their superiors. The Committee has been informed that the example of the Authority and, in particular, its task force approach in relation to investigations, has been influential in prompting similar approaches in other law enforcement agencies.³²

4.36 Certain of the fears expressed at the time of the establishment of the Authority, both as to the obstacles which might lie in the way of its effective performance of its functions and the potential threat to civil liberties which it posed, appear to date to have proven groundless. The concern was expressed that the Authority might be hampered by the specificity of the definition of 'relevant offence' and that the requirement to obtain references might prevent it from investigating some politically sensitive matters.³³ However, the Authority does not seem to have been prevented from investigating any matter by reason of the definition of 'relevant offence' and the Committee has been told that when the Authority's investigators come across evidence of offences not falling within that definition, they pass on this information to the relevant law enforcement agencies or, as noted in Chapter 3, lay charges themselves pursuant to their ordinary police powers.³⁴ No reference sought by the Authority has yet been refused and, indeed, there is some suggestion that Governments have been happy to see some politically sensitive allegations removed from the political arena by having them referred to the Authority.³⁵

4.37 Concern as to the potential threat posed by the Authority to civil liberties remains on the level of generalities. There has yet to be a challenge to a decision of the Authority on a person's claim to the privilege against self incrimination in hearings before the Authority and the only challenges to date in the courts in relation to the Authority's actions have concerned the issue of legal representation before the Authority and the seizure of a document while committal proceedings were pending. The former issue remains to be resolved while the latter challenge was unsuccessful. The Authority has received a number of complaints against police officers attached to the Authority and as a matter of general policy it refers such complaints to the officer's home force for investigation. All completed investigations to date have found the complaints concerned to be without merit.³⁶

Re-appointment of members

4.38 As noted in Chapter 3, the Chairman's term of appointment expires on 30 June 1988 and the terms of the remaining members expire on 30 June 1989. The latter date was determined by the operation of the sunset clause, and the Crimes Legislation Amendment Bill 1988, besides lifting the sunset clause, proposes certain consequential changes to the provisions of the Act relating to the terms of appointment of members. These changes would enable the first Chairman, Mr Justice Stewart, to be re-appointed once for a period that does not extend beyond 12 months after the expiration of his first appointment, and they would enable the present members to be re-appointed once for a period that does not exceed the difference between 4 years and the period of the member's first appointment. In other words the amendments would enable Mr Justice Stewart to remain as Chairman until 30 June 1989 and they would enable the present members to serve the full four year maximum term contemplated by the Act uninterrupted by the sunset clause.

4.39 A number of the submissions received by the Committee attacked the extension of the Chairman's term of appointment as an erosion of the prohibition on re-appointment contained in the Act.³⁷ This prohibition was inserted both to prevent the head of the Authority becoming a permanent and powerful figure akin to J. Edgar Hoover, the former head of the Federal Bureau of Investigation in the United States, and to prevent any member directing his or her investigations by reference to a desire for re-appointment. The Committee does not consider, however, that this principle is threatened by the extension of the foundation Chairman's term from four to five years. The choice of four or five years as the maximum term is, of course, arbitrary and the amendment to the legislation is drafted so as to preserve the prohibition on re-appointment beyond the extended term. The Committee believes that the Parliament is well aware of the

principle underlying the prohibition on re-appointment and that it would not lightly countenance any future legislative amendments seeking the extension of terms of appointment beyond the four year maximum.

Access to taxation records

4.40 The Authority raised with the Committee its concern that its access to taxation records is not as ready as it would consider desirable.³⁸ Its access is far more restricted than that accorded to certain Royal Commissions which were given open access to taxation records. As explained in Chapter 2 the Authority may obtain information from the Taxation Commissioner for the purposes of a tax-related investigation and where it has received a reference it may seek an order from a Federal Court judge requiring the Taxation Commissioner to disclose information that is relevant to the investigation being conducted under that reference. The Australian Taxation Office cannot volunteer information and the Authority cannot use taxation records as a source of intelligence indicating, for example, directions its investigations should take or assisting it in 'following the money trail'. The Committee considers that the legislation does appear to be deficient in this regard but it proposes to make this matter the subject of further inquiry before putting down any recommendations for change to the law.

May 1988

Peter Cleeland
Chairman

Chapter 4 - Footnotes

1. Fishman, S., Rodenrys, K. and Schink, G. (Wharton Econometric Forecasting Associates Inc.), 'The Income of Organized Crime', in United States, President's Commission on Organized Crime, The Impact: Organized Crime Today (U.S. Government Printing Office, Washington, 1986), Appendix B, pp.413-494; see also Reuter, P., Disorganized Crime: The Economics of the Invisible Hand (MIT Press, Cambridge, Mass., 1983).
2. See Wardlaw, G., 'Organized Crime and Drug Enforcement', in University of Sydney, Faculty of Law, Proceedings of the Institute of Criminology No. 67 - The Control of Organized Crime, pp.17-30.
3. Senate Standing Committee on Constitutional and Legal Affairs, The National Crime Authority Bill 1983 (Parliamentary Paper No. 30/1984, A.G.P.S., Canberra, 1984), p.16.
4. Australian Royal Commission of Inquiry into Drugs (Commissioner: The Hon. Mr Justice E.S. Williams), Report (A.G.P.S., Canberra, 1980), pp.B224-6; Royal Commission of Inquiry into Drug Trafficking (Commissioner: The Hon. Mr Justice D.G. Stewart), Report (A.G.P.S., Canberra, 1983), pp.563-4; Royal Commission on the Activities of the Federated Ship Painters and Dockers Union (Commissioner: Mr F.X. Costigan, Q.C.), Final Report (A.G.P.S., Canberra, 1984), vol. 3, pp.180-82.
5. In Camera Evidence, Meeting with Authority, 12 March 1987, p.306.
6. In Camera Evidence, Australian Federal Police, p.14; Australian Federal Police Association, p.149.
7. Submission from Mr B. Bottom, p.3.
8. In Camera Evidence, National Crime Authority, p.243.
9. In Camera Evidence, Australian Federal Police, pp.30-3.
10. In Camera Evidence, National Crime Authority, pp.247-9.
11. New South Wales Royal Commission into Drug Trafficking (Commissioner: The Hon. Mr Justice P.M. Woodward), Report (New South Wales Government Printer, Sydney, 1979), p.1454.
12. In Camera Evidence, Australian Federal Police, pp.14-18.
13. Ibid., p.20; Submission from the Australian Federal Police, p.1.
14. Submission from the Victoria Police; see also Submission from the Queensland Government.
15. Submission from the Australian Federal Police, p.1; Submission from the Australian Federal Police Association, p.9; Submission from Mr B. Bottom, p.3; In Camera Evidence, Mr V.A. Anderson, pp.114-5.
16. In Camera Evidence, Australian Federal Police, pp.11-12.
17. Ibid, p.23.
18. In Camera Evidence, Mr V.A. Anderson, p.106.

Chapter 4 - Footnotes (continued)

19. Submission from the Northern Territory Police; Submission from Mr V.A. Anderson, p.3; In Camera Evidence, National Crime Authority, pp.227-8.
20. Submission from the Hon. Mr Justice Vincent, p.2; Submission from Mr F.X. Costigan, QC, pp.6-7; Submission from Mr D.R. Meagher, QC.
21. In Camera Evidence, Australian Federal Police, p.14.
22. Submission from the Northern Territory Police; Submission from Mr V.A. Anderson, p.3; In Camera Evidence, Mr V.A. Anderson, p.105; Australian Federal Police Association, pp.159-60.
23. In Camera Evidence, information provided by Authority.
24. Submission from Mr F.X. Costigan, QC, pp.3-8; In Camera Evidence, Mr F.X. Costigan, QC, pp.69-73, 77; see also Submissions from Mr D.R. Meagher, QC; the Hon. Mr Justice Vincent, p.2; and the Hon. A.R. Moffitt, QC, pp.13-16, 21-5.
25. Written comments provided by the Authority, 1 February 1988, pp.4, 9-12.
26. Submissions from the Hon. Mr Justice Vincent, p.3; the Police Association of New South Wales; the Law Society of New South Wales.
27. Submissions from the Police Association of New South Wales; Mr D.R. Meagher, QC; the New South Wales Bar Association; In Camera Evidence, Mr F.X. Costigan, QC, p.63.
28. Submission from the Australian Federal Police Association, p.6.
29. Written comments provided by the Authority, 1 February 1988, p.8.
30. Submissions from Mr C. Corns, pp.7-8; Mr B. Bottom, pp.1-2.
31. In Camera Evidence, meeting with Commissioner D. Hunt, South Australia Police, 18 October 1985, p.67; Meeting with Commissioner J. Avery, New South Wales Police, 31 July 1986, p.181.
32. Letter from the Hon. J. Berinson, M.L.C., Attorney-General, Western Australia, to Chairman, 12 May 1987.
33. See, for example, press release by Senator the Hon. P.D. Durack, Shadow Attorney-General, 27 September 1984.
34. In Camera Evidence, Meeting with Authority, 19 June 1986, p.58.
35. In Camera Evidence, Meeting with Authority, 19 May 1987, pp.459-62.
36. Written comments provided by the Authority, 1 February 1988, p.13.
37. Submissions from the Hon. Mr Justice Vincent, pp.3-4; the Police Association of New South Wales, p.2; Mr F.X. Costigan, QC, p.1; the Hon. Mr Justice Nicholson; Mr D.R. Meagher, QC, p.3; In Camera Evidence, Mr F.X. Costigan, QC, pp.65-8.
38. In Camera Evidence, National Crime Authority, pp.235-8.

APPENDIX 1

**STATISTICS PROVIDED BY THE
NATIONAL CRIME AUTHORITY**

A. STAFF

		<u>30 June 1985</u>	<u>30 June 1986</u>	<u>30 June 1987</u>
SYDNEY				
APS	- Full Time	59	98	120
	- Part Time	-	2	-
Non-Public Service:				
	- Police	10	12	10
	- Other	1	1	-
Seconded	- Police	9	47	57
	- Tax	-	5	-
	- CAC	-	-	-
	- Other	1	-	-
Sub-Total		80	165	187
MELBOURNE				
APS	- Full Time	105	106	113
	- Part Time	-	2	-
Non-Public Service:				
	- Police	5	11	11
	- Other	-	3	-
Seconded	- Police	6	14	9
	- Tax	-	-	-
	- CAC	-	-	-
	- Other	-	-	-
Sub-Total		116	136	133
PERTH				
APS	- Full Time	5	9	-
	- Part Time	-	-	-
Non-Public Service:				
	- Police	-	-	-
	- Other	-	-	-
Seconded	- Police	-	4	-
	- Tax	4	4	-
	- CAC	2	2	-
	- Other	-	-	-
Sub-Total		11	19	-
<u>TOTAL</u>		<u>207</u>	<u>320</u>	<u>320</u>

B. STAFF - FUNCTIONAL BREAKDOWN

	<u>30 June 1985</u>	<u>30 June 1986</u>	<u>30 June 1987</u>
Legal			
*Counsel assisting (s.50)	5	4	6
SES	5	6	8
PLOs/SLOs	9	11	17
Total	19	21	31
Financial analysts (accountants)			
NCA	3	6	10
CAC	2	3	-
Taxation Office	4	10	-
Consultants (s.48)	1	-	1
Total	10	19	11
Information systems experts			
NCA	3	2	2
Consultants (s.48)	6	4	3
Total	9	6	5
Intelligence analysts	-	-	7

* not all full time; not included in figures in previous page.

C. STATISTICS RELATING TO INVESTIGATIONS: SUMMARY

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Requests made for information (s.19A)	-	-(3) ¹	8 (9) ¹
Requests made for documents (s.19A)	-	-(9) ¹	-(21) ¹
Requirements to furnish information (s.20)	-	1	-
Requirements to produce documents (s.20)	-	-	-
Orders made under s.16(4HD) ITAA 1936 for disclosure of information	-	-	-
Orders made under s.3D(7) Taxation Admin. Act 1953 for disclosure of information	-	-	-
Documents received from the ATO pursuant to s.16(4)(m) ITAA 1936 and s.3D(1) Taxation Admin. Act 1953	344	739	489
Approx. total folios	37,000	67,000	33,000
Search warrants sought under s.22	-	-	-
Applications by telephone for search warrants (s.23)	-	-	-
Search warrants granted otherwise than under NCA Act	11	99	98
Warrants applied for authorising interception of telecommunications	-	17	15
Warrants granted authorising interception of telecommunications	-	17 ²	15 ²
Listening devices utilised	-	40	30
Hearings under s.28 ³	100	236	237
Documents received in s.28 hearings	155	915	359
Approx. total folios	24,000	83,000	27,000
Hearings under s.29	-	190 ⁴	265 ⁵
Documents produced to NCA under s.29 (approx.)	-	942	936
Approx. total folios	-	55,000	68,000

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Documents seized by NCA under search warrant (approx. total folios)	700	550,000	50,000
Documents provided to NCA by other agencies	5,292	9,066	6,399
Approx. total folios	536,000	762,000	299,000
Persons charged as a result of NCA investigations	5	52	143
Charges laid	18	144	424
Convictions obtained	1	21	51
Taxation assessments raised as a result of NCA investigations (\$ value)	-	729,034 (plus 4,400,000 notified to Tax. Office)	17,153,508 (plus 9,105,000 notified to Tax. Office)
Witnesses protected (s.34)	-	2	5
Persons charged with breach of secrecy provision (s.51)	-	-	-
Applications for orders of review pursuant to AD (JR) Act	-	-	-
Public sittings	1	-	-
Published bulletins	-	-	-

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

2 While all applications for telephone intercepts were granted, several were not proceeded with due to the Australian Federal Police's limit on the number of telephone lines available to the Authority.

3 Each witness' evidence constitutes a hearing. Many witnesses were called more than once, some on several occasions.

4 Hearings held.

5 Notices issued.

REFERENCE NO. 1

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Requests made for information (s.19A)	-	-	-
Requests made for documents (s.19A)	-	-	-
Requirements to furnish information (s.20)	-	-	-
Requirements to produce documents (s.20)	-	-	-
Orders made under s.16(4HD) ITAA 1936 for disclosure of information	-	-	-
Orders made under s.3D(7) Taxation Admin. Act 1953 for disclosure of information	-	-	-
Documents received from the ATO pursuant to s.16(4)(m) ITAA 1936 and s.3D(1) Taxation Admin. Act 1953	119	121	64
Approx. total folios	14,000	11,000	4,500
Search warrants granted under s.22	-	-	-
Documents seized by NCA under s.22 search warrant	-	-	-
Approx. total folios	-	-	-
Orders for delivery of passports (s.24)	-	-1	-
Hearings under s.28	100	39	60
Documents received in s.28 hearings	155	90	56
Approx. total folios	24,000	1,000	3,500
Hearings under s.29	-	23	38
Documents produced to NCA under s.29	-	50approx.	49
Approx. total folios	-	5,000	3,580
Recommendations that immunity be granted under ss.30(6) and (8)	-	-	-
Undertakings given by C'wlth or State DPP under ss.30(5) and (7)	-	-	-

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Persons charged with failure to attend etc (s.30)	-	-	-
Warrants issued for arrest (s.31)	-	-	-
Applications to Federal Court or State Courts (ss.32, 32A)	-	-	-
Persons charged with giving false or misleading evidence (s.33)	-	-	-
Witnesses protected (s.34)	-	-	-
Search warrants granted other than under NCA Act	-	14	1
Documents seized by NCA under such warrants (approx. total folios)	-	35,000	4,645
Warrants granted authorising interception of telecommunications	-	2	-
Listening devices - Warrants granted authorising use of listening devices	-	2	-
Persons charged	-	1	2
Charges laid	-	12	15
Convictions obtained	-	-	-
Penalties imposed (years imprisonment etc)	-	-	-
Taxation assessments raised as a result of NCA investigations (\$ value)	-	-	880,000 (plus 5,105,000 notified to Taxation Office)
Pecuniary penalty/forfeiture of assets proceedings taken as a result of NCA investigations (\$ value)	-	-	-

I Order under s.24(1) obtained but not served. Proceedings lapsed due to circumstances.

REFERENCE NO. 2

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Requests made for information (s.19A)	-	-	-
Requests made for documents (s.19A)	-	-	-
Requirements to furnish information (s.20)	-	-	-
Requirements to produce documents (s.20)	-	-	-
Orders made under s.16(4HD) ITAA 1936 for disclosure of information	-	-	-
Orders made under s.3D(7) Taxation Admin. Act 1953 for disclosure of information	-	-	-
Documents received from the ATO pursuant to s.16(4)(m) ITAA 1936 and s.3D(1) Taxation Admin. Act 1953	87	5	-
Approx. total folios	3,000	200	-
Search warrants granted under s.22	-	-	-
Documents seized by NCA under s.22 search warrant	-	-	-
Approx. total folios	-	-	-
Orders for delivery of passports (s.24)	-	-	-
Hearings under s.28	-	-	-
Documents received in s.28 hearings	-	-	-
Approx. total folios	-	-	-
Hearings under s.29	-	29	2
Documents produced to NCA under s.29	-	185	10
Approx. total folios	-	15,351	10
Recommendations that immunity be granted under ss.30(6) and (8)	-	-	-

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Undertakings given by C'wlth or State DPP under ss.30(5) and (7)	-	-	-
Persons charged with failure to attend etc (s.30)	-	-	-
Warrants issued for arrest (s.31)	-	-	-
Applications to Federal Court or State Courts (ss.32, 32A)	-	-	-
Persons charged with giving false or misleading evidence (s.33)	-	-	-
Witnesses protected (s.34)	-	-	-
Search warrants granted other than under NCA Act	11	19	9
Documents seized by NCA under such warrants (very approximate estimate)	700	1,300	2,000
Warrants granted authorising interception of telecommunications	-	7	7
Listening devices - Warrants granted authorising use of listening devices	-	20	14
Persons charged	5	14	28
Charges laid	18	22	64
Convictions obtained	1	11	12
Penalties imposed (years imprisonment etc)	\$3000 fine	1x1 ¹ / ₂ yrs good behaviour bond 1x3 ¹ / ₂ yrs 2x7 yrs 1x8 yrs	1x\$200 fine 1x4 months 1x7 yrs 1x11 yrs 1x14 yrs 1x16 yrs 1x20 yrs 1x24 yrs
Taxation assessments raised as a result of NCA investigations (\$ value)	-	400,000	127,500
Pecuniary penalty/forfeiture of assets proceedings taken as a result of NCA investigations (\$ value)	-	-	20,000

REFERENCE NO. 3

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Requests made for information (s.19A)	-	-	-
Requests made for documents (s.19A)	-	-	-
Requirements to furnish information (s.20)	-	-	-
Requirements to produce documents (s.20)	-	-	-
Orders made under s.16(4HD) ITAA 1936 for disclosure of information	-	-	-
Orders made under s.3D(7) Taxation Admin. Act 1953 for disclosure of information	-	-	-
Documents received from the ATO pursuant to s.16(4)(m) ITAA 1936 and s.3D(1) Taxation Admin. Act 1953	17	5	38
Approx. total folios	1,000	400	2,000
Search warrants granted under s.22	-	-	-
Documents seized by NCA under s.22 search warrant	-	-	-
Approx. total folios	-	-	-
Orders for delivery of passports (s.24)	-	1	-
Hearings under s.28	-	5	13
Documents received in s.28 hearings	-	-	1
Approx. total folios	-	-	1
Hearings under s.29	-	94	81
Documents produced to NCA under s.29	-	552	270
Approx. total folios	-	28,306	14,961
Recommendations that immunity be granted under ss.30(6) and (8)	-	-	-
Undertakings given by C'wlth or State DPP under ss.30(5) and (7)	-	-	-

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Persons charged with failure to attend etc (s.30)	-	-	-
Warrants issued for arrest (s.31)	-	-	-
Applications to Federal Court or State Courts (ss.32, 32A)	-	-	-
Persons charged with giving false or misleading evidence (s.33)	-	-	1
Witnesses protected (s.34)	-	2	1
Search warrants granted other than under NCA Act	-	42	11
Documents seized by NCA under such warrants	-	145 files 13511 fols	132 files 1727 fols
Warrants granted authorising interception of telecommunications	-	4	2
Listening devices - Warrants granted authorising use of listening devices	-	13	2
Persons charged	-	13(3) ¹	25(3) ¹
Charges laid	-	45(3) ¹	124(4) ¹
Convictions obtained	-	7(3) ¹	5(2) ¹
Penalties imposed (years imprisonment)	-	\$2575 in fines 500 pounds in fines 2yr good behaviour bond	12yrs \$400 in fines 3 months 6-8weeks
Taxation assessments raised as a result of NCA investigations (\$ value)	-	329,034	1,206,941
Pecuniary penalty/forfeiture of assets proceedings taken as a result of NCA investigations (\$ value)	-	-	3,365,983 ²

¹ Figures in brackets indicate persons arrested and convicted overseas.

² Estimate of value of assets placed under control of Official Trustee but not yet forfeited.

REFERENCE NO. 4

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Requests made for information (s.19A)	-	(2) ¹	(8) ¹
Requests made for documents (s.19A)	-	(8) ¹	(20) ¹
Requirements to furnish information (s.20)	-	-	-
Requirements to produce documents (s.20)	-	-	-
Orders made under s.16(4HD) ITAA 1936 for disclosure of information	-	-	-
Orders made under s.3D(7) Taxation Admin. Act 1953 for disclosure of information	-	-	-
Documents received from the ATO pursuant to s.16(4)(m) ITAA 1936 and s.3D(1) Taxation Admin. Act 1953	-	240	105
Approx. total folios	-	18,000	4,100
Search warrants granted under s.22	-	-	-
Documents seized by NCA under s.22 search warrant	-	-	-
Approx. total folios	-	-	-
Orders for delivery of passports (s.24)	-	-	-
Hearings under s.28	-	93	60
Documents received in s.28 hearings	-	768	210
Approx. total folios	-	75,000	20,000
Hearings under s.29	-	-	-
Documents produced to NCA under s.29	-	-	-
Approx. total folios	-	-	-
Recommendations that immunity be granted under ss.30(6) and (8)	-	-	1
Undertakings given by C'wlth or State DPP under ss.30(5) and (7)	-	-	1

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Persons charged with failure to attend etc (s.30)	-	-	-
Warrants issued for arrest (s.31)	-	-	-
Applications to Federal Court or State Courts (ss.32, 32A)	-	-	-
Persons charged with giving false or misleading evidence (s.33)	-	-	-
Witnesses protected (s.34)	-	-	-
Search warrants granted other than under NCA Act	-	13	27
Documents seized by NCA under such warrants	-	excess 1/2 million folios	approx. 22,000 folios
Warrants granted authorising interception of telecommunications	-	-	-
Listening devices - Warrants granted authorising use of listening devices	-	-	-
Persons charged	-	-	7
Charges laid	-	-	19 ²
Convictions obtained	-	-	-
Penalties imposed (years imprisonment)	-	-	-
Taxation assessments raised as a result of NCA investigations (\$ value)	-	-	10,484,099
Pecuniary penalty/forfeiture of assets proceedings taken as a result of NCA investigations (\$ value)	-	-	-

¹ It was not necessary to make formal requests under s.19A, but these requests fell within the general ambit of that section and are included for information.

² Charges laid against five of the seven persons charged in 1986/87 were altered in 1987/88. Total number of charges laid against these seven persons is now 453. Several other persons have also been charged.

REFERENCE NO. 5

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Requests made for information (s.19A)	-	-	N/A
Requests made for documents (s.19A)	-	-	
Requirements to furnish information (s.20)	-	1	
Requirements to produce documents (s.20)	-	-	
Orders made under s.16(4HD) ITAA 1936 for disclosure of information	-	-	
Orders made under s.3D(7) Taxation Admin. Act 1953 for disclosure of information	-	-	
Documents received from the ATO pursuant to s.16(4)(m) ITAA 1936 and s.3D(1) Taxation Admin. Act 1953	-	38	
Approx. total folios	-	2,200	
Search warrants granted under s.22	-	-	
Documents seized by NCA under s.22 search warrant	-	-	
Approx. total folios	-	-	
Orders for delivery of passports (s.24)	-	-	
Hearings under s.28	-	99	
Documents received in s.28 hearings	-	57	
Approx. total folios	-	7,000	
Hearings under s.29	-	39	
Documents produced to NCA under s.29	-	150	
Approx. total folios	-	5,856	
Recommendations that immunity be granted under ss.30(6) and (8)	-	-	

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Undertakings given by C'wlth or State DPP under ss.30(5) and (7)	-	-	
Persons charged with failure to attend etc (s.30)	-	-	
Warrants issued for arrest (s.31)	-	-	
Applications to Federal Court or State Courts (ss.32, 32A)	-	-	
Persons charged with giving false or misleading evidence (s.33)	-	-	
Witnesses protected (s.34)	-	-	
Search warrants granted other than under NCA Act	-	-	
Documents seized by NCA under such warrants	-	-	
Warrants granted authorising interception of telecommunications	-	-	
Listening devices - Warrants granted authorising use of listening devices	-	-	
Persons charged	-	-	
Charges laid	-	-	
Convictions obtained	-	-	
Penalties imposed (years imprisonment)	-	-	
Taxation assessments raised as a result of NCA investigations (\$ value)	-	\$4.4m notified, no info. on assessments finally made by Tax Office	
Pecuniary penalty/forfeiture of assets proceedings taken as a result of NCA investigations (\$ value)	-	-	

REFERENCE NO. 6

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Requests made for information (s.19A)	N/A	-	-
Requests made for documents (s.19A)		-	-
Requirements to furnish information (s.20)		-	-
Requirements to produce documents (s.20)		-	-
Orders made under s.16(4HD) ITAA 1936 for disclosure of information		-	-
Orders made under s.3D(7) Taxation Admin. Act 1953 for disclosure of information		-	-
Documents received from the ATO pursuant to s.16(4)(m) ITAA 1936 and s.3D(1) Taxation Admin. Act 1953		4	10
Approx. total folios		200	1,600
Search warrants granted under s.22		-	-
Documents seized by NCA under s.22 search warrant		-	-
Approx. total folios		-	-
Orders for delivery of passports (s.24)		-	-
Hearings under s.28		-	15
Documents received in s.28 hearings		-	10
Approx. total folios		-	30
Hearings under s.29		5	65
Documents produced to NCA under s.29		5	237
Approx. total folios		98	12,444
Recommendations that immunity be granted under ss.30(6) and (8)		1	2

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Undertakings given by C'wlth or State DPP under ss.30(5) and (7)		-	-
Persons charged with failure to attend etc (s.30)		-	-
Warrants issued for arrest (s.31)		-	-
Applications to Federal Court or State Courts (ss.32, 32A)		-	-
Persons charged with giving false or misleading evidence (s.33)		-	-
Witnesses protected (s.34)		-	1
Search warrants granted other than under NCA Act		2	3
Documents seized by NCA under such warrants (approximate figures only)		5 files 15 folios	5 files 20 folios
Warrants granted authorising interception of telecommunications		4	-
Listening devices - Warrants granted authorising use of listening devices		5	3
Persons charged		-	6
Charges laid		-	16
Convictions obtained		-	3
Penalties imposed (years imprisonment)		-	-
Taxation assessments raised as a result of NCA investigations (\$ value)			-(\$4,000,000 notified to Tax Office)
Pecuniary penalty/forfeiture of assets proceedings taken as a result of NCA investigations (\$ value)		-	-

REFERENCE NO. 7

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Requests made for information (s.19A)	N/A	-	8
Requests made for documents (s.19A)		-	-
Requirements to furnish information (s.20)		-	-
Requirements to produce documents (s.20)		-	-
Orders made under s.16(4HD) ITAA 1936 for disclosure of information		-	-
Orders made under s.3D(7) Taxation Admin. Act 1953 for disclosure of information		-	-
Documents received from the ATO pursuant to s.16(4)(m) ITAA 1936 and s.3D(1) Taxation Admin. Act 1953		9	246
Approx. total folios		2,000	18,000
Search warrants granted under s.22		-	-
Documents seized by NCA under s.22 search warrant		-	-
Approx. total folios		-	-
Orders for delivery of passports (s.24)		-	-
Hearings under s.28		-	89
Documents received in s.28 hearings		-	82
Approx. total folios		-	3,470
Hearings under s.29		-	79
Documents produced to NCA under s.29		-	370
Approx. total folios		-	36,681
Recommendations that immunity be granted under ss.30(6) and (8)		-	2

	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>
Undertakings given by C'wlth or State DPP under ss.30(5) and (7)		-	3
Persons charged with failure to attend etc (s.30)		-	-
Warrants issued for arrest (s.31)		-	-
Applications to Federal Court or State Courts (ss.32, 32A)		-	-
Persons charged with giving false or misleading evidence (s.33)		-	-
Witnesses protected (s.34)		-	2
Search warrants granted other than under NCA Act		-	19
Documents seized by NCA under such warrants			220 files 20000 folios approx.
Warrants granted authorising interception of telecommunications		-	4
Listening devices - Warrants granted authorising use of listening devices		-	6
Persons charged		-	7
Charges laid		-	9
Convictions obtained		-	1
Penalties imposed (years imprisonment)		-	-
Taxation assessments raised as a result of NCA investigations (\$ value)		-	-
Pecuniary penalty/forfeiture of assets proceedings taken as a result of NCA investigations (\$ value)		-	-

APPENDIX 2

Individuals and Organisations Who Made Written Submissions to the Committee

1. Australian Federal Police
2. Mr C.E.K. Hampson, AO, RFD, QC
3. The Hon. Mr Justice Vincent
4. Police Association of New South Wales
5. Mr Christopher Corns
6. Victoria Police
7. Northern Territory Police
8. Mr Neil Jenkins
9. The Hon. A.R. Moffitt, CMG, QC
10. Australian Federal Police Association
11. Mr Frank Costigan, QC
12. Police Federation of Australia and New Zealand
13. The Law Society of New South Wales
14. Mr Douglas Meagher, QC
15. Mr Bob Bottom
16. The Hon. Mr Justice Nicholson
17. The New South Wales Bar Association
18. The Law Society of Tasmania
19. The Law Council of Australia
20. Mr V.A. Anderson, QPM
21. Queensland Government
22. Dr Malcolm Barr

APPENDIX 3

Individuals and Organisations Who Appeared as Witnesses Before
the Committee at In Camera Hearings

Date of Hearing	Individuals or Organisations	Represented By
1988		
15 April (Canberra)	Australian Federal Police	Deputy Commissioner R. Farmer
		Assistant Commissioner P. Lamb
	Mr F.X. Costigan, QC	
	Mr V.A. Anderson	
	Australian Federal Police Association	Mr C. Eaton, National Secretary
		Inspector G. Ward
22 April (Canberra)	National Crime Authority	The Hon. Mr Justice D.G. Stewart, Chairman
		Mr P.H. Clark, Member
		Mr L.P. Robberds, QC, Member
		Mr D.M. Lenihan, Chief Executive Officer