

GOVERNMENT RESPONSE

TO

THE PARLIAMENTARY JOINT COMMITTEE ON THE NATIONAL CRIME AUTHORITY'S REPORT 'INVESTIGATING COMPLAINTS MADE AGAINST THE NATIONAL CRIME AUTHORITY'

The Report of the Parliamentary Joint Committee, on the investigation of complaints against the National Crime Authority or its staff, and which was tabled on 10 October 1994, follows on from the Committee's earlier evaluation, in 1991, which was entitled '*Who is to Guard the Guards? - An Evaluation of the National Crime Authority*'.

The current Report contains one recommendation only, that **legislation be introduced as soon as practicable to provide for the establishment of an office of Inspector-General of the National Crime Authority to investigate complaints against the Authority or its staff**, which essentially replicates a recommendation contained in the 1991 Report.

The recommendations of that Report were addressed by the Government through the *National Crime Authority' Amendment Bill (No 2) 1992* (the Bill). In particular, the Bill provided for the establishment of an Office of Inspector-General to deal with complaints against the NCA and amended the Act to clarify the access of the Parliamentary Joint Committee to sensitive NCA information.

When the Bill was debated in Parliament the provisions relating to complaints were unanimously supported but a number of amendments to the access provisions were made in the Senate which were unacceptable both to the Government and to the State and Territory Ministers who are the Members of the Inter-Governmental Committee of the National Crime Authority. The amended Bill was therefore laid aside by the Attorney-General, Mr Duffy, on 16 December 1992.

The Government remains committed to ensuring the accountability of the National Crime Authority through an appropriate complaints regime. Circumstances have changed since the PJC reports of 1991 and 1994. The NCA now employs no non-police investigators. All NCA investigative staff are either members of the AFP or are seconded from State or Territory police services, and are thus subject to the formal complaints regimes of their respective jurisdictions

In recognition of these changes, and in order to accommodate concern expressed by the States that any complaints regime introduced for the NCA should mesh effectively with State arrangements, the Government has decided to give a reference to the Australian Law Reform Commission to inquire into the most appropriate means of handling complaints against the NCA, to be undertaken in conjunction with its current inquiry into the complaints and disciplinary system of the Australian Federal Police. The ALRC would be required to report by 30 June 1996. This position is supported by the Inter-Governmental Committee.

A copy of the ALRC reference is attached.

COMMONWEALTH OF AUSTRALIA

Law Reform Commission Act 1973

I, MICHAEL LAVARCH, Attorney-General of Australia, HAVING REGARD TO:

- (a) the importance of the National Crime Authority (NCA) in Australia's law enforcement efforts;
- (b) Australia's obligations under international law;
- (c) the responsibility of the Commonwealth to protect human rights and civil liberties and the need to maintain a proper balance between that protection on the one hand and protection of the community by practical and effective law enforcement on the other;
- (d) Australian Law Reform Commission Reports No. 1 *Complaints against Police 1975* and No. 9 *Complaints against Police Supplementary Report 1978*;
- (e) the reports of the Parliamentary Joint Committee on the National Crime Authority *Who is to Guard the Guards?: An Evaluation of the National Crime Authority 1991* and *Investigating Complaints Made against the National Crime Authority 1994*;
- (f) terms of reference given to the Commission on 29 March 1995 to inquire into and report on the *Complaints (Australian Federal Police) Act 1981 (Cth)*;

in pursuance of section 6 of the *Law Reform Commission Act 1973* (the Act), at the request of the Minister for Justice and the NCA and with the agreement of the Inter-Governmental Committee on the NCA, HEREBY REFER to the Law Reform Commission for inquiry and report procedures for the investigation and resolution of complaints against the NCA and staff members of the NCA or police officers seconded to the NCA.

In particular the Commission is to inquire into and report on:

- (a) the complaints and disciplinary system applying to police and staff members of the NCA in its entirety, including all related laws and subordinate instructions;
- (b) whether the complaints and disciplinary system meets the expectations of the public in terms of accountability, effectiveness and efficiency;
- (c) appropriate standards for handling these complaints;
- (d) appropriate ways to handle these complaints, including the use of mediation and conciliation in cases involving minor complaints;
- (e) appropriate sanctions to be applied if a complaint is established;
- (f) what laws, if any, should be enacted to give effect to the Commission's recommendations.

The Commission is to consider the particular situation of police officers seconded to the NCA and the appropriateness or otherwise of their being subject to any complaints system established for the NCA rather than to complaints systems for the police services from which they were seconded.

The Commission should undertake this inquiry in conjunction with its inquiry under the terms of reference dated 29 March 1995 referred to above.

IN PERFORMING its functions in relation to the reference, the Commission is to:

- (a) have regard to the laws, practices and procedures for handling complaints against police in the Australian Federal Police (AFP) and in Australian States and Territories and in comparable overseas jurisdictions;
- (b) consult widely among the Australian community, with the NCA, the AFP and State and Territory police services, with other relevant federal, State and Territory authorities and with relevant non-government organisations.

THE COMMISSION IS REQUIRED to report not later than 30 June 1996.

DATED 26/7/95



Michael Lavarch