

PARLIAMENT OF THE COMMONWEALTH OF
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INVESTIGATING COMPLAINTS MADE
AGAINST THE NATIONAL CRIME AUTHORITY

A Report by the Parliamentary Joint Committee on the National Crime Authority

October 1994

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INVESTIGATING COMPLAINTS MADE AGAINST
THE NATIONAL CRIME AUTHORITY

1. The purpose of this report is to draw the Parliament's attention to the fact that there is still no fully adequate avenue available for investigation of complaints brought by individuals against the National Crime Authority. This is despite a Committee recommendation in 1991 that such an avenue should be created.

2. In November 1991 the Committee tabled the report of its evaluation of the National Crime Authority.' One of the issues dealt with in the report was the adequacy of existing mechanisms for investigating complaints brought by individuals about the conduct of those working at the Authority. The Committee considered that improvement was required, and canvassed ways in which this might be achieved. (See Attachment A for the extract from the Committee's 1991 report.) The Committee recommended that:

the Inspector-General of Intelligence and Security be given jurisdiction to investigate complaints against the Authority, its staff and those seconded to work for it (para. 6.77).

3. The Government response was tabled on 1 June 1992.² In it the Government noted the role of the Inter-Governmental Committee on the National Crime Authority, which is made up of Ministers representing the Commonwealth and each State and Territory. The response stated:'

... the Government has consulted the Inter-Governmental Committee on the Report's recommendations. What follows is

1. *Who is to Guard the Guards?: An Evaluation of the National Crime Authority*, November 1991 (Parliamentary Paper No. 297 of 1991).
2. See Senate, *Hansard*, 1 June 1992, pp. 3121-26 for the full text of the Government response.
3. *ibid.*, p. 3123.
accordingly a response not simply from the Commonwealth but from all nine jurisdictions.

4. The response noted the Committee's recommendation on the Inspector-General and stated:⁴

A complaints procedure was recommended by the InterGovernmental Committee to the Joint Committee, so the InterGovernmental Committee has no difficulty in accepting the recommendation.

The Government will bring forward legislation to create the position of Inspector-General of the National Crime Authority. It is intended that complaints could be made by members of the public direct to the Inspector-General, or be referred by the Parliamentary Joint Committee or a member of the InterGovernmental Committee. For the purposes of investigating a complaint, the Inspector-General would be given full and unfettered access to all Authority information, materials and staff. ... It is not proposed that the Inspector-General would investigate

complaints against individuals working for the NCA where such a matter fell within the ambit of existing legislation, such as Commonwealth or State police complaints arrangements. The Inspector-General would report his findings to the Minister responsible for the Authority, and would report annually to the Parliament.

5. The National Crime Authority Amendment Bill (No.2) 1992 provided for the establishment of an office of Inspector-General of the National Crime Authority to investigate complaints against the Authority or its staff. The intention was that the person holding this office also simultaneously hold the office of Inspector-General of Intelligence and Security.

6. The Bill also made other changes to the National Crime Authority Act. The most important of these were changes to clarify when the

4. *ibid.*, p. 3123.

Authority was required to grant and withhold Committee access to information held by the Authority.

7. When the Bill was debated, the provisions relating to the Inspector-General received support from all parties, with only minor amendments being proposed. However, the non-government parties in the Senate made significant amendments to the information-access provisions, despite the Government's opposition and that of the Inter-Governmental Committee.⁶ When the Bill was returned to the House of Representatives, the Government declined to accept the Senate amendments, and withdrew the Bill altogether on 16 December 1992.⁶

8. No attempt has since been made to re-introduce the provisions that would create the office of Inspector-General of the National Crime Authority. Nor has any other formal mechanism been established to handle complaints against the Authority and those working for it.

9. The Committee considers that the continuing lack of a complaints mechanism is unacceptable.

10. Since its recommendation was made in 1991, the Committee has continued to receive complaints from individuals aggrieved at actions of the Authority or those working for it. The number received has been small, but this does not, in the Committee's view, remove the need for a complaints mechanism. The Committee continues to consider that it lacks the time and resources to investigate the more complex complaints. It is unsatisfactory both for the complainant and the Authority that complaints cannot be independently investigated and resolved.

11. Accordingly, the Committee RECOMMENDS that legislation be introduced as soon as practicable to provide for the establishment of

5.

See Senate, *Hansard*, 26 November 1992, pp. 3692-3710 for the debate and p. 3699 for the view of the Inter-Governmental Committee.

6.

See House of Representatives, *Hansard*, 16 December 1992, pp. 3815-20.
an office of Inspector-General of the National Crime Authority to investigate
complaints against the Authority or its staff.

Peter Cleeland, MP Chairman

ATTACHMENT A

EXTRACT FROM

Who is to Guard the Guards?: An Evaluation of the National Crime Authority A
Report by the Parliamentary Joint Committee on the National Crime
Authority, November 1991

Resolving Individual Complaints against the Authority

6.65 It was suggested that, in addition to the Committee, other agencies should have a role in resolving individual complaints against the conduct of those working for the Authority. Suggestions included conferring jurisdiction on the Commonwealth Ombudsman, on a police complaints authority, creation of a position along the lines of the Inspector-General of Intelligence and Security, who monitors Australian intelligence and security agencies, ⁶⁵ or creation of some other mechanism.⁶⁶ The submission from the Police Association of South Australia criticised the fact that: 'There is no provision for complaint to the Ombudsman, State or Federal, a Police Complaints Authority or the like'. ^{s7}

65.

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

66.

For examples of discussion of the various alternatives, see Evidence, pp. 522-23 (Police Federation of Australia and New Zealand); pp. 806-07 (Mr Arthur King); p. 98? (Commissioner DA Hunt); pp. 1060-61 (Law Council of Australia); p. 1106 (Australian Federal Police Association); pp. 1289, 1299, 1309-10 (Mr Frank Galbally).

67.

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

6.66 There is no police complaints authority publicly identified as having jurisdiction over Authority police.⁶⁸ In practice, most complaints against Authority staff (including police) have been taken to the Authority, and dealt with by ad hoc mechanisms. The Committee's predecessor was told in 1988 that complaints received by the Authority had been referred to the officer's home force for investigation." In 1989, the Authority's counsel⁷⁰ was used to investigate and re -ort on an

allegation relating to Authority staff in South Australia.⁷ The Committee was told that more recently investigations into complaints have been conducted by officers from a force other than the one to which the officer subject to the complaint belongs. 72

6.67 The Committee considers that the mechanism by which individual complaints against the Authority are investigated and resolved needs to be improved. The Committee lacks the time and the

68.

All police working for the Authority are on secondment from another police force. They retain the powers of arrest, pay and conditions they had as members of their home force. Equally, they are subject to whatever police complaints authority or mechanism exists in relation to officers of their home force. Thus, a complaint about the conduct of a member of the Australian Federal Police on secondment to the Authority can be made using the mechanism, including recourse to the Ombudsman, provided by the *Complaints (Australian Federal Police) Act 1981*. The fact that such jurisdiction exists appears not to be widely known. A person having a complaint against an 'NCA policeman' may well not know from which force the officer is seconded. Even if this is known, the complainant may be unaware of the police complaints mechanism applying to members of that force. The police complaints mechanisms do not cover Authority staff who are not seconded police.

69. 70.

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

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

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

72.

Evidence, p. 1684 (NCA).

investigative staff necessary to deal adequately with individual complaints. 73 Moreover, the most effective way of dealing with some individual complaints would be for the investigator to visit the Authority and inspect all the relevant files. This mode of investigation is difficult for a Committee.

6.68 Justice Phillips told the Committee on 29 July 1991 that he favoured a system of inquiry outside the Authority for handling serious complaints. He said he had not given any particular thought to an appropriate vehicle 'but, in principle, I would support somebody or some organisation independent of the Authority handling them'. 74

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

the Commonwealth Ombudsman;

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

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

6.71 The use of a special investigator might resemble the Authority's use of its counsel in 1989 to investigate complaints, ⁷⁵ modified to make the counsel fully independent of the Authority. The system for investigation of complaints against the Queensland

73.

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

74. 75.

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

See para. 6.66 above.

Criminal Justice Commission is one model of how this might work.⁷⁶

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

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

6.73 A clause in the NCA Bill to confer jurisdiction on the Commonwealth Ombudsman over the Authority was deleted, despite Government objection, when the Bill was before the Senate in 1984. The Senate Committee which had examined the Bill recommended deletion. ⁷⁷ A

major reason for removing the Ombudsman's jurisdiction was that given by Senator the Hon. Don Chipp:

76.

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

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

77.

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

Organised crime is of such dimensions and has such cohesion that smart, expensive lawyers could well use the Ombudsman's office to unduly hamper or harass inquiries

... Even if one goes to the stage of saying that the Ombudsman could not totally stop an inquiry, he could delay it to such an extent that would allow the criminal or criminals to get off the hook.⁷⁸

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

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

some remarkably ill-informed views put to it by others, who have had nothing to do with my office, about the impact on the Authority's effectiveness should its actions be subject to review by the Ombudsman. ... I believe fears voiced before the Senate Committee that my office might have been used by sinister and powerful interests to obstruct legitimate investigation by the Authority are exposed as fanciful by the failure of the identical interests to achieve frustration of any Australian Federal Police investigation through complaint to me.⁷⁹

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

we have come to recognise the value of having the Ombudsman in terms of the public acceptability and credibility of the organisation and in terms of the members' perception of their own organisational health

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

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

too. So we would suggest that the Ombudsman should have a role in overseeing the NCA.⁸⁰

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

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

6.78 The Committee envisages that complaints could be taken directly to the Inspector-General. Provision would also be made for the Committee, the Attorney-General, the IGC or Ministers who are members of the IGC to refer complaints to the Inspector-General. Complaints brought to the Committee would only be referred to the Inspector-General where the Committee considered that the Committee itself could not readily resolve them.⁸¹

6.79 The Inspector-General would have a right of access to all Authority files, and to require persons to attend and answer questions on oath and to produce documents.⁸² He would also have the power to refuse to take investigative action on any complaint that he deemed to be frivolous, vexatious or trivial.

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

80.

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

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

82.

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

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notify the Committee of the general terms of each complaint made, and whether the Inspector-General considered that the complaint warranted investigation. In addition to informing the complainant of his conclusion, the Inspector-General should present a report to the Committee on each completed investigation. These reports should describe in general terms what steps the Inspector-General took in his investigations, the conclusions he reached and the basis for those conclusions. The reports should not, however, contain 'sensitive information'. 83