

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

OPERATION ARK

REPORT FROM THE PARLIAMENTARY JOINT COMMITTEE ON THE
NATIONAL CRIME AUTHORITY

October 1990

MEMBERSHIP OF THE COMMITTEE

Mr E.J. Lindsay, MP (Chairman)
Senator A.E. Vanstone (Deputy Chairman)
Senator N.A. Crichton-Browne
Mr P.A. Filing, MP
Senator S. Loosley
Mr D. Melham, MP
Mr P.J. McGauran, MP
Mr N.P. O'Keefe, MP
Senator Hon. M. Reynolds
Senator Sid Spindler

FORMER MEMBERS

Senator M.J. Macklin
Senator G.N. Jones

OPERATION ARK

Introduction

The Parliamentary Joint Committee on the National Crime Authority has a statutory duty to monitor and review the performance by the Authority of its functions, and specifically pursuant to paragraph 55(1)(b) of the *National Crime Authority Act* 1984 the Committee has a duty:

to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the Authority or connected with the performance of its functions to which, in the opinion of the Committee, the attention of the Parliament should be directed.

2. This report draws to the attention of the Parliament the details, as far as they are known to the Committee, of a matter which has been of particular public controversy in South Australia in relation to an NCA operation codenamed Operation Ark.

3. The tabling of this report by the Committee is pursuant to its obligation to maintain a system of accountability under section 55 of the *National Crime Authority Act*.

Committee Examination

4. The Committee receives the NCA's Quarterly Operational Reports on a confidential basis. In its July-September 1989 Operational Report, the NCA outlined its activities in the South Australian office pursuant to South Australian Reference No. 2, issued on 24 November 1988. The office, which is funded in full by the South Australian Government, opened in February 1989.

5. That Operational Report was the first from the Authority Chairman and Members who took office on 1 July 1989. The new Chairman was Mr Peter Faris, QC, and the new Members were Mr G Cusack, QC, and Mr J.P. Leckie. The term of office for Adelaide Member, Mr P.M Le Grand, had commenced on 1 January 1989 for a twelve months period.

6. The July-September 1989 report indicated that most of the office's resources were devoted to a major investigation into allegations of blackmail and corruption associated with the operation of brothels in South Australia. The report also stated that some effort was being directed at finalising inquiries into allegations of corrupt withdrawal of charges by South Australia Police officers. These latter inquiries were expected to be finalised during the December quarter.

7. The Committee held its next regular meeting with the National Crime Authority on 1 December 1989 in Canberra. An in camera transcript was taken for future reference. The operation of the South Australian office was the subject of specific examination by Committee members, and the Committee was informed about how the Authority under Mr Faris had sought to prioritise its activities in consultation with the South Australian Government.

8. The Committee was specifically informed that of the 12 investigators in the South Australian office, 10 were engaged on the primary reference and 2 involved in a subsidiary matter. Discussion concentrated on the primary matter.

9. It was not until 12 December 1989 that the Committee became aware of an NCA operation in South Australia codenamed Operation Ark. On that date, the *7.30 Report* broadcast an item about Operation Ark, which was said to have arisen from the conduct by the South Australia Police in February 1989 of Operation Noah (the annual phone-in operation seeking information about drug trafficking). *7.30 Report* claimed that a report had been prepared by the NCA, which had dealt with allegations of the involvement of police officers other than former Drug Squad Chief, Chief Inspector Barry Moyse, in the drug trade and allegations of police destroying prosecution briefs in return for payments of about \$1,500 each. The claim was also

made that while the report was completed just before former Chairman Mr Justice Donald Stewart had retired in June 1989, it had not been forwarded to the South Australian Government.

10. On the next night, 13 December 1989, *7.30 Report* carried a brief postscript to its earlier story in which it quoted South Australian Attorney-General, the Hon C.J. Sumner, MLC, as announcing that the NCA report on Operation Ark was to be delivered to him on the following Monday, 18 December 1989.

11. A subsequent report on Channel Nine in Adelaide on 26 January 1990 alleged that an 80 page document had been prepared within the Authority's South Australian office which was said to have recommended that at least six high-ranking South Australia Police officers be dismissed as being unfit for duty. Mr Sumner was quoted in the *Adelaide Advertiser* of 25 January 1990 as saying that the document was not a report from "the present NCA administration" and that it did not have the support of "the present NCA".

12. The Committee discussed these media reports at its next regular meeting with the Authority, held in Melbourne on 16 February 1990. Arising from those discussions, and because of the imminent dissolution of the 35th Parliament, the Committee resolved to refer certain matters for inquiry by the Committee as reconstituted in the 36th Parliament.

13. The present Committee convened a meeting in Canberra with representatives of the NCA on 2 August 1990 at which the controversy about the NCA's report on Operation Ark was discussed.

14. In the interim, however, the Committee received correspondence from the Commissioner of South Australia Police, Mr David Hunt, QPM, in which he expressed a desire to put views to the Committee about the NCA's Operation Ark report. When the Committee was able to schedule a visit to Adelaide for 7 September 1990 for discussions with Mr Hunt, he was overseas on government

business. While discussions were still held on that date on a range of matters with representatives of South Australia Police, on 15 August 1990 Mr Hunt forwarded a report for the Committee's consideration in relation to his concerns.

15. The Committee has resolved to place before the Parliament the material it has received about Operation Ark as a means of informing the public, especially of South Australia, of the actions of the National Crime Authority in this matter.

The History of the Operation Ark Report

16. Operation Ark arose out of the failure to notify the proper authorities, the Commissioner of Police in particular, of the fact that 13 allegations concerning police involvement in, or protection of, drug trafficking had been received during the 1989 Operation Noah in South Australia.

17. At the time, the National Crime Authority was investigating at the request of the South Australian Government allegations of corruption in the South Australia Police. It commenced inquiries on Operation Ark on 17 March 1989 and continued to conduct hearings until 20 June 1989. The hearings were generally conducted by Adelaide Member Mr Mark Le Grand sitting alone, although NCA Chairman, Mr Justice Stewart, joined Mr Le Grand on two occasions.

18. Mr Le Grand then commenced drafting a report for presentation to the South Australian Government, a process which was completed on 4 July 1990.

19. The term of office of Mr Justice Stewart and two other NCA Members, Mr Clark and Mr Robberds, QC, ceased on 30 June 1990. However, on 30 June 1990, Mr Justice Stewart signed a letter of transmittal of the Operation Ark report to the South Australian Government, despite its lack of completion at that date.

20. From 1 July 1989, Mr Faris replaced Mr Justice Stewart as NCA Chairman. While the Committee cannot state with certainty what then transpired, it is known

that Mr Faris intervened to stop delivery of the report drafted by Mr Le Grand for which Mr Justice Stewart had signed a letter of transmission on 30 June 1989.

21. A report entitled *National Crime Authority South Australian Reference No.2 First Report* was sent to the Inter-Governmental Committee pursuant to sub-section 59(4) of the *National Crime Authority Act* 1984 on 21 December 1989. The report was 11 pages in length and contained six recommendations. Mr Le Grand had dissented to this report. Mr Sumner publicly released the NCA's report and the Government's response on 25 January 1990.

22. As stated above, *7.30 Report* had disclosed on 12 and 13 December the existence of another report on Operation Ark and Channel Nine had claimed on 26 January 1990 that an 80 page document had been prepared which had recommended that at least six high-ranking South Australia Police officers be dismissed.

23. In response to the public debate about NCA activities in South Australia, on 8 February 1990 Mr Sumner made a ministerial statement which dealt with the circumstances surrounding the receipt by his Government of the Operation Ark report. He also released: a letter received from NCA Chairman, Mr Faris, of 30 January 1990 which dealt with the matter of "the proposed report" as drafted by Mr Le Grand and "the final report" of the Authority; a letter from Mr Justice Stewart dated 8 February 1990 in which he responded to Mr Faris's letter of 30 January 1990; and pages 137-139 of the proposed report, which contained some 17 recommendations including three recommendations that the Commissioner of Police review the suitability of named persons, whose names had been deleted.

24. Mr Faris's letter stated, inter alia:

Although prepared before July 1, the proposed report was not sent.

The Authority, as newly constituted (namely myself, and Messrs Cusack, Leckie and Le Grand), carefully considered the proposed report and decided that it should not be delivered as a report of the Authority. Mr Le Grand dissented.

It should be made absolutely clear that the Authority rejected the proposed report.

The Authority rejected it for a number of reasons, in particular because the proposed report:

- (a) dealt unfairly with a number of police officers;
- (b) did not make any sufficient findings of fact;
- (c) had conclusions and recommendations that were often not supported by the evidence;
- (d) failed to accord natural justice to the persons it criticised;
- (e) had a style of authorship that was offensive and sarcastic towards persons and lacked objectivity; and
- (f) did not appear to apply the proper standard of proof.

The Authority proceeded to reconsider the matter and you have received what we regard to be a proper report. Mr Le Grand dissented.

It is important to note, however, that in relation to the most significant findings there is complete agreement. At paragraph 3.99 (page 39) of the proposed report it is stated: "The Authority has concluded that active dishonesty or corruption played no part in the failure of senior officers of SAPOL to inform the NCA of the Operation NOAH allegations, nor did it play any part in the apparent failure to inform similarly the Commissioner of Police".

As you are aware, our Report, at paragraph 15 (page 6) stated: "The Authority therefore finds that there was no dishonesty or corruption in the failure of senior officers of SAPOL to inform the NCA or the Commissioner of the South Australia Police of the Operation NOAH allegations."

As it is clear that there is no corruption or dishonesty in this matter, the only other considerations are administrative ones. We have made certain recommendations with relation to this (paragraphs 15 and 16).

The recommendations of the proposed report are found at pages 137 - 139.

A comparison of the recommendations of the proposed report compared with our report is attached. Mr Le Grand dissented from the recommendations made in the Final Report.

The most significant matters in the proposed report, which were rejected completely by the Authority (Mr Le Grand dissenting), were findings 15-17, to the effect that "the Commissioner of Police be requested to undertake an immediate review of the suitability of three named police officers to serve in their present positions in the light of the matters canvassed in this report."

In the opinion of the Authority, the evidence does not support such action and the recommendations are unfair to the officers concerned. As I have said, there is no suggestion of dishonesty or corruption in this matter. The proposed report fails to make any findings of fact upon which these recommendations are based and the officers themselves were not afforded natural justice.

It would be wrong if, in the present public debate, the names of these officers were made public.

Further, the proposed report is written in such an unsatisfactory manner that to release it, would in our opinion, unfairly damage the reputations of a number of police mentioned by name.

25. Mr Justice Stewart's letter to Mr Sumner of 8 February 1990, which commented on the above letter of Mr Faris, stated, inter alia:

I reply on my own behalf and on behalf of the other former Members of the Authority referred to in Mr Faris' letter namely, Messrs Robberds QC, Clark and Le Grand. I ask that you table this reply along with Mr Faris' letter.

The document which Mr Faris described as "certain internal documents" and "the proposed report" is in fact a report of the Authority pursuant to section 59(5) of the National Crime Authority Act. It was prepared by Mr Le Grand and myself on behalf of the Authority and duly authorised for transmittal to the South Australian Government by Messrs Robberds QC, Le Grand and myself. Mr Clark was on leave at the time pending the expiration of his term of office. When I last saw the Report, on its face it was described as the "First Interim Report to the Government of South Australia" and this is what it is in fact. I signed a letter of transmittal on 30 June 1989 which was reproduced in the report itself. I suggest that you read the report as this will suffice to show that it is the Authority's report made pursuant to section 59(5) of the Act and not a proposed report as claimed by Mr Faris.

It is clear from Mr Faris' letter that the newly constituted Authority under his chairmanship prohibited the delivery of the report of the previously constituted Authority to the South Australian Government. I am aware that there were media reports touching upon the matter towards the end of 1989 and I conclude that after these media reports appeared the then constituted Authority substituted a report and watered down the original report almost completely.

In Mr Faris' letter there are a number of criticisms made of the report and as they are to be made public I consider I am obliged to deal with them and in the little time available do so as follows:

- a) We reject this assertion. All police officers criticised in the report were heard on the matters canvassed therein, and were not dealt with unfairly.
- b) We reject this assertion. The report reviewed the facts at length, both in the body of the report and in the extensive annexures contained within the second part. Detailed findings are contained within chapters three and four under the heading "Conclusions" and in the body of the report dealing with the various investigations reviewed.
- c) We reject this assertion. The report is carefully drafted and, where the evidence was inconclusive, the report made findings in favour of the persons whose actions were the subject of inquiry.
- d) We reject this assertion. All persons criticised were examined before the Authority and the matters reported upon canvassed with them.
- e) We reject this assertion. The report is properly and appropriately written and scrupulously objective. Indeed, as the report makes clear, a deliberate decision was taken to couch the report in the words of the persons who appeared before the Authority to retain objectivity and to avoid importing the subjective views of the Authority.
- f) The report made no final findings adverse to any person. It did, however, exonerate some and criticise investigational standards. It recommended an internal review of the performance of three police officers. The appropriate evidentiary standard where no final findings are made nor prosecutions

recommended is the civil standard, namely the balance of probabilities which was the standard applied.

The assertion contained in the penultimate paragraph that the recommendations in respect of the police officers named in recommendations 15, 16 and 17 are unfair and are not supported by any findings of fact patently are wrong. The report contains numerous findings throughout in respect of these persons. We agree that the naming of these persons would be unfair pending the recommended review of each person's performance.

We reject the assertion that the report is written in an unsatisfactory manner. Subject to appropriate safeguards, we urge that it be tabled in Parliament and released so that the people of South Australia may draw their own conclusions.

I should add that at no time did Mr Faris consult me about any aspect of this matter.

26. It should be noted that, despite an apparent media leak, the report approved by Mr Justice Stewart remains a confidential document.

Discussion

27. The Parliamentary Joint Committee on the National Crime Authority is proscribed by paragraph 55(2)(b) of the 1984 Act from reconsidering the findings of the Authority in relation to a particular investigation.

28. However, because of the sensitive nature of the findings and recommendations of the "proposed report" the Committee believed that it was incumbent on it to determine the merits of the competing claims of Mr Faris and Mr Justice Stewart in respect to the status of that report.

29. In this respect, the Committee has been advised that, contrary to the claims of Mr Justice Stewart that the proposed report was "duly authorised for transmittal to the South Australian Government", there is no record of a minuted meeting of the Authority as constituted prior to 1 July 1989 at which the draft report was adopted as the report of the Authority for transmittal to the South Australian Government.

30. The Authority is not a corporate body. Rather, it comprises the Chairman and Members of the Authority, usually two or three in number, meeting in a

minuted meeting. Current NCA Adelaide Member, Mr Gerald Dempsey, dealt with this matter at a Public Sitting in Adelaide on 22 March 1990. He stated:

A decision of the Authority is, therefore, a decision which is taken by the Members at such a meeting, and recorded in the minutes. Informal discussions between Members of the Authority are no more a decision of the Authority than are informal discussions between directors of a company, outside of a company meeting, the decision of a company. This is particularly so where a document is to be put forward as the finding of an Authority investigation. There had been no minuted meeting of the Authority as at the 30th of June 1989 which had considered and/or approved the draft document.

On the 1st of July 1989, the membership of the Authority was Mr Faris QC, Mr Cusack QC, Mr Leckie, and Mr Le Grand. Mr Le Grand was the only Member whose term had continued beyond the 30th of June 1989. It was the responsibility of these four persons, meeting together, to then report on the matters in Operation Ark to the Government. Such a report could not be a mere rubber stamp of the draft document. Each of the Members, combining together as the Authority in a minuted meeting, had to satisfy himself of the matters contained in the Report before approval could be given. Each Member had to familiarise himself not only with the draft report itself, but also with the evidentiary material, including many days of hearings, upon which the draft report was based. The Authority was not satisfied with the draft report. The reasons for the Authority's dissatisfaction have been tabled in Parliament by the Honourable C J Sumner, Attorney-General for South Australia, and are contained in a letter plus annexure from the then Chairman, Mr Faris QC, to Mr Sumner. The Authority, therefore, prepared an amended report which, in the Authority's opinion, properly reflected the situation arising from its investigations.

31. Mr Dempsey went on to stress that the actions of the Authority were based on propriety, not impropriety. He stated that the problem that arose was entirely internal to the NCA, and that there had been no participation by or consultation with either the South Australian Government or South Australia Police prior to the delivery of the Authority's report on 21 December 1989. There had therefore been no "suppression" of an "original Ark report".

32. The Committee sought to determine whether the time and effort spent in resolving this dispute had at least had some positive contribution to the good government of South Australia, whose taxpayers were funding the NCA's South Australian operations.

33. The Authority's report had identified problems and administrative difficulties with respect to the South Australia Police investigation of the Operation Noah allegations. The South Australian Government accepted the thrust of the NCA's

recommendations and, with the full agreement and support of the Commissioner of Police, took immediate action to implement the NCA proposals for administrative reforms.

34. Upon receipt of the "proposed report" of Mr Justice Stewart, forwarded to Mr Sumner by Mr Faris on 30 January 1990, Commissioner of Police Mr David Hunt provided Mr Sumner with a response of behalf of the South Australia Police Department. Of particular note was a concern that the NCA, which is a law enforcement body, not a management consultant, had sought to comment adversely on the management of the Police Department by reaching broad generalised conclusions based on its examination of one limited aspect of police operations.

35. The Committee noted advice to it from Mr Hunt that a special working party under the chairmanship of the Deputy Commissioner had considered all of the recommendations contained in both the proposed report and the Authority's formal report and taken remedial action where appropriate.

A handwritten signature in cursive script, reading "E.J. Lindsay". The signature is written in black ink and is positioned above the printed name and title.

E.J. Lindsay MP, RFD
Chairman

QUALIFYING STATEMENT OF

SENATOR N CRICHTON-BROWNE

MR P FILING MP

MR P McGAURAN MP

SENATOR A VANSTONE

TO THE OPERATION ARK REPORT

PARLIAMENTARY JOINT COMMITTEE

ON THE

NATIONAL CRIME AUTHORITY

OCTOBER 1990

INTRODUCTION

The Committee report does not refer to a number of matters raised in this qualifying statement. We believe the matters raised herein will enable the Parliament to have a better understanding of the facts known to the Committee and consequently the controversy surrounding Operation Ark in South Australia.

We are not satisfied that the Committee is in a position to make final conclusions as to the events surrounding the above-mentioned matter without interviewing further witnesses and examining the totality of evidence obtained.

The Committee's decision not to pursue this matter to a final report stage and the subsequent ruling out of order of a motion to call certain other witnesses, means that cross-checking of the evidence available is impossible, as is the resolution of the many questions the material before the Committee raises.

The writers of this qualifying statement have not discussed all the evidence and all the issues which would have been canvassed had the Committee proceeded to the final report stage. This is in keeping with the Committee's resolution to report on the current state of knowledge of the matter of Operation Ark rather than proceeding to the stage of preparing a comprehensive report.

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INTRODUCTION

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1.0 CONSIDERATION BY THE COMMITTEE OF THE ARK REPORT

1.1 The Initial Resolution

The Joint Parliamentary Committee of the 35th Parliament recommended that

*"the matter of the apparent conflict between the evidence given by the Authority on 16 February 1990 and the account given by the former Chairman of the Authority, the Hon Mr Justice Stewart, in his letter of 8 February 1990 to the South Australian Attorney-General, the Hon. C.J. Sumner, MLC, in relation to the preparation of the Authority's report on Operation Ark be referred to the Committee as newly constituted in the next Parliament, with a recommendation that it give Mr Justice Stewart and Mr Le Grand the opportunity to appear before the Committee to give evidence on this matter."
(Committee Minutes, 16 February 1990, Melbourne)*

This recommendation has not been complied with.

It is this recommendation that the current Committee's report refers to as

"because of the imminent dissolution of the 35th Parliament, the Committee resolved to refer certain matters for inquiry by the Committee as reconstituted in the 36th Parliament."

1.2 Subsequent Meetings And Resolutions Of The Committee

It should be clear from the outline below that the Committee has had one meeting (2/8/90) to specifically discuss Operation Ark (and incidentally other matters) with the NCA. At a further meeting to deal with a separate matter on 6/9/90 certain information relating indirectly to Operation Ark but directly to the controversy surrounding it was put before the Committee. At a meeting the following day brief reference was made to the matter.

On the other 6 occasions when the matter has been raised with the Committee it has been on the agenda together with a list of other matters and been subject only to a brief debate of a procedural nature.

- 1.2.1 At its second meeting on 31 May matters outstanding from the 35th Parliament were given preliminary consideration, including the resolution referred to above. The Minutes show that the Chairman indicated

"that while the Committee was entitled to consider and make use of the evidence and records of the Committee appointed during previous Parliaments, he stressed that the Committee should make its own assessments about the worth of continuing outstanding matters from earlier Parliaments."

The Committee had a brief discussion with the Attorney General, who expressed the view that there was nothing to be gained from the Committee pursuing, among other matters, the Operation Ark matter.

- 1.2.2 A brief meeting of a procedural nature was held on the following day (3/36) at which it was resolved:

6. (i) *that the Committee defer consideration of ... the matter of Operation Ark until the next private meeting of the Committee.*

- 1.2.3 At its 9th meeting on 31 July 1990 the Committee took evidence on an unrelated matter for just over 2 hours. Following that the Committee resolved:

"that a meeting be held in Canberra on Thursday, 2 August 1990 at 11.00 am at which representatives of the National Crime Authority would be invited to respond to Committee concerns about the advice provided to the Committee by the NCA in both respects."

which referred in part to Operation Ark.

- 1.2.4 At its 10th meeting on 2 August the Committee met with the Authority and conducted other business. The Minutes of that meeting show

"The Committee discussed the advice of the NCA representatives about Operation Ark and ... [deletion]."

Senator Vanstone argued that the Committee should table brief (one-page) reports on both matters to seek to allay community concerns that the Committee might not have been fulfilling its monitoring role in relation to both matters. The reports should explain the limitations placed on the Committee by section 51 of the NCA Act. The Chairman urged that final decisions be deferred pending discussions with Mr Hunt, SA Police Commissioner, on 7 September 1990."

- 1.2.5 At its 12th meeting on 6 September 1990, which was held to deal with a variety of matters other than Operation Ark, a large amount of evidence was put before the Committee that both directly and indirectly related to Operation Ark.

At that meeting the undersigned members did not put certain questions to the witness on the clear understanding that at a later meeting the Committee would have the opportunity to further question the witness on matters relating to Operation Ark.

The witness' evidence gave rise to serious concerns and, in our view, begged further enquiry.

1.2.6 At its 13th meeting on 7 September 1990 the Committee was scheduled to meet with Commissioner Hunt of the South Australian Police Force. The Commissioner was unavailable. The Committee met instead with other senior members of the Police Force. It is clear to the undersigned from the meeting that the South Australian Police Force has an expectation that the ongoing controversy over the Ark report(s) should be resolved.

1.2.7 At its 14th meeting on Wednesday, 12 September Operation Ark was again raised. The Minutes show:

"Mr Melham moved that the matter of Operation Ark be no longer considered by the Committee.

Senator Vanstone opposed the motion.

Discussion ensued.

The Committee requested the Secretariat to provide a briefing paper dealing with the status of the matter.

Mr Melham placed his motion on notice for the Committee's meeting on 20 September 1990."

1.2.8 At its 16th meeting on 20 September the Committee discussed the matter again. The Minutes show

"The Committee considered a secretariat paper putting four options for the Committee's future approach to [Operation Ark].

Discussion ensued.

...

Senator Vanstone moved

That the Committee pursue the matter to a comprehensive report stage, by calling or recalling relevant individuals involved in the disagreement, including Mr Justice Stewart, Mr Le Grand, and Mr Hunt; and possibly Mr Faris, Mr Clark and Mr Robberds.

Discussion ensued.

Mr O'Keefe moved that the question be put.

Question put and carried.

And the question - That the motion be agreed to - being accordingly put, it was negatived.

Senator Vanstone then moved -

That the Committee report now on the basis of the Committee's current state of knowledge of the matter of Operation Ark.

Question put and carried. Senator Spindler abstained.

Senator Vanstone then moved -

That the Committee call or recall the individuals named in the unsuccessful motion above, without a commitment to present a comprehensive report.

Discussion ensued.

The Chairman ruled the question out of order as being in conflict with the resolution of the Committee."

- 1.2.9 At its 17th meeting on 11 October 1990 the Committee considered a draft report prepared as a consequence of the resolution passed at the previous meeting that the Committee report on the basis of the Committee's current state of knowledge.

The undersigned were particularly surprised to be informed by the Chairman that there was no intention, never had been, nor did the report disclose any intention, to table the report in Parliament. We submit that there was such an intention, always had been, and that paragraphs 2 & 3 of the report clearly indicate that.

A motion was moved by Senator Crichton-Browne that the report be tabled and it was carried.

2.0 UNRESOLVED ISSUES

2.1 Was There A Completed Report On 30 June 1989?

The Committee has been repeatedly advised that the Stewart Report was not completed on 30 June and that Mr Le Grand worked for four days on the report after that date.

That assertion has not been put to Mr Le Grand, Mr Stewart or Mr Robberds, the members on whose authority the letter of transmittal was apparently signed by Mr Stewart.

The Committee has been told that the then existing Authority does not know what extra work he (Mr Le Grand) had done. We believe it somewhat surprising that since Mr Le Grand worked from 30 June with Mssrs Leckie, Cusack and Dempsey for a considerable period that the Authority in that time did not ascertain what work had been done.

We appreciate that the Authority believes that what, if any, work was done is irrelevant, in the sense that the Authority relied on the absence of a minuted meeting to adopt the report and the fact that it had not been delivered to justify its entitlement to discard the Stewart Report and substitute the Faris Report. But it is nonetheless surprising that the point of non-completion having been made, fellow members are unable to say what work was done to bring the work to completion.

We note the remarks in Mr Faris's letter of 30 January 1990, quoted at page 5 of the Committee's report:

"Although prepared before 1 July, the proposed report was not sent."

2.2 Can An Authority Report Be "Duly Authorised" Without There Being A Minuted Meeting Of The Persons Purporting To So Authorise?

The matters referred to in paragraph 30 of the Committee's report in relation to the need for there to be a minuted meeting and the apparent lack of one has not been put to Mr Stewart, Mr Le Grand or Mr Robberds. We note that Mr Stewart purported to sign the letter of transmittal and the letter to the Attorney General on behalf of himself, Mr Le Grand and Mr Robberds.

2.3 Does A Newly Constituted Authority Have The Responsibility To Ensure That It Is Satisfied With A Report From The Previously-Constituted Authority?

The Committee has been told that, even aside from the question of whether the report was completed on 30 June, it had not actually been delivered. As a consequence of the non-delivery the Authority, as newly constituted, had a responsibility to consider the report and decide if it was an appropriate report to deliver.

2.4 Did A Former Authority Member Doubt The Propriety Of The Report Being Transmitted?

The Committee has evidence that Mr Robberds told Mr Faris on the 30 June that he agreed that the Stewart Report not be transmitted, and that he would speak to Mr Le Grand or Mr Justice Stewart in relation to it.

The matter has not been put to Mr Faris, Mr Robberds, Mr Stewart or Mr Le Grand. We would be particularly interested in Mr Stewart and Mr Robberd's view as Mr Stewart purports to have signed both the letter of transmittal and his letter to Mr Sumner (8/2/90) on behalf of Mr Robberds (and Mr Le Grand).

We are unaware of any attempts by Mr Robberds to distance himself from either piece of correspondence.

2.5 Prior To 30 June Had Internal Conflict Arisen Over The Stewart Report?

The Committee is also aware of evidence showing that Mr Faris was anxious about the contents of the report in May or June of that year, and that he asked Mr Le Grand to delay the report until he (Mr Faris) took office.

"In a telephone conversation in May or June you told me something about the Report which caused me to reply that I did not want the Report to be delivered without my first seeing it. I asked that you attempt to delay the Report until I took office."

(6 September 1990, Melbourne, in-camera p 155)

The Committee has evidence showing that the then Chairman discussed the Stewart Report with Mr Le Grand on 5 June and much later discussed whether on that day Mr Le Grand had repeated any remarks by Mr Justice Stewart in relation to what effect the report would or would not have on the employment of the South Australian Police Commissioner.

Mr Le Grand apparently indicated in the later discussion that he had no recollection or note of any such remarks but could not deny that they may have been made.

At those later discussions Mr Faris asked Mr Le Grand whether he (Mr Faris) had indicated to Mr Le Grand (on June 5) that he (Mr Le Grand) should attempt to stop the report going forward. Mr Le Grand indicated he had no recollection or file note of such an indication, but could not deny it may have been given.

There are obvious inconsistencies in the evidence before the Committee which cannot be explained without further enquiries being made.

The Committee has evidence that at this meeting (5 June) Mr Le Grand had expressed concern as to whether the Authority should report to the South Australian Police Force or the State Government. Mr Faris indicated that he would distance himself on taking office if he did not think the report appropriate.

The tenor of the evidence taken on 2 August is, we think, fairly characterised by the following excerpts:

"So the Authority came in. It looked at the [Stewart] report and found that this was not a report that it, as the National Crime Authority, was prepared to send ... The fact of it is, it had not been sent and when the Authority - which had changed complexion, but was still the same Authority - looked at it, the Authority said in effect, 'My God!'"
(2 August 1990, Canberra, in-camera p 96)

The Committee has been told that Mr Justice Stewart was very keen to have the Stewart Report completed and delivered to the appropriate authority before the incoming members considered it.

The Committee has evidence indicating that Mr Stewart rang Mr Le Grand daily, sometimes several times a day, urging him to complete the report before he (Mr Justice Stewart) left office.

Evidence indicates that the incoming members were dissatisfied with the level of consultation in relation to the report.

2.6 What Events Occurred After 30 June?

The Committee has evidence that Mr Faris and Mr Leckie met in Melbourne on a July 4, with a telephone link-up to Mr Le Grand in Adelaide, during which Mr Faris informed Mr Le Grand that he (Mr Le Grand) was now being instructed not to forward the Stewart Report. Mr Le Grand apparently indicated that the report was complete and that he no longer had any concerns in relation to the report.

Instructions were issued by Mr Faris that communications between the South Australian Attorney-General and the NCA should be conducted through the office of the Chairman.

The Committee has evidence that at a meeting on 4 August between Mr Faris, Mr Le Grand and the South Australian Police Commissioner, Mr Faris informed the Commissioner that the new Authority was vetting the report, that he (Mr Faris) expected the Stewart Report would go forward under Section 59(5), with a supplementary report of the new Authority, and that it was simply pressure of work which delayed this process.

Mr Le Grand's appointment as the Adelaide member of the NCA was called into question by an advice rendered by Mr Dempsey some nine months after his appointment. The effect of that advice was that Mr Le Grand was not permitted to attend the next meeting of the Authority but rather was only granted observer status.

The validity of Mr Le Grand's appointment was subsequently supported by an opinion of Mr Ray Finkelstein QC.

On 25 October the Chairman advised Mr Le Grand that while Mr Dempsey had not finalised an opinion he was of the view that the report may not have been within the NCA's reference. He asserted it may therefore have been illegal. He was also of the view that its conclusions were not supported by the evidence.

Mr Faris advised Mr Le Grand that the report would probably go forward with the present members observations on it, to which Dempsey's view would be annexed. He thought Mr Le Grand had until the middle of November to finalise his views.

The NCA received advice dated to 27 October that the Operation Ark was within the power of the NCA.

On 27 October Mr Dempsey provided the first of two advices on the Stewart Report which was highly critical of the report.

On 6 November, Mr Lenihan, the Executive Officer, produced a memorandum which may be described as a response to the above-mentioned advice. This concluded that aside from certain legal aspects it was the advice rather than the report which required justification.

Mr Dempsey responded on 16 November, defending his views.

2.7 Did Internal Conflict Arise Following The Decision To Not Proceed With An Alternative Report?

The Committee report discloses that Mr Le Grand dissented from the Faris report. It does not go on to reveal what the Committee now knows about the consequences of that dissent.

The Committee is aware that Mr Dempsey prepared two advices on the Stewart report and that Mr Le Grand prepared a response to each of these. A paragraph at the end of Mr Le Grand's response to one of these advices reads as follows:

*"I reserve the right to use this response if the matter of the first interim report [the Stewart Report] is raised before the Parliamentary Joint Committee, the Inter-Governmental Committee or by the South Australian Attorney-General."
(6 September 1990, Melbourne, in-camera p 153)*

The Committee is further aware that on 6 December 1989 the Chairman sent a memo to Mr Le Grand which, in response to the above reservation, contained inter alia:

- (a) *"I direct you that, in relation to Operation Noah, you are not to make any documents available to or have any discussions with any committee or person outside the Authority without first consulting the Authority. If you consider that I do not have the power to bind you with this direction or if you, for any reason, do not intend to obey it, please advise me forthwith and I will call an Authority Meeting."*
- (b) *I remind you of the secrecy provisions of the Act, which bind you now and after your term ends.*

(6 September 1989, Melbourne, in-camera p 154)

The Committee has been told that among the telephone conversations relating to the controversy within the NCA over the Operation Ark report, there was a telephone conversation on December 12 between Mr Faris and Mr Le Grand, where Mr Faris informed Mr Le Grand informing him of a resolution of the Authority.

Mr Faris made this call in the presence of other members of the Authority who had been meeting to consider, among other things, Mr Le Grand's apprehension about the appropriateness of the Chairman's instruction referred to above.

"The Authority directs that Mr Le Grand is not to divulge or communicate to any person outside the Authority any information acquired by him by reason of or in the course of the performance of his duties under the NCA Act unless specifically authorised to do so by the Authority and that the Chairman forthwith seeks from Mr Le Grand an undertaking to abide by this resolution."

(6 September 1990, Melbourne, in-camera p 158)

Mr Le Grand indicated his concern as to the position such a direction placed him in and advised that he would seek legal advice. Mr Faris agreed to that course of action.

The Authority met in Sydney on 16 December and considered the above matters:

"Mr Le Grand tabled an opinion by Mr David Smith dated 15 December 1989 on the question of the validity of a direction from the Authority to Mr Le Grand on 12 December 1989 ... The meeting noted that in Mr Smith's opinion the direction, so far as it concerned the Parliamentary Joint Committee and the Inter-Governmental Committee, was ultra vires and invalid."

After discussion, it was agreed that if either Committee sought to have Mr Le Grand appear before it, the Authority would decide if the request were appropriate. If it decided that the request were appropriate, the Authority would agree to Mr Le Grand appearing and to the necessary documents being provided to him. If the Authority's view was that the request was not appropriate, it would seek advice (at the Authority's expense). If the advice supported the Authority's view, then the Authority would refuse the Committee's request and if necessary have the matter determined by a court. On this basis, Mr Le Grand gave the undertaking sought."

(6 September 1990, Melbourne, in-camera p 163)

It was at this meeting that the Authority decided to reject the Stewart Report.

2.8 What Were The Consequences Of This Internal Conflict?

There are several points that should be made to qualify the circumstances outlined above.

Mr Le Grand has told the Committee that he agreed to abide by the process outlined in the minutes referred to above under the threat of the NCA seeking an immediate injunction in the High Court preventing him from passing on any

information. Mr Le Grand believes that such an injunction, regardless of the outcome, would have done irretrievable damage to his professional reputation. He believes Mr Snopek (former Legal Adviser in Adelaide) can corroborate this claim. He further believes that the Executive Officer, Mr Lenihan, should also be able to do so.

Mr Cusack and Mr Dempsey deny such a threat was made.

The allegation has not been put to Mr Faris, Mr Leckie, Mr Tobin, Mr Snopek or Mr Lenihan.

Presumably out of concern to satisfy himself that no attempts had been made to silence Mr Le Grand (which, given the public knowledge of Mr Le Grand's dissent from the Faris report, is in our view an understandable concern) Senator Hill asked a number of questions at the February meeting of the Committee with the NCA.

The relevant questions and answers were as follows:

"SENATOR HILL: Has Mr Le Grand ever been directed not to give evidence to this Committee or in any way been restricted on the evidence that he should give to this Committee?"

MR DEMPSEY: No.

SENATOR HILL: That is the view of the Authority as a whole, I take it?

MR CUSACK: Yes.

SENATOR HILL: Because that goes beyond South Australia.

MR CUSACK: Yes."

(16 February 1990, Melbourne, in-camera pp 1110-11)

The undersigned are aware of an interpretation or explanation of the matters outlined within parts 2.7 and 2.8 which, in effect, says that the Authority was simply concerned to see that Mr Le Grand did not breach S.51 inadvertently or otherwise; and moreover, the Authority was not putting a restriction on Mr Le Grand in any way, but rather was setting up a process whereby should Mr Le Grand be called or wish to give evidence the Authority and Mr Le Grand could together agree on what information could be passed on, and in the event of a failure to agree seek a resolution of the matter through the Courts.

We are conscious of the need to ensure that appropriate standards are maintained in respect of clarity, accuracy and frankness of evidence put before the Committee.

We are also conscious of the need for the Committee to ensure that no potential witness before this or any other parliamentary committee feels intimidated in respect to evidence he or she may desire to give to parliamentary committee.

In the course of the Committee's inquiries, we are further aware of the need to allow witnesses or persons mentioned in evidence every opportunity to respond to such evidence, and of the need to give thorough consideration to any such response.

Consideration of these and other requirements and standards has been hindered by the fact that in-camera evidence has not been readily available and accessible to Committee members in their offices.

3.0 CONCLUSIONS

In the opinion of the writers, the Committee's decision not to take further evidence relating to Operation Ark has resulted in members of the Committee being unable to make a proper assessment of the impact of the internal tension and conflict caused by the Operation Ark Report controversy on the capacity of the NCA to effectively fulfil the duties and functions during the relevant period.

In the writer's opinion, the internal conflict and tension within the NCA and its potential impact on the Authority's capacity to effectively fulfil its duties and functions is relevant to the statutory obligations of the Committee.

Frank discussion between the NCA and the Committee at an earlier stage may have assisted the Committee's considerations.

The apparent failure of the Authority to manage the internal conflict and tension arising from the Operation Ark Report and the impact of this on the Authority's capacity to fulfil its duties and functions is in our opinion relevant to the current evaluation of the NCA being conducted by the Committee and should be examined further in the course of the evaluation.

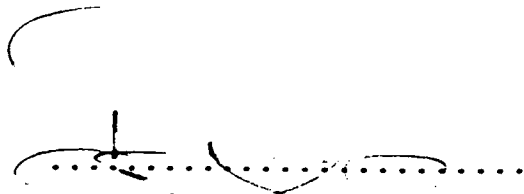
We are particularly encouraged by the Committee's meeting with the recently appointed Chairman of the NCA, Mr Justice Phillips, and by recent correspondence from the new Chairman. This demonstrates an earnest commitment of the Chairman to develop appropriate mechanisms for discussion between the NCA and the Committee.



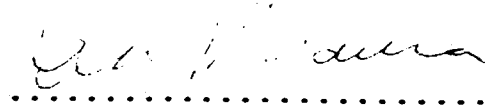
Senator N Crichton-Browne



Senator A Vanstone



Mr P Filing MP



Mr P McGauran MP