

CHAPTER 1

INTRODUCTION AND BACKGROUND

Referral of the Inquiry

1.1 On 4 October 2000, the Senate referred an inquiry into the adequacy of funding and operations of the Australian Federal Police (AFP) and the National Crime Authority (NCA) to the Senate Legal and Constitutional References Committee for inquiry and report by the first sitting day in August 2001. On 26 June 2001, the Committee sought and was granted an extension of time to report to 28 August 2001.

Terms of Reference

1.2 The Senate referred the following matters to the Committee:¹

The management arrangements and adequacy of funding of the Australian Federal Police (AFP) and the National Crime Authority (NCA), in particular:

(a) the current capability of both agencies in terms of:

(i) the management of staff resources, including numbers, attrition rates, skills mix, operational/support ratios and allocation of resources against priorities,

(ii) information technology capability and hardware, and

(iii) other resource issues;

(b) the resourcing of the AFP and NCA, including their current budget allocations and 2000-01 forward estimates, in relation to their respective charters;

(c) the relationship between the new AFP certified agreement and AFP budget management and any other issues associated with the implementation of the certified agreement;

(d) the appropriateness of any performance indicators or other mechanisms used to measure the overall effectiveness and efficiency of the AFP and the NCA and to measure the effectiveness and efficiency of each operation carried out by each agency;

(e) the mechanisms, if any, which are in place for long-term strategic law enforcement policy decision-making and oversight of Commonwealth law enforcement priorities, operations and budgets;

1 See Senate *Hansard*, 4 October 2000, pp. 17852-17853

(f) the recommendations of, and the Government's response to, the Ayers Report; and

(g) whether the requirement the Government placed on the AFP after the Ayers Report to find \$50 million in internal savings has in fact been achieved and, if it has, if this was at the expense of operational capacity.

Conduct of the Inquiry

Advertisement

1.3 The Committee advertised the terms of reference in *The Australian* on 14 October 2000, with the original closing date for submissions being 31 January 2001. However, a number of organisations requested an extension of time to complete their submissions and consequently, the Committee agreed to extend the date for close of submissions to 28 February 2001.

Submissions

1.4 The Committee received 34 submissions, including supplementary submissions and these are listed at Appendix 1.

Requests for Information

1.5 On 11 October 2000, the Chair of the Committee wrote to then Minister for Justice and Customs, Senator the Hon. Amanda Vanstone, informing the Minister of the inquiry and requesting copies of the Report on AFP Resources commissioned by Government and made by Mr Tony Ayers AC (the 'Ayers Report').

1.6 Senator Vanstone responded by providing the Committee with the 'Summary of Findings', the 'Milestones' section and some of the appendices from the Ayers Report stating that 'the Ayers Report [in its entirety] is a Cabinet document and, as such, cannot be made available for purposes other than Cabinet deliberations'.² This has limited the Committee's capacity to comment. As it has no knowledge of the report details, its assessments are based primarily on the Findings.

Public Hearings

1.7 The Committee held three public hearings and one in-camera hearing. The first of the public hearings was held in Melbourne on 15 March 2001, the second in Sydney on 13 June 2001 and the third in Canberra on 25 June 2001. Witnesses who appeared at the Committee's public hearings are listed at Appendix 2.

Briefings and Inspections

1.8 The AFP briefed the Committee on aspects of its operations on 16 November 2000 in Canberra and on 23 March 2001 in Sydney. In addition, the Chair inspected

2 Correspondence dated 31 January 2001 from the Minister for Justice and Customs to the Chair of the Senate Legal and Constitutional References Committee

the co-located offices of the AFP and NCA in Perth on 25 January 2001 and, on 16 March 2001, visited the Australian Institute of Police Management at Manly.

1.9 The NCA also briefed the Committee on aspects of its funding and operations in Sydney on 19 January 2001. The Committee would like to take this opportunity to thank both the AFP and the NCA for their assistance with these meetings.

References

1.10 References made in this report are to individual submissions as received by the Committee, not to a bound volume. References to the *Hansard* transcript are to the Official Hansard.

Acknowledgments

1.11 The Committee would like to acknowledge the assistance of the Parliamentary Library in providing research and analysis services. The Committee also thanks all witnesses, particularly the Australian Federal Police, the National Crime Authority and the Australian Federal Police Association. They provided several submissions and extensive other information which was of great assistance to the Committee in its deliberations.

Background to the Inquiry

1.12 Although the Ayers Report³ had prompted some aspects of the inquiry, the AFP (and to a lesser extent, the NCA) has been undergoing considerable change since the beginning of the 1990's at least. This has contributed to a number of financial, management and culture problems that the AFP has been dealing with for several years. Thus, the Ayers report, while useful, is but one in a series of assessments and reports undertaken.

1.13 The Australian Federal Police came into operation in 1979.⁴ From then until approximately the early 1990's, it operated in a traditional police force fashion, that is, it was hierarchical, valued length of service, had a quasi-military structure,⁵ limited devolution of responsibility, and a distinct police culture.⁶ Although certain changes

3 See above, Paragraph 1.6 and below, Chapter 3

4 It was formed through combining the Commonwealth Police (COMPOL) and the Australian Capital Territory Police, with the major instigation being the bombing outside the Hilton Hotel in Sydney during the 1978 CHOGM conference. Sir Robert Mark, a former Commissioner of the London Metropolitan Police, was commissioned to report to the Government on the anti-terrorist role of the law enforcement agencies in Australia. See Department of the Parliamentary Library, *Bills Digest No. 90* (1999-2000), p. 2 and *Submission 9*, Australian Federal Police Association, p. 25

5 See *Submission 6*, Australian Federal Police, p. 23 which indicates that the AFP was still a 'quasi military' organisation in 1995

6 See for example, Transformation in the Australian Federal Police, www.afp.gov.au/corp, 1995, p. 2

had been made to it during the 1980's, these related more to its resources level,⁷ than to its functions, its nature and its culture.⁸

Nature and focus

1.14 The focus of the AFP is now major Commonwealth crime, primarily in the areas of smuggling, drug importation, money laundering, and fraud.⁹ It also undertakes other Commonwealth duties, such as peacekeeping, and provides community policing services to the ACT.¹⁰ Unlike the NCA, it does not have a national focus, in that any cross-border investigations it undertakes are done on a case by case basis. The NCA, which is based on Commonwealth and complementary States legislation, is not impeded by such factors.

Changes to Structure and approach

1.15 The AFP began as a police force, but gradually took on roles to which its police culture was not well suited. It was therefore required to undergo substantial change in order to adapt to the changing nature of crime and manage the strategies with which to fight crime. From at least the end of the 1980's, a more systematic approach to reform and transformation was adopted, aligning the major crime issues with substantial changes in structure and approach of the organisation which would enable a more effective attack.

1.16 These changes, affected to some extent by the approach of different governments, nonetheless had some common factors:

- The creation of a more proactive force;
- Employment of staff with diverse experience and backgrounds, thus recognising and valuing different skills;
- Reduction in the power of seniority, including payment / promotion in accordance with achievement rather than seniority, and allowing staff to enter at different levels; provision of similar terms and conditions for all, both sworn and unsworn staff;
- Greater devolution of responsibility, allowing officers to gain management experience at lower levels than previously;

7 Transformation in the Australian Federal Police, www.afp.gov.au/corp, 1995

8 See below, Chapter 5, Paragraphs 5.40-5.46

9 See *Submission 9*, Australian Federal Police Association, p. 25

10 The Australian Federal Police Association stated that such missions and assistance with law enforcement in the Asia-Pacific regions was becoming more of a core function. *Transcript of evidence*, Australian Federal Police Association, p. 89. The AFP itself considers that they are an essential part of its role: see *Transcript of evidence*, Australian Federal Police, pp. 26, 48

- A shifting away from certain functions, and the defining of ‘core’ functions;
- More emphasis on internal integrity, including the power of summary dismissal by the Commissioner, drug testing, provision of integrity statements, and the deconstruction of specialist units which could encourage sub-cultures; and
- Development of flexible teams, which both facilitated investigation and demonstrated the reduction of hierarchical structures.¹¹

Changes in Structure

1.17 The above changes were implemented gradually, and many did not become obvious until at least the mid 1990’s. The Committee notes that changes such as abandoning the traditional rank structure, developing teams in which ability and experience were more important than length of service, and increased training in planning and analytical work contributed to the emergence of a different work profile and culture. It could therefore be argued that:

- The AFP became more of an organisation or public sector department,¹² than a traditional police force.¹³ Opportunities became available for middle managers from non-police backgrounds with relevant skills and experience.¹⁴ Increased employment options, supplemented by training and experience, facilitated management through the organisation being able to shift, redefine, and re-prioritise, while still meeting basic targets; and
- The long-term change process may now need to be acknowledged through the provision by government of more non-tied resources, not only to the AFP but to other agencies. Government strategies, including provision of finance, which may have been appropriate during what could be seen as a testing and restructuring period, may require revision.¹⁵

Changes in Functions

1.18 The main responsibilities of the AFP have remained as they were in 1979, but the emphasis given to various components has changed. Although certain of the AFP’s powers are limited because of the constitution,¹⁶ its main role is considered as

11 See *Australian Federal Police and the Wood Royal Commission*, Media Release, Office of the Attorney-General, 16 May 1997, p. 1

12 For example, through the devolution of resources to ‘line and functional managers’, *Submission 6*, Australian Federal Police, p. 2, annual planning, outcomes and outputs, business plans

13 *Submission 6*, Australian Federal Police, p. 1, Overview states: ‘The modern AFP does not resemble a traditional police force’, *Transcript of evidence*, Australian Federal Police, p. 25

14 *Submission 6*, Australian Federal Police, p.4

15 See *Submission 6*, Australian Federal Police, pp. 23-28 for comment on the effect of the Ayers report and previous reform

16 See below, Chapter 2: for example, the investigation of drug matters must be linked to the importation of drugs into Australia, *Transcript of evidence*, National Crime Authority, p. 53

the fighting of national and international crime. Other roles – such as the provision of community policing in the ACT/external territories, of protection services,¹⁷ and provision of staff in order to meet international obligations,¹⁸ are becoming more peripheral, although they consume considerable resources in both human and financial terms,¹⁹ and the community policing role is seen as an important part of training.²⁰

1.19 Within the ‘police services’ component, the emphasis has been less on the provision of localised ‘law and order’ than on being the means by which crime against the Commonwealth is pursued.²¹ This national focus requires substantial co-ordination and linking with not only state and territory governments but also a number of other federal agencies, including intelligence gathering and dissemination bodies, with international law enforcement organisations and the police forces of numerous countries.²²

Reasons for Change

Changing Nature of crime

1.20 Many of the major changes in the structure of the AFP are explained in terms of an adjustment to changes in crime patterns, including:

- The international nature of crime,²³ with effects being felt in many countries;
- The greater organisation of crime, although there is also recognition of certain, less systematic, opportunistic crime;
- The use of more sophisticated crime methods, including electronic/cyber crime (including money laundering);²⁴
- The speed and difficulty of detection of certain forms of crime;

17 These include the protection of diplomats and senior government members, and witness protection programs – see also Chapter 2

18 However, see *Transcript of evidence*, Australian Federal Police, p. 48, where reference is made to the presence in East Timor as ‘a core part of the business we need to do.’ Nonetheless, the role of the AFP on such missions is as peacekeepers; as a training exercise it may be more expensive than the results warrant

19 Resources utilised for community policing and protection are listed at Attachment C of *Submission 6*. The ACT Government pays for the community policing – see *Submission 6*, Australian Federal Police, p. 25

20 See *Transcript of evidence*, Australian Federal Police Association, pp. 76-77. See also below, Chapter 3, Paragraphs 3.104-3.106

21 Transformation in the Australian Federal Police, www.afp.gov.au/corp, 1995, p. 3

22 See Transformation in the Australian Federal Police, www.afp.gov.au/corp, 1995, p. 7; *Transcript of evidence*, Australian Federal Police, p. 42

23 Transformation in the Australian Federal Police, www.afp.gov.au/corp, 1995, pp. 6, 8. See also *Submission 4*, Attorney-General’s Department, pp. 1-2

24 See also *Submission 7*, National Crime Authority, p. 3: ‘Contemporary organised crime is much harder and more expensive to detect, investigate and prosecute.’

- Crime where it is difficult to obtain witnesses particularly because of personal repercussions on informants;²⁵ and
- The development of new crime, or the expansion of previously ‘manageable’ crime to higher levels (such as people smuggling).²⁶

Need to change police culture

1.21 Other more localised reasons for change included the concern that the more traditional police force, comprising long serving ‘lifetime’ officers, is particularly vulnerable to corruption. Public information about specific inquiries relating to the AFP have not revealed any systemic corruption, although both the NSW Wood Royal Commission (1994-1997)²⁷ and the later Harrison inquiry (1997)²⁸ demonstrated that there were some corrupt officers.

1.22 Concerns about real or possible corruption are also stated as having been one of the reasons for the introduction of the Australian Federal Police Adjustment Scheme (AFPAS) in 1989/90,²⁹ although there was no specific mention of corruption at the time. The main reason originally stated for the introduction of AFPAS was to provide a ‘compensation’ scheme for AFP staff because of the cessation of tenured appointments and their replacement with contracts. A secondary objective was to provide a form of ‘start up’ payment for those who wished to leave the force early and undertake a new career. Insofar as AFPAS was a disincentive to corruption, this could only be through a sworn or unsworn member losing such payments through having been proved to have been corrupt during the course of the contract.³⁰

Effect of Changing Priorities

1.23 A notable feature of AFP procedure and priorities is that these actually exclude substantial amount of Commonwealth crime:

A fundamental problem for the AFP is it is no longer the national or the Commonwealth law enforcement agency, because vast amounts of Commonwealth crime are no longer investigated by the AFP....we are seeing the distribution of policing or law enforcement activity across more

25 For example, in people smuggling, domestic servitude and slavery, child sex tourism

26 See generally, Commissioner M. Palmer, *White Collar Crime*, Australian Institute of Criminology Symposium, Crime in Australia, 1995, pp. 2-3 ; see also *Transcript of evidence*, Australian Federal Police, pp. 43, 48

27 See *Australian Federal Police and the Wood Royal Commission*, Media Release, Office of the Attorney-General, 16 May 1997

28 The Harrison Inquiry investigated the Australian Federal Police only, in response to allegations of corruption within the force: see *Findings of the Harrison Inquiry into the Australian Federal Police*, Media Release, Office of the Attorney-General, 28 May 1997; see also below, Chapter 5, Paragraph 5.44, Footnotes 67 and 70

29 See below, Chapter 5, Paragraphs 5.43-5.44

30 See below, Chapter 5, Paragraphs 5.43-5.44

and more agencies...[and] the growth of private policing in the guise of Big Five consultancy firms.³¹

1.24 The AFP works against priorities set by Government.³² Within these it works substantially on either high profile issues or cases likely to have a high return in terms of money involved:

Due to the large number of matters referred to the AFP, the CCPM is used to ensure that the AFP's resources are directed to high priority matters. Decisions on whether to accept or reject a referral are based on set criteria, such as the impact of the alleged criminal activity on the community, the priority afforded to that type of crime, and the resources required to successfully investigate or resolve the matter.³³

The effect of this is that some Commonwealth crime may not be dealt with to any extent, and 'smaller' cases may never receive priority.³⁴ The AFP has never sought to cover all aspects of any type of crime. Many offences fall outside the AFP's jurisdiction. The AFP is also a small agency and must operate within its resources.³⁵

1.25 The Case Categorisation and Prioritisation Model (CCPM) is utilised to determine what will be investigated,³⁶ and the Police Real-Time On Line Management and Investigation System (PROMIS) provides a range of information services that help assist in that decision, as well as assisting in case management and performance reporting. If individual offences, such as music piracy and copyright breach, for example, do not receive priority, they may not be examined even if collectively they could have a substantial economic effect:

. . . we had 91 referrals of intellectual property rights. Following our evaluation, 37 of these matters were accepted for investigation and 49 were rejected...The matters were rejected for a range of reasons, including the low priority of defence, the fact that civil remedy was more appropriate and/or a lack of Commonwealth jurisdiction.³⁷

1.26 It is not clear that this is a problem which has been addressed either by Government or by the AFP itself. It may be true to say that crime is always changing,

31 *Transcript of evidence*, Mr John Broome, p. 109

32 In addition, Government may refer other matters to the AFP for investigation, such as 'leaks' of information from government departments or agencies; see Chapter 2, Paragraph 2.18

33 *Submission 6*, Australian Federal Police, p. 4. See also *Transcript of evidence*, Australian Federal Police, p. 26: 'The AFP now directs the majority of its efforts to countering complex and serious crimes.'

34 See *Estimates Hansard*, Legal and Constitutional, 28 May 2001, pp. 94-95

35 *Submission 6A*, Australian Federal Police, p. 11. See also *Estimates Hansard*, Legal and Constitutional, 28 May 2001, p. 94

36 *Submission 6*, Australian Federal Police, pp. 2, 4

37 *Estimates Hansard*, Legal and Constitutional, 28 May 2001, p. 94

but this is not to say that new crime will always be more dangerous and costly than old crime. While tied funding may limit developments with respect to new crime, new crime may still not require substantial resources devoted to it – although this is a point with which the AFP does not appear to agree:

The dynamic environment of law enforcement means that emerging high priority crime will always take precedence over existing crime, and you do need the flexibility to be able to put your resources to the emerging trends.³⁸

1.27 The AFP's client base, which includes Ministers, government agencies and departments, private sector organisations, those in receipt of protection services, including politicians at particular risk,³⁹ and some law enforcement bodies,⁴⁰ is assessed as being satisfied with the quality of services provided.⁴¹ As far as the AFP is concerned, the major problems in the past have been funding and staffing. It now considers itself to be in a sound financial position, primarily as the result of substantial funding over the past five years and the resolution of the AFPAS payments.⁴² It has fewer staff than some sources would consider appropriate, but staffing numbers do not appear to be a major concern with management.

1.28 The issues of staffing, the measurement of performance, and the co-ordination of law enforcement resources are examined in greater detail in the following chapters.⁴³

National Crime Authority - Background

1.29 The National Crime Authority was established in 1984 as a 'national' as opposed to a federal body, that is, it is a Commonwealth/State organisation, which has separate and complementary Commonwealth and state legislation.⁴⁴ This facilitates

38 *Transcript of evidence*, Australian Federal Police, p. 29. It may also be useful for the AFP to provide information on the extent to which various types of Commonwealth crimes do not receive priority or are not investigated at all, as this could identify a need for other strategies over time

39 For example, AFP officers accompanied the Australian Parliamentary Delegation 'in connection with the independence referendum' - Australian Federal Police *Annual Report 1999-2000*, p. 26

40 State police bodies are seen as clients, and Commonwealth law enforcement agencies are described more as partners than 'clients': Australian Federal Police, Correspondence to the Committee, 22 August 2001, pp. 1-2.

41 *Transcript of evidence*, Australian Federal Police, p. 26, and see also *Estimates Hansard*, Legal and Constitutional, 22 November 2000, p. 90. As stated by then Deputy Commissioner Keelty, 'anyone who referred matters to the AFP became a potential person or entity to be surveyed. We looked at the rate of referral and...tried to survey the main referral agencies.' Performance measurement is discussed in more detail in Chapter 3, Paragraphs 3.112-3.118, and Chapter 7. From evidence provided, it was not clear if the AFP included as clients those whose referrals were rejected on the grounds of not having high priority. However, the AFP was open about the negative responses also: see *Estimates Hansard*, Legal and Constitutional, 22 November 2000, p 90.

42 See below, Chapter 5

43 See Chapters 6, 7 and 8 respectively

44 *Transcript of evidence*, National Crime Authority, p. 52; *Submission 7*, National Crime Authority, p. 7

effective management of crimes which may cover both State and Commonwealth offences, although the NCA has emphasised that ‘a significant proportion of [organised crime] will be the commission of State, rather than Commonwealth offences.’⁴⁵

1.30 Further, the NCA is not a police force.⁴⁶ Its role is to collect and analyse information about ‘complex organised crime’,⁴⁷ through use of multi-disciplinary teams,⁴⁸ and provide information on this to the ‘appropriate prosecuting authority.’⁴⁹ To assist in this it has the power to enforce the attendance of persons and the provision of information.⁵⁰

1.31 The references given to the NCA arise through the Inter-Governmental Committee (IGC) ‘authorising relevant State and Territory Ministers’ to do so.⁵¹ To determine national priorities, the police ministers depend on advice and information provided by the Senior Officers’ Group (SOG) and the National Crime Authority Consultative Group (NCACG).⁵² The NCA itself seeks advice from other law enforcement agencies as to priorities,⁵³ and works with bodies such as the AFP, the ACS and AUSTRAC.⁵⁴

Link with states and territories

1.32 The NCA has stated that it has good relationships with agencies in States and Territories,⁵⁵ and that the national task force arrangements and the secondment of state police officers to the NCA have assisted in this.⁵⁶ There is complementary legislation in each state and territory which facilitates the operation of ‘national’ strategies.⁵⁷

Changes to Function and Structure

1.33 The NCA has not had to undergo such drastic restructure as the AFP. Nonetheless, it believes that limited funding will affect the extent of its work, and that

45 *Submission 7A*, National Crime Authority, p. 1

46 *Submission 7*, National Crime Authority, p. 3

47 *Submission 7*, National Crime Authority, p. 3, *Submission 7A*, National Crime Authority, pp. 17-18

48 *Submission 7A*, National Crime Authority, p. 9

49 *Submission 7*, National Crime Authority, p. 7

50 *Transcript of evidence*, National Crime Authority, p.62; see also below, Chapter 2, Paragraphs 2.37-2.40, 2.65-2.67

51 See *Submission 7*, National Crime Authority, p. 31

52 *Submission 7*, National Crime Authority, p. 32 *Submission 7A*, National Crime Authority, pp. 13-14, p.31

53 *Submission 7*, National Crime Authority, p. 7, pp. 17-18

54 That is, Australian Customs Service and the Australian Transaction Reports and Analysis Centre

55 *Submission 7A*, National Crime Authority, pp. 14-15

56 *Submission 7A*, National Crime Authority, p. 2

57 See below, Chapter 2, Paragraphs 2.59-2.60

the increasingly sophisticated nature of organised crime, and its international focus,⁵⁸ requires concentration on certain areas:

...deployment of the NCA's limited resources must be prioritised towards those complex national matters where real difficulties confront our police services.⁵⁹

1.34 In addition, the NCA believes that it is essential to concentrate on particular outcomes, which include the following:

- Embark upon investigations directed to pursuing those at the pinnacle of criminal organisations; and
- Make strategic use of its special powers to advance investigations in areas where the extent of powers granted to police services would constitute a limitation.⁶⁰

1.35 The NCA also pointed out that when it began operation in 1984, organised crime was more hierarchical and static. It has increasingly become more flexible, less obvious, and more opportunistic.⁶¹ Approaches need to be able to respond to this, including broader cross-jurisdictional powers.⁶²

Recent structural change

1.36 There have been two main changes in focus which have occurred recently:

- Nationalisation, rather than regionalisation, of operations, resulting in more flexibility; and
- National corporate support.⁶³

1.37 The NCA referred to the lack of appropriate technology⁶⁴ as a factor which can seriously limit the organisation's capacity to deal effectively with major crime.⁶⁵ The improvement of technological resources therefore appears to be an essential element of the successful implementation of the above. A fuller discussion of this

58 *Submission 7*, National Crime Authority, p. 8: 'Australian organised crime investigations now commonly have a significant transnational component, necessitating pursuit of targets, drugs and criminal assets around the globe.'

59 *Submission 7*, National Crime Authority, p. 10; *Transcript of evidence*, National Crime Authority, pp. 66-67

60 *Submission 7*, National Crime Authority, p. 10

61 *Submission 7*, National Crime Authority, pp. 8-10, *Submission 7A*, National Crime Authority, pp. 2-4

62 *Submission 7A*, National Crime Authority, pp. 7-8

63 *Submission 7*, National Crime Authority, p. 12

64 *Submission 7*, National Crime Authority, p.19

65 *Submission 7*, National Crime Authority, p. 12

issue is to be found in a recent inquiry by the Parliamentary Joint Committee on the National Crime Authority.⁶⁶

Co-location with the AFP⁶⁷

1.38 Although there has been some pressure for co-location between the AFP and the NCA⁶⁸ the extent to which this means there can be greater use of information and technology between the two remains to be seen.⁶⁹ The AFP has received considerable funding for technological development, but even co-location would not result in certain technical improvements or information being shared:⁷⁰

The information that the NCA obtains is very stringently protected by its legislation, and whether it be friend or foe there is no automatic availability of NCA information to any person. For that reason alone, the NCA has to have...its own secure premises if they are in the same building...⁷¹

1.39 On the other hand, the NCA has stated that in some instances it would be appropriate for expensive technology to be shared, even though staff may not be co-located.⁷² The objective should be to achieve greater co-operation, regardless of location, so that common goals can be achieved.

1.40 The NCA also identified significant costs associated with co-location, and these should be taken into account relative to the proposed benefits.⁷³ Given that there is already sharing of some services, there may be limited benefits.⁷⁴

Staffing

1.41 The NCA has been affected by factors such as reliance on seconded staff, its responsibility for the salaries (and in some cases, all costs), of such staff,⁷⁵ and the possibility that a term of secondment may come to an end before an investigation is completed.⁷⁶ Other recent changes suggest that the operational staff will also have

66 Parliamentary Joint Committee on the National Crime Authority, *Law Enforcement Implications of New Technology*

67 *Submission 7*, National Crime Authority, p. 24

68 This was a recommendation of the Ayers Report, see below, Appendix 3, Finding 22 and also Chapter 3, Paragraphs 3.90-3.96

69 *Submission 7*, National Crime Authority, p. 22

70 See below, Chapter 3, Paragraph 3.97-3.100

71 *Transcript of evidence*, National Crime Authority, p. 57

72 *Transcript of evidence*, National Crime Authority, p. 60; see below, Chapter 3, Paragraphs 3.90

73 *Submission 7A*, National Crime Authority, pp. 10-12; see below, Chapter 3, Paragraphs 3.92, 3.97

74 *Submission 7A*, National Crime Authority, p. 12; see below, Chapter 3, Paragraph 3.99

75 *Submission 7A*, National Crime Authority, p. 25; see below, Chapter 2, Paragraphs 2.71-2.72, and Chapter 6, Paragraphs 6.87-6.92

76 *Submission 7*, National Crime Authority, p.14. *Transcript of evidence*, National Crime Authority, pp. 63-64; see also below, Chapter 2, Paragraphs 2.72-2.73

some administrative functions,⁷⁷ but also that greater efficiency will reduce administrative work, thus allowing more time for operations.

1.42 The NCA is also taking up the Parliamentary Joint Committee on the National Crime Authority's 1998 recommendation of employing longer-term contract investigators to provide some stability and continuation to investigations.⁷⁸ Nonetheless, the high costs of some seconded staff, and the possibility that many of them require additional training, are expenses not adequately addressed by current funding arrangements.⁷⁹

Funding

1.43 The NCA has stated that its base funding has not increased, although it occasionally receives additional, tied, funding for special projects.⁸⁰ A major concern is this level of base funding, the need for improved technology, and the cost of seconded staff. Funding issues concerning the AFP and the NCA are considered in further detail in Chapter 4.

Need for Legislative change

1.44 A major issue which has become more prominent during the period of inquiry is the extent to which further legislation is required in order to facilitate the operations of bodies such as the NCA and the AFP. For example, the need for legislation which would enable seizure of the proceeds of crime has been discussed for a number of decades with little result,⁸¹ although the Committee notes the provision in late 2001 of an exposure draft of the *Proceeds of Crime Bill 2001*. Also of note are *the Measures to Combat Serious and Organised Crime Bill 2001*, *the Cybercrime Bill 2001* and *the National Crime Authority Legislation Amendment Bill 2000*.⁸²

1.45 In the past, some major crimes –such as money laundering – have not been able to be successfully prosecuted:

The legislation requires proof of a predicate offence that has to demonstrate that the money that you laundered was money that came precisely from a particular offence.⁸³

77 *Submission 7*, National Crime Authority, pp. 16-17

78 *Transcript of evidence*, National Crime Authority, p. 65. The 1998 report of the Parliamentary Joint Committee on the National Crime Authority was entitled *Third Evaluation of the National Crime Authority*

79 *Submission 7A*, National Crime Authority, pp. 24-26, 27-29

80 *Submission 7*, National Crime Authority, pp. 3, 4-5 and 24-28; *Submission 7A*, National Crime Authority, pp.22-23

81 *Submission 7A*, National Crime Authority, p. 5

82 See below, Chapter 2, Paragraphs 2.80-81

83 *Transcript of evidence*, National Crime Authority, p. 72

1.46 The development of ‘civil forfeiture’ laws is seen as being especially useful, as these ‘enable proceeds of crime to be confiscated in civil courts according to civil rules of proof and procedure without the need for a criminal conviction.’⁸⁴ Additionally, legislation that enables access to computers and downloading of information is seen as important to effective fighting of electronic crime.⁸⁵ Further comment on the need to continually update legislation ‘to ensure that law enforcement agencies have the appropriate tools to investigate criminal activity involving the use of new technologies’,⁸⁶ demonstrates the importance of ensuring that the law can facilitate a rapid response to new criminal activity.

1.47 Both the AFP and the NCA see part of their role as being the identification of legislative change. In August 2001, the NCA emphasised this point in its paper *Australia’s National Interest and Consequent Policies*.⁸⁷

More effective co-ordination of Commonwealth Law Enforcement

1.48 The question of the increasing complexity or different nature of crime, and the question of the need for a co-ordinating body to manage this complexity are matters that are closely linked. It has been argued both that crime is still much the same in nature, but that it is run in new ways; and, on the other hand, that it has few boundaries and less discipline, allowing both heavily organised and well structured crime to operate alongside smaller, opportunistic players – although these latter may well intend to become bigger players. The development of cybercrime and the capacity of criminals to develop new ways of committing crime and hiding their profits suggest that only maximum use of all resources will allow for some limitation on the in international movement of substantial funds and their re-direction into other forms of criminal activity and into legitimate business to be used as a cover.

1.49 While some evidence to the Committee suggested that there was effective liaison and co-ordination adequate to meet the challenges of international crime, other evidence stated the contrary. It is claimed by some that while there is considerable liaison, there is a lack of required co-ordination and no clear authority for planning and development, especially in respect of long term strategies.⁸⁸ The NCA in particular believes that a holistic, whole of government, approach is required.

...the appropriate response to organised crime is not only to continue to build the capability of the NCA and partner agencies with an organised crime function. The nature of organised crime is such that a more strategic

84 *Submission 7A*, National Crime Authority, p. 5

85 *Submission 7A*, National Crime Authority, pp. 6-7

86 *Submission 7A*, National Crime Authority, p. 21

87 National Crime Authority, *Australia’s National Interest and Consequent Policies*, pp. 4, 5, 43-44

88 See, for example, *Submission 2*, Mr John Broome, p. 20. See below, Chapter 3, Paragraphs 3.73-3.90, 3.119-3.125, and Chapter 8, Paragraphs 8.1-8.2, 8.59-8.76

approach is required, focusing law enforcement agencies collectively on the problem and including other stakeholders.⁸⁹

1.50 Given the development of cybercrime in particular, it is essential that the resources available to the various agencies are used appropriately with no overlap or duplication, and that there is high quality assistance from the supporting agencies such as the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Office of Strategic Crime Assessments (OSCA), the Australian Institute of Criminology (AIC) and others. It would be a major economic and policing problem for Australia if territorial issues between agencies, or lack of integration of support work, limited the capacity of Commonwealth agencies to operate to their fullest potential, and to work effectively with the states and territories in this task.

1.51 This issue is discussed further in Chapters 3 and 8.

89 National Crime Authority, *Australia's National Interest and Consequent Policies*, p. 47 and see also pp. 9-10

