

CHAPTER 4

THE RESOURCING OF THE AFP AND THE NCA, INCLUDING THEIR CURRENT BUDGET ALLOCATIONS AND 2000-01 FORWARD ESTIMATES, IN RELATION TO THEIR RESPECTIVE CHARTERS

Charters of the AFP and NCA

4.1 In looking at the resourcing of an agency, it is obviously relevant to have regard to the functions which it is asked to perform. As Mr John Broome, former Chair of the NCA, said in evidence to the Committee:

Does it [the NCA] have enough? It has to use what it has got. I am not here to say that it should have a budget of \$100 million, for example, because I think it is far more important for us to actually work out what we want it to do, and then we can answer the question about how much you want to spend on those kinds of activities.¹

4.2 The Committee was asked by the Senate to inquire into the resourcing of the AFP and NCA in relation to their respective charters. Their charters, or the functions which they are asked to perform, are discussed in Chapter 2²

4.3 The AFP is conscious of the need to ‘cut its coat to suit its cloth’. It stated:

The AFP must ensure that its limited resources are directed to the matters of highest priority and the decision to accept or reject matters for investigation is based on this precept. All matters are evaluated in accordance with a Case Categorisation and Prioritisation Model (CCPM) which considers the nature of alleged crime, the impact of the criminality involved, and the resources required for the AFP to investigate the matter.³

4.4 The NCA is also conscious of the need to ‘make ends meet’. In the statement *Future Direction of the National Crime Authority*, issued in May 2000, its Chair, Mr Gary Crooke QC said:

... deployment of the NCA’s limited resources must be prioritised towards those complex national matters where real difficulties confront our police services.⁴

1 *Transcript of evidence*, Mr John Broome, p. 106

2 See above, Chapter 2, Paragraphs 2.45-2.46

3 *Submission 6*, Australian Federal Police, p. 82

4 *Annual Report 1999-2000* National Crime Authority, pp. x-xi

Concerns about the resourcing of the AFP and NCA

AFP

4.5 Concerns about the funding of the AFP were expressed by the AFPA in particular. In its initial submission to the inquiry, dated 5 March 2001 and therefore before the 2001-02 Budget, it stated, among other things:

- With the completion of the AFP reform program, it is evident that the AFP remains significantly under resourced for its broad functional role;
- Emergency funding as a result of the Ayers review and other significant Tied Funding initiatives by Government over the last 3 years has temporarily stabilised the AFP;
- Tied Funding should only be used as a short term funding strategy to address emerging criminal activity. Tied Funding should be measured against desired outcomes in order to establish long term resourcing strategies;
- Current Tied Funding under Ayers Stage 1 should be transferred into AFP base funding on a continuous basis;
- Current Tied Funding under the National Illicit Drug Strategy (NIDS) and in relation to ‘People smuggling’ should be transferred into AFP base funding on a continuous basis;
- AFP sworn Federal Agent numbers should be increased from 1,976 to a minimum of 3,000 in order to address the emerging criminal environment; and,
- Ayers Stage 2 funding should address the required increase in sworn Federal Agent numbers along with the purchasing of high technological equipment to assist investigations.⁵

4.6 One matter that concerned the AFPA was the reduction in the AFP Budget appropriation of approximately \$30-\$35 million forecast in the Attorney-General’s PBS for 2000-01.⁶ This showed the total operating revenues for the AFP as follows:

Total Operating Revenues 2000-01/2003-2004

2000-01	2001-02	2002-03	2003-04
\$m	\$m	\$m	\$m
365.559	345.391	326.651	329.292

⁵ *Submission 9*, Australian Federal Police Association, pp. 9-10

⁶ Portfolio Budget Statements 2000-01 Attorney-General’s Portfolio, p. 282

NCA

4.7 The NCA expressed concern about the extent of its total funding and the difficulties inherent in tied funding. In discussing with the Committee whether the NCA's situation would be easier if its funding was not tied, Mr Crooke said:

It would make it easier in some sense because it would give us flexibility, but it would not give us the capacity to enlarge these sorts of areas greatly. We still have this question of resources, and you would probably have to say that we are dangerously close to a critical mass in doing what we are obliged to do or are charged by the legislation and having the resources to do it effectively.⁷

4.8 Of particular concern for the NCA was the limited period for which specific tied funding was provided. Its Annual Report for 1999-2000 stated:

. . . with the end of tied funding at the completion of initiatives such as Swordfish, the NCA faces a substantial drop in its appropriations . . . and a potential loss of highly trained and experienced officers. Without a positive forecast for continuing support, there is a risk that current operational successes will be affected.⁸

4.9 The NCA's forward years' total operating revenues as shown in the 2000-2001 Budget papers⁹ were:

Total Operating Revenues 2000-2001/2003-2004

2000-01	2001-02	2002-03	2003-04
\$m	\$m	\$m	\$m
52.462	53.507	49.413	41.910

Factors impacting on the resourcing of the AFP and NCA

4.10 There have been several significant factors which have impacted, or continue to impact, on the funding of the AFP and NCA. Some have been particular to them or to one of them but others appear to have affected a wider range of agencies or even agencies in general.

Agency-specific factors –The Australian Federal Police

4.11 There are four major factors that have affected AFP funding over the past decade or so.

7 *Transcript of evidence*, National Crime Authority, p. 67

8 National Crime Authority, *Annual Report, 1999-2000*, p. 69

9 Attorney-General's Portfolio Budget Statements 2000-01, p. 304

4.12 The first of these was the Cessation Payments Scheme, originally established by determination of the Minister for Justice on 23 December 1987 and continued in operation by determination of the Commissioner on 22 December 1989. The determination arose out of the requirement for all police members to retire upon reaching the age of 60 years. The Minister recognised that this requirement prevented police members from obtaining full retirement benefits from the Commonwealth Superannuation Scheme (then the only relevant operating Commonwealth scheme). Police members who retired between the ages of 55 and 60 were entitled to a lump sum payment calculated by reference to final annual rate of salary, age and number of years of service.¹⁰

4.13 The second factor arose out of the passage of the *Australian Federal Police Legislation Amendment Act (No 2) 1989*, which put all police and staff members on a fixed term appointment system, instead of tenured office, from 1 January 1990. Effectively, instead of being ‘permanent’, they were engaged on five or ten year contracts.

4.14 A Commissioner’s determination, dated 22 December 1989, provided for a compensatory lump sum payment (Australian Federal Police Adjustment Scheme or AFPAS) on a member’s completion of his or her contract or contracts, calculated at the rate of 12.5% of accumulated salary over the whole time of the contract or contracts. New members had to serve for two years before becoming entitled to the benefit but that two years’ service would then be included. Any entitlement would be forfeited on dismissal or early resignation. A member could not receive both Cessation Payment and AFPAS.¹¹

4.15 The third, and possibly the most significant, particular matter impacting on the AFP’s finances was its ongoing reform, which dates back to the 1980s. The Report of the *Review of Commonwealth Law Enforcement Agencies* stated that the innovative work of the AFP coincided with the completion of some very significant changes to the AFP’s work force. Among the reforms it mentioned as having been made in the previous five years were:

- abolition of the seniority system for selection and salary advancement processes;
- introduction of a merit based incremental salary arrangement;
- lateral recruitment;
- flexible starting salaries; devolution of authority; and
- movement towards a service comprising 50% tertiary qualified personnel.¹²

10 See also below, Chapter 5

11 *Submission 6B*, Australian Federal Police, pp. 7 ff.

12 Report of the *Review of Commonwealth Law Enforcement Arrangements*, February 1994, p. 180

4.16 The AFP's drive for excellence continued under Commissioner Palmer, who was appointed late in 1994:

During 1996-97, the AFP change process outlined in previous annual reports has reached the point where a widespread environment of commitment to continuous review and improvement has been created. Briefly, the process had previously identified changes required to AFP expression of core business, ethos, organisation, people and key relationships. A series of strategic, behavioural and organisational reforms were instituted, including a redefinition of what constitutes 'high-value' business, the adoption of a flexible, empowered, teams-based approach to AFP activities . . .¹³

4.17 The AFP Annual Report for 1996-97 also stated:

To ensure that it was operating efficiently and effectively and making the best possible use of its resources, in April 1996 the AFP commissioned a review by KPMG of its major Commonwealth law enforcement program (Program 1: Investigation of Crimes Against the Commonwealth). The review was also tasked with identifying factors which inhibit the highest levels of corporate performance and to advise on the progress of the change process itself.¹⁴

4.18 In addition, the Government commissioned the Deloitte and Touche Consulting Group to review AFP resource management practices, in order to establish the form and effectiveness of the AFP's management, planning and resource allocation processes. The review reported that the AFP had the key elements of an effective resource allocation process at the operational level in place, but identified areas that needed improvement.¹⁵

4.19 In 1997-98 Coopers and Lybrand Consultants were asked to review the AFP's financial business practices to identify how the AFP might:

- manage its finances more effectively
- gain efficiencies from improved financial processes.¹⁶

4.20 This review built on the report of the Deloitte and Touche Consulting Group and sought to maximise the effectiveness and efficiency of the AFP's new integrated management system and associated procedures to be implemented from 1 July 1998. It identified further scope for improving financial business practices and processes.¹⁷

13 Australian Federal Police *Annual Report 1996-97*, p. 5

14 Australian Federal Police *Annual Report 1996-97*, p. 10

15 Australian Federal Police *Annual Report 1997-98*, p. 8

16 *Submission 6A*, Australian Federal Police, p. 22

17 Australian Federal Police *Annual Report 1997-98*, p. 8

4.21 One aspect of the AFP's reform and restructuring was 'employee reprofiling', or redundancies for officers who were seen as not being able to cope with the 'new' AFP. The AFP has indicated that, in 1995-96, a total of \$5.5 million was allocated for 87 redundancies and, in 1998-99, \$4.7 million was allocated for the reprofiling of 72 employees. Provision for further reprofiling was made under the Ayers Reform Program.¹⁸

4.22 The fourth particular matter impacting on the resources of the AFP was the Ayers Report. In February 1998, the Government announced that Mr Tony Ayers AC, former Secretary of Defence, would undertake a review of the AFP's resourcing needs to ensure that it was appropriately resourced to perform its functions over the next five years.¹⁹ The Committee sought a copy of the Ayers Report, which has not been publicly released. The Minister for Justice and Customs made a summary of the findings of the Ayers Report available to the Committee in January 2001, and the summary was also reproduced in the first submission from the Attorney-General's Department.

- In summary, the Report's findings in relation to resources were:
- The AFP was in dire straits in relation to its funding and was facing significant financial problems. It was currently budgeting on reductions of some 30 per cent in operational (non-salary) expenditure and, while it would continue to focus on illicit drugs, it was clear that other types of investigations would decrease and that levels of services to Commonwealth agencies and to other Australian police services would decline further. The AFP also faced a further decline in staffing numbers and continuing problems in relation to technical and forensic services and equipment. These problems would require the Commissioner to consider various options, including the possible closure of some regional offices on financial grounds.
- There should be a two-phase recovery program:
 - phase 1 should occur over the next 3 years and address the most obvious gaps in staff members, reprofiling and workplace reforms, equipment, overtime, travel, recruitment and training.
 - phase 2 should occur over the following 2 years and be aimed at developing the AFP into a law enforcement agency that is second to none in the world.
- It would cost \$125.893m to fully implement phase 1 of the recovery program. The AFP should be able to generate internal savings of some \$50.8m through internal efficiencies during this phase. The AFP would need, therefore, additional funding of \$75.093m to implement phase 1.

18 *Submission 6A*, Australian Federal Police, pp. 17-18

19 Australian Federal Police *Annual Report 1997-98*, p. 9

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- The primary impact of phase 1 would be a significant increase in investigations associated with the AFP's core business. Funding provided under phase 1 would also permit the stabilisation of the AFP's resource base and implementation of key reforms.
 - As part of phase 1, the total number of AFP staff should be increased from its current level of 2,624 to 2,800.
 - During phase 1 an alternative to AFPAS should be developed in negotiations between the AFP and the AFPA. This might result in a short-term cost for a long-term gain. No provision had been made for meeting these costs by the review.
 - The AFP did not have the capacity to meet the accrued debts of AFPAS in the short or long term. It should be funded to meet emerging cash requirements and liabilities in this area. To do otherwise simply meant funding would have to be taken away from operational areas.²⁰

4.23 In July 1998, after the 1998-99 Budget was brought down, the Prime Minister and the then Minister for Justice and Customs announced a program of \$115 million, partially funded by an additional \$65 million to be provided to the AFP over three years. The balance, about \$50 million, was to be met by the AFP through a range of cost reduction, business re-prioritisation and market testing activities. The program included a range of initiatives including the establishment of a budget charter for the AFP, recruitment of additional staff to enhance operational and investigative capabilities, and restructuring the AFP's employment base to develop a more mobile, flexible and skilled workforce.²¹ The Summary of the Project Costs and Funding for the Reform Program is as follows:

20 The Ayers report is considered in more detail in Chapter 3

21 Australian Federal Police *Annual Report 1998-99*, p. 12

Ayers Reform Program

PROJECT DESCRIPTION	COST			
	1998-99 \$m	1999-00 \$m	2000-01 \$m	TOTAL \$m
A Recruitment – Increase staff to 2800	9.8	13.4	12.7	36.0
B Payment of AFPAS entitlements on termination	-	5.3	9.9	15.2
C Learning & Development Strategy	4.6	3.1	2.2	9.9
D Reprofiting & Restructuring of Workforce				
(i) 1995 Change Agreement	4.9	4.9	4.9	14.6
(ii) Restructuring of Remuneration	3.3	4.6	4.6	12.6
(iii) Additional Reprofiting of staff	1.5	3.4	-	4.9
E Equipment Upgrade – One-off purchases	5.0	6.0	1.5	12.5
F Upgrade of Forensic Facilities	1.0	3.9	-	4.9
G Upgrade of Firing Range	0.7	-	-	0.7
H Liquidity Payments to Regions	4.8	-	-	4.8
I Additional Mobility Costs	0.2	0.5	0.5	1.1
TOTAL	35.8	44.9	36.3	117.0²²

4.24 On 20 September 1999 the Government announced its allocation of a further \$155 million over three years to enable the AFP to continue its staffing and resources upgrade program. The funding included \$105 million to pay out accrued termination benefits associated with fixed term contracts (AFPAS and Cessation Payments were effectively to be cashed out). With the allocation of the further \$50 million for the AFP's reform and resources upgrade program, the Government was effectively fully

funding it. The AFP was therefore able to use its internal savings for such matters as the cost of accrued leave liability, a payrise of 4% in November 2000 and other costs associated with the 3 year Certified Agreement dating from November 1999.²³

4.25 The Australian Federal Police Certified Agreement 1999-2002, having been accepted by the AFP workforce, was ratified by the Australian Industrial Relations Commission on 12 November 1999. Under the agreement entitlements to Cessation Payment and AFPAS ceased as from 6 January 2000. Associated with the negotiation of the agreement was passage of the *Australian Federal Police Legislation Amendment Bill 1999* which was to replace the fixed term employment regime with continuous employment. In addition, all requirements for members to retire on reaching a particular age were revoked. These changes removed the underlying rationale which had sustained the AFPAS and Cessation Payment schemes.²⁴

Factors affecting the National Crime Authority

4.26 The NCA's finances were specifically affected by the Government's decisions implementing the Report of the Review of Commonwealth Law Enforcement Arrangements²⁵, which was issued in February 1994. The Report said that the NCA had recently moved its focus and had become an overall strategist, a coordinator of services from relevant police and other agencies, and a collector and provider of strategic intelligence.²⁶ It also stated:

In view of what the Review said earlier about the need for multiplicity of skills inside the NCA to deal with the wider roles of coordination, shared strategic values and intelligence, cooperative investigation, alternative remedies and development of the law in aid of the strategy against particular organised crime groups, there is a need to re-examine the nature of the staffing resources within the NCA. Much of the staffing of the NCA was constructed in a different era when the approach was more one of enforcing laws against organised crime groups.²⁷

4.27 The Report recommended that the NCA should alter its employment profile by attracting strategic analysts, legal advisers, co-ordinators and experts able to participate in specialist international fora.²⁸ It recommended that the Government request the NCA Chairperson to indicate within three months the staff changes and

23 *Submission 6*, Australian Federal Police, p. 29

24 *Submission 6B*, Australian Federal Police, pp. 8-9

25 The Report of the *Review of Commonwealth Law Enforcement Arrangements* recommended the creation of the Commonwealth Law Enforcement Board (CLEB), for which the NCA was made responsible. The funding for CLEB was therefore administered by the NCA and is shown in a subsequent table as 'tied funding' for the years 1994-95 to 1996-97

26 Report of the *Review of Commonwealth Law Enforcement Arrangements*, June 1994, p. 98

27 Report of the *Review of Commonwealth Law Enforcement Arrangements*, June 1994, p. 103

28 Report of the *Review of Commonwealth Law Enforcement Arrangements*, June 1994, p. 240

savings which might accrue as a result. The Review believed that savings should be in the order of \$2m per annum.²⁹

Following Government acceptance of the Review of Commonwealth Law Enforcement Arrangements, the Chairperson was required to report to the Minister on the structure and staffing required by the Authority to undertake its revised menu of work. This review defined a new staff profile for the Authority and this has been accepted by the Minister. The Review resulted in savings of \$1.8 million, of which \$350,000 was allocated to support the Office of Strategic Crime Assessments.³⁰

Across the board factors

The Efficiency dividend

4.28 One important factor which affected all Commonwealth agencies was the efficiency dividend, about which Commissioner McAuley wrote as early as 1992-93:

The imposition of the so-called efficiency dividend (now applying to our Operations as opposed to only our administrative expenses as was formerly the case) can only be met by curtailing Operations and reducing staff . . . in an organisation in which about three-quarters of the costs are salary-related the efficiency dividend is now clearly counterproductive to efficiency.³¹

Targeted Reductions in Running Costs

4.29 This pressure was intensified for all agencies by the requirement for reductions in running costs from 1996-97. The 1996-97 Portfolio Budget Statement for the Attorney-General's Portfolio, showed that, apart from a general reduction of 2 % in running costs, there were to be additional savings in running costs of three programs, Family Court, CLEB and NCA.³² The PBS showed Budget Measure savings for the NCA as being:

National Crime Authority – Savings 1996-1997

	\$m
2% Reduction in running costs	0.714
Savings through increased efficiencies	0.198
Reduction in running costs	2.000
Telecommunication savings initiative	0.031

29 Report of the *Review of Commonwealth Law Enforcement Arrangements*, June 1994, p. 241

30 National Crime Authority, *Annual Report 1994-95*, p. 61

31 Australian Federal Police, *Annual Report, 1992-93*, p. iii

32 Attorney-General's Portfolio Budget Statements 1996-97, pp. 19-20

4.30 These savings were also expected to be ongoing:

National Crime Authority – Ongoing Savings

	1997-98	1998-99	1999-00
	\$m	\$m	\$m
Savings through increased efficiencies	0.201	0.205	0.210
Reduction in running costs	2.013	2.053	2.100

4.31 The PBS stated that the proposal for the reduction in the NCA's running costs was an election commitment. The purpose of the proposal was to contribute to the achievement of the Government's fiscal targets.³³

4.32 The 1996-97 Attorney-General's PBS showed Budget Measure savings for the AFP³⁴ as being:

Budget measures savings AFP

	\$m
2% reduction in running costs	3.41
Savings through increased efficiencies	1.159
Telecommunications savings	0.063

4.33 In other words, unlike Family Court, CLEB and NCA³⁵ (see paragraph 4.29 above), the AFP was not required to find additional savings in running costs. The PBS for 1997-98 showed that the portfolio was to make savings in running costs, as follows:

Attorney-General's Portfolio Savings in Running Costs

1997-98	1998-99	1999-00	2000-01
\$m	\$m	\$m	\$m
26.509	26.878	27.382	27.922

33 Attorney-General's Portfolio, *Portfolio Budget Statements 1996-97*, p. 160

34 Attorney-General's Portfolio, *Portfolio Budget Statements 1996-97*, p. 154

35 See above, Paragraph 4.28

4.34 Certain parts of the portfolio (not including the AFP) were to make specific savings in their running costs additional to those for the portfolio.³⁶

Attorney-General's Portfolio - Additional Running costs savings

	1998-99	1999-00	2000-01
	\$m	\$m	\$m
Human Rights & Equal Opportunity Commission	4.369	4.447	4.532
Aust. Law Reform Commission	0.508	0.517	0.527
Insolvency & Trustee Service, Australia	0.305	0.311	0.318
Administrative Appeals Tribunal	0.711	0.724	0.738
Aust. Bureau of Criminal Intelligence	0.509	0.519	0.530
Aust. Institute of Criminology	0.203	0.207	0.211
Austrac	0.509	0.519	0.530

4.35 In evidence to the Committee, the NCA referred to the tighter administration required of it by reductions in funding. In response to a query about operational budgets with tied funding, the NCA indicated that it had little discretion and had to prioritise carefully. It had developed a very sophisticated filtering system about the things it would be able to grant resources to, in the sense of complex national crime, and in the sense of truly national operations: it sought to concentrate on some truly difficult, complex, long-running issues that it just had to find the resources to service.³⁷

Cross agency tied funding

4.36 One innovation which affected the funding of the AFP and NCA was the concept of cross-agency tied funding. In 1997-98, the program for the investigation of money laundering and fraud against the Commonwealth over three years (codenamed 'Swordfish') was begun. The NCA received \$20 million under this program. It has since been extended for a further three years.³⁸ In 1998-99, under the National Illicit Drugs Strategy (NIDS), the NCA was allocated \$21 million over four years for the

36 Attorney-General's Portfolio, *Portfolio Budget Statements 1997-98*, pp. 32-33

37 *Transcript of evidence*, National Crime Authority, p. 66

38 *Submission 7*, National Crime Authority, p. 25

investigation of South East Asian organised crime and the AFP was allocated \$18 million for the establishment of new overseas posts and more mobile strike teams.³⁹

Funding to 2000-01

Reduction in base funding

4.37 Both the AFP and the NCA have argued that their base funding, i.e., their non-capital funding which is not 'tied' to nominated programs, has actually diminished over recent years.

4.38 The AFP table showing budgetary allocations from 1995, including breakdowns of tied funding (such as National Illicit Drugs Strategy or NIDS, Olympics and Commonwealth Heads of Government Meeting or CHOGM) and on the AFP's resources for its other targets⁴⁰ is as follows. It is to be noted that the AFP's base funding declined in the years 1996-97, 1997-98 and particularly in 1998-99. On the other hand, the AFP's Total Revenue Funding reached its lowest point in 1997-98, before the Government responded to the Ayers Report.

39 'Drugs Strategy' *Media Release*, Minister for Justice and Customs, 17 March 1998

40 *Submission 6A*, Australian Federal Police, pp. 13, 28

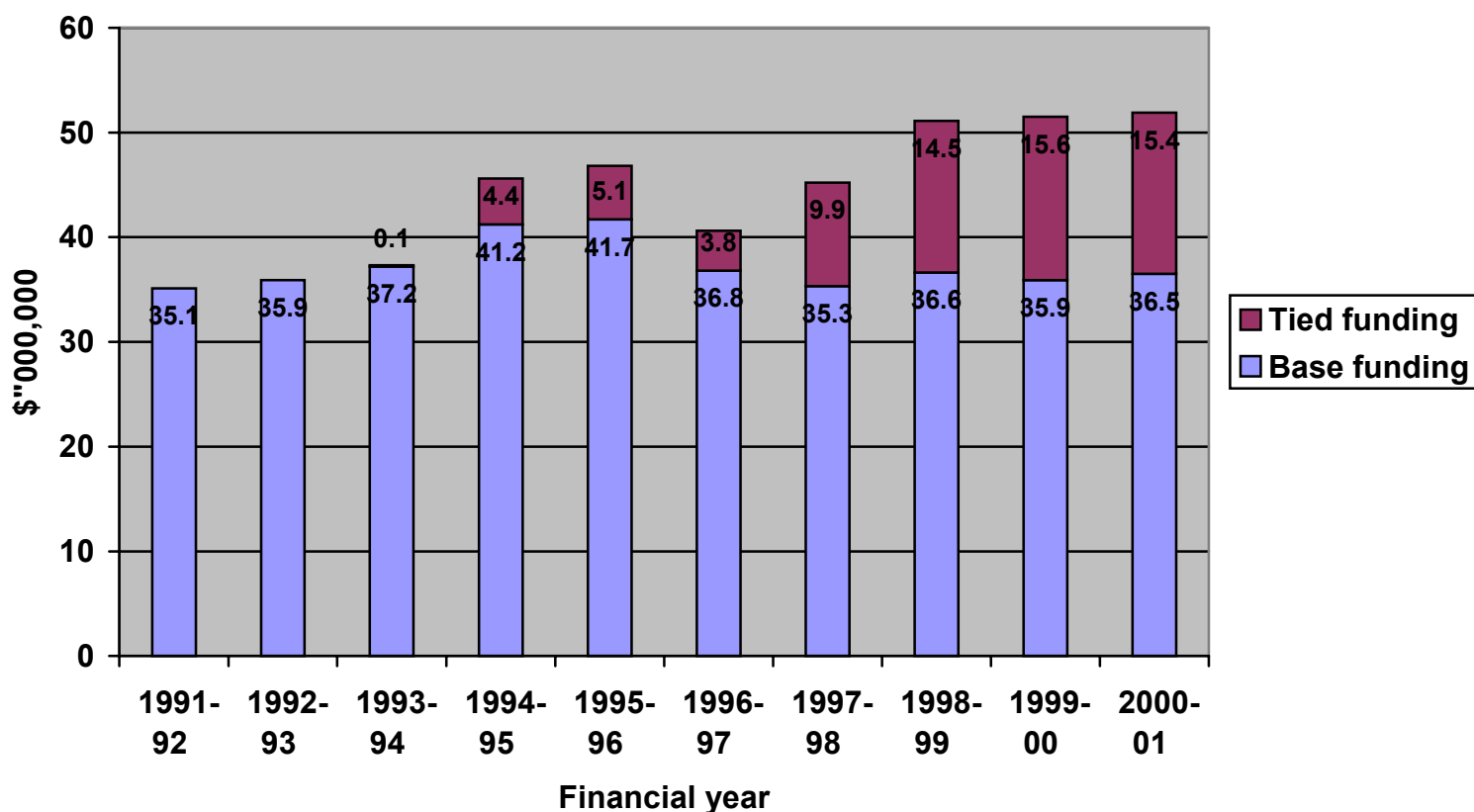
AFP RESOURCING 1995-2001							
		1995-96	1996-97	1997-98	1998-99	1999-00	2000-01
		\$m	\$m	\$m	\$m	\$m	\$m
Base funding		196.6	180.9	180.3	170.0	194.1	196.9
ACT Community Policing		52.0	53.3	55.3	56.0	59.0	65.8
Other Revenue		13.8	12.7	15.5	17.8	22.0	22.7
Sub-total		262.4	246.9	251.1	243.8	275.1	285.4
<u>Special Tied Funding</u>							
Reform Program		n/a	N/a	n/a	27.4	39.1	28.5
National Illicit Drug Strategy		n/a	N/a	n/a	14.7	23.3	23.5
Unauthorised arrivals		n/a	N/a	n/a	n/a	1.4	3.9
Sydney Olympics		n/a	N/a	0.5	5.4	6.5	10.6
Peace Monitoring (East Timor)		n/a	N/a	n/a	n/a	16.2	25.4
CHOGM ⁽¹⁾		n/a	N/a	n/a	n/a	0.2	2.2
National Information Infrastructure		n/a	N/a	n/a	n/a	n/a	0.2
Mobile Phone Interception contract		1.4	3.2	0.9	n/a	n/a	N/a
Reprofiling Cessation Payments		n/a	N/a	n/a	4.7	n/a	N/a
AFPAS Funding		2.9	4.9	0.9	4.0	(Moved to capital)	
Sub-total		4.3	8.1	2.3	56.2	86.7	94.4
Total Revenue funding		266.7	255.0	253.4	300.0	361.8	379.8
<u>Capital Funding</u>							
Bill 2 Capital Funding		5.7	3.0	2.5	2.5	n/a	N/a
AFPAS indicative drawdown						60.0	35.0
Communication Equipment						-	1.1
Carryover						25.9	
TOTAL CAPITAL		5.7	3.0	2.5	2.5	85.9	36.1

(1) Additional other Revenue received from PM & C. – this is in addition to 'Other revenue' above.

4.39 The NCA tables reproduced on the following pages show that NCA base funding since 1991-92 peaked in 1995-96, then declined. However, the first table also shows that the NCA's total funding has steadily increased over that period, apart from declines in 1992-93 and 1996-97:

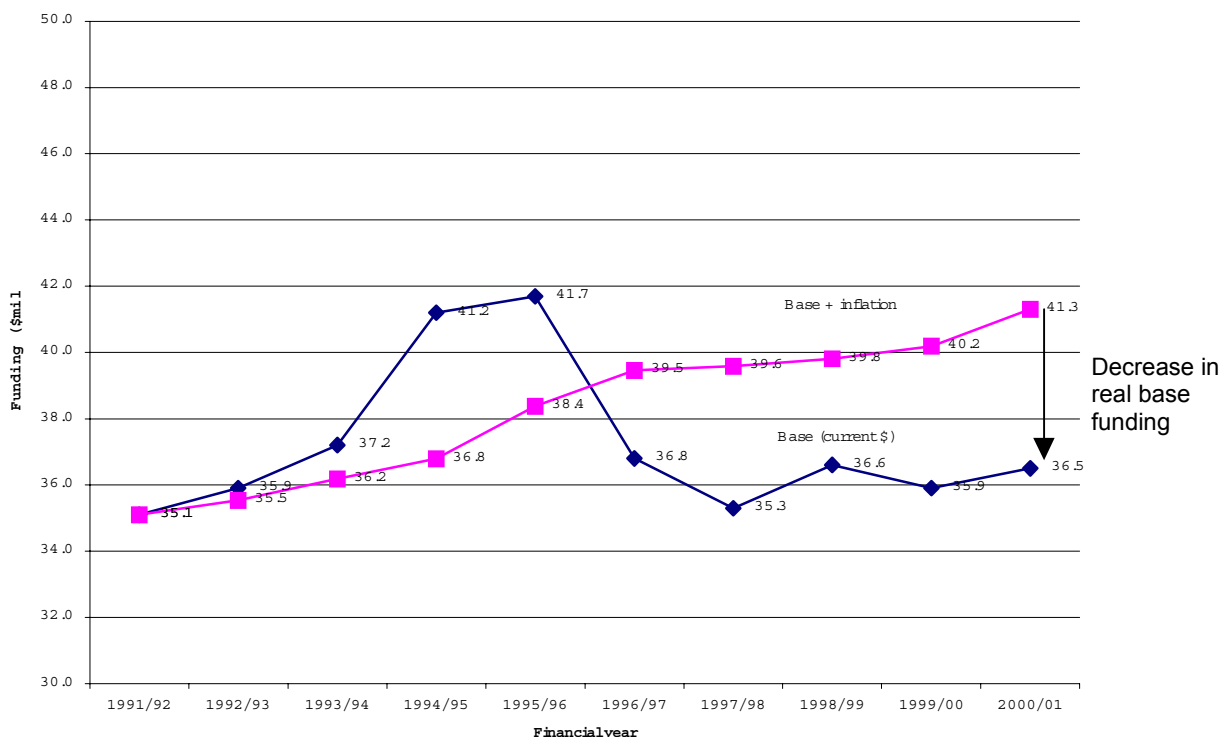
The NCA's budget has been reduced by some 20% over the past three years, 1994-95, 1995-96 and 1996-97, resulting in a restructure of the organisation and a review of operational priorities with resources more focused on operational outcomes and support services moving to better practice. As a result, the Perth and Adelaide offices were significantly reduced. There was a further 5% reduction in core funding in the 1996-97 budget.⁴¹

Chart 4 (Revised July 2001)
NCA Base vs Tied funding 1991/92 - 2000/01



41 National Crime Authority, *Annual Report 1996-97*, p. 57. It has to be noted that, while funds were taken from the NCA in 1994-95, this was at the suggestion of the Review of Commonwealth Law Enforcement Agencies. The apparent growth in National Crime Authority's 'base' funding from growing in 1994-95 and 1995-96, according to the National Crime Authority's Submission 7C, was due to such factors as carryovers from the previous year and additional provisions for Telecommunications Interception New Policy proposals. There was a fall in the National Crime Authority's base funding in 1996-97 and it would seem to have been far more than the 5% mentioned in the Annual Report

Chart 1 - Decrease in NCA base funding in real terms (Revised)
1991/92 - 2000/01



Source: Submission 7D, National Crime Authority

Effect of Tied Funding

4.40 The NCA seems to be more concerned than the AFP with the impact of funding being tied. One of its main concerns seems to be the fact that tied funding is given for fixed terms. It stated:

In recent years the NCA has received significant targeted funding increases. An initiative to investigate fraud against the Commonwealth (Swordfish) commenced in 1997—98 (\$20 million over three years) which has now been extended for a further three years to the end of 2002-03 (\$25.3 million), a four year allocation of \$21 million under NIDS commenced in 1998-99 and is due to expire in 2001-02 and additional NIDS funding of \$7.3 million over four years in 1999-00 which will expire in 2002-03. This targeted funding has allowed a concerted effort to be devoted to the specific priorities targeted by the Government and significant results have been achieved. However, with the end of tied funding at the completion of initiatives such as Swordfish, the NCA faces a substantial drop in its appropriations . . . and a potential loss of highly trained and experienced

officers. Without a positive forecast for continuing support, there is a risk that current operational successes will be affected.⁴²

4.41 The Committee notes that the Parliamentary Joint Committee on the National Crime Authority in its Third Evaluation of the National Crime Authority recommended:

That the National Crime Authority's base funding be urgently increased to ensure its ability to work with maximum effectiveness across the full range of organised crime activity.⁴³

4.42 The Government's response was:

The Government is committed to an effective national approach to dealing with organised crime and will continue to support Commonwealth law enforcement agencies appropriately. National Crime Authority funding is a matter for the Government to consider in the Budget context. This Government has adopted a supportive approach to the performance of the National Crime Authority. Funds appropriated for the National Crime Authority have included substantial amounts to cover specific projects. Budgets for agencies such as the National Crime Authority generally now comprise one off elements for specific work covering a number of years as well as recurrent funding.⁴⁴

4.43 The AFP, on the other hand saw that there were both advantages and disadvantages in tied funding. The advantages were in accountability. In addition, if the function no longer existed, one would expect the money to be removed. However, the AFP would prefer to see the tied funding rolled into base to allow it to plan for future years. The greatest disadvantage was inflexibility, which hindered the application of resources to the emerging trends.⁴⁵

4.44 A more positive view of the impact of tied funding was put by the NCA in its annual report for 1996-97:

In the 1997-98 Commonwealth Budget the Government announced specific funding for the NCA to extend its investigations into major fraud against the Commonwealth through complex money laundering and tax evasion schemes linked to organised criminal activity.⁴⁶ While this was a major vote of confidence in the NCA and its capacity to produce results, our base funding was further reduced to achieve the portfolio's savings target. This

42 National Crime Authority, *Annual Report 1999-2000*, p. 69

43 Parliamentary Joint Committee on the National Crime Authority, *Third Evaluation of the National Crime Authority*, April 1998

44 *Senate Hansard*, 7 December 2000, p. 21103

45 *Transcript of evidence*, Australian Federal Police, p. 29

46 Because the 1997-98 Budget was brought down on 13 May 1997, Mr Broome was able to write about it in the NCA report for 1996-97

means our base funding is now about 25% less than in 1994-95. The overall result, however, is that significantly greater resources are available to us than in the last financial year. This has not only been welcomed by the NCA and its staff, but by partner agencies.

The significant reductions in our base funding and the proposed changes in the Public Service Act provided both a requirement and an opportunity for the NCA to develop a more flexible and responsive structure. The change in nature of the activities which we investigate inevitably means that different skills and experience are required over time. While we remain strongly committed to the team approach which incorporates experienced investigators, financial analysts, lawyers, intelligence analysts and support staff, the particular mix may change depending on the type of investigation. Complex money laundering investigation may need staff with particular skills in financial analysis, for example. The NCA is therefore looking to create greater flexibility in its staffing and to this end all staff recruited to work on the initiatives announced by the Government in the 1997-98 Budget will be engaged for specific periods rather than in a permanent capacity. This will no doubt be a trend seen in many other areas of the public sector.⁴⁷

4.45 The experience of both agencies also suggests that even tied funds can be used to serve the general ends of the agency concerned. The AFP gave evidence that, as a result of the new funding provided by the Government under the National Illicit Drugs Strategy, all the overseas posts had been brought online.⁴⁸ The NCA also stated that some of its tied funding had been allocated to improving its basic operational infrastructure such as technical support facilities and equipment.⁴⁹

4.46 Although the NCA had its doubts, the experience of the AFP suggests that there is an element of flexibility in its use of tied funds. Acting Commissioner Keelty, as he then was, said in evidence:

There is a process by which we can rebadge, if you like, money that has been identified for a particular purposes – for example, East Timor funding...If we were not to expend all the money that has been allocated for East Timor, we may be able to go back to the Department of Finance to seek permission to use the money for another purpose . . .

. . . we have done exactly that in the Solomon Islands. The government had a need for us to be in the Solomon Islands at short notice and we were able to find funds within the East Timor budget. We advised the Department of Finance and we advised the Minister of that.⁵⁰

47 *National Crime Authority Annual Report 1996-97*, p.3

48 *Transcript of evidence*, Australian Federal Police, p. 43

49 *Submission 7A*, National Crime Authority, p. 23

50 *Transcript of evidence*, Australian Federal Police, p. 29

4.47 Although the AFP said that there was flexibility in the AFP's base funding but not in its quarantined funding, the Committee notes that Peace Monitoring (East Timor) is shown in the AFP's Resourcing Table⁵¹ as 'Special Tied Funding' and was not therefore part of base funding. Further, the AFP Reconciliation Table for 1999-2000 shows that \$10 million was transferred from East Timor funds to Capital for AFPAS payments.

4.48 The NCA, on the other hand, said that it would not be too optimistic about being allowed to transfer tied funds from one project to another, as the AFP had apparently been allowed to do.⁵² One argument raised by the NCA against its funding being tied was that its investigations were almost exclusively related to references given by the Inter-Governmental Committee of the NCA (the IGC), in relation to which its special powers could be exercised. Mr Crooke said:

... I think we are in a different category, too, because our investigations are almost exclusively related to references that are given to us, and that is another part of the process that does not relate to anybody else really.⁵³

4.49 However, the Committee notes that tied funding has been allocated to the Blade⁵⁴ and Swordfish⁵⁵ operational programs⁵⁶ and is not convinced that the process of references to the NCA by the IGC is incompatible with tied funding.

4.50 Whatever its flexibility, tied funding presents both advantages and disadvantages to law enforcement agencies. What is clear is that tied funding, whatever its restrictions, is better than none. The NCA gave evidence that it would prefer that there be no tied funding, but not if it meant less funding.⁵⁷ It is an oversimplification to argue that an organisation's base funding is lower when tied funding is available, than when there is no tied funding.

4.51 The Committee is conscious of the fact that it did not receive a submission from the Department of Finance and Administration on these key budget issues and is inclined to the belief that the question of tied funding cannot be resolved for the AFP and NCA alone, but that it must be resolved in the context of funding for law enforcement agencies in general.

51 See Paragraph 4.33 above

52 *Transcript of evidence*, National Crime Authority, pp. 58-59

53 *Transcript of evidence*, National Crime Authority, p. 70

54 South East Asian Organised Crime, particularly heroin trafficking

55 Fraud against the Commonwealth: money laundering, tax evasion and predicate offences, particularly drug trafficking

56 *Submission 7*, National Crime Authority, p. 18

57 *Transcript of evidence*, National Crime Authority, p. 70

Sufficiency in Total Funding

4.52 The AFP appears to be quite satisfied with its funding. In late 2000, the then Deputy Commissioner Keelty stated: 'We do not have a budget problem in the AFP.'⁵⁸ In May 2001, following the 2001-2002 Budget, Commissioner Keelty stated: 'I believe our Budget allocations reflect the Government's confidence in the AFP and their appreciation for the excellent operational results being achieved.'⁵⁹

4.53 Commissioner Palmer stated in the 1999-2000 Annual Report:

Despite this environment of almost constant change and challenge, the AFP is in a sound corporate and operational position. Firstly, we have created a flexible and professional work environment and have a highly motivated and skilled workforce. Secondly, whilst, quite properly, we have the responsibility to argue our case for longer term funding requirements, we presently have the support of the Government in terms of the work we are doing and a commitment to the funding we need to do it.⁶⁰

4.54 On the other hand, the NCA seemed far from satisfied. It had a number of specific matters on its funding 'wish list', particularly in the information technology (IT) area. It stated:

. . . the people that you are investigating have state of the art equipment; we have state-of-the-ark equipment.⁶¹

4.55 It indicated that desktop, notebook and server stock was fast approaching block obsolescence, personal computer (PC) hardware needed to be completely upgraded, sophisticated data management tools needed to be procured. It estimated that approximately \$6 million was needed to address these capability issues.⁶² In addition, it stated that it had 150 staff seconded from Federal, State and Territory law enforcement agencies. The NCA had to reimburse the source agencies for the salaries (and, in the case of State and Territory agencies, on-costs) of seconded staff. It stated:

. . . there are also adverse resource implications of having such a high percentage of seconded staff. The NCA has no control over the salaries and on-costs of seconded police officers, other than by regulating the number of secondees. Any pay increases awarded to police services flow through into NCA costs and must be absorbed. The NCA has no influence over the timing or size of such increases and therefore cannot adequately budget for them.⁶³

58 *Senate Estimates*, Legal and Constitutional, 22 November 2000, p. 92

59 Australian Federal Police, Media Release 23 May 2001, '*AFP Welcomes Federal Budget Allocation*'

60 Australian Federal Police, *Annual Report 1999-2000*, p. 10

61 *Transcript of evidence*, National Crime Authority, p. 60

62 *Submission 7*, National Crime Authority, pp. 21-22

63 *Submission 7*, National Crime Authority, pp. 13-14

Flexibility in Funding in General

4.56 The AFP appears to have had more flexibility than the NCA in borrowing against future years. In 1995-96 the AFP borrowed \$14 million from future years to fund additional costs associated with the staff reduction program.⁶⁴

4.57 The NCA, on the other hand, gave evidence that it could only move when DOFA would let it borrow money.⁶⁵ In response to a query about a loss of staff,⁶⁶ the NCA stated that the budget limitations had an impact, which was immediate and that it had not been able to get an accommodation with DOFA to fund contingencies by bringing money forward.⁶⁷

4.58 The NCA also complained about the diminishing level of its discretionary funding. It stated:

In addition to the decline in recurrent base funding and the shift to tied funding, the NCA is operating with:

- An NCA base budget that has diminishing discretionary and increasing non-discretionary expense components. Discretionary expense, which is used to meet the costs of such items as upgrading resources and equipment, has steadily decreased from 7.5% to 4.5% of the base budget. Non-discretionary expense is used to fund such items as salaries and rent. Increasing non-discretionary expense funding limits the NCA's ability to flexibly use its resources.⁶⁸

4.59 The Committee notes that the NCA's current proportion of discretionary expense is much less than that of the AFP in 1996-97. The AFP's Annual Report for 1996-97 stated:

Once firm commitments such as salaries, superannuation and other running costs have been met from a budget in the order of \$258 million, the funds available to the AFP with which to undertake all corporate initiatives, including particularly the travel, overtime and penalty costs associated with running AFP operations, and meet emerging priorities, are limited in the 1996-97 budgetary context to about 8% or some \$20 million. This figure is not dissimilar to that which has been available over the last several years.⁶⁹

64 Australian Federal Police *Annual Report 1995-96*, p. 54. It is not clear from the report whether this was done under the Keating government or the Howard government

65 *Transcript of evidence*, National Crime Authority, p. 58

66 The NCA said that budget limitations in the last year had contributed to a loss of staff, with a number of temporary contracts not renewed and the number of police secondments reduced for a period: *Transcript of evidence*, National Crime Authority, pp. 68-69

67 *Transcript of evidence*, National Crime Authority, p. 69

68 *Submission 7*, National Crime Authority, p. 26

69 Australian Federal Police, *Annual Report, 1996-97*, p. 12

4.60 On the other hand, the NCA, when pressed, was not able to indicate how its discretionary expense compared with that in other agencies. It stated that it had been advised by other agencies that there are too many differences in what is considered discretionary and non-discretionary expenditure to make any meaningful comparison.⁷⁰ The Committee does not have the detailed information necessary to establish whether the complaint of the NCA is valid, although it does seem to be a point that should be taken up with the Department of Finance and Administration.

Funding from 2001-02

4.61 Prior to the 2001-02 Budget, the AFPA said that it recognised the extra funding that came out of the Ayers Phase 1 review, and that this funding had allowed the AFP to increase the numbers of federal agents and improve its technological equipment. However, the AFPA was concerned that the extra resources be continued. It estimated that, if not, 200 federal agents might be lost as a cutback measure.⁷¹

4.62 The Attorney-General's PBS for 2001-2002 showed the total revenues from ordinary activities of the AFP⁷² as:

Total Revenue for AFP Activities

2001-02	2002-03	2003-04	2004-05	AFP
\$m	\$m	\$m	\$m	
386.802	381.132	383.384	355.746	

4.63 These amounts are far in excess of the Forward Estimates of the previous Budget.

4.64 The Portfolio Budget Statement indicated that the additional funding in 2001-2002 for the AFP Reform Program would be \$28.262m, that 159 federal agents would be retained in the AFP, and that re-equipment programs would be able to proceed.⁷³ Future additional funding would comprise \$28.745m in 2002-03, \$28.227m in 2003-04 and \$25.310m in 2004-05 and forward years.⁷⁴

4.65 The AFP indicated in the Committee's consideration of Budget Estimates that these funds were part of base funding and were not tied in any way. It also indicated that the amount of money contained in the budget measure was determined through a submission made by the AFP in 2000 and in line with what had been recommended by

70 *Submission 7C*, National Crime Authority, p. 3

71 *Transcript of evidence*, Australian Federal Police Association, 15 March 2001, pp. 94-5

72 Attorney-General's Portfolio, *Portfolio Budget Statements 2001-2002*, p. 222

73 Attorney-General's Portfolio, *Portfolio Budget Statements 2001-2002*, p. 204

74 Attorney-General's Portfolio, *Portfolio Budget Statements 2001-2002*, p.227

Mr Ayers to devise a phase 2 program.⁷⁵ As indicated at paragraph 5.15 below, the priorities identified in that funding would be the recruitment of staff, the learning and development strategy,⁷⁶ funding of the certified agreement, equipment upgrades and some mobility costs.⁷⁶

4.66 One apparently anomalous aspect of this funding is that the Government's Workplace Relations Arrangements for Commonwealth Authorities for April 2001 provide that certified agreements of Budget-funded authorities are to be funded within authority appropriations.⁷⁷ What this meant for other authorities is illustrated by the ANAO's Audit Report on Certified Agreements in the Australian Public Service, which surveyed the first round of certified agreements made by Public Service agencies between May 1997 and June 1999.⁷⁸

4.67 This report noted that agencies claimed wage increases under certified agreements were funded by productivity improvements and efficiency savings generated by the agreements, previous staff reductions, carryover of funds, previous productivity improvements and efficiencies, business improvement initiatives, the indexation of salary running costs (which all agencies received), the use of commercial revenue activities and other departmental running costs. It is not clear why the AFP was exempted from the policy applicable to other authorities and received Reform Program funding towards the cost of its certified agreement.

4.68 The Attorney-General's PBS for 2001-2002 showed the Total revenues from ordinary activities of the NCA⁷⁹ as:

2001-02	2002-03	2003-04	2004-05	NCA
\$m	\$m	\$m	\$m	
59.450	59.805	48.765	50.229	

4.69 The amounts for the years 2002-03 and 2003-04 are more than the amounts shown for those years in the Forward Estimates of the previous Budget,⁸⁰ although it would appear that the current tied funding will have expired at the end of the year 2002-03. It is not clear what factors have been taken into account in arriving at these

75 *Committee Hansard*, Legal and Constitutional Committee, Consideration of Budget Estimates Hansard, 28 May 2001, p. 89

76 *Committee Hansard*, Legal and Constitutional Committee, Consideration of Budget Estimates, Hansard, 28 May 2001, p. 90

77 Supporting Guidance for the Workplace Relations Arrangements for Commonwealth Authorities (April 2001); <http://www.dewrsb.gov.au/workplaceRelations/publicSector/publications/00-01/Revised%20WR%20Arrangements.pdf>

78 Australian National Audit Office, *Performance Audit Certified Agreements in the Australian Public Service*, Audit Report No. 13 2000-2001, pp. 37, 38

79 Attorney-General's Portfolio Budget Statements 2001-2002, p. 287

80 See above, Paragraph 4.7

forward estimates but it would seem that the future funding situation of the NCA is not as challenging as was anticipated.

4.70 After the Budget for 2001-2002 was handed down, the NCA indicated that it had made a decision to upgrade its computer system and had set aside an amount of \$1.5 million in its budget in the forthcoming financial year for that purpose. It had also been provided with \$700,000 in the Budget to cover increases in seconded police salaries.⁸¹

Conclusions

4.71 As is suggested above,⁸² the Committee cannot help but feel that the AFP's experience with funding matters over the last few years has been very different from that of the NCA. It was not required to make the same savings in running costs as the NCA from 1996-97. It has received funds to enable it to increase and reprofile its workforce and to purchase new equipment.⁸³ It had more flexibility in moving tied funds and in borrowing against future years. The Reform Program has been funded into future years as part of base funding. It appears that it has even received funding towards its Certified Agreement on a more generous basis than other agencies.

4.72 On the other hand, it appears from the Current Budget that the Government appreciates the financial problems inherent in the secondment of large numbers of Police to the NCA. It also appears from the NCA's Forward Estimates that its general funding situation will improve.

4.73 The Committee welcomes the indications that the Department of Finance and Administration is looking more favourably at the financial concerns of the NCA. The Committee observes that the apparently different treatment of the two agencies in the past may well have arisen from the lack of an adequate mechanism for long-term strategic law enforcement policy decision-making, to which Chapter 8 refers.

81 *Transcript of evidence*, National Crime Authority, p. 136

82 See Paragraph 4.54

83 It is probably not appropriate to mention in this regard the funding to pay out AFPAS and Cessation Payments obligations; they should rather be seen as a consequence of an experiment which was part of the general attempt over the last 15 years to make the public sector more efficient and responsive. More details on AFPAS are in Chapter 5