

Parliament of the Commonwealth of Australia

**PARLIAMENTARY JOINT COMMITTEE
ON THE NATIONAL CRIME AUTHORITY**

**Australian Crime Commission
Establishment Bill 2002**

November 2002

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TERMS OF REFERENCE

The National Crime Authority Act 1984 prescribes the following terms of reference for the Joint Parliamentary Committee on the National Crime Authority

55 Duties of the Committee

(1) The duties of the Committee are:

- (a) to monitor and to review the performance by the Authority of its functions;
- (b) 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;
- (c) to examine each annual report of the Authority and report to the Parliament on any matter appearing in, or arising out of, any such annual report;
- (d) to examine trends and changes in criminal activities, practices and methods and report to both Houses of the Parliament any change which the Committee thinks desirable to the functions, structure, powers and procedures of the Authority; and
- (e) to inquire into any question in connection with its duties which is referred to it by either House of the Parliament, and to report to that House upon that question.

2) Nothing in this Part authorizes the Committee:

- (a) to investigate a matter relating to a relevant criminal activity; or
- (b) to reconsider the findings of the Authority in relation to a particular investigation.

(3) To avoid doubt, the Committee may examine, and report to both Houses of the Parliament on, information given to it under section 59.

ABBREVIATIONS

ABCI	—	Australian Bureau of Criminal Intelligence
ACC	—	Australian Crime Commission
AFPA	—	Australian Federal Police Association
ASIC	—	Australian Securities & Investments Commission
AUSTRAC	-	Australian Transaction Reports and Analysis Centre
CEO	—	Chief Executive Officer
IGC	—	Inter Governmental Committee
NCA	—	National Crime Authority
OSCA	—	Office of Strategic Crime Assessments
PJC	—	Parliamentary Joint Committee on the National Crime Authority

Recommendations

Chapter 2

Recommendation 1

The PJC recommends that the Bill be amended to provide that Austrac be included as a member of the Board.

Recommendation 2

The PJC recommends that the Bill be amended to restore the entitlement for the ACC to develop co-operative relationships with corresponding overseas law enforcement agencies.

Recommendation 3

The PJC recommends that the Bill be amended to ensure that the relevant state/s are informed of any operation or investigation that is proposed to take place within its boundaries.

Recommendation 4

The PJC recommends that the Bill be amended to explicitly provide that:

- The CEO should be responsible for the overall management of the ACC. The Minister for Justice and Customs of the Commonwealth Parliament should be the Minister, under our system of responsible government, accountable to the Parliament for the work of the ACC.
- The CEO appoint the head of a task force after consultation with and advice from the Board.
- Heads of task forces are responsible to the ACC through the CEO.

Recommendation 5

The PJC recommends that the Bill be amended to provide that the suspension of the CEO can only take place on the initiative of the Minister until a meeting of the full Board to consider the matter and that the CEO can only be removed for cause, or, if that is thought to be insufficient scope to allow for the removal of the CEO, by the Minister following a resolution of the full Board passed by a two-thirds majority.

Recommendation 6

The PJC recommends that the Government give careful consideration to the terms and conditions of ongoing staff to be employed by the new ACC, particularly in the context of their current conditions of service.

Recommendation 7

The PJC recommends that the Bill be amended to provide that complaints against all staff of the ACC be investigated by the Commonwealth Ombudsman as a minimum.

Recommendation 8

The PJC recommends that the Government, once the ACC has been established, gives urgent attention to ensuring that operational, investigative and support staff work under the same integrity and complaints regime.

Recommendation 9

The PJC recommends that the Bill be amended to provide that the ACC is obliged to provide the Parliamentary Committee overseeing its operations with any information sought by the Committee except where that information would identify any particular individual suspected of criminal conduct (unless the matter is already in the public domain) or would, in the opinion of the CEO, risk prejudicing a current inquiry.

Recommendation 10

The PJC recommends that the Bill be amended to establish the ACC as a legal entity.

Recommendation 11

The PJC recommends that there should be no blanket immunity from suit for the ACC.

Chapter 3**Recommendation 12**

The PJC recommends that the Bill be amended to provide explicitly that any decision by a committee of the Board to authorise an operation/investigation as a “special operation/investigation” requires ratification by the full Board.

Recommendation 13

The PJC recommends that the Bill be amended to provide that no part-time examiners can be engaged on a per-hour or per-diem basis.

Recommendation 14

The PJC recommends that the Bill be amended to explicitly provide that examiners must satisfy themselves in each case that before they exercise special powers under the Act that it is appropriate and reasonable to do so and that they indicate in writing the grounds for having such an opinion.

Chapter 4

Recommendation 15

The Committee recommends that the Bill be amended to provide for a comprehensive public review of the ACC Act to take place after three years have elapsed from the date of Commencement of the ACC Act.

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CHAPTER 1

INTRODUCTION

Background

1.1 On 26 September 2002 the Attorney General introduced the Australian Crime Commission Establishment Bill 2002 (the Bill) into the House of Representatives. Following the adjournment of the second reading debate on the Bill, the Attorney-General moved that the Bill be referred to the Parliamentary Joint Committee on the National Crime Authority (the PJC) for consideration and report. The House of Representatives agreed to the motion and the Bill became the subject of the PJC's inquiry. Consideration of the Bill falls within its responsibilities under subsection 55(e) of the *National Crime Authority Act 1984*.

Commonwealth, State and Territory negotiations

1.2 The Bill represents the culmination of the Government's negotiations with the States and Territories to implement the Government's election promise to enhance the "national framework to deal with terrorism and transnational crime"¹. Following the election the Government commissioned a review of the NCA. A former police commissioner of the Australian Federal Police, Mick Palmer and a former departmental secretary, Tony Blunn, conducted the review. They reported in January 2002. The results of the review have not been made public but were used in preparation of a document entitled *The transformation of the NCA*². This document informed the negotiations between the Commonwealth, States and Territories and was provided to the PJC.

1.3 The negotiations included a Leaders Summit on 5 April 2002 which resulted in a communique outlining 23 resolutions to achieve the updated national framework. These resolutions formed the basis of the further negotiations which took place between the Commonwealth Government and the States and Territories over several months. An agreement (the August Agreement) of 11 principles finalised on August 9 2002 detailed the agreed position in relation to the establishment of the Australian Crime Commission (ACC).

1.4 The principles in the August Agreement provided a blueprint for drafting the legislation and included such issues as the functions of the new ACC, governance, the

1 *House of Representatives Hansard*, 26 September 2002, p. 7328.

2 Senate Legal and Constitutional Legislation Committee, *Committee Hansard*, 27 May 2002, p.112.

composition of the Board, the Chair, the position of Chief Executive Officer or Director and the powers of, investigations and budget³ for the ACC.

1.5 The governance principle, in part, required “discussions between jurisdictions during the drafting of the bill”⁴. At the public hearing on 17 October 2002, the PJC was informed that discussions took place at officer level in addition to consultation with the steering committee on the implementation process. The steering committee was chaired by the General-Manager, Criminal Justice and Security Division of the Attorney-General’s Department. The other members of the steering committee included the State Police Commissioners from South Australia, New South Wales and Tasmania, the Commissioner of the Australian Federal Police and the Chair of the Australian Securities and Investment Commission⁵. Two senior government officers from Victoria and New South Wales were on the steering committee and another from Victoria was present as an observer⁶.

The Bill

1.6 The legislation does not repeal the *National Crime Authority Act 1984* (the NCA Act), rather it proposes amendments that will create the ACC and give effect to the August Agreement. However, it does not embody all the principles of the August Agreement. The Agreement specified that the ACC would replace the National Crime Authority (NCA), the Office of Strategic Assessments (OSCA) and the Australian Bureau of Criminal Investigation (ABCI). The Bill effects the legislative amendments required in relation to the NCA with the incorporation of OSCA and ABCI to be achieved through administrative action.

1.7 The new body is designed to enhance Australia’s national law enforcement capacity through:

- improved criminal intelligence collection and analysis;
- setting clear national criminal intelligence priorities; and
- conducting intelligence led investigations of criminal activity of national significance, including the conduct and/or coordination of investigative and intelligence task forces ...⁷

1.8 The substantive provisions of the Bill are contained in three schedules. Schedule 1 is the amendments to the NCA Act necessary to replace that body with the ACC and transitional provisions. Schedule 2 consists of consequential amendments to Commonwealth legislation other than the NCA Act while Schedule 3 is the

3 Submission 10, Attachment A, p.17.

4 Ibid., p.18.

5 Legal and Constitutional Legislation Committee *Committee Hansard*, op.cit p. 79.

6 *Committee Hansard*, 17 October 2002, p. 183.

7 Submission 10, p.17.

amendments to Commonwealth legislation that are contingent on the commencement of other bills.⁸

1.9 A detailed analysis of the Bill is available in Bills Digest No. 54 2002-03 which has been prepared by the Department of the Parliamentary Library. It is available at the following website: <http://www.aph.gov.au/library/>

The work of the PJC

1.10 The PJC commenced its formal inquiry on 26 September 2002 when the Attorney-General's motion was passed by the House of Representatives. The PJC had also been maintaining a watching brief on the proposal under section 55 (1)(b) of the NCA Act. As part of the "watching brief" the Minister for Justice and Customs, Senator the Hon Chris Ellison met with the PJC for private briefings on the proposed ACC on 16 May 2002 and 29 August 2002. The Minister also provided the PJC with an exposure draft of the legislation on 2 September 2002.

1.11 On 18 September 2002, the PJC, with the knowledge of the Minister, provided the exposure draft to a number of interested parties and organisations, including former members and Chairs of the NCA. In the letter of transmittal, the PJC indicated that it was aware of the proposal to establish the ACC and may be undertaking an inquiry at a later date.

1.12 The PJC placed an advertisement in the national press on 25 September 2002. The advertisement invited registrations of interest from those who had an interest in commenting on the proposed legislation or making a submission to the PJC in the event that it should undertake an inquiry on the matter.

1.13 The PJC was aware that any parliamentary committee inquiry into the legislation establishing the ACC would have constricted time lines due to the Government's stated implementation date for the new body of 1 January 2003. It therefore took the decision to activate public interest in the PJC's work prior to receiving a formal reference on the matter.

1.14 Following the formal reference of the Bill to the PJC, submissions were invited from those who had been provided with the exposure draft and those who had registered an interest. They were provided with the bill, its explanatory memorandum and "paste-up"⁹ of the NCA Act. The PJC received 18 submissions (see Appendix 1).

1.15 The PJC also held public hearings in Sydney (8 October 2002), Melbourne (9 October 2002) and Canberra (14 and 17 October 2002). The public hearings were also advertised in the national press on 9 October, together with a further call for submissions. Those who gave evidence at the hearing are listed in Appendix 2.

8 Ibid, pp. 6 and 7.

9 A version of the NCA Act incorporating the amendments proposed in the Bill which was prepared by the Attorney-General's Department.

1.16 The PJC acknowledges that due to its reporting date (6 November 2002) it invited contributions at very short notice. It appreciates the quality of the submissions and evidence received, particularly given that short time frame.

1.17 The PJC also appreciates the briefing papers, additional comments and supplementary submissions, including the work of the Australian National Audit Office, that were provided in response to requests.

1.18 The PJC considered the issues arising from the inquiry at its private meetings of 17, 21, 23, 24 and 31 October 2002 and adopted the report on 4 November 2002.

Scope of the Report

1.19 The PJC was asked to examine and report on a Bill that has been the product of negotiations and compromise at officer level between the States, Territories and the Commonwealth. Those negotiations have occurred within the framework of the Leaders Summit. The PJC deliberations took place in the context of the agreed position that had been reached between the States, Territories and the Commonwealth.

1.20 During the inquiry a number of areas of concern was drawn to the PJC's attention. The revised governance structure for the new ACC and associated issues including accountability mechanisms are outlined and discussed in Chapter 2.

1.21 However, the central issue for the PJC was the question of the use of the coercive (or "royal commission") powers in special operations or special investigations. It is these powers that set the NCA and the proposed ACC apart from other law enforcement bodies. Chapter 3 explores the processes by which the "royal commission" or coercive powers can be brought into play and the "controls" that govern the use of these special powers. This discussion must be considered in terms of the structure that is outlined in Chapter 2 as the two are integral and have only been separated for the ease of discussion.

1.22 Chapter 3 also outlines other concerns relating to coercive powers that were drawn to the PJC's attention during the course of the inquiry.

1.23 Chapter 4 expresses the PJC's concluding remarks, including flagging issues for the future.

Note on references

References in this report are to individual submissions as received by the PJC, not to a bound volume. References to the Hansard transcript are to the proof Hansard. Page numbers may vary between the proof and the official Hansard transcript.

CHAPTER 2

STRUCTURE, GOVERNANCE AND ACCOUNTABILITY

The Structure of the ACC

2.1 At the commencement of negotiations with the States and Territories, the Commonwealth circulated the paper, *The transformation of the NCA*. It argued that the NCA was not and “as presently constituted cannot be, as effective as it needs to be ...”¹. The reasons put forwarded for this assessment included:

- the governance arrangements for the NCA and the Authority are not effective; ...
- governments have not identified a strategic national role for the NCA; ...
- structurally it lacks the flexibility to respond to emerging needs;
- the maintenance of offices and multi-disciplinary teams in every mainland State, rather than a more flexible mobile task force based approach in which people are more easily taken to the work, is not necessary and is operationally and financially wasteful; and
- administration and infrastructure costs, although improving, are high.²

2.2 The structure of the NCA was clearly considered to be one of the impediments to that body meeting the requirements to fight crime in the current circumstances. Therefore, the structure of the new ACC could be expected to differ markedly from that of the NCA.

2.3 The Bill, in item 35 (section 7(2)), defines the ACC as consisting of three parts – the Chief Executive Officer (the CEO), the examiners and the members of staff of the ACC. The management structure of the new body (the Inter-Governmental Committee, the Board and the CEO), is, with the exception of the CEO, external to the ACC. In contrast, in the NCA, the Chair and the two other members formed the Authority and provided the management of both operational and administrative matters, with oversight provided by the Inter-Governmental Committee (IGC).

The CEO

2.4 The position of the CEO is new to the structure of the ACC. The occupant of the position is to be appointed by the Governor-General after the Minister has consulted the Board and the IGC. Item 197 of the Bill implements part of the

1 *Transformation of the NCA*, undated document, provided by the Attorney-General’s Department in response to the Committee’s request of 14 October 2002.

2 *Ibid.*

requirements of principle 5 (Chief Executive Officer (Director)) of the August Agreement. The remainder of that principle - that the CEO will be “an individual with a strong law enforcement background”³ – was articulated in the Attorney-General’s second reading speech and has also featured as a demonstrable requirement in the advertisement seeking applicants for the position⁴.

2.5 The duties of the CEO include managing the administration of the ACC, co-ordinating its operations and investigations and appointing the examiner who will undertake the hearing duties in relation to a specific inquiry.

Examiners and staff

2.6 The examiners will conduct the hearings of a specified inquiry, and in doing so will apply the ACC’s coercive powers. They are therefore statutory appointments made by the Governor-General, after consultation with the IGC. To be eligible for appointment examiners must have been enrolled as a legal practitioner for a period of 5 years. Item 197 (section 46B) of the Bill gives effect to these provisions and is in accord with the relevant section of principle 8 (Powers) of the August Agreement.

2.7 While the CEO appoints the examiner who is to exercise the coercive powers in relation to a specific special operation or special investigation, there is no provision for the CEO to direct any examiner as to how or when to use the coercive powers⁵. Under the amendments proposed in the Bill (item 120, section 25A) provision is made for an examiner to determine how the proceedings at a hearing where he/she is presiding, should progress.

2.8 The staff of the new ACC are to be employed under the *Public Service Act 1999* (the PS Act). This category will include support staff and those who are currently employed with ABCI and OSCA. However, it will not include the staff that are employed on task force investigations who hold a position within another organisation. This is currently the case with such officers who assist the NCA. The amendments (items 199 to 215) to these sections of the NCA Act are largely technical.

Governance and Accountability

2.9 The two external parts of the ACC’s governance structure are the IGC and the Board. The membership of the IGC will be in the same form as that under the NCA structure, but the functions it must discharge have been amended. The creation of the Board establishes a new body within the governance structure for the ACC and it takes on aspects of the duties that were previously the IGC’s responsibility.

3 *House of Representatives Hansard*, 26 September 2002, p. 7329.

4 The Australian Financial Review, 20 September 2002, p. 7.

5 *Australian Crime Commission Establishment Bill 2002*, Item 197, Section 46A.

The Inter-Governmental Committee

2.10 The provisions of the Bill (items 36 and 37) relating to the establishment of the IGC are technical – the insertion of a new heading and an amendment to permit members of the Board rather than members of the “Authority” (the NCA) to attend meetings of the IGC. The membership of the IGA continues to be the Commonwealth Minister, and eight State (including, by definition, the Australian Capital Territory and the Northern Territory) Ministers. This composition reflects the terms of principle 3 (Governance) of the August Agreement. The functions of the IGC are amended by items 38 and 39 of the Bill.

2.11 Under the regime that operated under the NCA, the IGC was charged broadly with the following responsibilities:

- recommending the appointment of members of the NCA;
- approving the references for the work of the NCA (references provide the terms for NCA investigations);
- monitoring the work of the NCA; and
- receiving and transmitting reports from the NCA to the relevant Governments.

2.12 In the NCA’s arrangements, following the IGC’s approval of a reference, the decision as to the use of coercive powers lay with the members of the NCA.

2.13 The work of the IGC will be revised to include the following duties:

- monitor the work of the ACC and the Board;
- oversee their strategic direction and
- transmitting the reports to the relevant Governments.

2.14 Under the new structure, the NCA-IGC’s responsibilities relating to approving references will be reallocated to the Board. More than one witness before the PJC⁶ saw involvement by the IGC in the approval of investigations as being “cumbersome and unwieldy”⁷ and requiring change.

The Board

2.15 The Board is to be a new body established under item 35 of the Bill in accordance with principle 4 (Board and Chair) of the August Agreement which

6 *Committee Hansard*, 9 October 2002, p. 119

7 Submission 10, p. 4.

provides that the “Board shall consist of thirteen voting members and the Chief Executive Officer as a non-voting member.”⁸. The thirteen voting members are:

- The Commissioner of the Australian Federal Police;
- The Secretary of the Attorney-General’s Department;
- The Chief Executive Officer of the Australian Customs Service;
- The Chairperson of the Australian Securities and Investments Commission;
- The Director-General of Security;
- The Commissioner (or head) of each state and Territory police force⁹.

2.16 The Bill stipulates that the Board has the following functions:

- (a) to determine national criminal intelligence priorities;
- (b) to provide strategic direction to the ACC and to determine the priorities of the ACC;
- (c) to authorise, in writing, the ACC to undertake intelligence operations or to investigate matters relating to federally relevant criminal activity;
- (d) to determine, in writing, whether such an operation is a special operation or whether such an investigation is a special investigation;
- (e) to determine, in writing, the head of such an operation or investigation and the class or classes of persons to participate in such an operation or investigation;
- (f) to establish task forces;
- (g) to disseminate to law enforcement agencies or foreign law enforcement agencies, or to any other agency or body of the Commonwealth, a State or a Territory prescribed by the regulations, strategic criminal intelligence assessments provided to the Board by the ACC;
- (h) to report to the Inter-Governmental Committee on the ACC’s performance;
- (i) such other functions as are conferred on the Board by other provisions of this Act.¹⁰

2.17 The terms of principles 9 (Investigations) and 8 (Powers) of the August Agreement are in part reflected in the Board’s functions listed under paragraphs (b) and (d) respectively.

2.18 In determining that an operation is a “special operation” and that an investigation is a “special investigation” in accordance with the provisions of paragraph (d), the Board is determining that coercive powers will be used in the

8 Submission 10, p.19.

9 *Australian Crime Commission Establishment Bill 2002* section 7B .

10 *Ibid.* section 7C.

operation/investigation. The CEO must then appoint an examiner who will exercise the coercive powers as part of the special operation/investigation.

2.19 The Board also can establish committees and delegate to a committee any of its functions. There are two statutory requirements to be placed on this power. A decision to establish a committee must be unanimous. Secondly, any committee that the Board may establish to exercise its duties in relation to determining whether an operation/investigation is a special operation/investigation (and thus bring into play the use of coercive powers) must include in its membership “at least two eligible Commonwealth Board members”¹¹.

Issues

2.20 The major difference in the ACC’s structure in comparison with that of the NCA is the separation of the governance role for the agency with the creation of the Board. The consequential redistribution of certain responsibilities to the Board has created an additional and external level of management. Further, a CEO position has been established as separate from that of examiners - those who conduct hearings. Examiners are freed from administrative issues. Has this created a governance structure that addresses the perceived shortfalls identified by the Commonwealth or is what is proposed the equivalent of, in the words of a former Chair of the NCA (Mr Broome), a “five legged camel”¹² – unmanageable, unaccountable and doomed to failure¹³?

2.21 There was little dispute in the evidence presented to the PJC that, not only was there a perception that the NCA had some inefficiencies that were attributed to the structure of the organisation, they were in fact a reality. However, there was a divergence of opinion as to how the structural problems should be addressed. While there was evidence put before the PJC that suggested that the new structure had been devised to address the inefficiencies of the current structure, concern was also expressed by a number of witnesses that the structure would create a new set of problems.

2.22 The potential for problems arising out of the new structure were raised by a number of witnesses and included issues related to:

- the strategic direction of the new ACC, given the composition of the Board;
- committees of the board and the delegation of powers;
- the role of the CEO;
- staffing;
- complaints mechanisms;

11 *Australian Crime Commission Establishment Bill 2002*, section 7K(1) and section 7K(4).

12 *Committee Hansard*, 14 October 2002, p. 146.

13 *Ibid.*

- the role of the PJC; and
- the ACC as a legal entity.

Strategic Direction

2.23 One of the comments that concerned the PJC was that the new structure, especially given the composition of the Board, represented a “blueing” of the NCA,¹⁴. That is, that the new organisation will be controlled by a body the majority of whom are law enforcement officers. The concern was two-fold and stems from the Board’s responsibilities for the authorisation of special operations/investigations (discussed in Chapter 3) and secondly, those for setting the priorities and strategic directions of the ACC. Will the balance between operational requirements and strategic priorities be skewed towards what could be termed “police priorities”?

2.24 A strong case for the need for the ACC to have a strategic element to their work was put in terms of the best utilisation of resources¹⁵. A former Member of the NCA, Mr Greg Melick, SC indicated to the PJC that

It is a question of the best use of the resources. I suggest that the best use of the resources would be to combat the root cause of organised crime, which is money”¹⁶.

2.25 No organisation has an unlimited amount of funds and priorities must be set. This is clearly recognised in the legislation setting that responsibility with the Board. Mr Greg Melick put to the PJC that operations/investigations should have an “operational or tactical level, but ... also have a strategic overarching part to the investigation” and that this would not happen “by the very nature [of the Board], because the whole thing is controlled by police officers, who must be reacting, must report.”¹⁷. His concern was that the priorities set would focus on “problems in their own backyards”¹⁸.

2.26 Further, an operationally focussed ACC may compromise the strategic and advisory work that the new body can do in relation to prevention of organised and serious crime. In evidence to the PJC, Mr William Coad suggested that the new body should work in a preventative manner, “not just in criminal sanctions ... arrests, prosecutions et cetera.”¹⁹. As an example he cited the work that could be conducted in

14 Submission 8, p. 2.

15 *Committee Hansard*, 9 October 2002, pp. 78 to 80.

16 *Committee Hansard*, 9 October 2002, p. 79.

17 *ibid.*

18 *ibid.*

19 *Committee Hansard*, 8 October 2002, p. 30.

ensuring that regulatory frameworks be established to prevent criminal elements taking over Australia's major infrastructure²⁰.

2.27 The PJC was informed that the prominence of police interests on the Board was by design²¹ and was in response to criticisms that the NCA failed to adequately consult and respond to the law enforcement agencies in Australia. Although the PJC accepts this explanation and notes that the composition of the Board was a principle of the August Agreement, it has concerns over its composition.

2.28 One of the identified shortfalls of the NCA was that "governments had not identified a strategic national role for the NCA"²². The PJC is not eager to see the new ACC charged with the same deficiencies. It is the Board who will establish this role by setting the strategic direction.

2.29 Mr Greg Melick highlighted the significance of financial matters to the perpetuation of organised crime and the PJC acknowledges the financial associations with terrorism. Given the charter Austrac has in relation to the creation of "a financial environment hostile to money laundering, major crime and tax evasion"²³ the PJC considers that including Austrac in the Board's membership would enhance its capacity to develop strategic directions.

2.30 The PJC notes the concern expressed by officers from the Attorney-General's Department at re-opening the negotiations on the composition of the Board and the difficulty in striking a balance "between having an inclusive board of a workable size"²⁴. However, the PJC believes that the inclusion of Austrac on the Board would contribute to the long term success of the ACC.

2.31 Further, the advice by the Department that:

It [Austrac] is a financial intelligence body, not an investigative body. It provides intelligence in support of law enforcement. The Board is to be focussed on setting national priorities and while such priorities are based on intelligence assessments those who make such assessments or provide input to such assessments are not necessarily best place to do this.²⁵

is not disputed by the PJC. However, the PJC's view is that there is a need to appoint someone to the Board who would reflect the interests of those who make the assessments.

Recommendation 1

20 Ibid.

21 *Committee Hansard*, 17 October 2002, p.184.

22 Op cit: *The transformation of the NCA* .

23 Budget Paper No 4, *Agency Resourcing 2002-03*, p.55.

24 *Committee Hansard* 17 October 2002, p.190.

25 Supplementary paper prepared by the Attorney General's Department.

The PJC recommends that the Bill be amended to provide that Austrac be included as a member of the Board.

2.32 Further the PJC intends to take an interest in the Board's development of the ACC's priorities and strategic directions.

2.33 In the context of developing strategic priorities the PJC also considered the need for co-operation with overseas agencies. In particular, it explored whether the ACC could meet the newly emerging challenges of crime fighting without the international exchange of information and expertise. Under section 17 of the NCA Act the Authority had the option of working in co-operation with "authorities and persons in other countries". It would appear that this provision has been omitted from the Bill. Consequently, the ACC will not have the option of pursuing such co-operative relationships.

2.34 The PJC does not believe that a body that has been established to attack transnational crime can work effectively to meet that objective in isolation from its counterparts in other countries.

Recommendation 2

The PJC recommends that the Bill be amended to restore the entitlement for the ACC to develop co-operative relationships with corresponding overseas law enforcement agencies.

Committees of the Board

2.35 The Bill proposes to place a statutory requirement on the Board to meet in full a minimum of twice per year²⁶. The PJC notes that the Bill stipulates the minimum number of meetings and the current proposal is that the Board would meet at least four times a year²⁷. However, when considered in conjunction with the Board's power to form committees and to delegate to a committee any of its functions, this requirement suggests to the PJC that, in reality, most of the Board's responsibilities will be allocated to committees with different areas of responsibilities.

2.36 During the course of the inquiry, the PJC was alerted to two prime concerns that the delegation of powers to smaller (albeit more manageable) committees, give rise to. The major concern relates to the authorisation of the use of coercive powers and that matter is addressed in Chapter 3 of this report (see paragraph 3.34). The other concern is that this delegation of functions could result in a redistribution of power.

2.37 The PJC's attention was drawn by Mr Lenihan, the NCA's former Chief Executive Officer to the fact that the authorisation to conduct an operation or investigation into serious and organised crime within a state no longer requires the

26 Item 35, paragraph 7D(2)(b).

27 *Committee Hansard*, 14 October 2002, p. 132.

approval of the relevant state minister²⁸. Given that the power to activate an operation or investigation relating to federally relevant criminal activity can be delegated to a committee it is possible that the state which is the subject of the operation may not be aware of the proposed operation or investigation. Further, in a worse case scenario, following the authorisation by the committee, the State could be expected to assist in the resourcing of the inquiry.

2.38 The PJC accepts that the size of the Board and its composition would create considerable logistical problems in organising more frequent meetings of the Board. However, it is concerned that a particular state may not be fully consulted prior to the approval by such a committee of an operation that will take place within its boundaries and that such action would be detrimental to the collaborative approach required of the ACC.

Recommendation 3

The PJC recommends that the Bill be amended to ensure that the relevant state/s are informed of any operation or investigation that is proposed to take place within its boundaries.

Role of CEO

2.39 The structure of the new ACC was described as a “commercial governance model”²⁹ with the CEO implementing the decisions of the Board. Mr Coad, in evidence, queried the application of this model for law enforcement:

...commercial governance models like this, where you have got a board and a CEO, are all right for service delivery bodies but less so for law enforcement regulatory bodies...³⁰

2.40 Under the commercial governance model, the Board decides on the priorities of the ACC and the CEO has the responsibility to resource and implement these operations. The Board also has the responsibility of establishing a task force, selecting person to head it and its composition, in terms of the skills required to staff the task force³¹. Under the provisions of the Bill the CEO is not required to be consulted by the Board on any of these matters. Yet it is the CEO who is clearly regarded as being answerable for the success or otherwise of the operations³².

2.41 The PJC is concerned that the CEO is expected to deliver operational outcomes with a team in which he/she has had no input and to work with a task force

28 Submission 8, p. 3.

29 *Committee Hansard*, 8 October 2002, p. 29.

30 *Ibid.*

31 *Australian Crime Commission Establishment Bill 2002*, section 7C,

32 *Committee Hansard*, 14 October 2002, p.131; and 17 October 2002, p. 188.

leader that may be unknown to him/her. Good working relationships take time to establish, yet can increase the effectiveness and output of an organisation.

2.42 It was explained that the Board was made responsible for these decisions because the Board members had the day to day experience of operational issues and the knowledge of who had the skills required to head a task force. The Board would therefore be best placed to make the decisions³³. Given that the Board may delegate this responsibility to a committee, which would be lacking the breadth of experience of the full Board, the PJC believes that the CEO should have the responsibility for the ultimate decision but only if the views of the Board are consulted.

2.43 This restrictive role for the CEO in the decision making process was not indicated in any of the principles of the August Agreement. However, the PJC was informed that the decisions were “part of the dialogue that has lead to the drafting of the bill”³⁴. The PJC considers that the CEO’s involvement in the decision making process as critical to the successful management of any operation or investigation. To enhance the ability of the CEO to deliver successful outcomes the PJC makes the following recommendation:

Recommendation 4

The PJC recommends that the Bill be amended to explicitly provide that:

- **The CEO should be responsible for the overall management of the ACC. The Minister for Justice and Customs of the Commonwealth Parliament should be the Minister, under our system of responsible government, accountable to the Parliament for the work of the ACC.**
- **The CEO appoint the head of a task force after consultation with and advice from the Board.**
- **Heads of task forces are responsible to the ACC through the CEO.**

2.44 The PJC also has concerns over the current provisions of the Bill relating to the suspension and dismissal of the CEO.

2.45 The Bill, under item 197 (proposed section 43) provides that the Minister may “suspend the appointment of the CEO if the Minister is of the opinion that the performance of the CEO has been unsatisfactory”. Further provisions require the Minister to indicate whether the suspension is with or without pay and the time period of the suspension. There is also provision for the Governor-General to terminate the CEO’s appointment in certain circumstances. The majority of these are standard provisions for statutory appointments. However, proposed subsection 44(3) provides

33 *Committee Hansard*, 14 October 2002, pp.126 & 127; and supplementary material provided by the Attorney General’s Department, 21 October 2002.

34 *Committee Hansard*, 17 October 2002, p. 186.

that the Governor-General “may terminate the appointment of the CEO if the Minister is of the opinion that the performance of the CEO has been unsatisfactory”.

2.46 The PJC does not suggest that the inclusion of these provisions has been for any other reason than to ensure that the CEO is accountable and effective in his/her position. However, it is concerned that in the current form they may be perceived as undermining the independence of the CEO and the work of the new body. This concern was raised in the context of the CEO having the responsibility of selecting which of the appointed examiners would perform their duties in any a given operation/investigation³⁵. Whether the concern has any substance in reality could be irrelevant to the impact that the perception could have on the CEO in the conduct of his/her duties.

2.47 It is paramount that the new body is free from any possible perception that political interference may either be possible or could take place. The PJC accepts that non-performance should not be ignored. However, if the CEO’s performance is lacking there should be a clear statement of why that is so and what standards have not been met.

Recommendation 5

The PJC recommends that the Bill be amended to provide that the suspension of the CEO can only take place on the initiative of the Minister until a meeting of the full Board to consider the matter and that the CEO can only be removed for cause, or, if that is thought to be insufficient scope to allow for the removal of the CEO, by the Minister following a resolution of the full Board passed by a two-thirds majority.

Staffing

2.48 The PJC heard evidence from the Australian Federal Police Association (AFPA) that the staff of the new ACC should be employed under the terms of the *Australian Federal Police Act 1979* (the AFP Act) rather than the *Public Service Act 1999* (the PS Act) which is currently proposed in the legislation. Their arguments for proposing such amendments rest largely with the fact that the staff currently employed by the ABCI, whether sworn or unsworn officers, are employed under the terms of the AFP Act. The AFPA argue that these officers when transferred to the new ACC, if employed under the PS Act will have a lower level integrity standard to meet. Further, they pressed that the Bill was:

...lowering the integrity bar to the lowest common denominator - ... - rather than raising the integrity bar to the Australian Bureau of Criminal Intelligence standards,³⁶ .

35 *Committee Hansard*, 9 October 2002, p. 116.

36 *Committee Hansard*, 8 October 2002, p. 56.

2.49 The Community and Public Sector Union (CPSU) presented the PJC with an alternative argument. In a comparative analysis³⁷ between the integrity regimes operating under the AFP Act and the PS Act, the CPSU suggested that there was little substantive difference between the two regimes.

2.50 The CPSU also put a case to the PJC both in their submission and at the public hearing of 14 October 2002 concerning the terms and conditions of employment. The employment of the staff of the ACC under the PS Act was supported. The maintenance of the current terms and conditions of employment was also argued, particularly in relation to the conditions covered by other Commonwealth legislation, such as maternity and long service leave, occupational health and safety issues and membership of superannuation funds.

2.51 The PJC was also informed that the staff who are currently employed with the three bodies that will be amalgamated are predominantly employed under the PS Act. It was also made aware that while staff could be employed under the conditions that they currently work under it would “come at a cost”. Different terms and conditions and remuneration are usually associated with different integrity regimes³⁸.

2.52 The PJC is of the view that for administrative purposes and cohesion within the new body, the best outcome would be to have all staff employed under the same terms and conditions and integrity regime. However, the structure of the ACC does not lend itself to such a proposition, nor did that of the NCA. Both organisations have the provision to use the services of officers from other organisations to assist in specific investigation/operations. These staff can be subject to the employment regimes of their “home” agency. Further, the issue of integrity standards is one of accountability and should be addressed in that context rather than in terms of employment conditions.

2.53 Setting aside the integrity regime issue, the PJC is concerned about the issues raised by both the AFPA and the CPSU in relation to the terms and conditions of employment. It accepts that there are implications for the staff concerned and are of the view that careful consideration should be given to the industrial consequences of what is essentially the amalgamation of three bodies with different terms and conditions of employment.

Recommendation 6

The PJC recommends that the Government give careful consideration to the terms and conditions of ongoing staff to be employed by the new ACC, particularly in the context of their current conditions of service.

37 Supplementary Submission 12A, 17 October 2002.

38 *Committee Hansard*, 14 October 2002, p. 141.

Accountability

2.54 The PJC is of the view that in a western democracy one of the central elements that should be evident in an organisation such as the NCA or the new ACC are mechanisms to ensure transparency and accountability. This is not to suggest that the operations and intelligence gathering should be compromised but that appropriate checks and balances exist. These should ensure that in conducting the tasks they are charged with, these organisations do so in a proper manner and that if they fail to do so there is some form of scrutiny to reveal that failure and a means to deal with it. The PJC examination of the proposed new ACC found that there were some areas of concern.

Complaints Mechanisms

2.55 The PJC agrees with the AFPA's proposition that the highest degree of integrity be required from all staff of the new ACC. Further, it is of the view that the investigation of any complaint should be conducted under the same regime regardless of the position of the individual against whom the complaint has been made. Any investigation of a complaint against an officer from another agency who was assisting the ACC with an investigation or operation at the relevant time should also be conducted under the same regime.

2.56 The PJC is also of the view that an external body undertaking the investigation achieves the greatest degree of accountability. The Commonwealth Ombudsman conducts investigations of staff employed under the AFP Act in accordance with the provisions of the *Complaints (Australian Federal Police) Act 1981*.

2.57 The PJC considers that as minimum requirement the Commonwealth Ombudsman should investigate complaints against all staff of the ACC. However, it is concerned that this may place undue pressure on the resources of the Ombudsman's Office. Such pressure may result in extraordinary delays in processing such complaints and this, in the PJC's view, is not desirable. It accordingly asks that the Government examine a more effective regime than the Ombudsman to investigate complaints made against the staff of the ACC.

2.58 Further the PJC is aware of the high cost of external review agencies such as the Police Integrity Commission that is operating in NSW and suggests that the Government explore options with State Governments where such investigations can be conducted by existing agencies. There would be an added dimension of review if the agency was external to the State of origin of the staff member against whom the complaint was made.

Recommendation 7

The PJC recommends that the Bill be amended to provide that complaints against all staff of the ACC be investigated by the Commonwealth Ombudsman as a minimum.

2.59 The PJC was concerned that there be a common regime for both integrity and complaints for operational, investigative and support staff of the ACC.

Recommendation 8

The PJC recommends that the Government, once the ACC has been established, gives urgent attention to ensuring that operational, investigative and support staff work under the same integrity and complaints regime.

The Role of the PJC and Performance Reporting

2.60 In considering the issue of accountability many witnesses made reference to the oversight role that the PJC currently plays with the NCA. Given the new structure for the use of coercive powers there was some discussion over whether the role of the PJC could be enhanced to provide additional oversight.

2.61 In this context, the submission from Privacy NSW argued that the PJC could not be expected to take on any additional oversight functions and suggested instead that the transfer of exemptions from the provisions of the HREOC, the Ombudsman Act and the Privacy Act provided under the Bill be re-examined, in light of the expanded intelligence gathering powers.³⁹

2.62 An alternative proposition was put in the submission and evidence provided by Mr Bob Bottom and the Rev Bruce Ballantine-Jones. Their proposal was that the PJC take on the responsibility but that any request for operational details would only be required to be met if it was a unanimous decision of the PJC⁴⁰.

2.63 The PJC notes that the Bill only proposes technical amendments to the provisions of the NCA Act relating to the disclosure of information concerning an investigation (items 265 to 273). Clearly a continuation of the status quo is envisaged.

2.64 The PJC believes that if it is to conduct its oversight role effectively it must have access to operational information. It acknowledges that this places on the members of the PJC in particular, and the Parliament a concurrent responsibility to ensure that there is no breach of information that could compromise the work of the ACC.

Recommendation 9

The PJC recommends that the Bill be amended to provide that the ACC is obliged to provide the Parliamentary Committee overseeing its operations with any information sought by the Committee except where that information would identify any particular individual suspected of criminal conduct (unless the matter is already in the public domain) or would, in the opinion of the CEO, risk prejudicing a current inquiry.

39 Submission 6, p.3.

40 Submission 2, p. 5-6 and *Committee Hansard*, 8 October 2002, p. 18 -19

2.65 The submission from Privacy NSW also makes the point that the current reporting requirements for the NCA “could be seen as not sufficiently prescriptive”⁴¹ to ensure accountability.

2.66 The Bill includes technical amendments only to section 61 of the NCA Act (see items 293 to 307) which details the information that should be included in the annual report. The PJC, in conducting its inquiry on the 2000-2001 Annual Report of the NCA, has developed some understanding of the usefulness of the material provided under this section of the NCA Act. It is of the view that the accountability of the new ACC could be enhanced if these reporting requirements were expanded to include performance measures which can be used to provide a greater level of detail on effectiveness of the operations and programs. Mr Coad, in evidence, suggested that such benchmarks could include “stakeholder satisfaction, prevention and exposure of threats”⁴². The PJC will in its first review of the ACC annual report be giving careful consideration to the performance measures and the information that they provide as to the effectiveness of the organisation.

Legal Entity and Immunity

2.67 The PJC notes that the structure and governance of the ACC is similar to that of a commercial entity - a fact which was commented upon by Mr Coad⁴³ and the Rev Bruce Ballantyne Jones⁴⁴. However, evidence presented to the PJC showed that the ACC is not a legal entity⁴⁵ and that the Commonwealth Government would be “liable for the activities of persons exercising powers or functions.”⁴⁶ The PJC was also advised that the NCA has been the subject of legal proceedings.⁴⁷

2.68 As previously noted, the ACC consists of the CEO, the Examiners and the staff. The Board, which makes the substantive decisions regarding much of the ACC's work is outside the organisation as it is described in the Act. This has implications for those who may have a cause of action against the ACC, as well as for the autonomy of the organisation itself.

2.69 It is not clear to the PJC why the new body was not established as a statutory corporation. There are precedents for establishing Commissions with a corporate entity: for example: section 8 of the *Australian Securities and Investments Commission Act 2001* provides that ASIC is a body corporate which has a common seal, may acquire, hold and dispose of real and personal property and may sue and be sued in its corporate name.

41 Submission 6, p. 4.

42 *Committee Hansard*, 8 October 2002, p. 30.

43 *Committee Hansard*, 8 October 2002, p 29

44 *Committee Hansard*, 8 October 2002 p 18

45 *Committee Hansard*, 14 October 2002, p. 136.

46 *Ibid.*

47 *Ibid.*

2.70 The PJC considers that a body that has such extensive coercive powers at its disposal should be established as a legal entity. The NCA was frequently criticised for its lack of accountability; establishing the ACC as a body corporate would strengthen the new organisation's accountability and increase public confidence in the new organisation.

Recommendation 10

The PJC recommends that the Bill be amended to establish the ACC as a legal entity.

2.71 In context of legal action, the PJC also considered proposed section 59B (item 287) of the Bill which provides blanket immunity to those associated with the ACC against suit. The PJC was advised that this provision is

based on section 246 of the *Australian Securities and Investments Corporation Act 2001* and is intended to provide that those listed are not personally liable for damages that might be proven following a breach of statutory duty⁴⁸

2.72 The PJC notes that the “extent of the immunity afforded by the provision is a matter of statutory interpretation.”⁴⁹ and queries both the need for the provision and its effectiveness in achieving the stated objective. There is no similar provision in the current NCA Act nor is such immunity granted to other law enforcement agencies. The PJC does not believe that the current provisions should be varied.

Recommendation 11

The PJC recommends that there should be no blanket immunity from suit for the ACC.

48 *ibid*, p. 2.

49 *ibid*, p. 2.

CHAPTER 3

COERCIVE POWERS

Introduction

What are coercive powers?

3.1 The PJC's attention was focussed early in the inquiry on the issues arising from the proposed amendments relating to the "coercive powers". These powers are effectively those of a "standing Royal Commission" and are not possessed by law enforcement agencies – ie the police. They permit an officially sanctioned body to take initiatives which ordinarily would be outside the scope of legally acceptable methods of criminal investigation. Such powers are usually heavily circumscribed, and their use is limited to prescribed circumstances.

Functions and Powers: the NCA

3.2 Under the NCA Act, the coercive powers are exercised by the Authority, by the Members at a hearing, and in investigations. Section 11 of the NCA Act sets out the functions of the Authority and the special functions of the Authority. Section 11 is set out in Appendix 3.

3.3 Broadly, those functions are:

- to collect, analyse and disseminate (to those authorised to receive it) criminal information and intelligence relating to relevant criminal activities;
- to investigate matters relating to relevant criminal activities; and
- to arrange for the establishment of Task Forces, and to co-ordinate them.

3.4 The Authority also has special functions. They are, to investigate matters concerning a federally relevant criminal activity referred to the Authority

- by the Commonwealth Minister under section 13; or,
- by a State Minister under section 14.

3.5 In exercising these special functions for investigations, the Authority, under sections 19A and 20, may obtain information from Commonwealth entities, and may apply for search warrants either in person or by phone (ss 22 and 23). Under specified circumstances, the Authority may also apply to the Federal Court for an order to confiscate a person's passport (s 24).

3.6 The powers applying to hearings include the ability to summon witnesses and take evidence (s 28) and the power to obtain documents (s 29). The Authority can also apply for a warrant to arrest a witness who fails to attend a hearing, or who is likely to abscond (s 31).

3.7 The NCA's investigations were hampered by the ability of witnesses to avoid answering questions when giving evidence to the Authority. This was done either using claims for immunity from self-incrimination, or by refusing to answer questions in the knowledge that the offence was a minor one which incurred a negligible penalty and conviction.

3.8 Witnesses were also able to use a "reasonable excuse" to refuse to give evidence, which meant that if the Authority wished to pursue the evidence, it had to obtain a court order to do so - a time consuming process which in the context of dealing with complex and organised crime made it difficult for the NCA to discharge its obligations successfully.

3.9 The amendments to the NCA Act in 2001 expanded the coercive powers. The immunity from prosecution for information provided orally or in document form is now limited to instances where the person indicates before responding that the information may be self incriminating. Witnesses are advised of these rights at the commencement of the hearing process¹. The response cannot be used in evidence against the person in a criminal proceeding. However, "a person's self-incriminatory admissions could be used to find other evidence that verified those admissions or was otherwise relevant, and such derived evidence could be used against the person."².

3.10 The associated penalties for failure to answer questions were increased substantially, and the contempt provisions were expanded – also with increased penalties.

Functions and Powers: the ACC

3.11 The ACC functions are described in clause 35 of the schedule to the Bill which inserts proposed section 7A. The full text of the clause is contained in Appendix 4. The proposed section adds the responsibilities of maintaining a database of intelligence information, and undertaking criminal intelligence work.

3.12 While intelligence gathering was certainly a part of the NCA's activities, it is clear - with the addition of an ASIO representative to the managing body (the Board), and the incorporation of ABCI and OSCA into the organisation, that intelligence gathering has been given further importance in the work of the new organisation.

3.13 The NCA's work was focussed upon the concept of "relevant offences", defined in section 4 of the NCA Act: the section is set out in full at Appendix 5. A relevant offence includes theft, fraud, tax evasion, money and financial offences, drug offences, corruption, perverting the course of justice, bankruptcy and company violations, harbouring of criminals, forging of passports and armament dealings.

1 Email message from the National Crime Authority: 17 October 2002.

2 PJC Report *National Crime Authority Legislation Amendment Bill 2000*, March 2001, p 4

3.14 For the ACC, this definition is applied to “serious and organised crime” with the addition of firearms offences and cybercrime. The Bill also makes it clear that the definition can be extended to other offences by regulation. This has implications for the expansion of the exercise of coercive powers, as these must be exercised in relation to a particular offence or potential offence.

3.15 The NCA is of the view that the use of coercive powers to obtain information, and to cut through some of what appear to be the more obstructive aspects of the criminal justice system has had some effect on the work of the NCA, and the results it has been able to obtain. In evidence to the Committee earlier in the year, Mr Gary Crooke, the then Chair of the NCA advised that

Since October last year there has been a very real difference and hearings undertaken by the NCA have produced some quite significant and even surprising results.³

The Authorisation and Use of Coercive Powers

3.16 The ability to authorise the use and the exercise of coercive powers is clearly a potent weapon that can significantly affect individuals. Appropriate safeguards to ensure the proper use (ie to further a special operation/investigation) therefore are required. These safeguards should operate both at the point of authorisation and in the exercise of them.

3.17 Few witnesses or submitters supported the Board having the ability to approve special operations and thereby make available the coercive powers without any sanction. One who supported the proposed structure was the Rev Bruce Ballantyne-Jones, who spoke on behalf of himself and Mr Bob Bottom:

I believe, and Bob agrees, that the proposal to institute a board made up of police commissioners and other key people...gives a streamlined capacity and, ...will allow this new body to function more efficiently and in a more focused way.⁴

3.18 It was alleged by some witnesses that the structure of the Board where the majority of members consists of police officers cannot be expected to give a measured and unbiased consideration of the use of coercive powers. Mr Michael Lavarch, Secretary General of the Law Council of Australia indicated to the Committee that it is the Law Council’s view that while the best levels of interagency co-operation are important for the new body, this should not be achieved by putting coercive powers in the hands of the police. Mr Lavarch noted that this is not a feature of any of the Crime Commission- type bodies in Australia.⁵

3 *Committee Hansard*, 24 June 2002, p.13.

4 *Committee Hansard*, 8 October 2002, p.18.

5 *Committee Hansard*, 14 October 2002, p.153.

3.19 Mr Frank Costigan QC was more forthright. At the conclusion of his submission he said:

In the end we have a new body to be set up, dominated by police forces and possessed of powers which the Parliament has always refused to give to police forces.⁶

3.20 Mr Ed Lorkin of the Criminal Bar Association of Victoria was equally concerned. In his submission he indicated that the Association had reservations regarding

The placing of coercive investigative powers into the hands of an agency of Government that is effectively to be tasked and driven by police and prosecution bodies. [This] unprecedented step...should be resisted.

NCA, Police and the ACC

3.21 In evidence given to the PJC's predecessor on 2 April 2001, the Commissioner of the Australian Federal Police, Mr Mick Keelty stated:

The AFP enjoys a close strategic partnership with the NCA. ...The AFP believes it is appropriate for the NCA to exist as an independent agency. It is inappropriate for any police organisation to have the special powers conferred upon the NCA⁷

3.22 In his evidence, the Commissioner also referred to a public response to an article which had appeared in *The Canberra Times*:

I wrote a letter to the editor in which I expressed in clear terms that the relationship between the AFP and the NCA had never been better and that we enjoyed a number of recent successes in targeting organised crime groups. I would like to reiterate those comments to the committee today. ... I repeat that it would not be appropriate to vest those powers into a police agency...⁸

3.23 The PJC notes that these comments were made well before the development of the proposals to make substantial changes to the structure and function of the NCA, but the principles underlying the Commissioner's statements reflect the hitherto unquestioned demarcation between professional law enforcement and the exceptional use of powers analogous to those conferred on Royal Commissions and Commonwealth and State agencies akin to Royal Commissions.

3.24 The evidence by the Minister for Justice and Customs, Senator the Hon Chris Ellison at the Estimates hearings of the Senate Legal and Constitutional References

6 Submission No 9, p. 14.

7 *Committee Hansard*, 2 April 2001, p. 144

8 *Ibid.*

Committee on 27 May 2002, reinforces the Police Commissioner's comments in the context of establishing the ACC:

when the NCA was set up, it was never intended to be a ninth police force. ...What we are doing here is setting up a body which is definitely not another police force but which can be a national aid to the police forces we have in Australia....It will have the coercive powers of the NCA...But it will not be exercised by those police commissioners... you do not have police officers exercising those coercive powers. They do not want them. They have made it very clear they do not want those powers.⁹

3.25 Clearly there is a distinction drawn between the authorisation of the powers and the use of the coercive powers. The August Agreement provides that the Board will "approve the use to which coercive powers can be applied.", while the "coercive hearing powers would be exercised through independent statutory officers."¹⁰

3.26 Under the NCA Act, the authorisation for the use of coercive powers is given through the IGC's approval of references. The IGC includes Ministers from each State whose responsibility is limited to authorising the references, and does not include operational responsibility for the work. (This is set out in sub sections 8(b), (c) and (ca) of the NCA Act.) The Members and the Chair of the NCA then determine when and how these powers are to be used in developing an investigation, independent of any police involvement.

3.27 Under the proposed ACC Act, the authorisation for references rests with the Board, not the IGC. Unlike the IGC, the Board consists of Police Commissioners from all States and the Commonwealth as well as heads of other law enforcement and security-related agencies. The Board will determine the work of the ACC including providing references that authorise the use of coercive powers.

3.28 There was also a related concern as to whether the new body is sufficiently independent to exercise coercive powers objectively. Mr Michael Rozenes QC representing the Victorian Bar and the Australian Bar Association in evidence to the Committee said:

Firstly, we submit that there has been a significant dilution of control over the exercise of the coercive powers that are available to be used in the course of a criminal investigation. Secondly, there has been most recently a significant increase in the potency of the coercive powers granted to the NCA and now taken over by the Australian Crime Commission. To put it in a nutshell, the combination of those two issues means that we now have a police force with coercive powers.¹¹

9 *Senate Legal and Constitutional Estimates Committee Hansard* 27 May 2002, p. 135.

10 Submission 10, Attachment A, p. 21.

11 Committee Hansard, 9 October 2002, p. 93

3.29 The Criminal Bar Association of Victoria, expressed similar concerns, while the Law Council of Australia in its submission to the inquiry indicated that it opposed the transfer of the authorisation of coercive powers to the ACC Board. The submission notes:

... as a matter of precedent neither the NCA nor the State Crime Commissions currently allow the level of police force influence on the activation of the coercive powers as will be the case with the ACC¹².

3.30 It was this issue of whether there should be some further check on the authorisation made by the Board that stimulated most discussion within the PJC.

3.31 Some members of the PJC considered that the distinction between authorisation and use was not a sufficient “check” on the exercise of coercive powers. Further, they were of the view that ministerial responsibility should be required for such decisions. These members acknowledged the stated desire to “streamline” the reference system as it currently operates under the NCA and the associated time delays.

3.32 These members supported an alternative approach which would restructure the decision-making process for special operations/investigations, to address these issues and which would also include Ministerial decisions in the process. Under this approach the Board would remain responsible for the authorisation of general operations/investigations. In circumstances of urgency the Board will be entitled to authorise a special operation/investigation which could activate the use of coercive powers but that authorisation would lapse after a specified period unless ratified by the IGC within that period. Teleconferencing could be used in the ratification process. In non urgent circumstances the IGC would be required to authorise the special operation/investigation.

3.33 The majority of the PJC considered that these proposals would not meet the stated need to streamline the reference system. They were also of the view that the Board, including police commissioners was best placed to make an assessment against the threshold test of whether or not other policing methods can be used for the operation or investigation.

3.34 The PJC was concerned with another aspect of the Board’s involvement in the determination of the use of coercive powers. The Board has the power to create committees and delegate to those committees any of its responsibilities and functions (the limitations of this power are described in paragraph 2.19). All members agreed that a committee authorising the use of coercive powers in an operation/investigation would not provide a sufficient safeguard. The full Board should authorise the use of these powers.

12 Submission 11, p. 1.

Recommendation 12

The PJC recommends that the Bill be amended to provide explicitly that any decision by a committee of the Board to authorise an operation/investigation as a “special operation/investigation” requires ratification by the full Board.

The Role of Examiners

3.35 In the proposed structure for the authorisation and use of coercive powers the independence of examiners is a critical safeguard. The PJC gave careful consideration to this issue.

3.36 In his submission, Mr Frank Costigan QC described the role of the Examiner as “curious”. He noted that the NCA Act vested the special powers in those who were responsible for the control of the Authority, but that the ACC proposal removes the examiners from that central position with the result that they are rendered peripheral to any serious investigation.¹³

3.37 The PJC notes that there is no explicit requirement in the Bill for an examiner to be fully briefed on the line of investigation prior to conducting a hearing. It discussed whether there should be such a provision to ensure that the examiner has information on all aspects of an investigation, including such issues as the nature of the investigation, the identification of suspects and the direction of current inquiries.

3.38 After lengthy discussion the PJC decided not to make a recommendation to amend the Bill to provide for such briefings. It considered that such an amendment may not encompass all information of which an examiner would or should be appraised. However, it wishes to make clear that if examiners are to undertake their duties in any meaningful manner, then a briefing which is full and accurate is a basic requirement.

3.39 The PJC, during the hearings, also explored the issue of the independence of an examiner, given that the Bill makes provision for them to be employed on a part-time basis. The PJC was concerned by the evidence of Mr Phillip Bradley, the Acting Chair of the NCA who commented that although the CEO was not directly involved in the work of the examiners, it was open to the CEO to remove from an inquiry any examiner who might refuse to (for example) examine a particular witness.¹⁴

3.40 It pursued the matter with officers from the Attorney-General’s Department at the hearing of 14 October 2002.

...the argument is run along the lines that if the remuneration of your part-timers depends on getting more work, you could have the forum shopping that you alluded to After due consideration, the government is not

13 Submission 13, p. 14.

14 *Committee Hansard*, 8 October 2002, p. 9.

disposed to have part-timers of that kind – that is paid on an hourly, daily or use rate.¹⁵

3.41 The PJC acknowledges that the government's position in relation to part-time employment for examiners has been revised and believes that this should be reflected in the legislation.

Recommendation 13

The PJC recommends that the Bill be amended to provide that no part-time examiners can be engaged on a per-hour or per-diem basis.

3.42 The PJC also notes that there is no provision for requiring the examiners to provide reasons for the exercise of their coercive powers, and no prescribed criteria which the examiner must address in undertaking his or her duties. The issue of ensuring that these powers are limited to those situations in which there is no doubt of their appropriateness, is one which must be resolved. The PJC believes that the independence of the examiner can be made more evident if the Bill is amended to make specific provision for examiners to assure themselves, before exercising the coercive powers, that it is appropriate and reasonable to do so and that they indicate the grounds for forming such an opinion. Some members of the PJC believe that the reasons should be recorded in writing.

Recommendation 14

The PJC recommends that the Bill be amended to explicitly provide that examiners must satisfy themselves in each case that before they exercise special powers under the Act that it is appropriate and reasonable to do so and that they indicate in writing the grounds for having such an opinion.

Other Issues arising from hearings

3.43 The PJC also considered other issues relating to the coercive powers that arose during the inquiry. These issues include:

- The nature and exercise of the coercive powers; including:
 - a) extension to intelligence operations as well as investigations and
 - b) maintaining a balance between a need to gather intelligence and investigate crime on the one hand, and the need to preserve certain civil rights on the other.
- The potential for use by states of coercive powers.

15 *Committee Hansard*, 14 October 2002, p. 142.

Extension of the coercive powers to intelligence operations

3.44 There was some discussion as to whether the Bill created new powers for the ACC. In its submission the Attorney General's Department maintained that it does not, and that the functions are being articulated in a different way.¹⁶

3.45 However, many were concerned that the legislation does extend the use of coercive powers; the legislation specifies that these powers may be applied to a use previously not exercised. In his evidence to the Committee concerning the Bill Mr Greg Melick SC, a former Member of the NCA said:

...they have the ability to use coercive powers for the purpose of gathering intelligence rather than when they suspect the person or they know the person has been involved in criminal activity. You get the intelligence as a by-product. Now, gathering intelligence is good enough reason for using coercive powers.¹⁷

3.46 The Committee is concerned that the issue of the exercise of the coercive powers as described in the Bill represents a fundamental shift in the use of these special powers and asks that further consideration be given to this issue.

Balance

3.47 The need to gather intelligence and investigate crime on the one hand, and the need to preserve certain civil rights on the other was central to the issue of the exercise of coercive powers. The inherent dangers in balancing these interests were outlined by the NSW Privacy Commissioner Mr Chris Puplick. Mr Puplick noted the impetus provided by a need to respond to global terrorism which has necessitated the expansion of coercive powers. He continued:

Nevertheless the exercise of such powers challenges received assumptions about a right to privacy, which underlie the way our legal system operates as well as the right against self-incrimination and the presumption of innocence. There is a danger that the mere invocation of a broadly defined public interest will override these legitimate interests of individuals, and that coercive intelligence gathering powers once established will be extended to a wider range of activities than those where they are justified by special circumstances.¹⁸

3.48 Focussing on the power to apply for search warrants, which is one of the powers available to the examiners, the Victorian State Government emphasised that when evaluating whether particular entry, search and seizure powers are appropriate,

16 Submission 10, p. 7.

17 *Committee Hansard*, 9 October 2002, p. 84.

18 Submission 6, p. 2.

it is necessary to consider the object to be achieved, the degree of intrusion involved and the proportion between the two.¹⁹

3.49 The tension between these competing interests was also noted by the Australian Civil Liberties Union whose submission drew attention to a concern at what the Civil Liberties Union perceives as a growing trend to create what it views as "increasingly repressive legislation" as an anti-terrorist response.

3.50 The PJC acknowledges these concerns.

The potential for use of the coercive powers by states

3.51 There were some concerns raised in evidence regarding the construction of proposed section 55A (item 228), described as a "backdoor" method of allowing states to exercise unauthorised coercive powers.

3.52 When the issue of s 55A was raised with him, Mr John Broome said:

I seriously do not understand 55A. I know it is an attempt to try to overcome the High Court difficulties that have emerged over the last decade in relation to Hakim [Wakim] and so on. But it seems to me that the solution to that is perhaps to go and do some fundamental restructuring of the legislation and not try to do a belt and braces with those kinds of provisions.²⁰

3.53 Mr Philip Bradley took the question on notice. In his response he described the issue surrounding section 55A as being concerned with the extent to which the operation of the proposed section allows state legislation to confer wider power on the ACC or its officers to conduct an investigation in the absence of the approval of the Board. Mr Bradley indicated that he was confident that both proposed subsections 55A (2) and 55A (3) would prevent this from occurring²¹. These sections delineate and limit the extent to which the laws of a state can confer duties, functions and powers on the ACC, and stipulate that the Board's consent is required before the ACC can investigate matters under a state law.

3.54 The PJC acknowledges the protection provided for the use of the coercive powers by the states but queries how effective it will be in reality. The Board is made up of a majority of State representatives, the approval process could be seen as being open to manipulation, particularly if the responsibility is delegated to a committee. The PJC was informed that this scenario could lead to the development of "little blocks of people who form alliances,"²². Such a committee could approve the States acquiring the use of coercive powers with no requirement to have the endorsement of the full Board. Again the PJC would recommend that any authorisation of the use of

19 Submission 9, p. 3.

20 *Committee Hansard*, 14 October 2002, p. 159.

21 Response to questions on notice by Mr Philip Bradley, 14 October 2002, p. 1.

22 *Committee Hansard*, 9 October 2002, p. 116.

coercive powers by a committee of the Board be subject to the ratification by the full Board (see recommendation 12).

CHAPTER 4

CONCLUSION

4.1 The replacement of the NCA with the ACC attracted considerable comment from those who are involved in, interested in or affected by the activities of such a body. The proposal changes the structure and emphasis of the work of an organisation which not long ago was subject to a review and subsequent amendments to its governing Act.

4.2 The PJC has conducted its inquiry to accommodate a close reporting deadline, and is aware that it was not possible to explore all avenues of concern. The recommendations which have been made were designed to strengthen the structure of the proposed organisation and reinforce the independence of the examiner.

4.3 The PJC considers that the issues which have arisen in the hearings and through submissions have been well ventilated. However, the time constraints placed on the PJC's deliberations over the short period of consultation allowed by this timetable, have meant that there were witnesses who were unable to appear before the PJC. Similarly, the time allowed has meant that it has not been possible for submitters to prepare a comprehensive view of the proposals.

4.4 In spite of this, the PJC has been gratified by the responses which have been received, and the thoughtful evidence which has been put before it.

4.5 In its deliberations, the PJC was cognisant of the negotiations that had taken place between the Commonwealth, States and Territories and the agreed position which was reached. The PJC was also mindful of the Government's concern to provide an "enhanced law enforcement capacity"¹ for the ACC. The PJC notes that there was considerable concern as to whether the NCA could meet effectively the challenges of the current and future criminal environment.

4.6 Involvement in organised crime is not something which is limited to the criminal and a law enforcement elite. The wide distribution of drugs, the use of ordinary businesses to launder money, the distribution of illegal firearms, despite strict controls, and the possibility of increased cybercrime-related offences all have the potential to affect the lives of the "ordinary Australian". The ACC will have a pivotal role in the provision of a safer environment for every citizen. This is a significant task in the current environment.

4.7 The PJC has been confronted with the issue of the containment of the coercive powers. These must be sufficient to meet concerns regarding the potential for their abuse, and at the same time meet the demands imposed by combatting crime at an

¹ *House of Representatives Hansard*, 26 September 2002, pp. 6997-6998.

exponentially increasing level of sophistication. Central to this is the significant structural change, and the shift in the use and application of coercive powers. The combination of these two aspects of the proposal exercised the minds of the PJC, witnesses and submitters alike.

4.8 In particular, the governance model represents a significant departure from that of the NCA. The introduction of the Board, and the Board's role in making significant decisions regarding the organisation gave concern to some witnesses and submitters. There were also concerns that the size of the Board may result in an unwieldy structure.

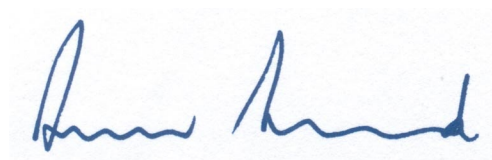
4.9 The recommendations contained in this report reflect the PJC's concerns that the new body must have the capacity to meet the challenges of the changing environment in serious and organised crime. At the same time the PJC seeks to ensure that the standards of accountability which apply to the ACC will yield sufficient information about the Commission's activities to ensure that its effectiveness can be assessed accurately.

4.10 The PJC intends to monitor these changes closely. However, the PJC also acknowledges that any new organisation needs a settling-in period. The ACC will be unlike its predecessor in several important ways, and the process of moving from one environment to the other will require considerable commitment on the part of all participants.

4.11 The PJC will continue to discharge its statutory role of monitoring and evaluating the organisation, but takes the view that there should be a review of the ACC in three years to assess fully the extent to which the ACC has been successful in discharging its obligations. Accordingly, the PJC makes the following recommendation:

Recommendation 15

The Committee recommends that the Bill be amended to provide for a comprehensive public review of the ACC Act to take place after three years have elapsed from the date of Commencement of the ACC Act.

A handwritten signature in blue ink, appearing to read 'Bruce Baird', is written over a light blue rectangular background.

The Hon Bruce Baird, MP

Committee Chair

ADDITIONAL RECOMMENDATIONS BY CERTAIN MEMBERS.

The members supporting these further comments fully support all the recommendations made by the Committee but would support three additional recommendations. This is therefore not strictly a dissenting report but an addendum by certain members of the Committee.

Coercive Powers

The Committee has noted the evidence given to the Legal and Constitutional References Committee on 15 March 2001 by the Commissioner of the Australian Federal Police Mr Mick Keelty. He then testified,

The AFP enjoys a close strategic partnership within the NCA. ...The AFP believes it is appropriate for the NCA to exist as an independent agency. It is inappropriate for any police organisation to have the special powers conferred on the NCA

In evidence given to the Joint Committee on the National Crime Authority on 2 April 2001, the Commissioner stated;

In response to [an article which appeared in the Canberra Times] I wrote a letter to the editor in which I expressed in clear terms that the relationship between the AFP and the NCA had never been better and that we enjoyed a number of recent successes in targeting organised crime groups. I would like to reiterate those comments to the committee today. ...I repeat that it would not be appropriate to vest those powers into a police agency....

The AFP Commissioner's remarks were made before he became aware that the Prime Minister would propose, and later the Council of Heads of Government would agree, to make substantial changes to the structure and operations of the National Crime Authority.

But as the Committee Report notes, the principles underlying the Commissioner's statements reflect the hitherto unquestioned demarcation between professional law enforcement and the exceptional use of powers analogous to those conferred on Royal Commissions that have been conferred on Commonwealth and State agencies akin to the National Crime Authority.

We are mindful that the Committee was asked to examine and report on a Bill that has been the product of negotiations and compromise at officer level between the States and the Commonwealth. Those negotiations have occurred within the framework of the Heads of Agreement referred to above. The outcomes of those negotiations, albeit conducted without public input, should not be interfered with unless there is good reason.

But we are also mindful that any proposal to vest such special powers of the kind possessed by the National Crime Authority into a body directed by the heads of Australian law enforcement agencies represents a shift not only of emphasis but also of principle. If the objectives of the Heads of Government can be achieved by measures that do not, or that only minimally, impact upon the hitherto clear separation of the use of powers akin to those more normally conferred on a Royal Commissions from those available to Commonwealth and State police forces that course ought be taken.

We share Commissioner Keelty's views that it is not appropriate to vest such powers in a police agency.

That is why the threshold issue for this Committee must be where the responsibility should be located for approving references that allow for the use of coercive powers.

Currently that responsibility resides with the Commonwealth Minister responsible for the NCA and Inter-Governmental Council (IGC) which is comprised of ministers from each State. Once a reference is activated neither the Commonwealth minister nor the IGC has operational responsibility for the work of the NCA. The three members of the NCA have the responsibility for the operational conduct of the NCA and this role is independent of any police force.

The Bill by contrast provides that a Board will manage the Australian Crime Commission. The Board will comprise the heads of all Commonwealth and State police forces and the heads of certain other law enforcement and security related agencies. The Board will determine the tasking of the ACC including providing references that authorise the use of coercive powers. .

There is little evidence formally on the record to indicate why this structure has been proposed. No state minister and no state police commissioner chose to submit evidence to the Committee. Nor has the AFP. The content of the Palmer/Blun review of the NCA has not been made available to us.

Such indirect evidence as was given to the committee suggests that the reasons may have included an apprehension that the NCA was too 'lawyer driven' and did not respond adequately to the concerns of state law enforcement agencies or that references were difficult to obtain in a timely way.

Those reasons, if they be those that underlay the decision, were strongly refuted by testimony of two former members of the National Crime Authority (save that Judge Betty King stated that the process for obtaining references had needed streamlining) and John Broome a former Chair of the NCA.

They, and many other witnesses strongly urged that the safeguard of requiring ministerial approval from the IGC for references authorising the use of special powers be retained.

They contended that it was a violation of the proper relationship between law enforcement agencies and the principles of responsible government, for heads of law

enforcement agencies to have a self-initiated and self-authorised power to determine when and under what circumstances a reference would be granted.

For our part we are unable to judge the weight of criticisms that may have been directed at the NCA but not made available to this Committee. No criticisms of substance have been made to the Committee in the past notwithstanding that the Committee holds annual hearings on the work of the NCA and there have been ample opportunities to do so.

Despite the paucity of evidence to justify the case for change it seems clear that the Commonwealth and the States have now agreed that the successor organisation to the NCA should be led by law enforcement priorities and should be managed by a Board made up principally of the heads of Commonwealth and State police forces.

Many witnesses have criticised this direction, a small minority have strongly supported it. Of the majority who criticised this direction, some have argued, Commonwealth and State agreement notwithstanding, the case against such change is so overwhelming that the provisions of the Bill should be wholly rejected.

While we respect those opinions we have concluded otherwise. Our starting point is that the thrust of the Bill can be accepted but only if it is accompanied by amendments that preserve key safeguards. This can be done with the broad framework agreed between the Prime Minister and the Premiers.

We take as the rationale for the changed system of issuing references proposed in the Bill two matters.

First that law enforcement should be at the centre of deciding priorities for the work of the ACC, including identifying the circumstances in which coercive powers will be able to be used.

Second that the process of issuing references should be streamlined and made less subject to potential delay.

Neither requires the Board self-authorise the use of coercive powers.

The Board will remain the centre of decisions regarding priorities so long as it retains the general power of directing the ACC in matters not requiring the use of coercive powers and of recommending any reference that requires the use of the coercive powers to the IGC. If that was done the IGC would only be able to issue a reference on the recommendation of the Board.

To address the criticism of potential delay (a criticism that Mr Melick, a recent member of the NCA claims has been overcome after the rejection of a court challenges to references issued by the IGC after a teleconference) we would allow the Board, where it was of the opinion that circumstances of urgency applied, to issue a reference to the ACC involving the use of coercive powers, but we would require that any reference issued in such circumstances would have to be ratified by a decision of the IGC within 45 days of the Board's decision.

Amended in this way the Bill would meet the broad objective stated in the inter-governmental Heads of Agreement that,

the Board will approve the use to which coercive hearing powers shall be applied.

This objective can be maintained by the amendments proposed below; they maintain the principle but modify the means by which it is to be achieved.

The amendments would retain the benefit of placing the ultimate responsibility for supervising the scope of coercive powers with ministers accountable to their Parliaments.

No witness put forward a case that this is undesirable as a matter of principle.

Objections, so far as they appear from the evidence, to the existing system were on the grounds identified, and dealt with, above. On the other hand many witnesses familiar with the history of the NCA have argued that the Bill should not proceed without such a safeguard.

Additional Recommendations 1 to 3.

- 1. The Board should be responsible for general references.**
- 2. In circumstances of urgency the Board should be entitled to issue a reference authorising the use of coercive powers but such a reference would lapse after 45 days unless ratified by the Inter-Governmental Committee within that period.**
- 3. In non-urgent circumstances the Inter-Governmental Committee would be required to approve any reference authorising the ACC to use coercive powers.**

Hon Duncan Kerr, MP
Member for Denison

Senator Kay Denman
Senator for Tasmania

Mr Robert Sercombe, MP
Member for Maribyrnong

APPENDIX 1

LIST OF SUBMISSIONS

1. Australian Federal Police Association
2. Rev Bruce Ballantine-Jones OAM QLD
Mr Bob Bottom OAM
3. Australian Bar Association & Victorian Bar Association VIC
4. Criminal Bar Association VIC
5. Families and Friends for Drug Law Reform ACT
6. Office of the Privacy Commissioner NSW
7. Australian Civil Liberties Union VIC
8. Mr Denis Lenihan NSW
9. State Government of Victoria
10. Attorney-General's Department COMMONWEALTH
11. Law Council of Australia
12. Community and Public Sector Union (PSU Group) ACT
- 12A Community and Public Sector Union (PSU Group) ACT
13. Mr Frank Costigan QC VIC
14. Bar Association of Queensland QLD
15. Victoria Police VIC
16. National Crime Authority COMMONWEALTH
17. Police and Emergency Services for Western Australia WA
18. Federal Privacy Commissioner COMMONWEALTH

APPENDIX 2

LIST OF WITNESSES WHO APPEARED BEFORE THE COMMITTEE AT PUBLIC HEARINGS

Sydney, 8 October 2001

National Crime Authority

Mr Philip Bradley, Acting Chair

Reverend Bruce Ballantine-Jones (Private capacity)

Mr Robert Bottom (Private capacity)

Mr William Coad (Private capacity)

Mr Michael Priest (Private capacity)

Office of the Federal Privacy Commissioner

Mr Malcolm Crompton, Federal Privacy Commissioner

Mr Timothy Pilgrim, Deputy Federal Privacy Commissioner

Australian Federal Police Association

Mr Jon Hunt-Sharman, National President

Mr Craig Shannon, Principal Industrial Officer

Mr James Torr, Project Officer

Melbourne 9 October 2001

Judge Betty King (Private capacity)

Criminal Bar Association of Victoria Inc.

Mr Greg Melick SC (Private capacity)

Victorian Bar and the Australian Bar Association

Mr Michael Rozenes QC, Member

Dr David Neal, Member

Criminal Bar Association

Mr Edwin Lorkin, Secretary and Public Officer

Canberra 14 October 2001

Attorney-General's Department

Mr Peter Ford, Acting General Manager, Criminal Justice and Security Division

Mr Chris Meaney, Assistant Secretary, Legal Assistance Branch

Mr Simon Overland, Implementation Manager, Australian Crime Commission

Ms Suesan Sellick, Principal Legal Officer, Criminal Law Branch

Mr John Broome (Private capacity)

Australian Council for Civil Liberties

Mr Terry O'Gorman, Director

Law Council of Australia

Mr Michael Lavarch, Secretary General

Families and Friends for Drug Law Reform

Mr Brian McConnell, President

Mr William Bush, Vice-President

Community and Public Sector Union

Ms Margaret Gillespie, Assistant National Secretary

Mr Steve Ramsey, Legal Officer

Commonwealth Office of the Director of Public Prosecutions

Mr John Thornton, Director, Legal and Practice Management

Mr Grahame Delaney, First Deputy Director

Canberra 17 October 2002**Attorney-General's Department**

Mr Peter Ford, Acting General Manager, Criminal Justice and Security Division

Mr Chris Meaney, Assistant Secretary, Legal Assistance Branch

Mr Simon Overland, Implementation Manager, Australian Crime Commission

Ms Suesan Sellick, Principal Legal Officer, Criminal Law Branch

APPENDIX 3

THE NCA ACT 1984

Section 11 Functions of Authority

(1) The general functions of the Authority are:

(a) to collect and analyse criminal information and intelligence relating to relevant criminal activities and disseminate that information and intelligence to:

- (i) law enforcement agencies; and
- (ii) any person authorized by the Governor-General, the Governor of a State, a Minister of State of the Commonwealth or a Minister of the Crown of a State to hold an inquiry to which the information or intelligence is relevant;

(b) to investigate, otherwise than pursuant to a reference made under section 13 or a law of a State or in accordance with section 14, matters relating to relevant criminal activities;

(c) where the Authority considers it appropriate to do so for the purpose of investigating matters relating to relevant criminal activities:

- (i) to arrange for the establishment of Commonwealth Task Forces;
- (ii) to seek the establishment by a State, or the joint establishment by 2 or more States, of State Task Forces; and
- (iii) with the concurrence of the States concerned, to arrange Task Forces, or for co-operation between

(d) to co-ordinate investigations by Commonwealth Task Forces, and, with the concurrence of the States concerned, to co-ordinate investigations by State Task Forces and by joint Commonwealth and State Task Forces, being investigations into matters relating to relevant criminal activities, but not so as to preclude the making of separate bilateral or multilateral arrangements between such Task Forces.

(2) The special functions of the Authority are:

(a) where a reference to the Authority made under section 13 is in force in respect of a matter relating to a federally relevant criminal activity—to investigate the matter; and

(b) where a reference to the Authority made in accordance with section 14 by a Minister of the Crown of a State is in force in respect of a matter relating to a federally relevant criminal activity—subject to subsection 14(1), to investigate the matter in so far as the relevant offence is, or the relevant offences are or include, an offence or offences against a law of the State.

APPENDIX 4

AUSTRALIAN CRIME COMMISSION ESTABLISHMENT BILL 2002

7A Functions of the ACC

The ACC has the following functions:

- (a) to collect, correlate, analyse and disseminate criminal information and intelligence and to maintain a national database of that information and intelligence;
- (b) to undertake, when authorised by the Board, intelligence operations;
- (c) to investigate, when authorised by the Board, matters relating to federally relevant criminal activity;
- (d) to provide reports to the Board on the outcomes of those operations or investigations;
- (e) to provide strategic criminal intelligence assessments, and any other criminal information and intelligence, to the Board;
- (f) to provide advice to the Board on national criminal intelligence priorities;
- (g) such other functions as are conferred on the ACC by other provisions of this Act or by any other Act.

