

GOVERNMENT RESPONSE TO THE THIRD REPORT OF THE
PARLIAMENTARY JOINT COMMITTEE ON THE
NATIONAL CRIME AUTHORITY

GOVERNMENT RESPONSE TO THE PJC 3rd REPORT

The Report, tabled in Parliament on 30 November 1989 reports on matters connected with the Authority during the period since the Parliamentary Joint Committee's (PJC) Second Report in November 1986. In this Third Report the Committee has not attempted to provide an exhaustive account of the National Crime Authority (NCA) activities in the past three years nor has it set out to make some further evaluation of the Authority's work beyond that contained in its Initial Evaluation.

Until the proposed review of 1991 the Government will continue to monitor and review the activities of the Authority closely in order to ensure its effective and efficient operation. Adjustments to either the Authority's legislation or administrative structure will be made as the need arises and as part of the ongoing process of administering the Commonwealth's law enforcement machinery. Appropriate consultation would be a part of this process. The Government will draw the Report's recommendations to the attention of the next meeting of the Inter-Governmental Committee of the NCA.

Contained in the Third Report are two recommendations. The first recommends that the NCA be provided with sufficient funds to enable it to assist the prosecuting agencies in meeting the costs of briefing counsel. The second recommendation states that the costs of the present system for telecommunications interception be carefully monitored so that consideration may be given in future to the adoption of measures which may reduce the costs of such interceptions to all law enforcement agencies.

The Government agrees with the principle affirmed by the PJC that there should be a clear separation between the functions of investigative and prosecuting agencies. The Government considers however, that this very principle would be eroded were the recommendation that the NCA be provided with funds to influence choice of counsel be put into effect.

The NCA does not consider that it should have right of veto over counsel nor has it requested that funds be provided for that purpose. Contrary to the Majority Report, the provision of funding to the NCA is neither designed to allow the Authority a veto over Counsel engaged by the Director of Public Prosecutions nor to in any way remove the separation between the investigatory and prosecutorial function.

The Report itself notes that the Authority has been generally content with the manner in which cases have been conducted and that the Committee is satisfied that in no instance has a prosecution arising out of one of the Authority's investigations failed solely because of any inadequacy on the part of the prosecutor.

It is the Government's view that the selection of counsel is purely a prosecution function. The Commonwealth Director of Public Prosecutions does of course take into account the views of an investigating agency on questions concerning legal representation in a prosecution.

The Committee argues that the NCA should gain greater control over its investigations by ensuring that it has some input in the prosecutorial process. The DPP assures the Government it will continue to seek advice from the NCA regarding choice of counsel. The ultimate choice however, must be left with the prosecutor to ensure neither the integrity of investigations is compromised nor the principle of separation of powers is eroded.

The Committee's second recommendation refers to the adoption of measures which will reduce the costs of the present system of telecommunications interception for all law enforcement agencies. The Government agrees with the Committee's recommendation that the cost of the present interception arrangements be monitored so that, where appropriate, cost reduction measures may be adopted. Nonetheless, it should be noted that some of the costs associated with the present interception arrangements arise from the significant safeguards which were incorporated in the Telecommunications (Interception) Act 1979 by amendments made in 1987 as a means of enhancing the protection of the privacy of individuals and of maintaining the propriety and legality of interception operations. In exploring possible ways of reducing costs, the Government believes that the current level of protection afforded under the Act's safeguards should not be jeopardised or compromised. Aspects of the Telecommunications (Interception) Act are continually under review.

The Committee also refers to the tragic circumstances of the suicide of Ms Cassandra Ogden, however, the Committee has not expressed any criticism of the Authority. In this context the Committee examines the issue of providing witnesses with reassurance and understanding prior to their appearance at a hearing. The Government believes that where it is humanly possible everything must be done to ensure that this support is provided and agrees with the Committee that there is a need for law enforcement agencies to respond to the needs of witnesses on a case by case basis.

The Report also comments on the need for adequate funding for effective witness protection. The Government is aware of the enormous costs associated with witness protection and for the need to be flexible in providing supplementation for investigations as the need arises. These issues are presently under review as part of the Government's overall endeavour to implement the National Co-operative Witness Protection Scheme.

The proposed legislation is intended to enable the Australian Federal Police to enter into a co-operative arrangement with participating authorities, including State/Territory police forces, the NCA or a prescribed authority to provide services for the protection and relocation of high risk witnesses, and their families or close associations. These aims will be embodied in the draft model Witness Protection Bill for subsequent consideration by the Commonwealth/State Steering Committee on National Witness Protection. The Steering Committee's aim is to ensure all jurisdictions have in place, by the end of 1990, uniform legislation and procedures which will facilitate the operation of a national, complementary scheme, including change of identity and relocation of witnesses.