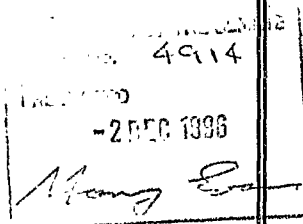




Parliamentary Joint Committee on the
National Crime Authority



**EXAMINATION OF THE ANNUAL REPORT FOR 1994-95
OF THE NATIONAL CRIME AUTHORITY**

DECEMBER 1996

**Parliament of the
Commonwealth of Australia**

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DUTIES OF THE COMMITTEE

The *National Crime Authority Act 1984* provides:

55. (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 authorises 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.

INTRODUCTION

1. Paragraph 55(1)(c) of the *National Crime Authority Act 1984* requires the Committee to examine each annual report of the National Crime Authority (NCA) and to report to the Parliament on any matter appearing in, or arising out of, any such annual report.
2. The NCA's 1994-95 Annual Report was tabled in both Houses on 25 October 1995 but was not examined by the Committee before the dissolution of the 37th Parliament.
3. The Annual Report is required to be presented to the Inter-Governmental Committee before being transmitted to the Attorney-General for tabling. The Attorney must also table any comments made on the report by the Inter-Governmental Committee. South Australian Minister for Emergency Services, the Hon. Wayne Matthew MP, made brief comment on the operations of the NCA during the year from his perspective. His comments were also tabled on 25 October 1995.

BACKGROUND

4. The attention of the Parliament was drawn on 19 September 1996 to the possibility of an error in the NCA's 1994-95 Annual Report. The entry in question states:

In Matter 10 in Victoria, Income Tax Assessments involving the target group of companies were amended by approximately \$26 million.¹

5. The target group of companies was identified as the Foster's Brewing Group Limited, which had denied the 'accuracy of the NCA's assertion'.²
6. On 9 October 1996 the House was informed that the Attorney-General had confirmed that the statement in the NCA's Annual Report was 'not accurate'.³
7. The problem of the inaccuracy was compounded by the claim in the Annual Report that:

... net benefits to the revenue by way of taxation assessments was of the order of \$35 million in 1994-95. This means that in 1994-95, the NCA recovered almost the equivalent of its budget appropriation⁴

the NCA thus inferring that the \$26 million tax receipt, when added to other taxation receipts in 1994-95, had led to a near break-even situation on its operations over the year.

¹ NCA Annual Report 1994-95, p.34

² House of Representatives *Hansard*, 19 September 1996, p.4782

³ House of Representatives *Hansard*, 9 October 1996, p.5103

⁴ NCA Annual Report 1994-95, p.8

8. The Speaker later informed the House that it was customary, where an error of substance was subsequently detected by a Commonwealth agency in its annual report, for a corrigendum, or erratum, to be issued, or a corrected version of the report to be tabled in substitution. At the time of providing this information, no corrigendum or substitute copy of the NCA's Annual Report for 1994-95 had been presented to the House.⁵

THE COMMITTEE'S EXAMINATION OF THE ISSUE

9. Mr Broome wrote to the Committee on 25 September, shortly after the matter was first raised in the House. Mr Broome informed the Committee in relation to the relevant entry in the Annual Report that:

This was incorrect because the Australian Taxation Office had not, in fact, issued a revised assessment and there was no revenue implications during last financial year. What in fact occurred was that the Australian Taxation Office disallowed a claim, the result of which will be to have revenue implications at some stage in the future.

10. Mr Broome's correspondence made it clear that the Authority and the company concerned had had an exchange of correspondence shortly after the publication of the Annual Report and discussions had subsequently taken place. These exchanges had led the NCA to believe the company did not wish to take the matter further. Another exchange of correspondence early in September 1996 between Mr Broome and the company confirmed this position.

11. The Committee also took the opportunity at the public briefing it received from the NCA in Melbourne on 21 October 1996 to raise this issue. In response to a question from the Committee about the relationship between the NCA and the ATO, Mr Broome stated:

They tell us, as a general rule, when they have issued a revised assessment as a result of information provided by the authority. What they do not tell us is individual collection. So they tell us that they have issued a revised assessment; they do not tell us about recoveries. The particular paragraph to which you refer in last year's report was not accurate because it talked about an assessment. In that particular case it was not an assessment that was involved. It was the tax office making a decision to disallow a claimed loss.

Without getting too much into the detail, the end result may be very similar in terms of determining the taxation liability, but it was inaccurate. I have admitted this to the people concerned. I have admitted it to the committee and written to the committee and explained what we have done. It was wrong to say that there had been an assessment; there had not been an assessment. It is correct, however, to say that at some stage - and I do not know enough about the taxation affairs, and I do not want to know about the

⁵ House of Representatives *Hansard*, 16 October 1996, p.5461

taxation affairs, of the company concerned - because of the actions taken, their tax position will be such that they will have to pay a substantially greater amount of tax than they would have paid if that loss had been allowed to be claimed.

The real problem was that we were wrong to say the assessment had been issued last year and to imply that perhaps the funds had been recovered last year. The amount of money involved will be, as I understand it, recovered at some stage. I do not know when and without a detailed analysis of the company's affairs you would not know. When we became aware of the error we discussed it with the company, as I have said to the committee in correspondence. We thought the matter had been resolved.

I became aware that the company still had some concerns. I took it up with the company direct. They were concerned that the matter not be given additional publicity. I explained that to you in a letter that I wrote to the chairman on behalf of the committee. I explained what we had done and that we had, in fact, offered to correct it. So I think we have very much sought to account to your committee because we believe that is the appropriate mechanism to deal with this and to explain that there was an error and we have sought to correct it.⁶

12. In a subsequent estimates committee hearing on 23 October 1996, Mr Dene Hawke, NCA General Manager, Corporate, clarified the matter further. He again confirmed that the information in the annual report was inaccurate but only because of the terminology used. He added:

However, the fact that an amount of revenue would ultimately come to the Commonwealth was correct....[it was not a tax assessment] it was a carry-forward of losses, which can be offset.⁷

SUMMARY

13. It is obviously a matter of concern to the Committee that the NCA Annual Report contained a statement which was incorrect. The fact that the error was one of terminological inexactitude rather than a false representation does not alter the fact that the Parliament expects and is, in fact, reliant on the accuracy of such documents as annual reports to hold the Executive accountable.

14. The NCA claims to have acted promptly to seek to address the issue once it was drawn to its attention. Its decision not to table an erratum in the Parliament was taken only after it had consulted with, and was taken at the request of, the company involved. The Committee's major concern is that it was not until September 1996 that the NCA drew this problem to the Committee's attention. This was despite the matter receiving media publicity in October 1995 in which an NCA spokeswoman asserted the accuracy of the claimed net benefit of the

⁶ Proof Transcript of Evidence, 22 October 1996, pp.21-22

⁷ Estimates Committee *Hansard*, 23 October 1996, p.L&C267

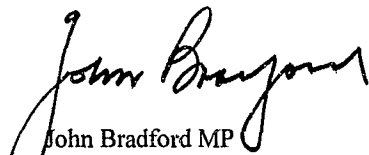
tax revenue to the Federal Government, which no doubt convinced the Committee at the time that there was no issue requiring its closer examination. Had it been so advised, the Committee could have indicated to the Authority whether it saw it as, in the Speaker's terminology, "an error of substance" which warranted an erratum to be tabled.

15. The Committee can also sympathise with the NCA in its attempts to show in its Annual Report a relationship between its budget appropriation and any revenue gained as a result of its activities. The "bottom line" is an easily understandable concept. However, law enforcement agencies should not be expected to perform on a quasi-commercial basis. If revenue was the purpose of law enforcement, NCA operatives would be better employed along Australia's highways with radar guns.

16. The Committee notes that, in general terms, there is a problem in translating the performance information contained in the annual report to performance measurement. The raw statistics tell the community what has transpired during the period in question. That does not help the community to make informed judgements about how efficiently and effectively the NCA has performed its role.

17. This is the challenge for the future and one that the Committee intends to examine in detail in its comprehensive evaluation of the operations of the NCA which it will be undertaking next year.

18. Finally the Committee notes that, at the time of completing this report, the tabling of the NCA's 1995-96 Annual Report is imminent. As required by its statutory charter, the Committee will also examine this report with a view to reporting to the Parliament its findings in this respect.



John Bradford MP
Chairman