

**Parliamentary Joint Committee on the
National Crime Authority**

DEPARTMENT OF THE SENATE
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<i>Mary Evans</i>

**EXAMINATION OF THE ANNUAL REPORT FOR 1995-96
OF THE NATIONAL CRIME AUTHORITY**

MARCH 1997

**Parliament of the
Commonwealth of Australia**

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Mr Michael McLean
Secretary
Parliament House
CANBERRA A.C.T. 2600

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.

Background

1. The annual report of the National Crime Authority (NCA) for 1995-96 was tabled in the House of Representatives on 11 December 1996 and in the Senate on 13 December 1996. Also tabled in conjunction with the report were letters written by three members of the Inter-Governmental Committee on the NCA (IGC).

2. Paragraph 55(1)(c) of the *National Crime Authority Act 1984* (the Act) requires the Committee:

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.

3. In accordance with its statutory duty, the Committee has examined the NCA's 1995-96 annual report (referred to in this report as the NCA report). To assist its consideration of the NCA report, the Committee held a public hearing with representatives of the Authority in Canberra on 3 March 1997¹. The hearing also included a wide-ranging discussion of topical issues in relation to the NCA's operations, which discussion is not addressed in this report but will be considered by the Committee in its continuing inquiries.

Late tabling

4. In order to be of value as an accountability document, an annual report needs to be published as soon as practicable after the conclusion of the period under report. As indicated above, the NCA report was first tabled on 11 December 1996, some 5 months after the conclusion of the 1995-96 financial year. Some of the events being reported upon would, of course, have occurred some 17 months earlier. The Committee sought to examine the reasons for the lateness of tabling of the NCA report. It wrote to the Hon. Daryl Williams MP, Attorney-General, on 24 February 1997 to invite his advice about the apparent late tabling of the NCA report. Mr Williams' response is attached to this report.

5. The NCA report contains within its cover a letter signed by NCA Chairperson, Mr John Broome, formally transmitting the report to the Attorney-General on 24 September 1997. Mr Williams has advised the Committee that the NCA report was, in fact, forwarded on that day to the Secretariat of the IGC.

6. The comments of the members of the IGC were invited by the secretariat on 30 September 1996, for response by close of business on 16 October 1996. The letters referred to in paragraph 1 represent the only responses received from the eight State and Territory members of the IGC. The latest response was sent on 22 October although, according to Mr Williams' advice, it was not received until 29 October.

7. Sub-section 61(6) of the Act requires the Attorney-General to cause the NCA's annual report and any comments made by the IGC to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by him. Mr Williams informed

¹ References in this report to evidence refer to the transcript of the NCA's appearance before the Committee on 3 March 1997

the Committee that he received the report and IGC comments on 29 October but, because of several questions he had in relation to the annual report, he did not approve its tabling until, by his own admission, he was in breach of the statutory reporting deadline.

8. Mr Williams has indicated that he was asked to table the NCA report by 31 October 1996. The Committee notes that if the NCA were subject to the standard reporting requirements for Commonwealth agencies, its report would be required to be tabled by 31 October each year. The Committee also notes that if the report had been "received" by the Attorney-General when it was transmitted to him by the NCA's Chairperson on 24 September, the 15 sitting days would have expired on 7 November 1996.

9. The Committee will examine this matter further in the context of the comprehensive evaluation of the NCA which it is currently undertaking. The Committee is of the strong view that the tabling of the NCA annual report as late as December in any year is unacceptable. Unless sound argument is raised against the proposition during its evaluation inquiry, the Committee foreshadows that it will be calling for the NCA Act to be appropriately amended to ensure the tabling of the NCA annual report by 31 October each year.

Comments by the Inter-Governmental Committee

10. The current Committee was in existence for only about one month, from 31 May 1996 to 30 June 1996, of the period under review in the NCA report. While the Committee received a number of briefings in order to bring it up-to-date on developments over the immediately preceding period, the comments of the three IGC members provided another perspective of the NCA's operations during the period.

11. The IGC consists of representatives of the Commonwealth, State and Territory Governments and performs a role in relation to the NCA which could be compared with that of a board of directors. It generally meets twice a year. In practice, IGC members are the Commonwealth Attorney-General and all State and Territory ministers with responsibility for policing. The three letters referred to in paragraph 1 were written by the following IGC members: the Hon. Stephen Baker MP, South Australian Deputy Premier and Minister for Police; the Hon. John Beswick MHA, Tasmanian Minister for Police and Public Safety; and the Hon. Bob Wiese MLA, Western Australian Minister for Police and Emergency Services.

12. Mr Baker noted that South Australia Police (SAPOL) is represented on several NCA Joint Task Forces and that SAPOL officers are involved in related committees. Mr Baker wrote:

Recent reductions in the NCA Budget have resulted in the severe downsizing of the Adelaide Office of the Authority and the consequences of that downsizing is of concern...

13. He proceeded to list seven reasons for his concern, such as increased demands on SAPOL's limited investigative resources and significantly reduced NCA contributions to Joint Task Force investigations.

14. Mr Wiese similarly noted the cooperation between jurisdictions which underpin the achievements of the NCA outlined in its report. He also referred to the effect of the Government's funding reductions leading to a near 50 per cent cut in staffing in the NCA's Perth office.

15. While relatively positive about the NCA's achievements in the 1995-96 year, in relation to the funding situation he wrote:

The full impact of this is yet to be realised and may become evident by the time of the 1996-97 Annual Report.

16. Mr Beswick made only brief comment. He noted that Tasmania Police had participated in two NCA operations in relation to Outlaw Motorcycle Gangs, both of which operations were discontinued after the commitment of extensive physical and financial resources. No charges were laid as a result of the operations, although information gained will be subjected to further intelligence analysis.

17. It is difficult to draw any concrete conclusions on the NCA's performance in 1995-96 based on these comments. It is unsurprising that States should express concern about a reduction in spending in their States by the Commonwealth Government. While they, and this Committee, would wish to see increased levels of spending on law enforcement by the Commonwealth, the Tasmanian situation demonstrates that, as is discussed at greater length below, expenditure on law enforcement should not be evaluated solely in terms of arrests made.

Performance measurement

18. The NCA report was the first by Mr John Broome as NCA Chairperson, he having been appointed to the position in February 1996. In his Chairperson's report, Mr Broome discussed with commendable frankness the problems and challenges confronting the organisation some 12 years after its establishment and in the face of progressively declining budgets. Mr Broome wrote:

There is a need for the NCA to re-emphasise its unique role in the Australian law enforcement community. I believe our best contribution to the national effort in law enforcement will be achieved by using our multi-disciplinary team approach to target organised criminal activity of national importance, using our special powers... The close relationships we now enjoy with other law enforcement agencies are critical to our continued success and to maximising the national response to organised crime (NCA report, p. 8).

19. One particular theme addressed by Mr Broome was the difficulty of measuring the performance of an agency such as the NCA, a matter which has been the subject of some critical debate in the Parliament over the recent period. He stressed that the most measurable outcomes do not necessarily present a complete picture of the agency's performance. He wrote:

While I understand the inevitable public focus on the level of arrests and charges, there are other measures of success which are equally relevant, such as the quality of the NCA's relationships with other agencies, the complexity of the matters successfully investigated and the disruptive effect NCA operations have on specific areas of organised crime (NCA report, p. 9).

20. Despite these reservations, Mr Broome noted that during the 1995-96 year the NCA charged 120 people with 330 offences, the second highest level of arrests since the NCA's establishment.

21. The Committee commented in its December 1996 report *Examination of the Annual report for 1994-95 of the National Crime Authority* that the performance information contained in the NCA's annual reports is not easily translated into an informed judgement about how efficiently and effectively the NCA had performed its role.

22. It took up this theme in its public hearing with the NCA in relation to the current annual report, particularly in relation to claims of its relative lack of cost effectiveness. A Committee member noted that, using the most generous measure of the NCA's arrest rate, the average cost per arrest was \$180,000. Another member noted that, on the basis of the details of the court results indicated in a schedule to the NCA report, several of the successful prosecutions led to token fines, some as low as \$50.

23. Mr Broome launched into a spirited defence of the Authority's performance:

First and foremost, through the briefs that we prepare and in cooperation with the prosecutors, we have a very high success rate of achieving successful outcomes in terms of prosecutions. It is a success rate which I think it is fair to say vastly exceeds anything which occurs in other law enforcement agencies...Secondly, we are dealing by definition with people who are more difficult to identify, investigate, subsequently arrest and charge and then prosecute. So I would expect that the average costs would be high (Evidence, p. 13).

Should we be getting more arrests for the dollar? This is one of the problems with these kinds of statistics...I think that what is important is trying to get some qualitative measure of the kind of work that is being done. Over the last 12 months...we have been involved in investigating serious criminal behaviour and getting results in that context. I really do find this sort of arithmetical analysis to be a fairly unsatisfactory measure of performance (ibid.).

24. NCA Member, Mr Greg Melick, also referred to what he termed 'the old Al Capone factor' that, on occasions, a "big player" may only be caught for a small matter,. He stated:

We know from our intelligence and hearing programs that we have significantly disrupted some of the organisations that we are investigating, despite the fact that the arrest resulted in a minor gaol sentence and some small fines. To my mind, that justifies the cost of the operation because these people are taking hundreds of millions of dollars out of the economy each year (Evidence, p. 25).

25. The Committee drew to the NCA's attention that it can expect criticism of its cost effectiveness if its performance is not adequately described in the annual report. Mr Broome pointed to some very real constraints on what can be included in a published report, which he acknowledged was a source of frustration to him. For example, the NCA may have arrested a suspect for, say, a drugs charge, and that suspect is implicated in a cash flow overseas worth several million dollars. A reasonable person would, on the balance of probabilities, accept the cash flow to be the proceeds of crime with associated tax evasion and money laundering. This "evidence" may not satisfy the criminal standard of proof, however. The NCA could therefore not publicly claim to have smashed a multi-million dollar money laundering operation if the people involved had never been charged or convicted.

26. At the hearing the Committee suggested how the performance indicator material in the annual report could be expanded to be more helpful to the reader, for example in relation to the details given of the nature of the charges listed in the appendixes. Mr Broome indicated that 'we can certainly try' (Evidence, p. 27).

27. Mr Broome wrote in his Chairperson's report that the NCA will be undertaking a review of its existing performance measures over the coming year. These revised performance measures will, hopefully, form the basis for more expansive and meaningful annual reporting in future.

Specific comments on the annual report

28. The main purpose of this report is to discuss the Committee views on the adequacy of the NCA report as an accountability document to the Parliament. It is hoped that the NCA will take the Committee's comments into account in its preparation of future annual reports. The purpose of this report is not to consider the adequacy of the NCA's operations in the period under review, especially as this issue will be examined in detail by the Committee in the coming months in the context of its comprehensive evaluation of the NCA.

General format

29. Annual reports are the key accountability document for Parliament and the community to review actual outcomes for the past financial year. Because of their significance, considerable attention has been paid, particularly by the Joint Committee of Public Accounts and the Senate's Legislative and General Purpose Committees, to their content.

30. The NCA report is 130 pages. The 1995-96 annual report of the New South Wales Crime Commission, an agency comparable to the NCA in function but of a smaller scale, is 58. Mr Broome told the Committee:

...there are statutory obligations to report on certain material in the act itself...there is now a raft - and I think that is the appropriate word to use - of obligations imposed by the parliament and then by the executive on what information it wants to see in the annual reports of agencies...None of those, I think it can be fairly described, is particularly consistent with a racy journalistic style, because in fact a large part of the document is tables and factual material of that kind (Evidence, p. 3).

31. Mr Broome noted that all Commonwealth agencies are faced with producing a report which meets the rules, rather than reporting in the way that they would wish to.

32. The Committee notes that in March 1994 the Joint Committee of Public Accounts approved revised reporting requirements for departments and those agencies, such as the NCA, whose operations are on a scale such as those of departments. These revisions were intended to produce more sharply focussed reports by significantly reducing the number of detailed requirements on which departments must report in annual reports.

33. The Committee noted that the format of the NCA report closely followed the format used each year since 1992-93, despite its adoption of the March 1994 reforms. In fact the 1992-93 annual report, which had to meet the former 90 reporting guidelines, was 119 pages in length, compared to the "streamlined" 1993-94 annual report under the new reporting guidelines which was three pages shorter.

34. The Committee recognises that the use of the same format in successive years may not be a problem in itself, although there is a risk, rebutted on this occasion by Mr Broome, that slabs of text are repeated from year to year but with updated statistics included. Conversely, this approach assists the making of year-on-year comparisons, especially in cases where longitudinal studies are undertaken.

35. Mr Broome also admitted that some of the reporting in the annual report was a 'fairly cryptic description' (Evidence, p. 4) because of the obligation not to make public certain information. In the Committee's view, such cryptic references detract from the usefulness of the report.

36. The Committee urges Mr Broome to consider carefully the options provided by the current reporting guidelines to produce an annual report for 1996-97 which enhances the Parliament's ability to make informed judgements about the NCA's performance, while avoiding excessive and extraneous detail. As stated in the advice to departments from the Department of the Prime Minister and Cabinet following the March 1994 revisions:

... agency heads are encouraged to interpret these statutory reporting requirements in a manner which leads to a concise, economical and informative presentation.

37. The Committee observes, however, that despite its length, the content of the NCA report is relatively accessible, with such aids as the provision of a comprehensive general index, an index to compliance with the reporting requirements of the Act, and an index to compliance with the 'raft' of departmental reporting requirements approved by the Joint Committee of Public Accounts.

Naming

38. Mr Broome discussed the question of the publication in the NCA's annual reports of the names of those charged. The Committee also raised with Mr Broome the related issue of the NCA's practice of issuing a media release when charges are laid.

39. He acknowledged the difficulties raised by the issue, saying:

It is all a matter of public record if someone wants to find out. However, when it is produced in the annual report it is readily accessible to the press and to others, and it is accessible in a way in which I would argue is not publication in the sense of something being put on the public record which was not otherwise there. But it does raise some questions about whether people should be referred to by name in that way.

That is something which the authority has done for a number of years because it believed it was able to provide the committee and indeed the public generally with more recent information than it would be able to if it waited for three-year-old court cases to be completed. We would be in more trouble trying to defend ourselves on the basis of three-year-old statistics, but there is a real dilemma in that (Evidence, p. 27).

40. The Committee concurs with Mr Broome's view in relation to the inclusion of names in both categories in which they are currently shown in the NCA's annual report: in the summary of persons charged and in the summary of court results. Where a named person is, some years later, found not guilty of those charges, it should be of some comfort to them that this information will be published in the annual report. The Committee notes with approval that the Act properly prohibits the identification in the annual report of persons only suspected of having committed offences or of identifying persons as having committed offences unless those persons have been convicted of those offences.

Comprehensiveness

41. At the risk of lengthening the NCA report, the Committee records its concern that several matters of interest to it were not adequately addressed in the report. The Committee noted that the strategic assessment into organised paedophile activity, a matter of particular interest to the Committee arising from its inquiry into the topic in 1995, was referred to only by inference in the *Strategic Intelligence* section. Also not mentioned was the conduct by the Auditor-General of a performance audit on the management by the NCA and others of the investigation and recovery of the proceeds of crime. While the audit report was not tabled until 13 December 1996, the audit investigation was conducted between November 1995 and July 1996. The Auditor-General, of course, performs a valuable role on the Parliament's behalf to examine and report on the efficiency, economy and administrative effectiveness of the agencies of the Commonwealth.

42. The NCA may have omitted the detail of these topics in its annual report because of a perception that its primary audience, the IGC, would either be aware or uninterested in such detail. The Committee simply notes that the Parliament's interests are different to the IGC's and urges the NCA to be more conscious of Parliament's areas of interest.

Staffing reporting

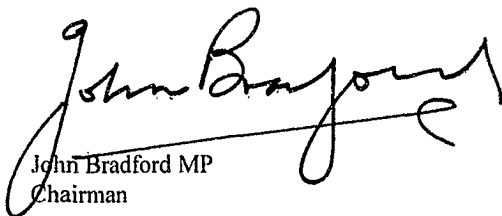
43. The Committee examined the NCA report to seek to determine the manner in which it had approached the task of rationalisation demanded by its budgetary situation. For example, the Committee was interested to see whether operational personnel were dismissed while the

senior executive remained unaffected. While the Committee received some valuable advice from the NCA about how the budgetary situation was adversely affecting its operational capacities, advice which the Committee will not deal with here, some confusion resulted from its attempts to interpret the relevant statistics contained in the annual report.

44. Table 5 showed the NCA's Senior Executive Service (SES) as at 30 June 1996 as 15 officers, a decline of two on the figure for the previous year, although the comparison was not included in the current report. However, the notes to the financial statements also showed that the number of executive officers whose fixed annual remuneration exceeded \$100,000 had grown from eight in 1994-95 to the current 15, that fixed remuneration had grown from \$1.25m to \$1.95m and that performance pay had increased from \$39,695 to \$80,926.

45. Mr Broome stressed that both sets of figures were correct, since they were measuring different things. The latter figures included the Members of the Authority, but not all SES officers. The Committee acknowledges that, if such confusing material is required to be included in annual reports, the NCA cannot be held responsible.

46. However, as noted by the Committee in relation to the NCA's reporting on Equal Employment Opportunity, the absence of prior year figures complicates the observation of trends and, wherever relevant, the Committee urges the NCA to include such comparative data.



John Bradford MP
Chairman

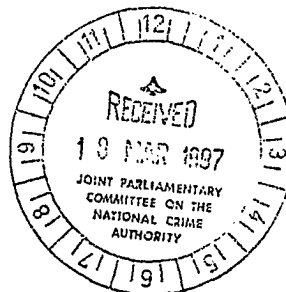
The Hon Daryl Williams AM QC MP



Attorney-General
and
Minister for Justice

16 MAR 1997

Mr John Bradford MP
Chairman
Joint Committee on the National Crime Authority
Parliament House
CANBERRA ACT 2600



Dear Mr Bradford

I refer to your letter of 24 February 1997 about the apparent late tabling of the annual report of the National Crime Authority (NCA).

As your letter points out, the 1995-96 Annual Report was tabled in the House of Representatives on 11 December 1996 and in the Senate on 13 December 1996. Section 61(1) of the National Crime Authority Act 1984 provides that the NCA shall, as soon as practicable after each 30 June, prepare a report of its operations during the year ended 30 June and furnish the report to the Inter-Governmental Committee for transmission, together with such comments on the report as the IGC-NCA thinks fit, to the Commonwealth Minister and to the appropriate Minister of the Crown of each participating State and Territory.

On 24 September 1996, the NCA forwarded to the Secretariat of the IGC-NCA copies of its 1995-96 Annual Report. The Secretary of the IGC-NCA wrote to jurisdictions on 30 September attaching a copy of the Annual Report seeking comments by the close of business on 16 October 1996.

Section 61(6) provides that the Commonwealth Minister shall cause a copy of the report and any comments made by the IGC-NCA on the report to be laid before each House of Parliament within 15 sitting days of that House after the report is received by him. In other words the report is not considered ready for tabling until after its consideration by the IGC-NCA (whether in or out of session).

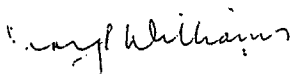
Comments from the jurisdictions were received as late as 29 October 1996. The Secretary of the IGC-NCA wrote to me on that day attaching a copy of the NCA

Annual Report together with the comments provided by jurisdictions (South Australia, Western Australia and Tasmania) and seeking my approval to table the 1995-96 Annual Report by 31 October 1996.

I had several questions in relation to the Annual Report and I sought advice from my Department. One of those questions required formal advice from the Chief General Counsel. On receipt of that advice, which satisfied my concerns, I approved the tabling of the report. As a result of the need to satisfy myself that the report was in order, tabling was delayed until 11 December 1996 in the House of Representatives and 13 December 1996 in the Senate, one and seven sitting days late respectively.

I would be grateful if you would convey this information to the Committee.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Daryl Williams', with a stylized flourish at the end.

DARYL WILLIAMS