

## **THE PROLIFERATION OF INVESTIGATIVE AGENCIES: DEMARCATION AND INTELLIGENCE TENSIONS**

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### **INTRODUCTION**

The proliferation of investigative agencies is perceived to be a relatively new phenomenon, however this in fact is not the case. Certainly in recent years there has been an increase in the number of different agencies investigating the same types of targets. This has been partly caused by new problems confronting society that seemingly cannot be rectified by existing methods of criminal investigation - hence the perceived need arises for a new investigative body. Such perceived 'new problems' can be traced back to the beginning of our colony when the proliferation of investigative agencies commenced.

The colony was only two weeks old when Governor Arthur Philip appointed the first constable to prevent general pilfering. This one constable was unable to eradicate the problem and the marine guard was formed. However it was soon discovered that the marine guard was systematically looting the government stores. Six of the marines were eventually sent to the gallows, and needless to say this very first alternative investigative agency was a failure. It could be argued that the original constable would have been more effective had he been appropriately resourced.

It seems that we have not learnt from that mistake and with the emergence of perceived new problems, new investigative agencies are still being formed.

Agencies of this nature not only operate in isolation to each other but also to the traditional policing bodies. They each commence their own intelligence gathering systems, and, although initially they may be somewhat haphazard, as the agencies become more sophisticated so too do their intelligence gathering systems. Unfortunately, this does not mean that they automatically become more efficient.

In this paper it will be argued that the additional agencies are not warranted. If traditional policing was given adequate resources and access to the additional powers provided to most of the additional agencies, they would prove more effective than such agencies.

All of these additional agencies hold banks of valuable intelligence which should be made available to all areas of law enforcement. Of particular concern in this regard are those agencies which were formed to investigate areas previously the entire responsibility of traditional policing. This paper will focus on such bodies.

## BACKGROUND

Over a period of years various Royal Commissions have recognised a general lack of co-operation between state and federal police forces. This is best summarized in the following excerpts from the report on the Stewart Royal Commission of Inquiry into Drug Trafficking:

It appears clear to this Commission that total police effectiveness will never be obtained in Australia unless co-operation between the Australian Federal Police force and the State forces is significantly improved.<sup>1</sup>

Dealing specifically with the question of intelligence exchange the report states:

It must also be realized that there is great difficulty in encouraging police officers to co-operate in disseminating criminal intelligence to one another. This is true even between police officers of the same force.<sup>2</sup>

The report then discusses a range of perceived reasons for the reluctance of police forces to exchange intelligence, commenting:

Other reasons for refusing to pass on criminal intelligence to other police or other police forces are less valid and range from interservice rivalries and jealousies to an unwillingness to share information which is equated with notions of power.<sup>3</sup>

Later this paper will identify the action has been taken to resolve these problems, not only within the New South Wales Police Force but between that Service and other agencies.

Notwithstanding the valid comments from the *Stewart Report*, we have witnessed a proliferation of agencies which, not only by their respective legislative restrictions, but also by their attitude, have disregarded the main thrust of these statements.

## INTELLIGENCE TENSIONS

In dealing with the question of perceived intelligence tensions within the State of New South Wales, the paper will specifically address the National Crime Authority (NCA), the State Drug Crime Commission (SDCC) and the New South Wales Police (NSWP).

### National Crime Authority

Section 11 (1) of the National Crime Authority Act provides the basic functions of the Authority as being

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1 Royal Commission of Inquiry into Drug Trafficking Commissioner: The Hon. Mr Justice D.G. Stewart p 516  
2 *ibid* p 522  
3 *ibid* p 523

- (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 authorised 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.<sup>4</sup>

This section is also supported by section 17 which provides:

In performing its function under this Act, the Authority shall, so far as is practicable, work in co-operation with law enforcement agencies.<sup>5</sup>

Generally speaking, it is the perception of most other law enforcement agencies that, notwithstanding the spirit of the quoted sections, material disseminated by the Authority to other law enforcement agencies does not qualify as true intelligence. History, in most instances, has shown that such material has not been timely, relevant, or of any real value.

The National Crime Authority accesses all recognised intelligence holdings in Australia and, in addition, has the machinery to develop its own intelligence from sources not available to traditional policing. Yet, with the availability all these resources, it is the perception of most law enforcement bodies that the flow of intelligence is traditionally one way - inwards, to the Authority.

### The State Drug Crime Commission

On 2 October, 1985 the then Premier of New South Wales, (Mr Wran) addressed Parliament on the proposed introduction of the State Drug Crime Commission. He, *inter alia*, said:

The Commission will co-operate and consult in its work with other law enforcement agencies such as the National Crime Authority, the New South Wales Drug Law Enforcement Bureau and the Joint Task Force on Drug Trafficking.<sup>6</sup>

Section 7 of the *State Drug Crime Commission Act* provides that:

- (a) disseminate intelligence and information to the National Crime Authority and such law enforcement agencies as the Commission thinks appropriate; and

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4 The National Crime Authority Act 1984 s.2 (1)

5 The National Crime Authority Act 1984 s. 17

6 Speech of Mr Wran, second reading of bill for introduction of *State Drug Crime Commission Act* at 7536 of *NSW State Government Hansard*

- (b) co-operate and consult with the National Crime Authority, the Australian Bureau of Criminal Intelligence, law enforcement agencies and such persons and other bodies as the Management Committee thinks appropriate.<sup>7</sup>

Whilst the SDCC enjoys a better reputation for its willingness to disseminate intelligence, than the NCA, there has never been a complete exchange of intelligence between it and the NSW. In fact, the secrecy provisions of Section 29 of the Act prevents any meaningful discussion between staff members of the Commission and other areas of law enforcement.

### **New South Wales Police**

The NSW State Intelligence Network was recently established and its primary objective is to provide human and computer resources through which topical and accurate information, as well as intelligence, is made readily available to all police and other relevant areas of law enforcement on a twenty four hour basis. The network now operates on a local, national and international level and interacts with such agencies as Interpol, the Australian Federal Police, Australian Customs Services, Australian Bureau of Criminal Intelligence, National Crime Authority, and State Drug Crime Commission.

The NSW Service recently re-introduced the Intelligence Co-ordinating Committee. This Committee consists of senior representation from all agencies involved in the New South Wales drug law enforcement response, namely, Australian Federal Police, Australian Customs Service, Australian Bureau of Criminal Intelligence, National Crime Authority, and State Drug Crime Commission. The Committee meets bi-monthly and encourages a free exchange of targets under investigation. The establishment of this Committee is an attempt by the NSW Service to overcome investigatory problems associated with duplication of effort and operational conflict of interest. For this committee to work effectively there must be a removal of distrust between the various agencies.

### **RELATIVE EFFECTIVENESS OF NON-TRADITIONAL AGENCIES**

To obtain a fair comparison of what can be achieved by an adequately resourced traditional policing body, compared with alternative agencies it is necessary to refer to the 1986/87 fiscal year, which was effectively the last year of operation of the now disbanded Commonwealth/State Joint Task Force on Drug Trafficking (JDTF). The newly formed NSW Drug Enforcement Agency (DEA) was modelled on the JDTF. The DEA is adequately resourced and will properly address the drug problem within New South Wales. However, it has not been functioning long enough for a realistic comparison at present. The DEA will later be addressed more fully.

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7 The State Drug Crime Commission Act 1985 s. 7

Prior to embarking upon the comparison, it is necessary to provide a brief history of the JDTF. The JDTF was staffed by police from the NSW Service and the Australian Federal Police Force (AFP).

Upon formation of the JDTF, Royal Commissioners Mr Justices Woodward and Williams provided the Unit with the names of ten individuals who were then considered as the most powerful and resourceful drug traffickers in New South Wales, if not Australia. The ten suspects were subsequently targeted by the JDTF and all of them, with the exception of one who was investigated and found to be no longer in the trade, were successfully prosecuted for major narcotic trafficking offences. The same, extremely high quality of targets was pursued by the JDTF until its closure. A feature of the JDTF was to target, and ultimately remove complete syndicates, or networks, of organised criminals involved in drug trafficking, including overseas sources, as well as street level traffickers. Pursuit of such syndicates meant that in seven instances, international criminals were identified and extradited to this Country for prosecution for their part in the importation of drugs into Australia.

As of 30 June, 1987, the JDTF had been responsible for the prosecution of 286 persons for 570 offences.<sup>8</sup> This resulted in the destruction of 25 major and 14 minor drug trafficking groups.<sup>9</sup> The JDTF maintained a conviction rate of 92%, which compares most favourably with the NSW 'general crime' conviction rate, which was also 92%,<sup>10</sup> especially in light of the fact that most of the State's convictions emanated from pleas of guilty, whereas JDTF prosecutions were invariably defended.

During the 1986/87 financial year the JDTF operated on a budget of approximately \$37m, plus approximately \$75m for salaries.<sup>11</sup> The Unit had a staff of 23 police officers and three administrative personnel.<sup>12</sup>

The JDTF also focused on the confiscation of assets, and was responsible for the seizure of assets valued at approximately \$2.8m.<sup>13</sup> Based on JDTF information the Australian Taxation Office had, as of the year ended 30 June 1987, launched four investigations, disclosing the sum of approximately \$7.3m in understated income. This resulted in the imposition of \$5.8m as additional taxation and penalties.<sup>14</sup>

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8 **The 1986/87 JDTF Annual Report**, p 9

9 **ibid**, p 26

10 **Report of the Australian Bureau of Statistics**, NSW Office, 1983, p 7

11 **The JDTF Annual Report (1986/87)**, Chairman's Preface, p 4

12 **ibid**, p 5

13 **ibid**, p 12

14 **ibid**, p 12

By comparison, the SDCC budget for the 1986/87 financial year was approximately \$3.03m.<sup>15</sup> It had a staff of 85, excluding security personnel but including 31 NSWSP officers.<sup>16</sup> The Commission commenced on 1 November 1985,<sup>17</sup> and as of 30 June 1987 had prosecuted 58 persons for 140 offences. During the 1986/87 financial year it broke up one major drug distribution ring and arrested 21 offenders.<sup>18</sup>

During the same period the NCA had a budget of approximately \$15.3m and a national staff of 254, excluding security officers. Sydney, the Central Regional Office, had a staff of 187, including 87 police officers.<sup>19</sup> It has been in place since 15 June 1984,<sup>20</sup> and as of 30 June 1987, had prosecuted 194 persons for 540 offences.<sup>21</sup> During the 1986/87 financial year the Authority prosecuted 143 persons for 406 offences.<sup>22</sup>

As can be seen, the results achieved from traditional policing methods, used by the JDTF, compared most favourably with those from the alternative agencies. It is significant that the results obtained of the JDTF were obtained without access to the additional powers given to the alternative agencies. A major point arising from these comparisons is simple cost effectiveness. On this basis alone the results of the comparative agencies, to say the least, are questionable.

## THE NEW SOUTH WALES POLICE RESPONSE

In his report on the Royal Commission of Inquiry into Drug Trafficking Mr Justice Stewart stated:

This Commission believes that the only successful way that the criminal justice system in Australia can deal with organised criminals breaking the laws of the Commonwealth and of a State or States is by the use of joint resources in the shape of a task force. Such task forces should, of course, have limited targets and a limited life.<sup>23</sup>

The NSWSP Service had previously heeded the advice of the Woodward and Williams Royal Commissions and as a result the JDTF was established. After a successful tenure, the Task Force was disbanded in 1988. The disbanding heeded the advice of Mr Justice Stewart in regard to task forces having only a limited life.

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15 **The SDCC Annual Report (1986/87)**, Preface, p (x)

16 **ibid**, p 19

17 **The State Drug Crime Commission Act 1985**, p 11

18 **The SDCC Annual Report (1986/87)** Preface, p.(x)

19 **The NCA Annual Report (1986/87)**, p 46

20 **National Crime Authority Act 1984**, p 1

21 **The NCA Annual Report (1986/87)**, p 20

22 **ibid**, p 20

23 **Report of Royal Commission of Inquiry into Drug Trafficking**. Commissioner: The Hon. Mr Justice D.G. STEWART. pp 516-517

Advice, which, with the removal of the sunset clause from the National Crime Authority Act, seems to have been ignored in relation to his own Agency.

On 2 March 1988 the NSW Police service and the AFP entered into a memorandum of understanding regarding the primary roles of the respective agencies. It also created positions of liaison officers within each Service and made allowance for the formation of joint task forces as required.<sup>24</sup>

This memorandum of understanding is an ideal demonstration of the rationalisation of resources which can be achieved between two mature and experienced Police Forces. Through the memorandum, responsibilities and responses are able to be clearly defined thereby reducing duplication and providing an open facility for the free exchange of intelligence.

With the commencement of the DEA on 2 April 1989 the NSW Police Service rationalised its drug law enforcement response, making all major drug investigations in the State the responsibility of the Agency.

The Agency has been divided into a number of task forces as well as a support group. Each of the task forces have been modelled on the previously successful JDTF and have been supplemented with resources previously available only to the alternative Agencies. This has meant that the professional police investigator is being supported by lawyers, accountants and fully trained analysts within the Agency.

With the establishment of the DEA the operational police previously attached to the SDCC were removed. One of the DEA task forces took over the investigatory duties previously undertaken by police attached to the SDCC. This has meant that the task force is now able to utilise additional resources available to it through the Commission. Already the advantage of professional policing with the additional resources of the Commission has proved successful, in that a number of persons allegedly involved in major heroin distribution network were recently arrested.

## DISCUSSION

It is inevitable that the alternative investigative agencies will be compared with traditional law enforcement. All too often comparisons of this nature are biased

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24 An Agreement between the Assistant Commissioner, Australian Federal Police, Eastern Region and the State Commander of the New South Wales Police relating to the exchange of information on the investigation and prosecution of narcotic and drug offences committed against the laws of the Commonwealth, or the laws of the State of New South Wales

towards the high profile new alternative agencies. However, not all observations in this regard have been favourable. In his book entitled *A Quarter to Midnight*, Mr Justice Moffitt, when dealing with the National Crime Authority noted:

The general recommendations for a permanent authority were accepted and implemented, but in such a watered down way and omitting such essential elements recommended by all such commissioners that the resultant National Crime Authority represents a totally ineffective attack on organised crime. In fact it is a serious step backwards.<sup>25</sup>

Mr Frank Costigan QC commented, when discussing the NCA, and addressing the Victorian Catholic Bishops Inquiry:

In my view it sees itself as a new police force, and that's not the role of a National Crime Authority." He went on to say that when establishing the Authority Federal Parliamentarians made an "absolutely honest attempt to combat the rise of organised crime, but I think they got it wrong ... it (the Authority) doesn't have enough teeth in it."<sup>26</sup>

Inevitably, with the role that the alternative agencies have taken on, particularly the NCA, there has been a tendency to refer to them as new police forces, or at least as competition to the traditional policing organisations. The NCA has often been referred to as the 'ninth' police force.

On the eve of his retirement from the AFP in February, 1988, the retiring Commissioner, Major-General Grey referred to the NCA as "...a costly response to a political problem rather than a solution to a law enforcement problem..." and said there was "...a dismal prospect of the NCA becoming Australia's ninth police force..."<sup>27</sup>

The majority of the inquiries which have been conducted by the alternative agencies have been matters which would normally have been dealt with by traditional policing and did not really fall within the fundamental charter of the agencies. Generally speaking, it is reasonable to suggest that if the NCA and SDCC acted within their original charters, there would have been no necessity for the tax payer to fund yet another alternative investigative agency, the Independent Commission Against Corruption.

A classic example of this is the NCA "Illiad" Task Force. That task force exclusively targets alleged Chinese drug importing/distribution networks and all intelligence relating to alleged Chinese drug activity is referred to that Unit by all agencies. Because of the secrecy provisions of the NCA, such intelligence then becomes locked away in the Authority's intelligence system. At an enormous cost to

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25 *A Quarter to Midnight, The Australian Crisis: Organised Crime and the Decline of the Institutions of the State.* Mr Justice Moffitt. 1955. p 106

26 *Sydney Morning Herald*, 3 May 1988

27 *Sydney Morning Herald*, 18 February 1988



the tax payer Task Force "Illiad" is undertaking inquiries which should properly be carried out by traditional policing.

The SDCC has at least admitted that there may be a perception that it may be in competition with other law enforcement agencies. Its last annual report states: "The Commission is proud of its ability to conduct successful joint operations. It believes its track record contradicts the views of those who see the Commission as 'in competition' with other law enforcement agencies, particularly the NSW Police Department."<sup>28</sup>

## CONCLUSION

Despite what may be viewed as the best intentions of the various alternative agencies, they will inevitably be seen as operating in competition with traditional policing.

When looking at the results of the various alternative bodies, compared with the JDTF, it may well be asked, why was the JDTF disbanded. Put simply, it was done to reduce proliferation within NSW investigative agencies pursuing common goals and to prevent demarcation within single agencies.

A similar situation was recognised with the operational police attached to the SDCC, and as a result those police were removed from that Agency and replaced under the control of the Police Commissioner. Task forces are formed on a needs basis to investigate references on behalf of the SDCC, but the police in those task forces remain under the control of the Commissioner of Police.

The existing situation with the NCA is that seconded police come under the control of the Authority and, by legislation, are prevented from interaction with even the Commissioner regarding any operational matters. This situation inevitably leads to a division of loyalties which can only be detrimental to both agencies.

Although the focus of this paper has been directed at only two of the alternative investigative agencies, there are a number of others which fall, to some degree within the same category. An important aspect of each of those agencies is that they all draw experienced investigators from the traditional bodies. It is these professional investigators which provide the impetus for the success of their inquiries.

This very point provides the basis of an argument on whether there is any real need for the retention of alternative bodies.

It is obvious that each of the alternative bodies have recognised that they would have limited success without the expertise provided by the professional investigators. Also, one of the obvious results is a drain of human resources from the areas of traditional policing which inevitably leads to a shortage of trained investigators to satisfy domestic needs.

Within the organisational and operational structure of the alternative investigative bodies the professional police investigator has played a secondary role in the control of inquiries, whilst the management of inquiries has been left to non professional investigators such as lawyers and accountants.

This situation is one of the primary factors resulting in the lack of achievements of the alternative agencies as highlighted by the JDTF comparison.

In his speech to Parliament relating to the proposed formation of the State Drug Crime Commission in 1985, the Premier, (Mr Wran) said, "While in the long term the police will acquire the legal, computing and accounts expertise necessary to investigate organised crime, the problem of drug trafficking requires Government response now."<sup>29</sup>

Support in the areas highlighted by Mr Wran should have been provided to the NSW Police at that point. This has now been recognised and illustrated by the organisational structure of the DEA, resulting in the professional police investigator 'driving' the inquiry whilst supported by adequate accounting, analytical and legal expertise.

When considering the respective budgets of the alternative investigative Agencies and their 'achievements' it could well be argued that far better results would be obtained if that funding were channelled into traditional policing. This would also mean clear lines of demarcation and alleviate intelligence tensions.

Effective law enforcement therefore requires a return to adequately resourced traditional policing, with access to powers presently available to most of the alternative agencies.

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29 Speech of Mr Wran, second reading of the bill for the introduction of the **State Drug Crime Commission Act** at Page 7539 of **NSW State Government Hansard**