The National Crime Authority and the Investigation of Fraud

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The National Crime Authority is an investigative agency established by Commonwealth and underpinning state legislation. The Authority is constituted by a Chairman and Members of the Authority. A Member of the Authority is responsible for the operation of one or more of the Authority's offices. The Authority has offices in Melbourne, Sydney, Adelaide and Perth and in 1992 will open an office in Brisbane.

Functions of the NCA

The Authority's functions are set out in the National Crime Authority Act 1984 (the Act). Amongst those functions is the obligation to investigate certain defined types of criminal activity. The establishment of the NCA in 1984 was prompted by concern within the community about the level and impact of organised crime - a term which is frequently used, but which is rarely defined to everyone's satisfaction. The Act makes no reference to organised crime. Instead, the Act states that the NCA may conduct investigations and inquiries into relevant criminal activity. A relevant offence is defined in Section 4 of the Act as having the characteristics set out below.

The Authority may conduct such investigations by way of general investigation or by means of a special investigation. The powers it may exercise in the course of conducting its investigations vary accordingly.

The Authority's statutory functions envisage and include the power to establish, participate in and coordinate state and federal joint task force investigations in appropriate cases. This aspect will be referred to later in this paper, as it is considered to be a most important function when considering the role of various law enforcement agencies in investigating serious fraud matters.

It should be noted that the Authority is purely an investigative agency and has no prosecutorial function. Under the Act the Authority has the responsibility to furnish admissible evidence assembled by it to appropriate prosecutorial agencies.

The Authority also has a statutory function in the area of criminal intelligence and law reform. In that regard the Act states that the Authority is to obtain, analyse and disseminate intelligence and information to relevant law enforcement agencies and to make recommendations where considered appropriate to the
relevant Minister regarding reform of law and/or administrative practice.

**Powers of the NCA**

Because of the state and federal legislation establishing and defining the powers and functions of the Authority, the Authority is free of jurisdictional restrictions on its activities in Australia. The powers available to the Authority in the conduct of a general investigation are those powers which may be used by the police investigators taking part in the investigation.

It is in relation to a special investigation that the Authority's coercive statutory powers come into play. These powers include:

- the power to conduct hearings and summon witnesses to appear before the Authority and give evidence on oath and produce documents;
- the power to, by way of notice compel the attendance of a person before a member of staff of the Authority to produce documents specified in the notice;
- the power to compel the production of documents and information from some federal and state agencies and officers of those agencies;
- the power to appoint specialist consultants to assist in particular investigations;
- the power and obligation to cooperate with similar international agencies.

When a person is summoned to appear before the Authority, the person can refuse to answer a question or produce a document on the grounds of self-incrimination. The person does not have that right if the relevant Director of Public Prosecutions (or equivalent prosecutorial agency) provides the person with an undertaking that the answers given or documents produced by the person will not be used in criminal proceedings against them, other than for a charge of perjury under the National Crime Authority Act. A person may also decline to answer questions where legal professional privilege attaches.

In other circumstances the Authority can compel a person to answer questions unless the person has a 'reasonable excuse' to refuse to answer.

The term 'reasonable excuse' has not been subject to judicial consideration as it appears in the NCA Act, but there may well be circumstances other than those referred to above where a person can refuse to answer questions or produce documents.

In addition to the above statutory powers under the National Crime Authority Act, the Authority has telephone interception capacity and a sophisticated physical and technical surveillance capacity.
References and Special Investigations

The special investigative powers of the National Crime Authority may only be exercised after a notice of referral (reference) under the Act is obtained from the Commonwealth and/or relevant states. Although the procedure varies slightly in relation to the obtaining of a Reference from the Commonwealth, as compared to the states, the process basically involves the matter that is sought to be investigated by the Authority being approved by the Inter-Governmental Committee (IGC). The IGC comprises relevant state ministers and is chaired by the Commonwealth Attorney General. The appropriate state and/or federal Ministers then sign a notice, referring the matter the subject of the investigation to the National Crime Authority. A matter may be referred to the Authority by the Commonwealth, all or any of the states or any state or states and not the Commonwealth. A cost sharing formula is applied to matters in accordance with the jurisdictions that have referred the matter.

A copy of this notice of referral is required under the Act to be annexed to each and every summons served on a person to attend and give evidence before the Authority in relation to the particular investigation.

Criteria applied to NCA References

The National Crime Authority Act lays down criteria governing the jurisdiction of the Authority to investigate certain types of criminal activity. The statutory definition requires that an offence subject to investigation by the Authority:

- must involve two or more offenders and substantial planning and organisation;
- must be of a kind that ordinarily involves the use of sophisticated methods and techniques;
- is an offence that is committed or is of a kind that is ordinarily committed in conjunction with offences of a like kind;
- and is an offence that involves, inter alia 'theft, fraud, tax evasion, currency violations . . . obtaining financial benefit by vices engaged in by others, corruption, bankruptcy and company violations or matters of the same general nature as one or more of the foregoing.

Further, the definition does not include an offence committed in the course of a genuine dispute as to matters pertaining to relations of employees, or an offence, the time limit on the commencement of the prosecution of which, has expired. It also does not include an offence that is not punishable by imprisonment or is punishable by imprisonment for a period of less than three years.

The Authority applies additional criteria to matters under consideration for its investigation. The most important of these are:

- that the conduct the subject of the proposed investigation involves criminal
behaviour crossing jurisdictional boundaries;

- that the matter under consideration could not be properly investigated by normal police means and exercising normal police powers;

These criteria are most important, in that by their application the Authority attempts to focus upon the investigation of complex and serious matters not suited to investigation by other law enforcement agencies. Further, they avoid the Authority being put in the position of competing with other law enforcement agencies.

The Multi-Disciplinary Investigative Team Approach

The key to conducting a thorough professional and successful investigation starts with assembling together a team of individuals with the appropriate motivation and expertise to conduct the particular investigation. In the case of serious fraud investigations, the importance of assembling such a team will determine whether the investigation is an effective one or not.

The Authority conducts its investigations by way of multi-disciplinary investigative teams. When the Authority commences an investigation, a team is formed containing the appropriate mix of disciplines and skills to carry out the investigation. The team may be led by a lawyer, police investigator or accountant, depending upon the nature of the investigation. On occasions the Authority will also appoint at the outset, specialist consultants such as merchant bankers or accountants from the private sector to assist the investigation. The Authority has flexibility within its settled structure to assemble a team with the expertise necessary to investigate a particular matter, from within the Authority, or by drawing on the expertise of other agencies in carrying out its joint task force function.

All members of the team are co-located, rather than being located at various points of the building set aside for disciplines. This co-location helps to engender a team spirit and encourages the informal transfer of information between team members.

It goes without saying that the multi-disciplinary team model used by the Authority places it in an advantageous position to investigate serious fraud offences. The Authority's statutory functions and powers and its multi-disciplinary approach make it uniquely suited amongst law enforcement agencies in Australia to coordinate and participate in serious fraud investigations.

Drug/Fraud Investigations

Since its creation, the Authority has conducted numerous investigations including major drug and fraud investigations. In matters other than the fraud related matters, the expertise of the multi-disciplinary team has also been used.
In the past, partly due to the expertise of the former Chairman of the Authority, The Honourable Mr Justice Stewart, the Authority's resources were slanted more heavily towards complex drug investigations. This reflected community concerns prevailing at that time.

The Authority found that its multi-disciplinary team approach was well suited to complex drug investigations, which were often document intensive and involved significant legal and accounting expertise, particularly in the area of tracing assets acquired from the proceeds of crime and more generally, following the money trail. The expertise developed by the Authority in the management of long-term, complex and document based drug investigations can be applied in the conduct of serious fraud investigations. The importance of documents in potential drug prosecutions cannot be over-emphasised.

Even with the increased interest and emphasis on white-collar criminal activity, the law enforcement community continues to allocate far more resources to the investigation of drug related activity than to fraud matters. In recent times, the enormity of the damage caused to Australia by fraudulent conduct, particularly involving public companies, has been clearly acknowledged. Apart from the devastation caused to defrauded individual investors, Australia continues to suffer as a whole because of the lack of confidence and trust in Australian enterprises by Australian and international investors alike.

It should be noted that under Mr Justice Stewart's chairmanship the Authority was involved in investigations involving taxation fraud, customs fraud, companies and securities, fraud, corruption, payment and receipt of secret commissions, fraud offences against state revenue agencies, social security fraud. The Authority has also assisted various agencies in the recovery of funds due to them and has successfully instituted action under Proceeds of Crime legislation.

Looking back at the 1980s it has become abundantly clear to law enforcement agencies that no single agency has the capacity, resources or expertise to properly undertake investigations and assemble evidence to prosecute offenders in serious fraud cases. Serious fraud investigations may involve a combination of all or any of, taxation fraud, state or federal revenue fraud, customs fraud, social security fraud, companies and securities industry fraud or other organised fraudulent schemes.

The Authority has recognised and intends to respond to the enormous damage done to Australia by corporate and securities industry defalcation during the 1980s. Reputable leaders of the business community are of the opinion that it is necessary for those responsible for fraudulent behaviour to be brought to justice. The successful investigation and prosecution of fraudulent 'high flyers' will facilitate the restoration of confidence in bona fide companies within Australia and in the Australian capital markets generally. The Authority sees that it has a role in assisting the Australian Securities Commission and other regulatory and law enforcement agencies to convince the international investment community
that Australia is a safe, secure place to invest where laws will be properly enforced, and that business within Australia will be properly regulated and policed, and that those who transgress the criminal law will be brought to account.

**Information Management**

An efficient and 'user friendly' information management system is central to the conduct of any serious fraud investigation. Information management has therefore been an area of some moment to the Authority since its inception.

One of the major difficulties in handling the complex cases fitting the criteria for the involvement of the Authority is the volume of documentary information generated by a single case. This statement is particularly applicable to the investigation of serious fraud matters. The task of properly storing, sorting, indexing, analysing and retrieving is an enormous one. The Authority has been involved in the development of sophisticated computerised document registration systems and computerised information storage, sorting, collating and retrieval systems.

The Authority's document management system is designed to preserve the integrity and source of each and every document acquired by the Authority in the course of an investigation. The initial registration function gives each document (or group of documents) a unique number, which will enable the origin of the document to be examined at any time during the investigation or litigation. For example, the computer registration system will record if a particular document was seized pursuant to a particular (identified) warrant and was seized from a particular draw of a particular desk on a documented date and time by an identified officer.

Much more information than this 'basic registration' is needed for any information management system to be productively used as an investigative tool. The development of the Authority's computer systems has been regarded as a matter of some moment since its inception. This was the case even when the Authority's workload was slanted more heavily towards drug related investigations. As stated earlier, these were generally document and information intensive investigations which required as a matter of pure practicability that the Authority develop systems and mechanisms to properly manage larger volumes of information and documentation.

The Authority continues to be involved in the development of its computer systems. It is currently in the process of upgrading not only its document registration system, but also, with a particular view to serious fraud matters, to improve its investigative database.

The Authority has led the way in the area of the tracing of assets and the investigation and following of the money trail by the development of its 'money
The Authority has recently developed a new system which is being effectively utilised in the conduct of its major fraud investigations. The system is currently a 'two tiered' system which is the process of being integrated into one. The first stage is the basic registration system referred to briefly above, which records the date, source, type, general description and other details regarding documents and the manner, date and time when the document was acquired by the Authority. Certain other 'links' concerning names of organisations and persons and general references to relevant transactions can also be included at this stage.

The 'second tier' of the system approaches the most difficult problem encountered with any investigative computer support system. That is, to extract all relevant information from an enormous amount of material and have that information entered, sourced and available on the database to be interrogated, analysed, sorted and retrieved in an appropriate format. There is little doubt that in the future a system will be developed involving 'imaging' of documents onto a database with the capacity to search in all relevant fields to enable the user to retrieve all relevant information. The Authority is working towards this goal at the present time. Current systems rely largely upon the keying in of data into designated fields identified as relevant to the investigation and which can be searched on. The Authority has tried a variety of forms to enable this initial keying in of relevant information to take place in an accurate and timely manner. The form currently being used with success in some fraud investigations is simple and fast, and allows police investigators, lawyers, accountants and analysts involved in the investigation to enter relevant data onto the system at the time they are making a general assessment of the worth of a document. Previously, the Authority and numerous Royal Commissions and Commissions of Inquiry have left this most important task, of the initial evaluation of a document and the extracting from the document of its key and important features for entry on the computer system, to junior collators with little or no knowledge of the investigation and often without the expertise to properly understand the complex nature of the document before them.

By the development of a 'user friendly' system and the appropriate training of professional officers with an appropriate knowledge of the case, the Authority has been able to establish a system where the people who enter the all important data onto the system, are the people who will be the users of the data entered and the people with a knowledge of the investigation sufficient to ensure a database of high integrity.

The information thus entered can be sorted, searched for and retrieved in a variety of forms including a chronological sort relating to the involvement of particular individuals or entities, occurrences on or between particular dates, a chronological printout of all events concerning a particular transaction or group of transactions, or a variety of all the above.
By having investigators, accountants, analysts and lawyers with a knowledge of the case entering this data it may be argued that valuable time of those professional officers is being wasted. This is not so. It is imperative for someone with a proper knowledge of the investigation to peruse every single document that is acquired in the course of the investigation to make an assessment of the relevance and importance of the document to the investigation. This initial assessment stage is the ideal opportunity for the officer, either by dictaphone for later entry by keyboard staff, or directly on the computer terminal, to enter relevant information regarding the document so from that point on all other team members will be able to search and retrieve that piece of information and know where the information is sourced. In fact enormous time savings are made by this system, because the database can be relied upon as being of a high integrity, and 'double handling' of a document is largely eliminated. If one is searching for particular information and the details of a particular document or file have been entered logically and properly by a person with a knowledge of the matter then the editing of the collation and entry of information is cut to a minimum. One can to a large extent, eliminate the fear, that relevant material obtained from a particular source may have been eliminated as irrelevant or otherwise misplaced and not entered into the system by inexperienced officers. Previous systems where inexperienced collators were employed to carry out this function required complex systems for review which were generally unsatisfactory and required the handling of one document on numerous occasions by a variety of team members, to check that all relevant material had been accurately entered on the database.

Transcripts of evidence given before the Authority are all entered on the computer system by disk and can be searched on a text retrieval basis as can various reports and analyses prepared by investigators assigned to the case. When the Authority acquires documents from outside sources, it seeks to obtain the material on computer disk to enable ease of search and retrieval.

The Need for Coordination of Serious Fraud Investigations

Following the report and recommendations of the Fraud Trials Committee chaired by Lord Roskill in the United Kingdom, the report of which was released in December 1985, comments and recommendations were made in relation to the various stages of the investigation and prosecution of fraud matters.

The report stressed the need for the coordination of investigations of serious fraud matters, noting that in Britain they were fragmented amongst different agencies. It proposed the establishment of a centralised agency with the appointment of a 'case controller' to direct the investigation process at an early stage and to utilise appropriately experienced accountants and lawyers to improve the prospects of a properly conducted investigation and successful prosecution. Many recommendations of the reports were subsequently implemented in the Criminal Justice Act 1987 (UK) which established the Serious Fraud Office for the United Kingdom, which office has similar powers to the Authority, to
investigate serious or complex fraud and to carry through the conduct of any proceedings which result.

Although the Authority is not an agency established for the single purpose of investigating serious fraud matters and its jurisdiction to investigate matters goes beyond complex and serious fraud matters, it is submitted that similar observations, to those referred to above particularly regarding the need for coordination could be applied to the investigation of serious and complex fraud matters in Australia.

It may be argued that the need for an agency to coordinate the investigation of serious fraud matters is probably even more important in Australia than the United Kingdom not only because of the proliferation of agencies concerned with serious fraud matters, but particularly because of the jurisdictional problems between state and the federal laws in Australia.

There are a variety of state and federal regulatory and law enforcement agencies charged with administering and/or enforcing legislation from which a serious fraud investigation may emerge.

There has been a demonstrable lack of coordination of the activities of the various agencies in complex fraud matters involving the crossing of jurisdictional boundaries (national and international) and involving conduct more serious than a mere regulatory violation. Some of this may involve conduct so organised and complex in nature that the agency felt it had neither the responsibility nor the powers or expertise to effectively investigate the matter. Many of these cases have either not been investigated at all or have not been adequately investigated.

The Authority's confirmation as a permanent law enforcement agency, together with its statutory coordinating and joint task force establishment function, its multi-disciplinary team approach and special powers occupy the role of a coordinator of investigations into serious fraud matters.

The permanent presence of the National Crime Authority in conducting and coordinating serious and complex fraud investigations will assist in the development and maintenance of an intelligence and methodology database regarding this sort of criminal activity. Previously, where such matters were either not properly investigated or investigated by way of the appointment of a special investigator under the Companies Cooperative Scheme Legislation, investigative methods and techniques and useful intelligence that could be utilised in future investigations was lost upon the cessation of the Special Investigation or Commission of Inquiry established to conduct the investigation.

The Authority sees an important part of its function in the area not only to coordinate the conduct of appropriate investigations but also to ensure the dissemination of relevant information to appropriate agencies. The development of an intelligence database will enable the Authority to gain greater expertise in the conduct of these investigations and also to analyse intelligence with a view to
taking action in relation to potential fraud matters. It is recognised that the Authority will of course not be acting alone in the conduct of this intelligence function and that the ASC and other agencies will play a significant role in partnership with the Authority.

**NCA/ASC Relationship**

As noted earlier, serious and complex fraud investigations do not all originate in one agency. The Taxation Office, Customs, Cash Transaction Reports Agency, state and federal police fraud squads, Royal Commissions and other Commissions of Inquiry, state and federal revenue agencies along with the ASC are just some of the sources of serious fraud investigations which may fit the criteria for investigation by the National Crime Authority. In relation to companies and securities fraud, the ASC, as the regulator and the agency responsible for the application of the Corporations Law is the most likely agency to identify criminal conduct appropriate for the Authority to investigate.

There will be a clearly recognisable category of cases in which the ASC may target various forms of civil recovery action. This conduct may also demonstrate breaches of state and federal law going beyond the provisions of the Corporations Law and cases of a complex and substantial nature which entail the crossing of national and international jurisdictional boundaries and otherwise satisfying the criteria for the Authority's involvement which will necessitate joint task force operations between the Authority and the ASC and other law enforcement agencies. The Authority sees itself playing a continuing and coordinating role in relation to the investigation of such matters.

**Law and Administrative Practice Reform**

The Authority also sees itself as having a role in making appropriate recommendations for the reform of law and administrative practices and procedures and to participate actively in research studies, commissions and committees charged with the examination of regulatory matters.

The Authority reports to government on the results of investigations on matters of the law and administrative reform that affect the environment which may be conducive to or even encourage the commission of serious fraud offences. In this regard once again the Authority will not be acting alone but will be working in partnership and consultation with relevant law enforcement and regulatory agencies in the making of recommendations for law and administrative reform in appropriate areas.

The Authority's current investigation into the methods of money laundering is an area which will soon result in a report to government on the methods and environmental factors which affect money laundering. The Authority either has or is in the process of consulting all law enforcement and regulatory agencies and
relevant industry groups in an effort to identify methods employed by criminals in laundering the proceeds of crime. Any particular cases requiring investigation by the Authority during the course of this twelve-month project will be referred to the relevant law enforcement agency for investigation.

The Authority has recently convened a conference concerning the presentation of complex cases to juries which will result in the establishment of a working party to examine a number of critical national and international issues affecting the criminal justice system, particularly the law of criminal procedure as it relates to the conduct of complex prosecutions.

**New Directions of the NCA**

The current chairman of the National Crime Authority the Hon. Mr Justice Phillips, after due consultation with other law enforcement agencies, released a paper outlining the new direction of the National Crime Authority.

The fundamental principle underlying this new direction is the determination of the Authority to act in consultation, cooperation and partnership with other law enforcement agencies. The Authority is determined to prove itself as not being in competition with other agencies but as being capable of supplying complementary services to other agencies in the conduct of investigations into complex matters which cross state jurisdictional boundaries and are matters which can only be effectively exercised by the use of the National Crime Authority's special investigative powers.

In this regard the Authority intends to place optimum effort on attacking the profit motive in crime and in particular to target serious fraud offenders whose criminal conduct is based solely upon greed and the accumulation of wealth.

The Authority will seek to cooperate with other agencies in the investigation of fraud matters by the establishment of white-collar crime liaison committees in each of the states of Australia. These committees will comprise representatives of relevant law enforcement agencies in the state and will be charged with identifying appropriate matters for the Authority to consider becoming involved in investigating in partnership with other relevant agencies.

Appropriate matters identified by other law enforcement agencies or by the Authority itself are to be referred to a Consultative Committee comprising Commissioners of Police and the Chairmen of the Cash Transaction Reports Agency and the Australian Securities Commission and representatives of other relevant agencies. They will advise the Inter-Governmental Committee regarding matters appropriate for the Authority to investigate using its special powers.

This Consultative Committee will be serviced by a Secretariat comprised of generally the Assistant Commissioner (Crime) of each state police force. Other agencies may become permanent members of the Secretariat or invited to attend
meetings of particular concern to the agency. It is expected that via the White-Collar Crime Liaison Committees, the Secretariat and the Consultative Committee process, that the Authority will be raised and the Authority will be able to offer its expertise in the management and conduct of complex fraud investigative powers.

**Summary of NCA's Role in Serious Fraud Investigations**

The statutory powers and functions of the National Crime Authority, along with its multi-disciplinary team approach to investigation, are well suited to the conduct of serious fraud investigations.

The Authority's national focus and cross jurisdictional powers are essential to the conduct of coordination of national serious fraud investigations in a complex environment.

All those involved in law enforcement recognise that there is a gaping hole in the law enforcement area relating to serious fraud investigations and their coordination. This has become particularly apparent in relation to some highly complex corporate matters which demonstrate criminality beyond the area of sole responsibility of the regulator.

The gap seems to occur where alleged criminal conduct goes beyond the sphere of the legislation being administered by the regulatory/law enforcement agency and involves conduct which not only breaches the legislation of the regulatory agency but also arguably state or a number of states criminal laws and Commonwealth Criminal Laws.

It is matters such as these, which are complex, cross jurisdictional boundaries and which require the special powers of the Authority, that the Authority is determined to identify. In such matters the Authority will assemble investigative teams and task forces with the resources and expertise required to conduct a thorough and successful investigation.

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