PRESENTATION OF PAPER

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Mr Chairman, this is the first occasion that I have attended one of these seminars. Unfortunately I was not warned that I should be wearing my armour! One might think that I have been led into an ambush, but you will get no prize for guessing that Assistant Commissioner Strong now heads up the New South Wales Police DEA. But be that as it may, I am not here to defend the National Crime Authority, I am here to address you on my paper.

In order to assist your understanding of what is in the paper, let me explain to you its structure. To begin with, I have described the powers given to the Authority by the *National Crime Authority Act*. Then I have described the other powers which the Authority exercises and which come from sources other than the *National Crime Authority Act*. In dealing with the powers given by the *Act*, I have distinguished on the one hand between the special powers of the Authority, which the Authority may only exercise when it is carrying out its special functions, and on the other hand other powers which may be exercised whether or not the Authority is carrying out its special functions. As the Authority can only exercise its special powers when it is carrying out its special functions, I have summarised how the Authority comes to exercise those special functions and then described those special functions. Because the Authority's special and general functions are concerned with what is described in the *Act* as relevant criminal activity, I refer to the definition of that phrase and the definition of relevant offence early in the paper, before a description of the Authority's general functions. I then come to what I have referred to as the other powers of the Authority which do not have their source in the *National Crime Authority Act*.

In order to understand how the Authority operates and to appreciate the uniqueness of the Authority in the law enforcement area in Australia, it is instructive to look at the circumstances in which the *National Crime Authority Act* came to be passed.

As you will see from my summary of those circumstances, in the early 1980s there was considerable debate as to what form the legislation should take. The end result of that debate was that all of the states and the Northern Territory agreed to pass legislation which mirrored the Commonwealth legislation. The Authority thus became the first body constituted on a national basis to combat organised crime in Australia. This is one of the great strengths of the Authority, in that it has no jurisdictional boundaries and it is able to investigate the activities of criminals involved in organised crime no matter where they are involved in those activities and no matter whether they are committing Federal or State offences.

In the paper I have not referred to any of the state legislation.

I will not stop to dwell upon the definitions of relevant criminal activity or relevant offence, nor upon the general functions of the Authority, but will pass to the special functions of the Authority and how it transpires that the Authority exercises those functions. The legislative provisions can be summarised by saying that the Commonwealth Government and the State Governments may refer a matter relating to relevant criminal activity to the Authority for investigation. When that has been done, the Authority can then exercise its special powers, to which I will now refer.

One of those powers is the power to hold hearings, which must be held in private. The Authority regularly exercises this power and has found it to be of considerable assistance in furthering its investigations. Many advantages are to be obtained in having a member of the Authority preside over an examination conducted by counsel assisting the Authority. The Authority has also found that many witnesses, who would not otherwise have done so, are prepared to provide information to the Authority when they know that the hearing is presided over by a member and held in private. The witness cannot be required to answer questions at those hearings if the answer may tend to prove his or her guilt. Provision is made in s.30, whereby the Director of Public Prosecutions can give to a witness an undertaking in writing that any answer given by him will not be used in evidence. If such an undertaking is given then the witness is obliged to answer. The privilege against self-incrimination can, in fact, hinder the Authority's investigations, and as I have said in the paper, "when one has regard to the scale of criminal activity engaged in by persons investigated by the Authority and the huge illegal profits made by those persons a strong case can be made that the *Act* should be amended to remove that privilege."

Section 29 of the *Act* enables the Authority to serve notices requiring a person to attend and produce documents, This power is regularly used by the Authority and it has found it to be a very important one, having provided very valuable information and evidence to the Authority. In particular, the Authority gains access to financial institutions by serving those notices, and it has been found that the financial institutions are very willing to co-operate as they understand what the Authority is doing. We have not found any difficulty at all in gaining access to those documents.

As an adjunct to the power to hold hearings, provision is made in s.24 of the *Act* for the Authority to approach a judge of the Federal Court to obtain an order to show cause why the witness' passport should not be delivered to the Authority. Before such an order can be made it is necessary to show that there are reasonable grounds for believing that the person may be able to give to the Authority evidence and that there are reasonable grounds for suspecting that he/she may be about to leave Australia. There is also provision in s.31 to have a judge issue a warrant for the apprehension of a person who has been ordered to deliver his or her passport to the Authority, if there are reasonable grounds to believe that the person is likely to leave Australia for the purpose of avoiding giving evidence to the Authority. Another special power which the Authority has is contained in s.22 of the *Act* which is the power to apply to a judge of the Federal Court for a search warrant to be issued. That provision has been used by the Authority to great advantage because it can be

used at a very early time in an inquiry when there may not be very much evidence available and on which it might otherwise be necessary to obtain a warrant under the *Commonwealth Crimes Act* or the State legislation.

I pass to the other powers given to the Authority, and there are three sections mentioned there - 19A 20 and 21 - which enable the Authority to seek information from Commonwealth agencies. That is a power which is used by the Authority to obtain information from time to time from those agencies.

I make reference to task forces. One of the means by which the Authority is able to co-ordinate the effort in Australia against organised crime, in spite of the fact that the Authority is only a very small organisation. In this way the Authority has been able to draw together people with experience and expertise in particular fields of investigation, and also those who have expertise in tracking and following the efforts of particular criminals who might be the subject of one of our own investigations. I believe this is one of the major strengths of the Authority, but those task forces do bring with them management problems of which the Authority must be aware.

Amongst the other powers which the Authority has from sources other than the *National Crime Authority Act* is the power to intercept telephone calls. Of course a warrant is needed from a Judge and proper evidence is placed before the Judge in order to get those warrants. These telephone intercepts provide very important information to the Authority, and enable it to make decisions as to how an operation should work in the future, where it should be targetting people, and so on. Of course the intercepts themselves provide evidence, when the matters come to court, of damning admissions made by the participants in the telephone calls.

I refer to listening devices which have become a very, very useful tool in the hands of the Authority. The *Customs Act* was recently amended to allow the Authority to make application itself to a Judge of the Federal Court for warrants enabling listening devices to be issued in *Customs Act* matters. Of course highly skilled technicians are required to operate these; you and I would not have the ability to take full advantage of those warrants which are issued. The *Listening Devices Act* in South Australia was recently amended to enable the Authority to make application under that *Act* to a Judge of the Supreme Court to obtain a warrant, and there is other State legislation which enables members of the staff of the Authority, normally police investigators, to make application for warrants.

I understand that the Authority has exercised or used the power under a new provision for law enforcement agencies, set out in s.73 of the *Proceeds of Crime Act*, more than any other law enforcement agency in Australia. We have made applications to Judges of the Supreme Court and obtained monitoring orders and found them to be very effective. Not only have they been used to obtain evidence to prosecute criminals, but they have enabled the Authority to gather information which has been useful to allow us to continue with a particular investigation which we have had on foot.

There is also power given to the Authority under the *Taxation Administration Act* to obtain information from the Australian Taxation Office where the Authority is carrying out a taxation-related investigation. It is not necessary for the Authority to obtain an order from a Federal Court Judge in order to get this information. If the Authority is carrying out an investigation which relates to a taxation offence, then we can simply apply to the Taxation Commissioner himself for the information. He has the power under section 3D(1) of the *Taxation Administration Act* to provide that information to us and readily does, once satisfied as to the nature of the investigation.

Now the investigators who work at the Authority, and who become members of the staff of the Authority, are made available by the Australian Federal Police and the police forces of the States and the Territory, and usually they remain with us for periods of two or three years, continuing to retain their police powers which from time to time, as the need arises, they exercise whilst they are within their own territorial jurisdictions.

In the concluding part of the paper I have made a couple of comments. I have mentioned that it is not always possible to hold hearings at early stages of an investigation because you do not want to let the target know of your intentions and I have concluded with some remarks about witness protection matters. Under s.34 the Authority is enabled to make arrangements to provide or arrange protection for witnesses. As you are probably aware, in this day and age it is necessary to rely upon these witnesses. More and more of them are coming forth to give evidence and to provide information and when they do it is necessary for the law enforcement agencies to provide or arrange for protection for them. These matters raise new problems that law enforcement agencies have never had to deal with in the past and I think it is true to say that we are all learning how to deal with the problems. We have not learnt how to solve all of them and the Commonwealth and the States are embarking on the drawing up of legislation to institute safeguards so that these people can be properly protected and can go back into the Australian community with a new identity when they are finished giving their evidence or their information. I have said in conclusion that in my view the efforts in that regard should be pushed along as hard as possible because it is a problem which we have to deal with from day to day.