

# Submission to inquiry into the Australian Crime Commission Establishment Bill 2002

5 October, 2002

The Secretary  
Parliamentary Joint Committee

Dear Ms Weeks

Families and Friends for Drug Law Reform is grateful for the opportunity to make a submission to the Joint Committee on the National Crime Authority concerning its inquiry on the Australian Crime Commission Establishment Bill 2002.

Our association was formed in April 1995 around a group of people who had a child, relative or friend who had died from a drug overdose. The grief they all shared turned to frustration and anger that those lives were lost: all would be alive today if drug use and addiction had been treated as a social and medical problem and not a law and order one.

The immediate focus of our group is on the impact of the criminal law and policies on our children, relatives and friends. Our interest in the big league of crime that the National Crime Authority was set up to tackle is in this sense incidental. For all that, our interest in organised crime is no less vital. We looked to law enforcement to keep drugs from those we loved. It did not do so.

We want to know why and we want to know what needs to be changed to prevent illicit drugs being as available as they are to younger and younger children.

We have respect for the efforts that law enforcement agencies around the country put into catching the big time criminals who are amassing wealth from illicit drugs. We support those efforts. We insist, though, that efforts not stop there.

The matter of high principle before the Committee is not so much the continuation of those important efforts but the need for the people, parliaments and policy makers all to know the facts, however uncomfortable, about the extent of organised crime and what should be done to reduce that menace.

The Royal Commissions and other inquiries that led to the NCA's establishment recognised that shining light in dark places was one of the best disinfectants. For example, Mr Justice Stewart declared in the final report of his Royal Commission inquiring into drug trafficking that "Citizen awareness and involvement are essential to any measure to control organised crime" (p. 791).

In its *Commentary* released in August last year the NCA provided a sobering assessment of organised crime. It was growing in spite of concerted law enforcement effort:

"The reach of organised crime in Australia is pervasive, multi-faceted and carries enormous social and economic costs. Significantly, the cost is not just in direct monetary terms but in terms of lost productivity, health, violence and well being. Another cost is the diminution of societal security, both in perception and reality" (p. 10).

The *Commentary* concluded that "we have now reached the stage where the fight against organised crime will benefit from a whole of government approach" (p. 3).

How governments respond to assessments and to recommendations is, of course, up to them. What is essential in a democracy is that everyone have access to information essential for informed debate and good decision making. The accuracy of information and how policies are likely to work out in practice are not determinable by the numbers of people voting for them. In other words, truth and knowledge are not determinable democratically but they are essential if democracy is to function. Without them, democracy will degenerate.

The elimination of the Royal Commission-like independence of the NCA – for that is what the Bill will entail – will mean that the capacity of the Crime Commission to throw light into dark places will be fatally compromised. There is no other independent source of such advice.

Lack of independence will also mean that the Crime Commission will be incapacitated in its ability to deal with corruption in police forces and politics of the magnitude shown in a long series of inquiries and to resist other influence that organised crime can buy with its limitless resources.

We call on the Committee to resist the headlong rush to replace the NCA but undertake a comprehensive examination of the proposed replacement organisation. The arguments put forward to justify the NCA's replacement do not hold water. Experience strongly suggests that the replacement commission would be less rather than more effective than the NCA in investigating crime. The growing international dimension of organised crime argues for the strengthening of the NCA's independent status, not its destruction.

It is clear that there need to be co-ordinated changes to both law enforcement and other policies to tackle the transnational organised crime that menaces Australia. Replacing the NCA is not a priority task. Legislation to adjust the NCA Act to reflect its most recent (and thorough) review was passed only last year. Of much greater urgency are other measures agreed to by Heads of Government in April such as the development of "the mutual recognition of a national set of powers for cross-border investigations covering controlled operations and assumed identities legislation; electronic surveillance devices; and witness anonymity".

The NCA Act represented a careful balancing of concerns that included effectiveness, protection of civil liberties and answerability. As much care should be taken to ensure similar considerations are reflected in any new commission. Families and Friends for Drug Law Reform urges that the following, among others, be reflected in the Committee's conclusions:

- Any crime fighting body to replace the NCA should be independent to shield it from corruption and other influence of a criminal or political nature;
- It should have a mandate to provide for public release:
  - independent assessments on the effectiveness of measures taken to combat organised crime; and
  - recommendations for reform of the law and administrative practices;
- Its governance should be efficient and effective, tending toward a single line of command rather than a committee structure;
- It should have a capacity to take a national view of crime threats and provide for better cross- border and inter- agency cooperation;
- It should be adequately resourced having regard to the resources available to organised crime.

Families and Friends for Drug Law Reform has reached these conclusions on the basis of a paper it prepared entitled: "[Against the National Interest: a critique of the Federal Government's proposal to replace the National Crime Authority](#)". A copy of this is attached.

Families and Friends for Drug Law Reform requests the opportunity to appear before the Committee.

Yours faithfully

Brian McConnell  
President