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COMMISSIONER

1<sup>st</sup> March 2004

Senator Marise Payne  
Chair  
Senate Legal and Constitutional Committee  
Room S1.108 Parliament House  
Canberra ACT 2600

Dear Senator Payne

**Australian Federal Police and Other Legislation Amendment Bill 2003.**

I refer to your letter of 11 February 2003 advising of the arrangements made by the Senate Legal and Constitutional Committee to conduct a hearing into the *Australian Federal Police and Other Legislation Bill 2003*. Please find attached a written submission from the Australian Federal Police. The AFP will be represented at the hearing scheduled on Monday 8 March 2004 by John A Lawler performing the duties of Deputy Commissioner, together with Federal Agents Audrey Fagan, Tony Negus and Mark Ney.

The AFP agrees in principle with the Committee's request that the Australian Government Solicitor (AGS) be asked to appear. The AGS would be able to provide assistance to the Committee in respect of the legal technical inter-relationships of the Bill with relevant Acts, for example the *Australian Federal Police Act 1979*, the *Public Service Act 1999* and the *Workplace Relations Act 1996*.

Yours sincerely

  
M J Keelty

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**AUSTRALIAN FEDERAL POLICE SUBMISSION**  
**AUSTRALIAN FEDERAL POLICE AND OTHER LEGISLATION AMENDMENT BILL 2003**

The *Australian Federal Police and Other Legislation Amendment Bill 2003* (the Bill) was introduced into the Senate on 4 December 2003. The Bill proposes amendments to the *Australian Federal Police Act 1979*, the *Crimes Act 1914* and various other Commonwealth legislation and will also repeal the *Australian Protective Service Act 1987*.

2. The Bill will establish the legislative framework for the final stage of the integration of the Australian Protective Service (APS) into the Australian Federal Police (AFP).
3. The Bill also implements a recommendation of the Standing Committee of Attorneys-General and Australasian Police Ministers' Council Joint Working Group to allow the AFP to investigate State offences with a federal aspect.

### **Background**

#### **Role of the AFP**

4. The AFP enforces Commonwealth criminal law, and protects Commonwealth and national interests from crime in Australia and overseas. The AFP is Australia's international law enforcement and policing representative, and the chief source of advice to the Australian Government on policing issues.
5. The AFP's priorities are set by Ministerial Direction and include enforcing laws relating to terrorism, organised crime, transnational crime, money laundering, major fraud, illicit drug trafficking and e-crime. The AFP supplies community policing services to the Australian Capital Territory, Jervis Bay and Australian territories such as Christmas Island. Additionally, it provides some personal protection services. These include Close Personal Protection (CPP) to certain Australian Officer Holders, internationally protected persons, diplomats and visiting dignitaries.

#### **Role of the APS**

6. The APS supplies protective security services at Parliament House, the offices and residences of the Prime Minister and Governor General, sensitive defence establishments, certain foreign embassies and the Australian Nuclear Science and Technology Organisation (ANSTO).
7. Part of APS core business centres on counter terrorism first response (CTFR) at selected security designated airports around Australia.<sup>1</sup> Counter terrorism services also include Air Security Officers who fly covertly on domestic and international air routes.

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<sup>1</sup> Security designated airports are: Canberra, Sydney, Melbourne, Hobart, Brisbane, Gold Coast, Cairns, Darwin, Alice Springs, Perth and Adelaide.

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8. The APS may, subject to capacity, operate competitively with the private sector to provide such things as training, security risk management surveys, secure Internet firewalls and other services to Government.
9. The APS is a cost recovery agency and APS services may be contracted to the private sector where there is an identified Commonwealth interest.

#### **Integration**

10. In February 2002, the Government announced that the APS would transfer from the Attorney-General's Department (AGD) and be established within the AFP. This move ensures the closest possible coordination between two of Australia's key counter terrorist organisations. It further consolidates and enhances national security initiatives that have been implemented following the terrorist attacks in the United States and Bali.
11. Implementation of the decision is being undertaken in a staged approach. The Commissioner established a project team known as Project Merida, to be responsible for progressing implementation issues. Ten functional Working Groups operate under Project Merida (See Attachment A).
12. Employees of both the APS and AFP are active members of the Working Groups, and officers from the Attorney-General's Department, the Australian Public Service Commission and Department of Employment and Workplace Relations also participate and provide advice. These consultations also extend throughout the employees of the APS (under a dedicated Communication Strategy) and with employee representative bodies (i.e. the Community and Public Sector Union, Transport Workers Union and the Australian Federal Police Association).

#### **Legal and Financial Responsibility**

13. The first stage of the implementation resulted in legal and financial responsibility for the APS being transferred from the Secretary of the AGD to the Commissioner of the AFP on 1 July 2002. This was through amendments to the *Australian Protective Service Act 1987* and to the regulations under the *Financial Management and Accountability Act 1997*. The APS continued as an Australian Public Service Agency within the meaning of the *Public Service Act 1999* (PS Act). The Commissioner of the AFP became the 'Agency Head' of the APS.
14. As an interim step, the APS and AFP have continued to operate under separate legislative and employment arrangements. There is a duality to the administrative responsibilities that the Commissioner is obliged to discharge. The Bill will allow for administrative improvements and permit efficiencies to infrastructure to be made (e.g. operate under a uniform human resource policy, a common governance framework, one integrity regime, integrated financial reporting etc).
15. Following stage one, the Working Groups under Project Merida have been examining the integration and consulting widely. The conclusions from this analysis and consultation have informed drafting of the Bill.
16. Notwithstanding that the AFP and APS currently operate under separate legislative and employment frameworks, the Commissioner has taken every

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opportunity (within those limitations) to integrate APS operations into those of the AFP. In February 2003 the Protection Portfolio of the AFP was established; this placed the protective security functions of the AFP (e.g. Close Personal Protection, Protective Security Intelligence, Witness Protection) alongside those of the APS. These protection functions report to the same senior executive National Manager.

17. Since 1 July 2002, there have been a number of examples where the AFP and APS have successfully undertaken joint operations or joint deployments:
- APS involvement as part of Operation Alliance in Bali;
  - AFP/APS and NT Police joint operation at Pine Gap demonstrations in October 2002;
  - Assistance to ACT Policing during the January 2003 bushfires;
  - AFP/APS and SA Police joint operation over the Baxter Detention Centre protests during the 2003 Easter long weekend;
  - AFP/APS deployed together for Regional Assistance Mission Solomon Island (RAMSI); and
  - AFP/APS operations successfully provided security for the visits of President Bush of the USA and President Hu of China in October 2003.
18. Following passage of the Bill, the employment regime and functions of the APS will be contained in the *Australian Federal Police Act 1979*. This is a prerequisite to securing a fully integrated delivery of the protection services that the Commissioner is presently responsible for.

#### COMMENTARY ON THE BILL

19. The *Australian Federal Police and Other Legislation Bill 2003* has the support of the Commissioner of the AFP.

20. The salient features of the Bill are:

- Creation of a new category of employee in the AFP – Protective Service Officer (and include the power to appoint Special Protective Service Officers).
- Inclusion of the protective service functions of the APS in the AFP.
- Inclusion of the powers and duties of protective service officers (currently provided for in the APS Act) in the AFP Act.
- Allow the Commissioner to charge for certain protective services.
- Repealing the *Australian Protective Service Act 1987*.
- Enabling the AFP to investigate State offences with a federal aspect.

Additional amendments will:

- Recognise that each APS transferee is taken to be engaged as an AFP employee;
- Recognise that each transferred PSO is taken to have been declared a PSO under the AFP Act at the transfer time;

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- Will not require transferred PSOs to enter an undertaking and will recognise an oath or affirmation made and subscribed by a PSO under section 10 of the *Australian Protective Service Act 1987* as having satisfied the same requirement under paragraph 36(4A)(b) of the amended AFP Act;
- Require uniformed PSO to wear their identification numbers so they are clearly visible;
- Make it an offence to impersonate a PSO or Special PSO;
- Allow the Commissioner to certify that a specified person is a transferred PSO. The certificate will be prima facie evidence of the matters stated; and
- Make relevant consequential amendments to other Acts.

21. The Bill amends the AFP framework to include the Protective Service Officer as a new category of AFP employee.

22. There is an extant machinery of government transfer mechanism under section 72 of the PS Act. The Public Service Commissioner may, in order to give effect to this administrative rearrangement, determine in writing that the APS employees cease to be Public Service employees and become employees of the AFP. The making of a determination under section 72 should coincide with the passage of the Bill.

*A legislated safeguard*

23. Subsection 72(3) of the PS Act safeguards remuneration and other conditions that transferees were entitled to immediately before transfer. Entitlements that apply after transfer must be *no less favourable*. The AFP is developing arrangements which will ensure that *no less favourable* remuneration and conditions will apply until a new Certified Agreement or Australian Workplace Agreement is made for APS transferees in the AFP workplace.

24. The section 72 transfer mechanism safeguards the remuneration and other conditions under an award, certified agreement, Australian Workplace Agreement (AWA) or a determination under the Public Service Act. The safeguard does not have effect on the *Commonwealth Employment (Protective Service Officers) Section 170MX Award* (MX Award) made under the *Workplace Relations Act 1996*. The Commissioner will make a determination under section 24(1) of the PS Act to ensure that employees under the MX Award are protected by the subsection 72(3) safeguards.

**Investigating State offences that have a federal aspect**

25. Schedule 3 of the Bill proposes to implement a recommendation from the Standing Committee of Attorneys-General and the Australasian Police Ministers' Council Joint Working Group to enable the AFP to investigate State offences with a federal aspect. The April 2002 Leaders' Summit resolved to legislate and develop administrative arrangements to allow the AFP to investigate State offences incidental to multi-jurisdictional crime.


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26. Where the AFP is investigating federal crimes such as people smuggling, terrorism or drug importation, it may become apparent that State offences have also been committed.
27. A State offence has a federal aspect if the subject-matter of the offence is a subject on which the Commonwealth has constitutional power to legislate. A State offence also has a federal aspect where the investigation of that State offence is incidental to an investigation of a federal or Territory offence.
28. This definition of a State offence with a federal aspect, covering a State offence that could have validly been enacted as a federal offence, provides a sound constitutional basis for the amendments.
29. The AFP will operate under federal procedures and policies when investigating a State offence with a federal aspect.
30. The AFP will be able to exercise the range of federal investigative powers in the Crimes Act when investigating a State offence with a federal aspect. These powers include the power of arrest and powers to obtain search warrants, to undertake controlled operations, to acquire and use assumed identities and to carry out forensic procedures.
31. These amendments will streamline investigations, avoiding the potential duplication of police resources that arises where otherwise the Australian Federal Police and State police services would need to investigate different aspects of the same criminal conduct.

#### Concluding comments

32. As noted at paragraph (16) above, the APS and AFP Protective Security functions have been aligned in a new Protection Portfolio that is headed by the National Manager Protection. The Bill will remove the requirement to maintain dual employment and administration systems and allow for full integration. As AFP employees, APS transferees will have access to extended training opportunities.
33. The Bill will enable the AFP to complete the integration of protection operations. Operational outcomes will become fully integrated with the aim of delivering seamless protection services to the Commonwealth.

  
M J Keelty  
Commissioner  
Australian Federal Police  
1 March 2004

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**ABBREVIATIONS**

AFP	AUSTRALIAN FEDERAL POLICE
AFPA	AUSTRALIAN FEDERAL POLICE ASSOCIATION
AGD	ATTORNEY GENERAL'S DEPARTMENT
ANSTO	AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY ORGANISATION
APS	AUSTRALIAN PROTECTIVE SERVICE
APSC	AUSTRALIAN PUBLIC SERVICE COMMISSION
AWA	AUSTRALIAN WORKPLACE AGREEMENT
CPSU	COMMUNITY AND PUBLIC SECTOR UNION
CTFR	COUNTER TERRORISM FIRST RESPONSE
DEWR	DEPARTMENT OF EMPLOYMENT AND WORKPLACE RELATIONS
MX AWARD	COMMONWEALTH EMPLOYMENT (PROTECTIVE SERVICE OFFICERS) SECTION 170MX AWARD
PM&C	DEPARTMENT OF THE PRIME MINISTER AND CABINET
TWU	TRANSPORT WORKERS UNION

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**Attachment A****The functional Working Groups of Project Merida**

1. Legislation
2. Communications and Marketing
3. Workplace Relations
4. Professional Standards
5. Operational Delivery
6. People (Human Resources and Health and Safety Services)
7. Corporate Support (Finance and Commercial)
8. Information Technology and Information Management
9. Learning and Development
10. Governance