

The Senate

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Legal and Constitutional  
Legislation Committee

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Australian Protective Service  
Amendment Bill 2003

August 2003

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# TABLE OF CONTENTS

<b>MEMBERS OF THE LEGISLATION COMMITTEE.....</b>	<b>I</b>
<b>RECOMMENDATIONS.....</b>	<b>V</b>
<b>ABBREVIATIONS .....</b>	<b>VII</b>
<b>CHAPTER 1 .....</b>	<b>1</b>
<b>INTRODUCTION .....</b>	<b>1</b>
Key provisions of the Bill.....	1
Conduct of the inquiry .....	1
Acknowledgment.....	1
Note on references .....	1
<b>CHAPTER 2 .....</b>	<b>3</b>
<b>ISSUES .....</b>	<b>3</b>
Justification for the Bill .....	3
Requirement to provide name, address and evidence of identity.....	3
Stop and search powers .....	5
Seizure of items .....	13
Other issues.....	14
The Committee’s conclusions .....	17
<b>APPENDIX 1 .....</b>	<b>21</b>
<b>SUBMISSIONS RECEIVED.....</b>	<b>21</b>
<b>APPENDIX 2 .....</b>	<b>23</b>
<b>WITNESSES WHO APPEARED BEFORE THE COMMITTEE .....</b>	<b>23</b>
Canberra, Wednesday 23 July 2003 .....	23



## **RECOMMENDATIONS**

### **Recommendation 1**

**The Committee recommends the wording of proposed subparagraphs 18B(1)(a)(iii) and 18B(2)(b)(iii) be changed from “vehicle” to “vehicle or vessel.”**

### **Recommendation 2**

**Subject to the previous recommendation, the Committee recommends that the Bill proceed.**



## ABBREVIATIONS

AFP	Australian Federal Police
AFPA	Australian Federal Police Association
APS	Australian Protective Service
CPSU	Community and Public Sector Union



# CHAPTER 1

## INTRODUCTION

1.1 On 26 June 2003, the Senate referred the provisions of the Australian Protective Service Amendment Bill 2003 to the Legal and Constitutional Legislation Committee for inquiry and report by 18 August 2003.

### **Key provisions of the Bill**

1.2 The Bill proposes amendments to the *Australian Protective Services Act 1987* by giving extra powers to Australian Protective Service officers:

- to request a person's name, address, identification and reason for being in or near a place the officers are protecting;
- to stop, detain and search a person in or near such a place; and
- to seize things that are likely to cause death or serious harm.

### **Conduct of the inquiry**

1.3 The Committee advertised its inquiry in *The Australian* newspaper on 2 July 2003. It also wrote to over 68 individuals and organisations inviting submissions. A list of the parties from whom submissions were received appears at Appendix 1.

1.4 The Committee held one public hearing on this inquiry in Canberra on 23 July 2003. Witnesses who appeared before the Committee at that hearing are listed in Appendix 2.

### **Acknowledgment**

1.5 The Committee thanks those who assisted with its inquiry.

### **Note on references**

1.6 References in this report are to individual submissions as received by the Committee, not to a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.



## CHAPTER 2

### ISSUES

2.1 This chapter discusses the stated justification for the Bill and its key issues, namely:

- the requirement to provide name, address and evidence of identity;
- stop and search powers; and
- seizure of goods.

2.2 It then briefly outlines broader issues raised during the public hearing.

#### **Justification for the Bill**

2.3 The Explanatory Memorandum states that the purpose of the Bill is ‘to ensure that the Australian Protective Service (APS) has adequate powers and capabilities to support its functions of providing protective security services’.<sup>1</sup>

2.4 The proposed powers are described as a ‘proactive approach in the current security environment’ that will provide officers:

... with greater flexibility in suspicious circumstances where the exercise of the arrest power is not immediately necessary, but where it is necessary to act quickly to ensure the security of a person or place that is being protected is not compromised.<sup>2</sup>

2.5 The Explanatory Memorandum states that the proposed powers ‘preserve the clear delineation’ between the APS and police:

They are less intrusive than the existing arrest and search powers and will provide for a graduated response to circumstances that may arise when protective service officers are performing security services.<sup>3</sup>

2.6 No financial impact ‘on Government revenue’ is expected.<sup>4</sup>

#### **Requirement to provide name, address and evidence of identity**

2.7 Proposed section 18A provides that where a protective service officer suspects on reasonable grounds that a person might have just committed, be committing or be

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1 *Explanatory Memorandum*, p. 1.

2 *ibid.*

3 p. 2.

4 *ibid.*

about to commit, an offence for which the officer may arrest the person without warrant, and the person is in a place or in the vicinity of a person, place or thing in respect of which the APS has functions, the officer may request the person to provide his or her name, address, reason for being in or near the place, and evidence of identity.

2.8 The offences for which an officer may arrest without warrant are set out in section 13 of the Act and include sabotage, damage to Commonwealth property, escaping or aiding escape from lawful custody, official secrets offences, trespass on Commonwealth land, terrorism offences under the *Criminal Code* and offences under the *Crimes (Aviation) Act 1991*.

2.9 The officer must be in uniform or must produce his or her identification card when making a request, and must tell the person of his or her authority to make the request and that it may be an offence not to comply (proposed subsection 18A(2)). Failing to comply with the request, or giving a false name or address, without reasonable excuse can attract a maximum fine of 20 penalty units.

### ***Evidence to the Committee***

2.10 The Committee received evidence concerning one aspect of the “Requirement to provide name etc” provisions of the Bill.

2.11 In evidence to the Committee, Mr Evan Hall of the Community and Public Sector Union (CPSU) representing APS officers, raised concerns about the wording of paragraph 18A(1)(a), which gives power to an APS officer to request details from a person if the officer suspects the person ‘might have just committed’ an offence. The CPSU submitted:

There is a restriction in this clause - the word "just" in relation to the time frame of committing an offence. For example, an APS officer may require a person to provide their identification, but the offence event cannot be immediately dealt with. If it took an APS officer 10 minutes to locate a person in connection with an offence event, the officer would not legally be able to apply this power because it would be outside of the timeframe. .... By removing this restriction, APS officers would have greater flexibility in obtaining identification from persons of interest.<sup>5</sup>

2.12 The CPSU suggested replacing the words “might have just committed” with “might have committed.”

2.13 In response, the Attorney-General’s Department submitted that:

We do not consider the word “just” limits the capacity of the APS officer to exercise the power to the extent suggested. However, we consider the inclusion of “just” is necessary to ensure the power is not exercised inappropriately (for example, in relation to a person who might have

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5 *Submission 2*, p. 2.

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committed an offence some days or even years previously). Removal of the word “just” could result in protective security officers becoming involved in investigations, rather than protection.<sup>6</sup>

2.14 The Department added:

The provision has been drafted to ensure the APS officer can exercise the power within a reasonable period of forming the relevant suspicion in order to act in a preventative manner, consistent with the preventative objects of the provision and the functions of the APS. What will constitute a reasonable time will depend on the circumstances of the particular situation.<sup>7</sup>

2.15 The Committee considers that the Department’s view is reasonable and accordingly recommends no change to this provision.

### **Stop and search powers**

2.16 Proposed section 18B gives protective service officers power to stop and detain a person, conduct an ordinary or frisk search of the person if the officer is of the same gender as the person, and search any thing or vehicle under the person’s control. ‘Ordinary’ and ‘frisk’ searches are defined in the same way as under the *Crimes Act 1914*.

2.17 Where the officer is not of the same gender as the person, the search of the person must be conducted by an officer of the same gender if such an officer is ‘reasonably available’, by a police or customs officer of the same gender, or by any other person of the same gender who is requested to carry out the search. Only reasonable and necessary force may be used and the person must not be subject to greater indignity than is reasonable and necessary.

### ***Evidence to the Committee***

2.18 Several areas of concern in the “Stopping and Searching” provisions of the Bill were considered by the Committee.

#### **Degree of suspicion**

2.19 Proposed section 18B allows an APS officer to stop and detain a person for the purpose of searching for a thing which is likely to cause damage to property, or death or serious harm to a person. The CPSU expressed concern over the limitations this wording imposed on APS officers and the difficulty officers in the field might have in determining the likelihood of an offence, as opposed to the possibility of an offence (a lower threshold of suspicion). The CPSU submitted that:

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6 *Submission 5*, p. 2.

7 *ibid.*

The term "likely" implies a particular action or event is destined to occur, or there is certainty it will occur or a high probability of occurring. It is therefore recommended that the term "may" also be inserted into this part of the clause, in order to modify the likelihood of a particular action or event to that of a possibility or opportunity of occurring. This recommendation should cover circumstances whereby there are differing levels of suspicion on the part of an APS Officer, ie. "may be the case" rather than "likely to be the case".<sup>8</sup>

2.20 Mr Hall of the CPSU told the Committee:

The view of the officers is that the burden of an offence being 'probable' ignores what their training tells them are significant threats that need to be investigated...<sup>9</sup>

2.21 In response to this concern, the Attorney-General's Department submitted that:

We do not believe the word "likely" connotes the certainty of a particular outcome. A significant amount of thought was given to the appropriate word to be used in this provision during the drafting process. "Likely" was chosen as we consider this word appropriately limits the circumstance in which a protective security officer is authorised to exercise the power. It is not appropriate the power could be exercised in circumstances where it is highly unlikely that an event will occur, but where there is a slim possibility that the event "may" occur. The power is only exercisable if the APS officer has reasonable grounds to suspect that there is a likelihood of the event occurring.<sup>10</sup>

2.22 A representative of the Attorney-General's Department told the Committee:

...the word 'may' can be interpreted as being much more permissive than we might want in this context. We might want [officers] to really think about probability, and using 'likelihood' gets people to think in that way.<sup>11</sup>

2.23 The Committee considers that the Department's view is reasonable and that training can address concerns about the appropriate threshold.

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8 *Submission 2*, p. 4.

9 *Committee Hansard* 23 July 2003, p. 2.

10 *Submission 5*, p. 4.

11 *Committee Hansard* 23 July 2003, p. 24.

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## **Justification for search: Concern for public and personal safety**

### 2.24 The CPSU submitted that:

There needs to be a clause that covers the circumstances whereby a thing that a person has or has been brought into premises, may cause a person to fear for their personal safety, or to be intimidated, or that the security of the premises may be in jeopardy.

This recommendation would cover disturbances at premises where an evacuation occurs or a service at a premise has been suspended, or where a person at premises has been put under duress fearing for their safety. It would also cover tricks and practical jokes that are done knowingly and intentionally. A common example at Sydney Airport would be a person makes a statement that they had a “bomb” in their bag at an airport.<sup>12</sup>

### 2.25 The Attorney-General's Department responded:

We do not consider an additional provision of the type outlined is necessary. In situations in which an evacuation or similar incident has occurred, the events which resulted in the evacuation would normally be sufficient for a protective security officer to form the relevant suspicion and exercise his or her search powers. Those powers would be exercisable in relation to a number of things at the premises or in the vicinity of those premises.

A protective security officer would also be justified in exercising the search power in circumstances where a person makes a statement to the effect that they have a bomb in their bag. There would need to be more for the officer to conclude it was a practical joke (eg the person is known to him or her as a joker).<sup>13</sup>

### 2.26 The Committee considers the Department's view is reasonable and recommends no change.

## **Search of vessels**

2.27 Proposed subparagraph 18B(2)(ii) allows an APS officer to ‘search any vehicle operated or occupied by the [person of interest].’ The CPSU has submitted that this subparagraph should be widened to include the searching of vessels. The example of Sydney Airport was given, where:

...it would be commonsense for APS officers to have the power to search vessels, given the waterways that connect to the Security Restricted Area of the airport. There have been several occasions whereby small vessels have come alongside of the rock-walls of the runway and moored, which has

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12 *Submission 2*, p. 4.

13 *Submission 5*, p. 5.

resulted in an APS response to reports of suspicious activity from persons occupying vessels.<sup>14</sup>

2.28 The CPSU recommended changing the wording in subparagraph 18B(1)(a)(iii) from “vehicle” to “vehicle or vessel.”

2.29 In response to this concern, the Attorney-General's Department stated that:

We believe clause 18B already covers the search of a vessel. In the context of a search under clause 18B, a vessel would be either a thing under the person's immediate control (subparagraph 18B(1)(a)(i)) or a thing a person is occupying (subparagraph 18B(1)(a)(ii)).<sup>15</sup>

2.30 The Committee is not entirely satisfied with the explanation provided by the Attorney-General's Department. The existing wording may not, for example, allow for the situation where a boat came to shore near protected premises and its occupants disembarked and moved towards the building. It is arguable that the boat could not be lawfully searched because it is not a vehicle and it is not under a person's immediate control. In any case, since the provision specifically allows for the search of a vehicle, there would seem to be no harm in adding an explicit reference to search of a vessel. There is a number of protected premises with water frontages.

## **Recommendation 1**

**The Committee recommends the wording of proposed subparagraphs 18B(1)(a)(iii) and 18B(2)(b)(iii) be changed from “vehicle” to “vehicle or vessel.”**

### **Things in possession or control**

2.31 Subparagraph 18B(2)(b)(ii) empowers an APS officer to search any thing under a person's immediate control.

2.32 The CPSU submitted that this wording limited any search to articles being carried or handled, and prevented APS officers from searching an article left temporarily unattended.<sup>16</sup> The addition of the words “or anything that is in the care of the person” to the end of the above subparagraph 18B(2)(b)(ii) was recommended.

2.33 The Attorney-General's Department responded:

The expression “immediate control” is used in other legislative provisions authorising protective security officers to conduct personal searches (for example, section 252 of the Migration Act 1958). “Immediate control” includes property that is either on the individual's person or nearby at the time of the search. Therefore, it would not be necessary to show that a thing was being carried or handled for that thing to be under a person's immediate

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14 *Submission 2*, p. 2.

15 *Submission 5*, p. 2.

16 *Submission 2*, p. 3.

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control. An item under a person's immediate control would include, for example, an item locked in luggage that has been left in the public area of an airport, but for which the person was carrying the key.

Protective security officers are also authorised to search items left unattended. Subclause 18B(6) of the Bill expressly authorises a protective security officer to search "items brought on to premises" which are left unattended (see subparagraph 18B(1)(a)(iv)).<sup>17</sup>

2.34 Given this explanation, the Committee recommends no change to the provision.

### **Vehicle searches**

2.35 The CPSU suggested some amendments which it considered would make clearer to APS officers exactly what can be searched in connection with "vehicles." Questions on which the CPSU sought clarification were: Are officers permitted to enter a vehicle? Are officers authorised to give directions to facilitate a search? Are officers permitted to search compartments within the vehicle? Are officers authorised to search abandoned vehicles? Does "vehicle" include motor cycles, motor carriages and attached trailers?

2.36 The Attorney-General's Department advised in each case that it considered the provisions of the Bill to be adequate. The Department advised that entry to a vehicle for a lawful search is implicitly authorised, and compartments can be searched as they are part of the vehicle. "Vehicle" includes motor cycles and other means of conveyance, and an abandoned vehicle can be searched because it is a "thing" that has been brought on to premises where an APS officer has authority to search. On the question of whether officers can give directions to facilitate a search, the department pointed to the general offence of obstruction of a Commonwealth public official (in the *Criminal Code*) which would cover situations where a person sought to prevent a search.<sup>18</sup>

2.37 The Committee recognizes the concerns of APS officers, but is satisfied with the Department's explanations, and believes that proper training should equip officers with the knowledge and skills to make appropriate judgments.

### **Ordinary searches**

2.38 The CPSU submitted that "ordinary searches" as defined in proposed subsection 18B(8) should be expanded to include bomb appraisal and sniffer dog examination.

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17 *Submission 5*, p. 3.

18 *Submission 5*, p. 4.

2.39 The Attorney-General's Department pointed out that the definition as provided had been taken directly from the *Crimes Act 1914*, and was considered appropriate. The Department also advised that:

In any case, the definitions provided for ordinary and frisk searches relate to searches of persons. In contrast, the types of examination the CPSU seeks to have incorporated into the ordinary search definition are generally not relevant to searches of persons, but examinations of things and vehicles.<sup>19</sup>

2.40 The Committee considers the Department's answer to be sufficient, and recommends no change to the provision.

### **Definition of premises where search powers apply**

2.41 The CPSU submitted that APS officers in the field might have some difficulty determining exactly where they were empowered to exercise the stop and search power, and recommended the insertion of a definition of "premises." Mr Hall told the Committee:

What is being sought here by the officers is that those powers should not be limited to the sterile areas at the airports, that their powers should extend to the public waiting areas, the car park and anything on the airport or the public areas of infrastructure, and that there should be no doubt that their powers extend to those areas.<sup>20</sup>

2.42 In response the Attorney-General's Department submitted:

The suggested definition is not consistent with the generally understood meaning of premises. For instance, in the context of the issue and conduct of search warrants by police, section 3C of the *Crimes Act 1914* (Cth) defines premises to include "a place and a conveyance".

The search power in subparagraph 18B(1)(a)(iv) would not operate to prevent a protective security officer from inspecting or searching an item in a public place. For example, if a protective security officer observed an item in a roadway or other public place adjacent to, or in the vicinity of a place where he or she was performing protective services, the APS officer would be entitled to examine that item, just like any other member of the public could. No statutory authority would be necessary for such an action.<sup>21</sup>

2.43 The Committee recommends no change to this provision.

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19 *Submission 5*, p. 4.

20 *Committee Hansard* 23 July 2003, p. 2 & p. 8.

21 *Submission 5*, p. 3.

## Requirement for officer to advise of authority, and of potential offence

2.44 As previously noted, proposed section 18A covering the “Requirement to provide name etc” requires an APS officer to inform a person of the officer’s authority to make the request, to inform a person that it may be an offence not to comply, and also specifies a penalty for non-compliance. The Department advised that the Privacy Commissioner had been consulted regarding these requirements, and the relevant provisions had been included at his request.

2.45 The Committee noted that in contrast, proposed section 18B covering stop and search powers does not have comparable requirements or provide a penalty. The Committee recognises that offences and penalties listed under the *Criminal Code* cover these situations, particularly the general Commonwealth offence for obstruction of a Commonwealth public official (in section 149.1 of the *Criminal Code*).<sup>22</sup>

2.46 However, the Committee queried why proposed section 18B does not include a requirement to inform a person that the APS officer has the authority to conduct a search. In response, the Attorney-General's Department submitted that:

... there are legal and practical reasons for this. For a prosecution under section 149.1 of the *Criminal Code* for failing to cooperate, it would be necessary to prove the person was aware of the APS officer’s authority to exercise the power and that the person knew he or she was required to cooperate. Alternatively, it would be sufficient to show the person did not give the APS officer the opportunity to convey this information because, for example, the person decamped the area.<sup>23</sup>

2.47 Representatives of the Australian Federal Police explained that APS officers would be fully trained in this regard:

The training... is about the officers being clear with their powers and then when they exercise those powers being able to articulate to the person what they are doing. That is all captured in training.<sup>24</sup>

2.48 The Department explained why proposed section 18A does specify a penalty, in contrast to proposed section 18B:

A failure to cooperate with a request for name and address information is considered less serious than hindering or obstructing a lawful search. In addition, there is no general offence provision in the *Criminal Code* for failing to provide name and address details when requested by a Commonwealth official. Therefore, clause 18A includes an offence with an

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22 The penalty for that offence is two years’ imprisonment.

23 *Submission 5*, pp. 1-2.

24 *Committee Hansard* 23 July 2003, p. 23.

appropriate penalty, which is comparable to penalties for similar offences in other Commonwealth legislation.<sup>25</sup>

2.49 The Committee recommends no change to these provisions.

### **Procedure following search**

2.50 The CPSU submitted to the Committee that it was not clear under the new arrangements exactly what would happen once a search revealed a suspicious item:

Under the Bill, an APS officer will be able to "ask for a name", "stop and search" and "seize things", but apart from the provision to "Stop and detain to search" what happens to persons of interest after they have given their name and been subjected to a search?<sup>26</sup>

2.51 Mr Hall told the Committee:

It does raise the question as to what would occur should that lawful search yield something which clearly indicates that there is a threat to public safety. What does not clearly exist in the bill is an extension of the powers for a Protective Service officer to detain on the basis of suspicion. They do currently have the powers to arrest when an offence is in the process of being committed or has just been committed, but the ability to detain on the likelihood that an offence may occur is not included.<sup>27</sup>

2.52 A representative of the Australian Federal Police gave evidence that in the situation where an APS officer did find a thing that they decide is a security risk:

... the next point is the existing powers of arrest. On the continuum, if they go from a suspicion to a belief, they can exercise that power of arrest and there is the provision within the current provisions of the APS Act to hand that person to a police officer. The role of the APS, as per the air navigation regulations, is counterterrorism first response. They are not a police nor investigative body, so they would call state or Federal Police to come and assist and take over for the investigation.<sup>28</sup>

2.53 The discovery of a dangerous weapon or item changes the level of suspicion. A representative of the Attorney-General's Department pointed out that:

... If there are sufficient grounds to arrest the person, they can arrest them. The arrest powers of the APS are an extension of what we understand to be a citizen's arrest, but the bill is quite prescriptive about what they can do. It

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25 *Submission 5*, p. 2.

26 *Submission 2*, p. 5.

27 *Committee Hansard 23 July 2003*, p. 2.

28 *Committee Hansard 23 July 2003*, p. 17.

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puts into it the necessity to be handing the person to the professional law enforcement officer.<sup>29</sup>

2.54 Concerns were raised regarding the period of detention between the search and subsequent handover to police, given that the legislation appeared not to impose any limit on the period of detention. A representative of the Attorney-General's Department advised that:

There is no specified time limit in the existing legislation, and it is something that we have not looked at putting a time limit on.

...the situation is that the provisions we have in relation to that have been in operation for over a decade. We have never had a situation where it has been drawn to our attention as being a problem. Of course, there is the overriding requirement that this be done as soon as practicable. The period could vary, but I do not think we have had a situation where there has been a problem.<sup>30</sup>

2.55 An Australian Federal Police representative added:

If we get to the arrest situation, the act is currently quite clear, in section 17, that they are to deliver forthwith to police.

.....The new power is about assessing a suspicion that could either elevate the situation or establish bona fides. I would anticipate that in most practical scenarios that I could imagine it would be a very truncated time in which they would be making these assessments.<sup>31</sup>

2.56 The Committee considers the responses from the Department and the Australian Federal Police are sufficient and recommends no change.

## **Seizure of items**

2.57 If an officer finds the thing for which he or she was searching, or finds a weapon or other thing that he or she suspects on reasonable grounds is likely to be used to cause death or serious harm to a person, the officer may seize it (proposed section 18C). The thing must be delivered to police custody as soon as practicable.

2.58 There are also provisions concerning seizure notices to be delivered to the owner, stating that the thing will be forfeited in 90 days to the Commonwealth if its return is not requested, and allowing a police officer to apply to a magistrate for an order for forfeit, disposal or retention by police where the seized thing is reasonably suspected to be likely to cause substantial damage, death or serious harm (proposed sections 18D and 18E).

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29 *Committee Hansard* 23 July 2003, p. 18.

30 *Committee Hansard* 23 July 2003, p. 19.

31 *ibid.*

## ***Evidence to the Committee***

2.59 The Committee heard little evidence on the seizure provisions. The CPSU raised the question of what would happen if during the course of a search an APS officer discovered items such as illicit drugs or stolen items, and whether the discovery of such items would render the search unlawful.

2.60 In response to this concern the Attorney-General's Department stated:

The new powers are not designed to create a new police force. Consistent with the functions of the APS, the seizure power in clause 18C is preventative – not investigative. In the event that items such as illicit drugs are located and the arrest power under section 13 of the APS Act is not available, the APS officer can contact police and report the matter. If the APS officer considers the matter is serious and that it necessary to act immediately, the APS officer can exercise the citizens arrest power and hand the arrested person and the seized items into the custody of the police at that time.<sup>32</sup>

2.61 The Committee recommends no change to these provisions.

## **Other issues**

2.62 Three broader issues were canvassed during the hearing:

- Training and remuneration;
- role of APS officers v. role of police; and
- involvement of the private sector in airport security.

## ***Training and remuneration***

2.63 The Committee recognises the concerns expressed by staff representatives that APS officers need to have clarity regarding exactly when and where they are entitled to exercise their new powers. The CPSU submitted:

Effective application of the new powers would require a training regime in order to develop the necessary skills in order to perform this enhanced role. The CPSU believes one shortcoming of the Bill is that it does not provide sufficient onus on the Federal Police Commissioner to ensure that the delegation of these new powers is accompanied by appropriate training, equipment and remuneration.<sup>33</sup>

2.64 The Attorney-General's Department advised the Committee:

APS Officers currently receive job-specific training relating to their local work environment and ongoing refresher training and testing to ensure they

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32 *Submission 5*, p. 5.

33 *Submission 2*, p. 5.

are familiar with changes to legislation and are competent in all aspects of their work. The Bill proposes new powers which are less coercive than existing powers. Following the conferral of the new powers, training programs will be adapted to ensure protective security officers understand and can exercise those powers effectively. This will involve training protective security officers about the circumstances in which they can exercise the powers.<sup>34</sup>

2.65 The Committee sought clarification as to whether APS officers would be trained in the exercise of the new powers in time for the commencement of the legislation (which is 28 days after assent).<sup>35</sup> A representative of the Australian Federal Police advised that:

...training is being developed and is due to be rolled out by 15 August. In order to have the training in place for use of the powers, we anticipate the required period to be to about 1 November.<sup>36</sup>

2.66 The issue of possible additional remuneration for APS officers who have received training in the new powers is one that is beyond the scope of the Bill, and therefore not a matter for this inquiry to resolve.

2.67 The issue of the s.170MX Award<sup>37</sup> was also raised.<sup>38</sup> While it too is outside the scope of this inquiry, it is a matter that the Committee has been aware of for some time. The Committee notes that this matter is central to the issue of remuneration and needs to be addressed.

### ***Role of APS officers v. role of police***

2.68 Both the CPSU and the Australian Federal Police Association (AFPA, representing Commonwealth law enforcement employees) raised concerns regarding the delineation between the role of APS officers and the role of police. Members of the public, for example, could perceive an APS officer in uniform as a person to call on for assistance in the event of a bag-snatching or shoplifting incident, whereas the legislation (including this proposed Bill) clearly defines powers of APS officers as applying solely in the context of their protective security role.

2.69 In response the Australian Federal Police acknowledged that APS officers can sometimes be mistaken for police officers, but advised that:

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34 *Submission 5*, p. 6.

35 See Clause 2 of the Bill.

36 *Committee Hansard* 23 July 2003, p. 25.

37 *Workplace Relations Act 1996*, s. 170MX.

38 *Committee Hansard* 23 July 2003, p. 3.

if an incident is assessed as being a community or general policing matter, it is referred to the local police.<sup>39</sup>

2.70 The Australian Federal Police pointed out that APS officers:

are aware that their role is Counter Terrorism First Response (CTFR), not policing, that they are not empowered as police, and that any involvement in policing matters detracts from their primary CTFR focus of cordon and contain and handover of the situation to State/Territory authorities.<sup>40</sup>

2.71 The Committee notes the wider ongoing process to integrate the Australian Protective Service into the Australian Federal Police. The concerns raised over demarcation of roles are noted, and the Committee looks forward to seeing such concerns resolved as the process of integration and consequent legislation proceeds.

### ***Involvement of the private sector in airport security***

2.72 The demarcation between traditional policing roles and the protective security roles of APS officers also gives rise to particular concerns by the AFPA regarding security at airports which are owned and operated by private industry:

Where the AFPA has concerns over the provision of airport security is in respect to the provision of the policing role (as distinct from the existing APS role). This Bill recognises the retention of a demarcation between the provision of traditional policing powers and the provision of this newly defined security function. Unfortunately this then leaves open the still serious question over who is responsible for general duties policing at the airport facilities.<sup>41</sup>

2.73 The AFPA submitted that this apparent gap in the provision of security at airports can lead to the expectation on the part of private sector airport managers that APS officers may be available to perform a quasi-policing role. This expectation may be increased in light of the new powers given to APS officers as a result of the Bill. Mr Hunt-Sharman of the AFPA told the Committee:

What we have at the moment here with the Australian Protective Service is this blurring across where it is not as clear—for example, what powers does an airport manager have in directing Australian Protective Service officers to carry out or not carry out certain functions; [for example] to declare a suspect parcel safe?<sup>42</sup>

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39 *Submission 4A*, p. 2.

40 *Submission 4A*, p. 2.

41 *Submission 3*, p. 7.

42 *Committee Hansard* 23 July 2003, p. 13.

2.74 The AFPA suggested that commercial imperatives can dictate decisions made by private sector airport management in regard to security, including staffing levels and security vetting of employees. The AFPA stated:

In general terms it increasingly seems that that the private sector culture dominates security provision in areas of significant national security interest. The risk management culture that has evolved with it fails to ensure all efforts necessary to provide security services are the best and not the cheapest!<sup>43</sup>

2.75 In response, the Australian Federal Police advised that APS officers would not be using the new powers for any other purpose but to implement their Counter Terrorism First Response role. They submitted that:

The AFP does not envisage that the amount of interaction between the private user of airport facilities and Protective Service Officers will increase due to the new powers.

.....A comprehensive training package is being developed to educate APS officers on the correct use of the proposed new powers. In this training program, they will be instructed on their legal obligations and any restrictions that may be placed on their use of the powers.

The airport operators will also be briefed on the new powers if the Bill passes.<sup>44</sup>

2.76 The Committee acknowledges the concerns raised but notes they are outside the provisions of the Bill.

### **The Committee's conclusions**

2.77 The Committee recognises the concerns of APS officers, who under this Bill are being given additional powers, and who want to make sure they are acting lawfully.

2.78 The Committee notes that despite the concerns raised, staff representative associations (the CPSU and the AFPA) are generally supportive of the provisions of the Bill. However, during the public hearing it became apparent that while the APS and the Privacy Commissioner had been consulted during the development of the Bill, neither of the two staff organisations had been consulted, either by the AFP or the Attorney-General's Department.<sup>45</sup> A representative of the Department explained that there had not been time to have a 'wider consultation process' involving an exposure

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43 *Submission 3*, p. 8.

44 *Submission 4A*, p. 3.

45 *Committee Hansard* 23 July 2003, p. 5, where Mr Hall of the CPSU noted 'We have neither had the chance to hear management's view on the legislation nor the ability to put our view forward at this point'; see also p. 26.

draft of the Bill and an invitation to comment.<sup>46</sup> However, the Committee is concerned that key groups should be consulted when legislation is being developed, particularly on issues arising from the integration of the APS into the AFP. Such an important part of the development of legislation should not be left to the Committee inquiry process to resolve.

2.79 The Committee supports the proposed legislation and stresses that comprehensive training for APS officers is essential for clarity in the minds of the officers as to when and where they can confidently exercise the new powers. The Committee notes that training programs are to be conducted by the Australian Federal Police prior to the commencement of the new provisions, and would welcome the opportunity to see any training guidelines produced.

### **Recommendation 2**

**Subject to the previous recommendation, the Committee recommends that the Bill proceed.**

**Senator Marise Payne**

**Chair**

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46 *Committee Hansard* 23 July 2003, p. 26.





# APPENDIX 1

## SUBMISSIONS RECEIVED

<b>Submission No.</b>	<b>Submitter</b>
1	Humanist Society of Victoria Inc
2	Community and Public Sector Union
3	Australian Federal Police Association
4	Australian Federal Police
4A	Australian Federal Police
5	Attorney-General's Department



## **APPENDIX 2**

### **WITNESSES WHO APPEARED BEFORE THE COMMITTEE**

**Canberra, Wednesday 23 July 2003**

**CPSU**

Mr Evan Hall, Division Secretary, Border Protection and International Affairs  
Division

Mr Dennis Hayman, Section Counsellor NSW, CPSU & APS officer

**Australian Federal Police Association**

Mr Jonathan Hunt-Sharman, National President

Mr Craig Shannon, Principal Industrial Officer

**Australian Federal Police**

Federal Agent Audrey Fagan, Executive Director, Protection

Federal Agent Stephen Jackson, General Manager, Protection and Guarding

**Attorney-General's Department**

Mr Geoff McDonald, Assistant Secretary, Criminal Justice Division

Mr Anthony Seebach, Principal Legal Officer, Criminal Justice Division

Ms Karen Bishop, Senior Legal Officer, Criminal Justice Division