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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN PROTECTIVE SERVICE AMENDMENT BILL 2003

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Justice and Customs
Senator the Honourable Chris Ellison)

AUSTRALIAN PROTECTIVE SERVICE AMENDMENT BILL 2003

OUTLINE

The Australian Protective Service Amendment Bill 2003 as introduced amends the *Australian Protective Service Act 1987* ('APS Act') to ensure the Australian Protective Service has adequate powers and capabilities to support its functions of providing protective security services.

The proposed amendments will ensure the powers for both the Australian Federal Police ('AFP') and the Australian Protective Service ('APS') are consistent when operating in the same locations under the same circumstances. The powers will enable all officers to operate cooperatively and effectively to remove potential threats to national security.

The proposed amendments also respond to the recommendation of the Senate Legal and Constitutional Legislation Committee in its report on the Bill.

The APS is an operating division of the AFP, providing protective security and custodial services in a range of areas to complement the role of AFP officers in their investigative and policing role. While APS officers have primary responsibility for providing protective security services, the provision of such services comes within the greater law enforcement jurisdiction of AFP officers. Therefore, there are situations when AFP and APS officers work alongside one another and can jointly respond to a possible security threat. However, there are also situations when AFP officers are operating at locations where the APS can perform functions but where there is no APS presence. The powers currently available to AFP officers to respond in those circumstances to a possible security threat are limited.

Under section 3V of the *Crimes Act 1914* ('Crimes Act'), AFP officers currently have the power to request a person's name and address where the officer believes on reasonable grounds that the person may be able to assist in inquiries about an indictable offence that has been or might have been committed. The amendments to the Bill will give AFP officers the power to request a person's name and address where there are reasonable grounds to suspect the person might have committed, might be committing or might be about to commit a prescribed offence. This will give AFP officers the same powers as APS officers in situations where it is necessary to react quickly in circumstances that give rise to legitimate security concerns.

While AFP officers have some non-arrest search powers under other Commonwealth legislation, including the *Customs Act 1901* and the *Protection of Moveable Cultural Heritage Act 1986*, these powers generally have no application to counter-terrorism and national security. There are also limitations on existing powers of AFP officers to seize items.

The amendments will give AFP officers the power to search persons and seize items in circumstances that give rise to legitimate security concerns. AFP officers will only be able to exercise these powers in locations where APS protective security and custodial functions can be provided. That is, AFP officers will only be able to conduct searches and seize items in the vicinity of a place, person or thing, in respect

of which the APS has functions. This would include airports, diplomatic and consular missions, and Commonwealth government buildings. The powers will only be exercised where an AFP officer has reasonable grounds to suspect a person might have just committed, might be committing, or might be about to commit an offence to which section 13 of the APS Act applies.

These powers are in addition to any powers an AFP officer may have apart from this Bill. They are not intended to in any way limit those other powers.

FINANCIAL IMPACT

The proposed amendments in the Bill have no financial impact on Government revenue.

NOTES ON CLAUSES

Amendment 1

This amendment inserts a definition of ‘vehicle’ in item 1 of the Australian Protective Service Amendment Bill 2003 (‘the Bill’) as introduced, in response to recommendation 1 of the Senate Legal and Constitutional Legislation Committee report. This amendment clarifies that the term ‘vehicle’ in new section 18B has a wide meaning. For example, it includes vessels and aircraft.

Amendment 2

This amendment inserts new section 18F after section 18E in item 1 of the Bill as introduced to confer the powers contained in new sections 18A, 18B, 18C, 18D and 18E on the AFP.

Proposed subsection 18F(1)

Subsection 18F(1) provides that a reference in sections 18A, 18B and 18C (other than subsection 18C(3)) to a protective service officer includes a reference to a member or a special member of the AFP.

The AFP currently has the power to request a person’s name and address under section 3V of the *Crimes Act 1914* where an AFP officer believes on reasonable grounds that the person may be able to assist in inquiries about an indictable offence.

The amendment will allow AFP officers to exercise the power in section 18A to request a person’s name and evidence of their identity, residential address and reason for being in a place or in the vicinity of a place, person or thing in respect of which the APS has functions, where the officer reasonably suspects the person might have just committed, might be committing or might be about to commit an offence under section 13 of the APS Act. It will also allow AFP officers to exercise the power in section 18B to stop and search a person in a place or in the vicinity of a place, person or thing in respect of which the APS has functions. The AFP officer must reasonably suspect the person has in their possession a thing that could be used to cause substantial damage to a place, or death or serious harm to a person, in respect of which the APS is performing its functions. Further, it will allow AFP officers to exercise the power in section 18C to seize a thing the officer reasonably suspects is likely to cause, or is likely to be used by the person or another person to cause, damage or harm in circumstances that would be likely to involve the commission of an offence under section 13 of the APS Act.

This will give AFP officers the same powers as protective service officers in situations where officers must be able to react quickly in circumstances which give rise to legitimate security concerns.

The exclusion of the reference to protective service officer in subsection 18C(3) from the operation of subsection 18F(1) is due to the fact that an AFP officer will be able to deal with seized things under section 18D without the need to deliver the things into the custody of another police officer.

Proposed subsections 18F(2) and 19F(3)

Subsection 18F(2) provides for references to a person, place or thing in respect of which the Protective Service is performing functions in sections 18A, 18B, 18C, 18D and 18E to include a reference to a person, place or thing in respect of which the Protective Service has functions. Subsection 18F(3) provides for references in paragraph 18A(1)(a), subsection 18B(1) and paragraphs 18D(5)(b) and 18E(3)(a) to an offence to which section 13 applies to include a reference to subsection 13(2) of the APS Act to a person, place or thing in respect of which the APS has functions.

The effect of these subsections is that AFP officers will be able to exercise the powers in sections 18A, 18B and 18C at locations where the APS has authority to perform functions but may not be performing its functions at the relevant time. This will provide the AFP Commissioner with the necessary flexibility to situate AFP and APS officers at various locations where protective security functions are required, including airports, diplomatic and consular missions, and Commonwealth government buildings.

Proposed subsection 18F(4)

Subsection 18F(4) modifies the operation of paragraph 18A(2)(d) as introduced in two ways. First, in the case of a member of the AFP exercising the power under section 18A, it modifies the reference in paragraph 18A(2)(d) to subsection 19(3) or subsection 20(2) to a reference to subsection 64A(1) of the *Australian Federal Police Act 1979* ('AFP Act'). In addition, in the case of a special member of the AFP exercising the power under section 18A, it omits paragraph 18A(2)(d).

Subsection 19(3) of the APS Act requires an APS officer, when in uniform, to wear his or her identification number on, or attached to, the front of the uniform. Subsection 20(2) of the APS Act requires an APS officer to produce his or her identity card when the officer exercises any of the powers in the APS Act and the officer is not in uniform at that time. Members and special members of the AFP are not required to be in uniform to exercise their police powers. However, when a member of the AFP is wearing uniform there is a requirement under subsection 64A(1) of the AFP Act for the officer's identification number to be worn on his or her uniform. There is no similar requirement for special members of the AFP.

The effect of this subsection is that when a uniformed AFP officer exercises the power under section 18A to request a person's name, evidence of identity, address and reason for being in the relevant location, the officer's identification number must be attached to the officer's police uniform in accordance with subsection 64A(1) of the AFP Act. The omission of paragraph 18A(2)(d) in the case of special members exercising the power under section 18A is that special members do not have to comply with any requirement to be in uniform or display an identification number on their clothing.

Subsection 18F(5)

Subsection 18F(5) provides for a references in subsections 18D(1), 18D(6) and 18D(7) to the day on which the thing was delivered into the custody of a police officer to be taken to be a reference to the day on which the thing was seized in circumstances where an AFP officer seizes any thing under section 18C.

The effect of this subsection is that the time periods for service of a seizure notice for seized things under subsection 18D(1), for forfeiture of seized things under subsection 18D(6) and for either returning seized items or applying to a magistrate under section 18E are to be determined from the day on which the thing was seized by an AFP officer. In circumstances where things are seized by APS officers the time periods are determined from the day on which the thing is delivered into the custody of a police officer.

Amendment 3

This amendment inserts new subsection 21(4A) at the end of Schedule 1 of the Bill as introduced.

Proposed subsection 21(4A) outlines the relationship of the powers and duties conferred on AFP officers in the Bill with the powers conferred and duties imposed by other laws. It provides that the new powers and duties are additional to any powers and duties AFP officers have under other Commonwealth law or the law of a State or Territory. Also, these powers and duties do not exclude or limit the operation of any other law of the Commonwealth or a State or Territory.

This will allow AFP officers to continue to carry out investigations of suspected offences under other legislation.