



Submission

Senate Legal and Constitutional Legislation Committee

Inquiry into Amendments to the Australian Protective Service Amendment Bill 2003

Submission by the Community and Public Sector Union (PSU Group)

September 2003

Key Recommendation

Amendments (2)&(3) of the *Australian Protective Service Amendment Bill 2003* be rejected as they:

- are unnecessary for Federal Police but provides a mechanism to abolish APS as an operating statutory authority employing APS Officers.
- remove the APS safeguards from APS powers
- allow for APS not to perform it's own Protective Service functions.
- remove the statutory separation of the Federal Police from the protective services user pays regime.
- creates employment instability and concerns amongst APS Officers.

other recommendations

- The *Federal Police Act* be reviewed to determine if enhancements to Federal Police powers are necessary and appropriate. If enhanced powers are necessary, amendments should be sought to the *Federal Police Act* not the *Australian Protective Service Act*.
- the Senate Committee seek assurances from the AFP that "One Act One Agency" will not be implemented using s72 of the *Public Service Act* without further legislation.
- the Senate Committee seek advice from the Public Service Commissioner as to whether the Commissioner could (or would) transfer APS Officers under the proposed legislative structure.
- APS Officers should remain employed under the *Public Service Act* until and unless specifically determined by parliament that the Protective Service should cease to be a statutory authority.

1. Introduction

The PSU Group of the Community and Public Sector Union welcomes the opportunity to make a submission on the *Amendments to the Australian Protective Service Amendment Bill 2003* on behalf of our members who are Australian Protective Service Officers. CPSU is the registered union with industrial coverage of APS Officers.

This submission details the CPSU concerns regarding the *Amendments to the Australian Protective Service Amendment Bill 2003* (these Amendments), specifically Amendments (2) and (3) regarding Australian Federal Police Powers. CPSU contends that these amendments are unnecessary and would provide for the effective abolition of the Australian Protective Service (APS) as an operating statutory authority employing APS Officers.

2. These Amendments not necessary

Powers available under the *Federal Police Act* far exceed those that would be available under the amended *Australian Protective Service Act* and should suffice for Federal Police involvement in Protective Services.

Federal Police powers go well beyond the Protective Service function to a policing function. Particularly the Federal Police power of arrest of constables under the Crimes Act 1914 far exceeds the enhanced powers under sections 13 and 18 of the *Australian Protective Service Act*.

Power	APS Officer	AFP constable
Arrest	s3Z Crimes Act (citizens arrest only) s13 Australian Protective Service Act	S3W Crimes Act (police arrest)
Search	s18B Australian Protective Service Act	S3ZE,F&H Crimes Act
Stopping	s18B Australian Protective Service Act	S3T
Seizure	s18C Australian Protective Service Act	3ZE,F&H Crimes

Amendment (3) would also specifically ensure that any additional Protective Service powers given to Federal Police would operate "*in addition to*" and in combination with existing Federal Police powers. These Federal Police powers would not have the safeguards of:

1. Powers being limited to protecting and guarding functions, and
2. Accountability of public service employment.

Enhancement of Federal Police powers should be reviewed in their own right to consider if they are necessary and appropriate. The most transparent legislative mechanism to change Federal Police powers would be to put amendments to the *Federal Police Act* before the Senate, not amendments to the *Australian Protective Service Act*.

Recommendation

- Amendment (3) be rejected as it removes the APS safeguards from APS powers
- The *Federal Police Act* be reviewed to determine if enhancements to Federal Police powers are necessary and appropriate. If enhanced powers are necessary, amendments should be sought to the *Federal Police Act* not the *Australian Protective Service Act*.

3. Abolition of the Australian Protective Service

The AFP has a longstanding ambition to absorb the APS; a program referred to internally as "One Act One Agency". This ambition was recently described in an AFP *Message from the General Manager Protection and Guarding* to all APS Officers:

"A Legislative Program is currently underway to enable APS employees to be transferred under the AFP Act. This program will also fold relevant parts of the APS Act into the AFP Act to achieve One Act One Agency. We are currently aiming for a January 2004 effect date. However, this date will be subject to the parliamentary processes and may be pushed out to July 2004."

This new Amendment Bill if enacted would deliver One Act One Agency. The AFP has publicly stated their intention to seek a forcible transfer of existing APS Officers out of the public service to AFP employment using Section 72(1)(b) of the *Public Service Act 1999*:

"Machinery of government changes

(1) The Commissioner may do any of the following, if the Commissioner is satisfied that it is necessary or desirable in order to give effect to an administrative re-arrangement:

(b) determine in writing that APS employees cease to be APS employees and become employees of a specified Commonwealth authority;"

N.B. Commissioner refers to the Public Service Commissioner.

While APS employees could possibly be transferred to the AFP they could not operate as APS Officers because their APS powers can only be provided to officers employed under the *Public Service Act*. These Amendments however would allow APS powers to be given to AFP employees. This would allow for all current and future APS Officers to be employed and empowered under the *Federal Police Act*.

This would circumvent the current intention of Parliament (in the *Australian Protective Service Act*) to have an independent statutory authority APS employing officers accountable under the *Public Service Act*. The APS would exist in statute but would cease to exist as an operating authority.

"One Act One Agency" could be achieved without further legislation from Parliament to repeal the *Australian Protective Service Act* and amend the *Federal Police Act*.

Recommendation

- Amendment (2) be rejected as it provides a mechanism to abolish APS as an operating authority.
- APS Officers should remain employed under the *Public Service Act* until and unless specifically determined by parliament that the Protective Service should cease to be a statutory authority.
- the Senate Committee seek assurances from the AFP that "One Act One Agency" will not be implemented using s72 of the *Public Service Act* without further legislation.
- the Senate Committee seek advice from the Public Service Commissioner as to whether the Commissioner could (or would) transfer APS Officers under the proposed legislative structure.

4. Abolition of APS anticipated by these Amendments

These Amendments anticipate (and legislate for) the situation where the Australian Protective Service has ceased to exist as an operating statutory authority.

Amendment (2) the proposed Section 18F(2) would specifically allow for the possibility that the Protective Service only "*has functions*" as opposed to currently, where "*the Protective Service is performing functions*". These Amendments provide for the functions of the Protective Service not to be performed by the Protective Service.

Recommendation

- Amendment (2) be rejected as it allows for APS not to perform it's own Protective Service functions.

5. Separation of roles of AFP and APS in user pays regime

The Protective Service function operates in a user pays regime with significant law enforcement powers. The Federal Police function does not, and should not, operate in a user pays regime. Statutory separation of the two functions is necessary to uphold this principle.

Recommendation

- Amendment (2) & (3) be rejected as removes the statutory separation of the AFP from user pays.

6. Public Service Act superior integrity regime

The accountability and integrity regimes of *Public Service Act* and *Federal Police Act* are similar. Both regimes establish conduct suitable for employees, which is subject to sanctions. The Australian Public Service Act contains a far more detailed set of Values and Conduct than the reciprocal AFP legislation that relies on guidelines.

While APS and AFP conduct requirements are similar, APS Officers have much higher standards of individual protection and external accountability, standards are not available in AFP employment:

1. Protection for Whistleblowers
2. protection from unfair, unjust or unreasonable termination
3. no external review of promotion to uphold merit selection
4. external review of disciplinary actions Public Service Commissioner

APS Officers need these protections not available to AFP employees especially in a user pays environment. The Public Service Act regime was enacted only 4 years ago to set the highest ethical and moral practices and applies to: prosecutors, Court registrars, customs officers, protective service officers, tax investigators, quarantine inspectors and Australian Crime Commission employees.

Recommendation

- Amendment (2) be rejected as it circumvents public service accountability standards.

7. Industrial implications for APS Officers

CPSU members currently employed as APS Officers support the AFP as Agency Head but are deeply concerned with changes to their employment regime and rights, which could potentially:

1. overturn their MX Award rights for which they fought so hard.
2. remove their protections in disciplinary, promotion and management decisions and action.
3. abolish their conditions of employment in Public Service Determinations, the APS Award.
4. remove rights in *Workplace Relations Act* not binding on the APF such as unfair dismissal.
5. forcibly transfer them from the Public Service they chose to join.

APS Officers have performed under immense pressure since the Olympics, Sept 11 and Bali changed the national security environment. They have performed despite the major cost cutting approach to their employment conditions by previous APS management. APS Officers are surprised at having to defend their existing employment conditions when they were expecting a period of consolidation and stability.

Recommendation

- Amendment (2) be rejected as it creates employment instability and concerns amongst APS Officers.

8. Searching Powers supported

The CPSU supports the amendment in reference to APS Officers' powers to search a vessel.

Recommendation

- Amendment (1) defining "vehicle" for the purposes of Searching be accepted.

9. Conclusion

CPSU contends that these amendments are unnecessary and would provide for the effective abolition of the Australian Protective Service (APS) as an operating statutory authority employing APS Officers.

Key Recommendation

- Amendment (2) & (3) be rejected.