



Our Ref: SEN/240406

4 May 2006

Mr Jonathan Curtis  
Parliament House  
Canberra ACT 2600

Sent: Email [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Mr Curtis,

**Re: Questions on notice – Australian Federal Police Association**

The AFPA would first like to thank the Senate Legal and Constitutional Legislation Committee for hearing our submissions on Thursday 24 April 2006 in Sydney, and also for their expeditious response in asking questions on notice as outlined below.

On 1 May 2006 you provided question 1 on notice as follows:

Question 1

*At page 21 of the transcript.*

**CHAIR**—*What are your views in relation to the Ombudsman's role?*

**Mr Torr**—*Many of our members currently see the Ombudsman as their last line of defence of what they might perceive as mismanagement, but it does not translate that way. With all due respect to that office and that role, it has not proven effective in dealing with complaints about senior level police. It has proven very effective in dealing with, to the most fine degree, the conduct of the male and female practitioners who actually achieve the good publicity for the AFP, but in terms of looking at the conduct of senior police it has proven ineffective.*

**CHAIR**—*I am not sure that that is a comment on the Ombudsman's submission in relation to the bill. I would be grateful if you would have a look at that and provide any feedback on that as a question on notice.*

*What are your views in relation to the Ombudsman's role (with reference to the [Ombudsman's submission](#) to this inquiry)?*

The following is the answer to question 1:

---

In relation to the Ombudsman's role, as has been set out in the Ombudsman's submission, the AFPA does not object to this role and believes the Office of the Ombudsman plays a vital role in providing a certain level of oversight in the professional standards system and the soon to be established ACLEI.

**Australian Federal Police Association**

t... 02 6285 1677 f... 02 6285 2090 e... [admin@afpa.org.au](mailto:admin@afpa.org.au) w... [www.afpa.org.au](http://www.afpa.org.au)

a... 9<sup>th</sup> floor, amp tower, 1 hobart place, canberra act 2600, gpo box 132, canberra act 2601

The AFPA however does believe there are some issues with the way the Ombudsman views the bills under inquiry. These issues will be outlined below and tie in with the general views of the AFPA, as expressed in our submission.

### **Ombudsman's submission Page 2**

As the author outlined in the AFPA submission, Justice Fisher expressly recommended a two tiered model; with minor complaints being dealt with by management, with an option for *internal review*, and/or requesting for the complaint to be moved to the next level of investigation. More serious matters are to be investigated by the professional standards unit, which could lead to punitive employment action being taken in relation to the alleged action and an option for *external review* of the decision.

The Ombudsman outlines this model on page 2 of the submission, however, the 'new oversight model', as set out in the Ombudsman's submission does, not equate with model in the bill? The model in the bill is a three tier model; the first tier rightly so has minor complaints being dealt with by management, but *no option for internal review*, no option for request for the matter to be heard at a higher level, and pecuniary and punitive employment action may in *some circumstances* be taken against the employee.

The second tier (still the first tier in the Fisher model) has minor complaints being dealt with by management, but once again, *no option for internal review*, no option for request for the matter to be heard at a higher level, and pecuniary and punitive employment action will in *most circumstances* be taken against the employee.

The third tier (second tier in the Fisher model) has the professional standards model dealing with serious complaints with the option for punitive employment action to be taken, but *no option for external review* due to s69B(1)(b).

The Fisher model, and the model as set out by the Ombudsman's submission simply do not equate with the professional standards bill. With all due respect to the Office of the Commonwealth Ombudsman, the author feels the submission has been based on Fisher Review, no on the current bill in question. The Ombudsman outlines a flexible two tiered model with employment action only being taken at a serious level; the bill sets out a three tiered model with no flexibility for internal or external review, no right to referral to the next level, and the possibility to take pecuniary and punitive employment action at all levels.

The AFPA appreciates the Ombudsman adopting in theory the model as set out in the Fisher review; however, it is unfortunate that the drafters of the bill were no made aware of the existence of the Review.

### **Ombudsman's submission page 3**

The Ombudsman points out that the oversight from his/her office will be removed for minor matters, as this would allow for 'a timely response to complaints' and allow for the Office to 'focus on more serious complaints and systemic issues'.

The AFPA does not, *prima facie*, disagree with the Ombudsman's role, as set out on page 3, and hopes it will lead to the Office being more effective in dealing with complaints at the senior level (particularly with the formation of ACLEI). As Mr Torr alluded to in the Senate Inquiry, 'in terms of looking at the conduct of senior police [the Ombudsman] has been ineffective'.

With the Ombudsman's oversight being removed at the 'minor level' however comes the greater need for the omitted recommendations (by the drafters) of the Fisher Review. That is, *there is now an even greater need for review due to the lack of Ombudsman's oversight.*

The bill now paints a picture of the Commissioner determining the professional standards and action taken, no oversight of the Ombudsman for minor matters, and there is no option for review, at any level, as envisaged by Justice Fisher (and as is available at state level law enforcement).

The need for the regulation 24 review mechanisms to be brought into the AFP Act cannot be understated, now with the removal of the Ombudsman at certain levels. The review mechanism in its 'regulation' form has failed to be implemented by the Commissioner in any form, despite the heading of regulation 24 stating '*Process for review must exist*' and clause (1) stating '*The Commissioner must ensure a process for reviewing employment decisions exists at all times*'. The review mechanism must be brought into the AFP Act, and associated with the addition of options for review in the new Part V.

---

The AFPA welcomes any questions on notice from the Committee, and is available to answer questions, or assist with any other parties with an interest in the bills and associated review.

Yours sincerely,



**Ian Phillips**

B.Ec., LL.B(Hons) (Syd)

Lawyer (ACT & NSW)

Director Legal

Australian Federal Police Association

Level 9, AMP Building, 1 Hobart Place

Canberra ACT 2600

Em: [ian.phillips@afpa.org.au](mailto:ian.phillips@afpa.org.au)

Mob: +61 (0)422 441 116

Tel: +61 (0)2 6285 1677

Fax: +61 (0)2 6285 2090

Web: [www.afpa.org.au](http://www.afpa.org.au)