



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

**Reference: Australian Protective Service Amendment Bill 2003**

WEDNESDAY, 24 SEPTEMBER 2003

SYDNEY

BY AUTHORITY OF THE SENATE



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**SENATE****LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE****Wednesday, 24 September 2003**

**Members:** Senator Payne (*Chair*), Senator Bolkus (*Deputy Chair*), Senators Greig, Ludwig, Mason and Scullion

**Participating members:** Senators Abetz, Brandis, Brown, Carr, Chapman, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Humphries, Kirk, Knowles, Lees, Lightfoot, McGauran, McLucas, Murphy, Nettle, Ray, Sherry, Stephens, Stott Despoja, Tchen, Tierney and Watson

**Senators in attendance:** Senator Payne (*Chair*), Senator Ludwig

**Terms of reference for the inquiry:**

Australian Protective Services Amendment Bill 2003.

**Committee met at 8.59 a.m.**

**HALL, Mr Evan, Division Secretary, Border Protection and International Affairs Division, Community and Public Sector Union**

**HAYMAN, Mr Dennis, Section Councillor, Australian Protective Service, Community and Public Sector Union**

**IRVINE, Mr William, Section Councillor, Australian Protective Service, Australian Capital Territory, Community and Public Sector Union**

**RAHILL, Ms Alison, Organiser, Border Protection and International Affairs Division, Community and Public Sector Union**

**CHAIR**—Welcome to this hearing of the Senate Legal and Constitutional Legislation Committee. This is the first hearing of the Senate Legal and Constitutional Legislation Committee's inquiry into the government's proposed amendments to the Australian Protective Service Amendment Bill 2003. The inquiry was referred to the committee by the Senate on 10 September 2003 for report by 7 October 2003. The committee has already reported on the first bill as drafted on 18 August 2003. The bill proposes to give Australian Protective Service officers extra powers—namely, 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. The government amendments that are the subject of this inquiry extend those powers to members or special members of the Australian Federal Police. They also adopt one of the committee's previous recommendations in relation to the search of vessels.

The committee has received three submissions for this inquiry, all of which have now been authorised for publication. Copies are available from our secretariat and will be placed on the committee's web site in the near future. I remind witnesses of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Witnesses are also

reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses do have the right to request to be heard in private session. It is important that witnesses give the committee notice if they do intend to ask to give evidence in camera. I welcome the witnesses.

We have a submission from the CPSU, which we have numbered 1 and which has been lodged with the committee. Do you wish to make any alterations or amendments to that submission?

**Mr Hall**—No.

**CHAIR**—I now invite you to make a brief opening statement, at the conclusion of which we will ask questions.

**Mr Hall**—Thank you. The last time we appeared before the Senate committee with regard to the first bill of amendments, we were sitting down at the table basically expressing the strong support of APS officers for those amendments and making further suggestions, one of which—regarding the searching of vessels—I note has made it to the second bill, which is the subject of this committee hearing. But the remainder of the bill that is now before the Senate has raised considerable concerns amongst APS officers and CPSU members. I think as evidenced by the size of the gallery today, we have here officers from seven stations and two states who are on their days off, and they are keenly observing these proceedings with some trepidation. The reason for that trepidation is that the proposed amendment introduces a substantial change to the operation of the Protective Service. In particular, it provides a mechanism for achieving more or less the abolition of the Protective Service as an operating entity without going through a very obvious process before the Senate.

Currently, the Australian Protective Service Act provides for the function of the Protective Service, the statutory authority which is the Protective Service and the employment under the Public Service Act of officers who are then delegated with the powers of Protective Service officers. This bill would introduce the capacity for Federal Police engaged under the Australian Federal Police Act to be provided with those powers of Protective Service officers. One of the reasons for the concern is that this mechanism could be used to achieve a process being referred to internally within the Federal Police as 'one act, one agency', by which they are assuming legislative change sufficient to abolish the Australian Protective Service and fold all functions within the Federal Police. I would like to hand up some material.

**CHAIR**—Thank you. We will receive both of those documents as tabled documents.

**Mr Hall**—Thank you. I direct your attention to the document *One act, one agency*. It covers a series of slides that were shown at a recent presentation to station managers. It outlines the process of one act, one agency, which is essentially the abolition of the Australian Protective Service as a separate entity. I hasten to add that it is not a full list of all the slides. Slide 2 illustrates that we are up to stage III, implementation of this process. This implementation assumes the support of the Senate in making legislative changes capable of achieving one act, one agency. If you go to the slide marked 'Legislation' and the following slide marked 'Proposed legislation changes'—the last slide—you will see that the legislative process is that 'Relevant parts of the APS Act will be folded into the AFP Act,' which is what

we are seeing here today. The second dot point is ‘The remainder of the APS Act will be repealed,’ and the last dot point is ‘Integration Day: Timing is a matter for parliament.’

We have concerns and we are certainly happy to be told that our concerns are misplaced. The amendments would provide the ability to delegate powers to Federal Police officers. This would leave us with a situation where, without going back to the Senate to repeal the Protective Service Act 1997 and having the clear intent from parliament that protective services are a function of federal police, we could see the operation of section 72 of the Public Service Act 1999. This provides the capacity for the Public Service Commissioner to remove employees from the authority of the Public Service Act 1999 and forcibly transfer them to another Commonwealth agency.

The Federal Police have stated to us and to officers on a number of occasions their intention of using section 72 of the Public Service Act 1999 to achieve that transfer. That would see all current APS officers forcibly transferred to employment under the Federal Police Act 1979. They would then have the capacity, under the amendments that are before the Senate now, to provide, as Federal Police employees, the same powers that Protective Service officers have. We would therefore achieve a full circle and we would have employment under the Federal Police Act 1979 and all the powers of protective services being delegated under the Protective Service Act 1997 to employees under the Federal Police Act 1979.

In fact, the amendments clearly anticipate such a situation occurring. I refer you to amendment No. 2, 18F: ‘Modification of sections 18A, 18B, 18C, 18D and 18E to confer powers on Australian Federal Police,’ and in particular subsection (2). Quite clearly here it makes a distinction and corrects the current wording of the act to change the situation from these powers being delegated to officers where the Protective Service is performing the function and limits it to a situation where the Protective Service has the function. In short, it anticipates a scenario where the Protective Service has the function but no longer performs the function—where it has become a statutory shell, if you like, which holds the function, but all employees who are in fact Protective Service officers with those powers are employed under the Federal Police Act 1979.

There is widespread concern from members of the CPSU about the one act, one agency process, which I will return to in a moment. Our main concern is that this legislative mechanism would achieve, or at least have the potential to achieve, that abolition of an agency and effective ending of the purpose of the Protective Service Act 1997, without it ever going before the Senate with that stated intention. If we are wrong about this, as I said, we are happy to have this matter cleared up. Unfortunately, we have had no opportunity to consult with the Federal Police on this matter.

Our concern is that it would provide a legislative mechanism for that to occur. So I hope that the Senate and the Senate committee understand our concerns that, if this is the intention or the capacity, it ought to be openly discussed and reviewed. To that end, I recommend to the Senate, as we stated in our submission, that we seek the views of the Public Service Commissioner as to whether or not that transfer of employment could or would take place if requested. I also recommend that we seek the views of the Australian Federal Police as to whether that is the intention of the amendments and whether or not that is a capacity that they

may seek to use in the future to transfer employment while leaving the current legislation intact.

As to the industrial concerns of members which we would like to raise for the Senate's consideration, it is the stated intention of the Federal Police that, if this transfer of employment takes place, their current industrial instrument containing their rights and conditions—the so-called MX award—would cease to operate. We do not have that view and certainly we would pursue legal means to prevent that from occurring. Nonetheless, it certainly is the stated intention to transfer without the existing employment conditions and without protection of that instrument.

While section 72 of the Public Service Act requires that at the time of transfer they transfer to employment conditions that are no worse than their current conditions, the Community and Public Sector Union has unfortunately had the experience of employees being transferred under that and, on the day of transfer, their employment conditions are the same, but by the very next day they are not. Certainly, the legislation does not require that there be any protection against the employment conditions being eroded one day, two weeks or three months into the future. The expressed concern of officers is that we went through a very difficult industrial period, as I think the Senate might be aware. Since that time, officers have proven their worth in the Olympics and after September 11 and Bali, and they were frankly looking forward to a period of stability, consolidation and appreciation of the work that they had done. They were not expecting a period of such instability or to be basically in a situation where they are once again going to have to fight for their existing employment conditions.

Another element of our submission which we put to the committee for your consideration is the necessity of this act. If the intention is not to do the transfer—and we have expressed our fears to you on that point—then the question arises: why is the legislation necessary? Without a doubt, Federal Police have far greater powers than Protective Service officers. If there does prove to be some substantial difference between the powers of the two that is worthy of amendment in legislation, we would suggest that the appropriate legislation to amend would in fact be the Australian Federal Police Act and not the Australian Protective Service Act. The one view that we have had expressed to us is that it is to remove any anomalies between the two. If the intention is to give the Federal Police more powers, then that should be fairly up-front and go before the Senate as an amendment to the Australian Federal Police Act.

I point out that the wording of the amendments that have gone forth, particularly amendment (3), make it quite clear that any additional powers that the Federal Police pick up through this process in no way limit their existing powers and operate in conjunction with their existing powers. In short, they would be picking up these powers without any of the limitations or safeguards that are currently put on Protective Service officers—not the least of which being that these powers are intended in the Australian Protective Service Act for the function of the Protective Service. As to the function of policing, those powers would then be applied to the policing function. I do not want to say that we have a particularly firm view on this. We are suggesting that it is certainly worthy of review. The appropriate review would be through amendments to the Australian Federal Police Act rather than through amendments to



the Australian Protective Service Act and then a process of transferring the powers and/or the employment to the Federal Police. I think that is everything I have to say.

**CHAIR**—Thank you very much. Do any of the other witnesses wish to add anything at this stage? Mr Hayman, is everything under control with you?

**Mr Hayman**—I believe so.

**CHAIR**—Thank you very much for your written submission and your remarks, Mr Hall. I acknowledge that a number of your members are attending here this morning to listen to these proceedings, and that is an important part of the Senate process. It is a public hearing for good reason, and I am pleased that people are able to be here. I have one question before I ask Senator Ludwig for questions. What if it is not the great conspiracy that you suspect it might be? What if it is simply a case of needing to extend the powers of the AFP to match those that were given to the APS at the time we last considered this legislation? If that is the case, is your organisation amenable to the legislation?

**Mr Hall**—My first suggestion would be, as I mentioned, that those amendments go through the Australian Federal Police Act as opposed to the Australian Protective Service Act.

**CHAIR**—We can ask the Federal Police why that is not the case.

**Mr Hall**—Certainly. To be honest, the CPSU has no firm view as to whether the powers are necessary for the Federal Police. At first glance, the Federal Police powers in general seem to be far greater than those of the Protective Service and therefore it strikes us as unnecessary, but we have no view on it. Our concern is the ‘conspiracy theory’. Certainly from our members’ perspective, if limitations were placed on the amendments so that those powers were only available for temporary reasons and could not be permanently transferred, and the legislation made it clear that the normal form of employment will be Public Service employment, those amendments would cease to have any concerns for us. We do not have a view as to whether they are right or wrong; it goes outside our role of responsibility for industrial purposes. A situation where we had strong assurances that not now nor in the future would it be used for that purpose or where the Public Service Commissioner were to say, ‘You’re certainly barking up the wrong tree,’ would also allay those concerns.

**Senator LUDWIG**—Just putting that aside for the moment, the last time we were here we also dealt with consultative processes and the training that might be required for you to have the functions and powers that the bill provides. Has that been progressed?

**Mr Hall**—The training: not as far as I am aware. We are not aware of any specific development of training for the so-called enhanced powers. In terms of the consultation, we have not had the opportunity to consult on these or the previous amendments.

**Senator LUDWIG**—No. I think there has been quite a short time frame with that; I understand that.

**Mr Hall**—Yes. But I would say that we have had previous discussions about improving our consultative processes, and the Federal Police have taken some positive steps in recent days to outline and enhance those consultative mechanisms. But I think the time frame of this particular legislation probably was the main barrier there to consultation.

**Senator LUDWIG**—Has there been any further consultation in respect of the 170MX award?

**Mr Hall**—The short answer is no. Enhancement of powers, changes to the legislative structure and who is the employing authority for protective services and its implications for employment conditions—we have agreed on a process for discussing that but, in short, those discussions have not commenced. But I would say certainly the Federal Police, in terms of their own thinking, their own planning, are well down the path of that integration process. They have already sought legal advice as to the implications for the industrial instruments and have their own intentions there, of which they have advised the station managers and staff. Clearly they are expecting Senate approval for this process and they are well under way in terms of their industrial agenda. In short, I would say I am very much looking forward to the process of consultation beginning on those items.

**Senator LUDWIG**—What is the timetable that they have laid out?

**Mr Hall**—In the timetable that we have seen and that has been referred to, they are ideally working towards a 1 January to a 1 July start, so clearly they are expecting parliamentary approval in some form between now and 1 July. You would note from that overhead they are stating that the timing is dependent on parliamentary assent. To be honest with you, part of our concern is how much it is assumed that the Senate will approve the one agency.

**Senator LUDWIG**—It is two entities, I guess.

**Mr Hall**—Yes, certainly—and will pass the parliamentary process. If that is frustrated, then the mechanism that I have described—while it is not currently the intention—might suddenly become more appealing as a way of achieving the same ends. That is one of our concerns about the mechanism and the fundamental change that the amendments would provide of allowing those powers to move to the Federal Police and the policing function as opposed to being limited to the protective service function.

**Senator LUDWIG**—Presently you have joint operations with the Federal Police?

**Mr Hall**—Yes.

**Senator LUDWIG**—I think the document *One act, one agency* lists a number of joint operations which involve the APS, including Operation Alliance in Bali and the AFP, APS and Northern Territory police joint operations at the Pine Gap demonstration in October 2002. The first bill provided additional powers.

**Mr Hall**—Yes.

**Senator LUDWIG**—They would help or assist you in carrying out your functions during some of those operations, notwithstanding their joint nature. That is what they were designed for—to assist you in your overall functions. Is that right?

**Mr Hall**—Certainly, yes. That was the strong view of APS officers—that they would improve and assist in their role.

**Senator LUDWIG**—When you conduct joint operations is there a designated person in control from either the AFP or the APS? I am curious about how you function together in joint operations. Perhaps Mr Hayman wants to answer that question.

**Mr Hayman**—My understanding is that, since the merge took place from 1 July 2002, any large-scale operations involving the AFP and APS have been run by a federal agent.

**Senator LUDWIG**—Is there a way of working out the seniority in respect of that? Forgive me if I am not familiar with the rank structure, but is there is a rank structure whereby an AFP officer at only a certain level will take control, or do you work that out at a higher agency level and then operate together?

**Mr Irvine**—There is nothing defined at the moment to do with structure and who has seniority. It is more based on a case by case scenario.

**Senator LUDWIG**—Is there an operational manual that details who would have seniority?

**Mr Irvine**—Yes, there is always an operational order.

**Senator LUDWIG**—I imagined that.

**Mr Irvine**—But who will be in charge overall depends on the scenario and where it is.

**Senator LUDWIG**—Should the AFP have the power that the bill provides for with this amendment, say there is an incident and both the AFP and APS are in the vicinity or at the location. Who would assume command or control of that? What would be the scenario that would allow someone—

**Mr Irvine**—Greenpeace took over the Lodge in the ACT, where I am. We have control inside the grounds, and we responded first. Then the AFP assisted. It just depends on the day who turns up to take control. There is still a bit of confusion on the jurisdictions, and that is within the ACT.

**Senator LUDWIG**—Will this piece of legislation not assist in lessening that confusion?

**Mr Irvine**—No. I assume that is something that will be addressed in the future, but at the moment we are in no-man's-land.

**Senator LUDWIG**—We will deal with the one act, one agency issue then. The circular that you have tendered mentions the legislation program delivering one act, one agency. Is it your view that that legislation is still to come, or do you say that section 18F either is central to the legislation that is referred to in this document or is legislation that has been plucked out of the package of legislation that obviously has been contemplated in this circular and then brought forward?

**Mr Hall**—I would not pretend to know.

**Senator LUDWIG**—That is what I am trying to gain an appreciation of.

**Mr Hall**—My feeling is that there is still an intention to bring forward a clear legislative agenda to abolish the APS, but this is something that has been before the Senate on a number of occasions in a number of guises. It is a very similar process for the Australian Crime Commission.

**CHAIR**—What do you mean by that?

**Senator LUDWIG**—It did not seem simple at the time.

**Mr Hall**—Let us say there is a similar ambition to expand the Federal Police role and to have Crime Commission employees engaged under the Australian Federal Police Act as opposed to the Public Service Act.

**Senator LUDWIG**—That is in respect of the Australian Crime Commission?

**Mr Hall**—Yes. Consideration as to whether employment is best under Public Service employment or Federal Police employment and the differing roles has come before the Senate previously. My own view is that it is not a simple matter, and therefore there may be issues if legislation to achieve one act, one agency came through. Hence my concern that a judgment call might be made at some stage that such legislation would not be passed and therefore we have a mechanism to achieve the same, or that such legislation does go before the parliament and is not passed and once again there is an avenue or mechanism available to achieve the same thing. That mechanism is not without doubt. Certainly, we would put a case to the Public Service Commissioner that there should be no transfer of employment while ever the clear intention of the Australian Protective Service Act and parliament is to have a protective service that employs people under the Public Service Act. But we still have grave concerns that the mechanism will take place. So I do not know the answer to your question, but I think that, whether or not it goes before the Senate as one act, one agency, this legislative mechanism would still exist if passed in its current form.

**Senator LUDWIG**—I notice that circular is not dated.

**CHAIR**—I was just going to ask the same question. Do you know when that was issued?

**Senator LUDWIG**—And the same for the slides. Were they provided to your members?

**Mr Hall**—The *One act, one agency* circular is a message from the General Manager, Protection and Guarding, which I understand was issued to all officers in around August.

**CHAIR**—August this year?

**Mr Hall**—Yes. The overheads come from a station managers' conference in September 2003 to go through the process of one act, one agency.

**Senator LUDWIG**—As I understand the position that you are putting—and please correct me if I have misconstrued it—your concern is the change of your base employment from the act to the AFP where they now are situated; that is, away from the 170MX award.

**Mr Hall**—There are two concerns. There is an industrial concern and there is a concern as to the nature of the function. The industrial concern is that a movement away from the Public Service Act to employment under the Australian Federal Police Act may well trigger the cessation of all current industrial instruments—and I make it clear on the record that we do not agree with this, but certainly this has been the stated intention of AFP management. The current instruments include a Public Service award which still applies, in part, to Protective Service officers; the MX award; and a range of determinations under the Public Service Act that has very real allowances, such as allowances that officers currently receive for being on guard in places where there are no bathroom facilities. These are very real issues for these officers, and they would instantly cease to exist according to the Federal Police. The stated intention is that they will be no worse off, but that still leaves the industrial instruments. Those protections to ensure that they are there would be null and void, according to the

Federal Police. We take a different view, and we would certainly pursue what is known as transmission of business in this case for the—

**Senator LUDWIG**—That would be a matter of law to sort out.

**Mr Hall**—Yes, it would. But it is certainly the stated intention of the AFP that the instruments would cease to exist. I am simply stating the obvious to say that this raises a great deal of concern for our members. The second issue really goes to the officers' role and how they would be placed in an environment where there is no longer a statutory separation between the protective service function and the police function. This is of course a broader issue of public policy, but it is of great concern to the officers, when they are engaged as protective service officers—however they may be called in such an environment—and they work under a user-pays system, and then they are in an environment where there is stronger integration with what is also a police function. It is very difficult at this point in time to maintain the difference between their protection function and community policing, which is consistently asked of them even though they have no powers to act. To do so when they are in fact integrated with the Federal Police, you suddenly are exposing the police function to a user-pays system—which Protective Service works in—and then a whole range of accountability issues start to arise.

For example, the sorts of protections that Protective Service officers would instantly lose as Federal Police employees include the protection for whistleblowers under the Australian Protective Service Act, the application of the merit principle, the protection of independent review of promotion exercises under the Public Service Act and any rights to protection from unfair or harsh dismissal under the Workplace Relations Act. These are all protections for individual officers that do not exist for Federal Police. While that might be appropriate in a policing function, I certainly suggest that in a user-pays system, where you are doing a more proactive protective function, those protections for individual officers—which can quite literally be from directions from above at times—may well be necessary. Certainly there is a fear among officers of being placed in a situation where they are asked to do a policing function when they are there for a protective service function—when ultimately they know contracts are governed by money—because if they say, 'Hang on, I'm not sure I should be doing this,' they have no protection from any dismissal or disciplinary action that might arise. That is a situation of which they are genuinely very fearful, and I have to say we agree.

**Senator LUDWIG**—Do you say 18F will unstick you from the Public Service Act, or do you say it anticipates legislation that is being brought forward? If it is the latter, then you will obviously go through a process of consultation that you have already laid out between yourself and the employer in respect of these issues that you have now raised. I am trying to tie this down a bit.

**Mr Hall**—Are you referring to 18F(2)?

**Senator LUDWIG**—Yes.

**Mr Hall**—Right here, right now, 18F(2) would allow a Federal Police officer to do a Protective Service function where there is no Protective Service. We suddenly see the policing powers move into the user-pays regime and the Protective Service function because, while the Protective Service as a statutory authority will continue to hold the function, it immediately

recognises that there could be a scenario where they do not perform their own function—that is, the function is performed by someone else; in this case, the Federal Police. But the real concern is the combination of section 72 of the Public Service Act, where they can transfer the employment under the Public Service Act, and these amendments, where they can transfer the powers and the role. It is those two instruments in combination which could end up seeing existing Protective Service officers moved across. That could potentially be attempted at this point in time, but they would not have the same delegated powers of the Protective Service, because the Australian Protective Service Act only allows those powers to be delegated to public servants until, and unless, these amendments go through—and then suddenly those powers can be delegated to those engaged under the Federal Police Act.

**CHAIR**—In the supplementary explanatory memorandum the last two sentences of the fourth paragraph say:

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.

It goes on to suggest that the amendments are to deal with that situation. Is that not your view? Is it your view that that is not correct, or is it your view that the legislation, if it does not achieve that effect, achieves the more sinister concern that you have identified?

**Mr Hall**—This will be a roundabout sort of answer to the question, but in the first instance we find it hard to envisage a situation where Federal Police powers would be more limited than Protective Service powers. They go well beyond Protective Service powers. In the vast instance, the Federal Police powers are far greater, but there is some overlap in a particular power that the Protective Service has. If there are some identified gaps, then surely if the intention is to extend the Federal Police powers that should be done through the Australian Federal Police Act. That as an intention or a goal is something we have—and I hopefully have expressed—no particular view on. But, as I have said, the powers of the AFP for arrest, for example, far exceed those of the Protective Service. They can arrest for any indictable offence. For most of the things where the committee might expect a Federal Police officer to be able to do something, the powers already exist in a greater form.

**CHAIR**—But the explanatory memorandum says that they do not. Maybe the explanatory memorandum is not accurate, and we can ask questions in relation to that. It itemises four or five areas which suggest that the AFP do not have the sorts of powers that we are specifically talking about. While it particularly makes the observation that AFP officers have some nonarrest search powers under other Commonwealth legislation, including the Customs Act and the Protection of Movable Cultural Heritage Act, generally those powers have no application to CT and national security. That is why these powers are being pursued through this legislation. I understand the point you make about whether the amendments are best made here or in another head act. That is what that says.

**Mr Hall**—I will not pretend to be an expert on this, but my understanding is that we are only talking about the ability to do things like fund the enhanced powers and ask people for ID when you suspect them of an offence which is not under the Crimes Act. If it is under the Crimes Act—if it is a crime—the officers already have the power. So we are talking about powers that are limited to situations where there is not a crime—where, from my

understanding, it is an offence listed in the Australian Protective Service Act but not in the Crimes Act. But I understand what you are getting at there. I am not saying that the explanatory memorandum is wrong; there may well be a gap. Our instinct is that it is not a significant one and that these are not the sorts of powers that the Senate would necessarily be concerned about Federal Police having. But, yes, there may be a gap. It is not our view that that gap should not be closed. Our view is that the gap should not be closed—

**CHAIR**—Through this mechanism.

**Mr Hall**—Through the Australian Protective Service Act. Certainly in closing the gap we should not open up a scenario where the Federal Police functions and the Protective Service functions can be merged unless it is the specific intent of parliament to do so.

**CHAIR**—The supplementary EM also says that currently under the Crimes Act agents of the AFP:

... 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—

and these are the relevant words—

an indictable offence that has been or might have been committed.

The amendments to the bill will give AFP officers the power to do those things where:

... there are reasonable grounds to suspect the person might have committed, might be committing or might be about to commit a prescribed offence.

There is a contextual difference there, and that is the point the supplementary EM makes also.

**Mr Hall**—Yes.

**CHAIR**—Earlier I read out a point about the exercise of these powers by the AFP in a location where the APS can perform functions but where there is no APS presence. In the view of your organisation and the witnesses here today, what might such a location be?

**Mr Hall**—Our view is that that could be every location. That is, the main concern encompassed within that paragraph is that, while there is a protective service on the books that has the function of protective service, they may not perform the function and the Federal Police may perform the function. That is the extent of our concern.

**CHAIR**—Sydney has a high level of activity and an increased number of locations at which the APS perform functions in the new environment. If I walked out into Sydney today and tried to find a place where the APS has the power to perform functions but where there is no APS presence, where would I go? I would not go to Kirribilli, the airport or a number of other places. Where would I go where your organisation has the power to perform functions but where you have no presence and the AFP might have one?

**Mr Irvine**—Within Canberra, the powers could be used at any embassy sites which do not have static guards.

**Senator LUDWIG**—But would an AFP officer be there?

**Mr Irvine**—Not necessarily, but they can be if a threat level increases.

**Ms Rahill**—Any of the consulates in Sydney could be subject to that scenario.

**CHAIR**—Thank you very much. I do not think Senator Ludwig has any further questions, and I have certainly exhausted the details of the explanatory memorandum. Do you have anything further that you wish to add before we conclude this session?

**Mr Hall**—I am probably repeating the recommendations, but if we are barking up the wrong tree, and we are happy for it to be demonstrated so, some things would certainly assure us that that is the case—and I am not sure of the powers of the Senate committee. These things include a request to the Public Service Commissioner that they would not transfer employment while ever the Protective Service exists in legislation. They also include, for the record, a similar assurance from the AFP that that is not the intention of the legislation and that any amendments put forward which recognise that there might be a gap in the powers and there are situations where the gap in the powers should be closed have protections and limitations, such as a requirement that the normal form of employment for Protective Services be Public Service or that the delegation of powers to the Federal Police be on a temporary basis. All of those would go to assuring us that this is not a permanent transfer of power and function, but is just for—I think the term is—flexible deployment.

**CHAIR**—Mr Hall, I do not know whether you and your colleagues are intending to stay for the duration of the proceedings, but the next witnesses are from the AFP and after that there are witnesses from the AFP and the Attorney-General's Department. It may be that some of the issues you have raised today are addressed in those proceedings. If there is any further comment that you wish to make to the committee in relation to those matters, we would be grateful for your input as soon as possible, because we have a reporting date of 7 October. If you are not able to stay, then you can access the *Hansard*—this is not exactly prime time television happening here.

**Mr Hall**—I think we will have a number of keen observers.

**CHAIR**—I am sure you will. Thank you very much. On behalf of the committee, I thank you all for your assistance this morning.



[9.40 a.m.]

**HUNT-SHARMAN, Mr Jonathan Kirkness, National President, Australian Federal Police Association**

**SHANNON, Mr Craig Anthony, Principal Industrial Officer, Australian Federal Police Association**

**CHAIR**—Welcome. The AFPA has lodged a submission with the committee, which we have numbered 2. Are there any amendments or alterations you would like to make to that submission?

**Mr Hunt-Sharman**—No.

**CHAIR**—I now invite you to make a short opening statement. At the conclusion of that we will move to questions.

**Mr Shannon**—As you will note, the submission is a relatively brief one, given the timetable for response—which seems to be getting incredibly shorter every time there is another matter to provide comment on.

**CHAIR**—You can thank the Senate for that.

**Mr Shannon**—We do. Given the context of the amendments that have been proposed as further amendments to this bill, we did not think it was necessary to provide a much more substantial submission. Our previous submission addressed a lot of issues that we believe may be contextual to the other submissions heard today in regard to the policing of the airport function. As a result of the amendments being very specific this time, we really did not provide a broader comment on the policing issue as such. I will just take up our general position regarding the proposal to combine the powers of the AFP and the APS. The association certainly supports that proposal. We think it an operationally best practice approach to take with regard to the delivery of security functions at airport facilities and other locations where the AFP and APS work together.

It has been stated today, and I think it was stated in our previous submission, that there are moves to integrate the two agencies. While we do not believe that these amendments in themselves touch, in a direct sense, on the section 72 issues of the Public Service Act, they are obviously contextual to any potential integration down the path, and we obviously might have a different view from previous witnesses about whether they are a good or bad thing on that basis. It is certainly our view at the moment that it is appropriate to limit, where we can, artificial demarcations in the exercise of responsibilities where the AFP and APS are working in joint functions. It has also been a long-held view of a number of our members in the Protective Service, particularly at airport facilities, that their roles have been substantially devalued or underregarded with regard to the policing type function that they perform, and we see this as a positive move to restoring some recognition to the APS and AFP where there are commensurate roles being performed. In some respects, it brings both up to a more common standard, which is probably long overdue.

There has been comment today regarding the exercise of powers and where that would be applicable. Mention was made of the embassies. That is a good example of where we see

there being some benefit in this model, in that every time there has been a major incident like September 11 and the embassies have required an extra staffing component across the board—I think the ACT was mentioned earlier—you frequently have AFP and APS officers working together, in effect performing the same functions at that moment. In some circumstances you will have some present and not others, and we believe that it is an important operational principle for whoever is in situ to have the capacity, if there is a demand, to apply these powers, rather than having a demarcation of powers when they are both in situ doing the same ostensible function. I think there are a number of locations where the AFP may be but the APS are not, but the APS powers would extend to those facilities, and it is an appropriate option to have a greater capacity to deliver those powers where they are required by the circumstance.

In general terms, we support the proposals that have been put forward. We do not believe that they in themselves deal with the issues of the integration of the two agencies or the employment framework. I am happy to go into some issues relating to the broader integration if that is the committee's interest. Some statements made today were, on face value, incorrect—such as those regarding the application of the Workplace Relations Act. The AFP is, by definition, covered by the unfair dismissal powers of the Workplace Relations Act. In fact, we have several matters relating to that running at the moment. There are a number of other elements of that discussion that we are happy to discuss if that is the committee's interest.

**CHAIR**—What is your comment on the suggestion that these amendments should be made under the AFP legislation and not the APS legislation?

**Mr Hunt-Sharman**—Australian Federal Police officers have the like powers of law enforcement officers within certain agencies as a result of those agencies' acts—for example, our powers in regard to a federal agent. Although you have the Crimes Act powers, you also have the like powers of a Customs officer and an immigration officer. Those powers are drawn from the Customs Act and the immigration act—and the same goes for, for example, quarantine. When you are talking about border issues, those acts actually give Federal Police officers those like powers. So it is absolutely consistent that it be put in the APS Act and not the AFP Act. There is no section in the AFP Act that says we have the powers of a Customs officer, an immigration officer et cetera. As I said earlier, that is pulled out of that host legislation.

The importance of that of course is that it then puts you into the restrictions of those acts with regard to the methodology used and so forth. It is important to have that consistency. I will give an example: a prohibited import under the Customs Act is the charge that is used for charging offenders with importing heroin or cocaine. The investigation falls under the legislative powers of the relevant act. So, although we have a general power—which is really more about after the event; it is when there are reasonable grounds to believe that an offence has taken place et cetera—we do have the ability to draw on those other pieces of legislation, and this is just doing that. As far as the Australian Federal Police Association is concerned, and being a professional police association, I can honestly say we have no evidence of this being a conspiracy or anything other than a normal practice and an attempt to put it in line with similar legislation.

**Mr Shannon**—In some respects it may correct an anomaly that should have been addressed, particularly with regard to the delivery of these powers, in the original establishment of the APS Act.

**CHAIR**—Do you mean the original establishment of the APS Act or the last bill that we considered in that context?

**Mr Hunt-Sharman**—I mean the original APS Act. Our understanding is that a substantial amount of effort was put in to separate the two acts when the agencies were separated from the original AFP construct, and a great deal of legislative drafting was put in place to separately codify the powers of the two entities. That is one of the reasons why these powers were deficient in that context—they were not available at that time. That resolves one anomaly, and this other element of the AFP having the application of those powers addresses another anomaly.

**CHAIR**—You might even suggest that it would have been more effective to have put these in the previous amendment bill.

**Mr Hunt-Sharman**—There might be a number of things about which we could say that. They could possibly even have been held for later integration legislation.

**CHAIR**—That being the question which we have been discussing this morning.

**Senator LUDWIG**—Were you consulted about these amendments?

**Mr Shannon**—Not until after they were tabled.

**Senator LUDWIG**—That is similar to the last bill.

**Mr Shannon**—It seems to be the way that drafting is done these days.

**Senator LUDWIG**—When were you consulted about these?

**Mr Shannon**—In the last week.

**Senator LUDWIG**—What was the view put to you about what the amendments were designed to do?

**Mr Shannon**—It was substantially as we have reiterated and understand from the second reading speeches. My understanding is that it was more that there was an opportunity to deal with this matter at this time rather than to deal with it down the path. That is what I assume is the case.

**Senator LUDWIG**—Were the issues of training and how the power would be exercised by your officers dealt with?

**Mr Shannon**—No, not as such.

**Senator LUDWIG**—Is it scheduled to be dealt with? Is a consultative process going to be undertaken?

**Mr Shannon**—We have not drawn up a timetable for that but, as you would be aware, there is a quite common obsession around with having a head of power to implement a program. From our experience, the AFP generally do not implement training programs until they know the legislation is in place to allow them to be delivered. They would not generally

exhaust a developmental phase on something like that until they knew that the powers to proceed with were going to be resident in the act.

**Senator LUDWIG**—In terms of the operation of the power, how would your members operate conjointly with the APS? Has that been dealt with at all either by the department with you or by yourselves internally?

**Mr Shannon**—Do you mean in regard to this specifically or generally?

**Senator LUDWIG**—I mean this specific piece of legislation.

**Mr Shannon**—Not in any specific sense. There are obviously facilitative arrangements, which I am sure the AFP can address more specifically, about the way the two agencies are working at the moment. For instance—I think you asked a question about this—we understand that in the deployment in the Solomon Islands the APS and AFP are under separate management structures. While there might be some coalescing of those at a more senior level, we understand there is an OIC for both sides.

**Senator LUDWIG**—Do you understand that this amendment could result in both the APS and the AFP being at a location at the one time and, in that instance, there could be a need to determine who would be the controlling body to respond to a particular emergency that had arisen?

**Mr Hunt-Sharman**—I think that issue exists now. This change of legislation is not going to change that. What it does is put them under the same legislative regime when dealing with the same issues. One could not really argue against that as a concept in regard to the search powers, detaining powers et cetera.

**Mr Shannon**—It is certainly the case regarding the counter-terrorism function at the moment. It is our understanding that the APS have primacy in that role and the AFP have primacy in their role regarding their normal policing responsibility. One can only imagine—and I assume this could be answered more succinctly by the AFP—that that would not necessarily alter. The AFP is a functionally driven organisation and you frequently get different areas working together, and the one that has primary carriage for the function would generally be the coordinating point.

**CHAIR**—On the point you just made, you say you have an understanding that this is the case. Where do you derive that understanding from?

**Mr Shannon**—Just custom and practice. We have certainly had discussions about the matter we raised in our original submission—about who is actually responsible for policing airports and what the jurisdictional break-ups are. The government has a very succinct view that the APS are responsible for the delivery of the counter-terrorism first response role, and the AFP has a role very distinct from that. At the moment the two roles are not seen to blur. I do not believe this ostensibly changes that. While the APS exists as an agency, they will be the primary agency for carriage of that responsibility.

**Mr Hunt-Sharman**—Certainly the Federal Police organisation is involved in many multiagency investigations involving, for example, departments such as Immigration, Customs, state police and so forth. A lead agency is always nominated. That process is well established in those multiagency matters, and there have been examples of where a structure

is put in place, such as with the Bali bombing and so forth. This would be no different. The primary agency is the Australian Protective Service.

**Senator LUDWIG**—Can you envisage a position where an AFP officer would turn up to a location which is now or could be the usual preserve of the APS, without an APS officer, to deal with an issue that had arisen there because you would then have the same power?

**Mr Shannon**—This is largely theorisation on my part, but it would not be uncommon—using the example of Sydney airport—where in a location at Sydney airport an AFP officer may, simply by virtue of wandering through the place, be in situ when an APS officer is not attendant and have a need to use these powers. I think there is a very real expectation that could happen, and I assume that is one of the reasons why this is seen as an efficiency, providing a greater spread of the protection available to the public in that facility.

**Senator LUDWIG**—I am hampered by the fact that the department has not consulted you widely about how the power will be used, so unfortunately we can only deal with, in some instances, hypothetical situations with which you may be able to assist. I will certainly be able to ask the department about them as well.

**Mr Hunt-Sharman**—As Mr Shannon has said before, the AFP is structured down functional streams, so it has the protection area, which has close personal protection federal agents. By virtue of their role, they are going to be taking the principals back and forth from their employment to their residence, consulate or embassy. If an incident were to happen, and for some reason there was either a shortage of available APS members or another incident APS members had already gone to and a consulate was left somewhat unguarded, then obviously the protection officers could get involved in that and would have, under these amendments, the powers under the APS Act.

**Senator LUDWIG**—There has not been any consultation, but is there an operation manual or provision which provides for who takes control or coordinates the activity in one of those situations—I know this is hypothetical—where you might have the APS operating and then a senior or junior AFP officer happens to go along or responds to the emerging situation?

**Mr Hunt-Sharman**—Yes, there is, but the best person to ask about that would be the General Manager, Protection and Guarding.

**CHAIR**—He will be joining us momentarily.

**Mr Hunt-Sharman**—He would be able to give you specific details on how the structures work and what the command powers are when there is an incident. But, again, these issues are occurring now. All this legislation appears to be doing is making it in line with other legislation such as the Customs Act, the immigration act et cetera.

**Senator LUDWIG**—The extension of the power to the Australian Federal Police officers is in line with other movements in this field. I am also trying to establish that it could not be construed as an excessive power or power that is not already held by New South Wales police or Queensland police in like situations.

**Mr Hunt-Sharman**—Commonwealth acts sometimes spell out that a state, federal or territory police officer has the like powers of, for example, a Customs officer. That certainly

occurs. I am not sure whether that is happening in this legislation for those state bodies, but I know that the state bodies are putting in similar legislation to have those powers.

**Senator LUDWIG**—Has your organisation been consulted in respect of the ‘One act, one agency’ process?

**Mr Shannon**—There have been ongoing discussions, as I gather the previous parties have alluded to in their own terms. Certainly, we have had discussions about the issues with the AFP and APS. I am sure the committee is well aware that this issue is not a new one. It has been running now in excess of two years, so I am a bit disappointed that people suddenly find moves towards integration a bit of a shock. I do not believe that this amendment has been predicated on that, but certainly discussion regarding integration is not a new subject—I think we have bored you with it many times ourselves.

**CHAIR**—It was never boring.

**Senator LUDWIG**—I did not want to go there. Have you seen the draft legislation in respect of ‘One act, one agency’?

**Mr Shannon**—We are of the understanding at the moment that it is not finalised as an instrument and therefore has not been made available to anybody. We have made a request that when the legislation is drafted it be made available to us for scrutiny purposes, which I think is the same thing everybody else is seeking. But at this stage we do not have a clear idea of when that will be available.

**Senator LUDWIG**—Do you have a clear understanding as to what the legislation may entail and what points may be included in it? Has there been any proviso—

**Mr Shannon**—Only with regard to undoing some of the work that was originally done to separate the two agencies and to bring them under one umbrella. That is substantially all we have had put to us.

**CHAIR**—As we have no further questions for you, do you wish to make any final comments?

**Mr Hunt-Sharman**—We have certainly said all along—and we make no apology for it—that, if any agency starts to get greater law enforcement powers, there has to be a greater integrity regime attached to those powers. I am not going to shy away from that. The Federal Police, with the support of the Australian Federal Police Association, has put in significant integrity measures and, compared to the Commonwealth departments, it is well in excess of those requirements. If anyone can show me legislation in any other Commonwealth department where you can go to jail for six months for failing to answer a question or for misleading an investigator when you answer a question, I would be happy to see it.

**Mr Shannon**—As a final comment on the integration issue, there are a couple of things with regard to the section 72 element. There has been some confusion today with regard to the AFP and what the impact would mean, but it is worth noting that AFP employees are substantially better remunerated than the average employee in the APS, including down through the administrative structure. For example, they receive seven weeks recreation leave across the board. We have no expectation that, once integration is completed, people will be worse off or even on the same conditions they are on today. Hopefully they will be on better

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outcomes. The integrity environment that Jon just mentioned, having been brought into the AFP, was also done in conjunction with a remunerative outcome. Obviously, you have to pay for a degree of integrity for people, and we think that is an important symbol to pursue. The AFP does have unfair dismissal powers under the Workplace Relations Act, as I referred to earlier. It also addresses issues of merit and all the other elements of the Public Service within the terms of its own act and operations. We do not believe there is necessarily any great dislocation involved in your process but, until we see the legislation, we will obviously have to reserve our judgment.

**CHAIR**—Indeed. We are in a similar position. Thank you very much, both for your submission and again for assisting the committee. We are very grateful for that.

[10.03 a.m.]

**McDONALD, Mr Geoff, Assistant Secretary, Criminal Law Branch, Attorney-General's Department**

**BATCH, Federal Agent David, Senior Legislation Officer, Australian Federal Police**

**JACKSON, Federal Agent Steve, General Manager, Protection and Guarding, Australian Federal Police**

**CHAIR**—The Australian Federal Police have lodged a submission with the committee, which we have numbered 3. Do you wish to make any alterations or amendments to that submission?

**Federal Agent Jackson**—No, I do not.

**CHAIR**—I note that under the Senate's procedures for the protection of witnesses, departmental representatives should not be asked for opinions on matter of policy. If necessary, they must also be given the opportunity to refer those matters to the appropriate minister. I now invite you to make a brief opening statement, which I presume at this stage will come from the AFP, and at the conclusion of that we will move to questions.

**Federal Agent Jackson**—Thank you, chair. First of all, I place on record an apology from Commissioner Keelty and the Executive Director Protection, Audrey Fagan, who were not able personally to appear before you today.

The Australian Federal Police welcomes the proposed amendments to the bill. The amendments under consideration would support a more effective protective security regime in respect of places, persons or things for which a protective service officer can perform a protective service function. Under the proposed changes, members and special members of the AFP will be afforded the same powers to request personal particulars and to stop, search and seize, which have been proposed for protective service officers, and which the committee considered in June this year. It is important to highlight that these powers will only extend to AFP members and special members insofar as they extend to protective service officers. These powers will not have general application to Commonwealth criminal offences.

Circumstances in which AFP members and special members may be required to obtain personal particulars and to stop, search and seize things include those where they are confronted with a situation involving suspected threats to national security at locations such as the non security sensitive areas of airports, around Commonwealth infrastructure, diplomatic premises and security installations. If AFP members and special members are to equally respond to national security threats, they must be able to act as soon as they suspect that a person may be involved in, or a thing may be used in, the commission of an offence relating to the function of a protective service officer. If relevant powers are inconsistent, the gap between protective service officers and AFP members and special members would give rise to situations where the AFP officers were unable to act on a suspicion thereby requiring the immediate presence of a PSO in order to remove potential threat.

One of the primary outcomes of the proposed amendments will be the ability for AFP members and PSOs to render areas safe as quickly as possible, either alongside each other or



in isolation of each other. Concurrent powers are particularly important in areas where PSOs perform a function but where they may not be immediately present or available. This could occur at a scheduled airport, for example, where PSOs are performing a function but do not have an immediate presence and where an AFP member or special member may be in attendance.

Currently AFP members and special members' powers are limited when dealing with offences under the Australian Protective Service Act. This means that the powers of search and seizure are limited to persons under arrest, which inherently requires a higher belief standard of knowledge to be applied before these can be invoked. Consistent with the reasoning provided in the committee's first examination of this bill, the suspicion threshold would allow officers to take graduated protective actions commensurate to the situation as it unfolds. It also gives greater allowance for these powers to be used in a proactive fashion thereby increasing the preventive capability of the Commonwealth's protective service function. That concludes my opening statement.

**CHAIR**—Thank you very much. Mr McDonald, do you wish to add anything at this stage?

**Mr McDonald**—Only that I would like to reassure earlier witnesses that this legislation is only what it is expressed to be—that is, about ensuring that there is protective security. There is no agenda to use this as a mechanism to have integration. We have been working on an integration bill and we expect that bill to be ready before long. There has been quite a significant amount of work done on the drafting of the bill. I would just like to reassure everyone here that there is no other agenda with these amendments. The amendments are about ensuring that things go operationally smoothly in the protective security environment.

**CHAIR**—Mr McDonald has raised a question which I am sure either Senator Ludwig or I would have pursued anyhow. Mr Jackson, what is your comment on those issues?

**Federal Agent Jackson**—My comment is, unequivocally, the same as Mr McDonald's. The intent of the amendments is not to, in a secretive way, give effect to one act, one agency; it is, as I said in my opening statement, to reinforce the protective security strategies that we need to have to provide the best possible response to safeguard Australia's national interest.

**CHAIR**—So, in the first instance, your undertaking to this committee is that an integration bill, as it has been termed in this context by Mr McDonald, is in preparation and will make its way to the parliament—if the Senate deems fit, it will make its way to this committee, I should imagine—at some stage; I think you said not before long.

**Mr McDonald**—Yes.

**CHAIR**—That is an interesting time frame. I am familiar with 'before long' in the Attorney-General's Department context.

**Mr McDonald**—Yes. I guess the reason I cannot give a specific time is that that is ultimately for the minister to decide. But I want to reassure you that the drafting of that bill is very advanced.

**CHAIR**—That is interesting in and of itself. It is interesting because in questioning this morning we have again raised issues of consultation with the organisations that routinely come before us on these matters. We are always happy to welcome those organisations before

us to give their views and provide evidence. We made a note in the report on the previous bill that it became apparent during the public hearing on that occasion that neither of the two staff organisations had been consulted either by the AFP or by the Attorney-General's Department in relation to the preceding bill. That again appears to be the case today, and the explanation is that routinely the time frame does not allow for consultation. It seems that if the time frame allowed for the most basic of consultation, the work of this committee would be facilitated, as would the work of both of the organisations which put legislation before us.

The committee can continue to make notations on that matter in its report, and recommendations where appropriate. It may become a little tedious if they continue to fall on deaf ears. In that regard, and in the development of the integration bill, where is the consultation process up to?

**Mr McDonald**—The situation with the actual bill itself is that we have not yet released the draft to anyone.

**CHAIR**—But in the preparation of the draft, you are speaking with the organisations. Is that an incorrect assumption?

**Mr McDonald**—No, that is something the AFP can probably better answer than I.

**Senator LUDWIG**—Why can't you answer that? This is what confuses me. It is your legislative framework, it is the Attorney-General's responsibility and yet you flick it to the AFP or, alternatively, you say that the time frame was too short.

**Mr McDonald**—The bill itself concerns—

**Senator LUDWIG**—But there are principles that are required to be dealt with. It is not a case of waiting for a draft piece of legislation. Consultation, as I understand it, can be preceded by the principles that will surround the need for integration, such as basic employment issues—all of those matters that would be quite routine in any integration. The more technical detail you would not put forward anyway because that does require technical drafting and you would leave that part of the consultative process to the end. It just seems to be a strange process. You are using the idea—and correct me if I am wrong—that you have to wait for a draft piece of legislation before you consult. I do not think that is right.

**Mr McDonald**—The reason I referred it to Mr Jackson is that he can give you more accurate and precise information about consultation to date because clearly this particular legislation is of an industrial nature, and that is the side of the show that is dealt with by the Federal Police. I sometimes go too far with my answers and answer questions about operational matters and things like that, but in this particular incident I can assure you that I am aware that there has been some preliminary consultation going on for some time. I think Mr Jackson might be able to give more detail.

**Federal Agent Jackson**—If I can help the committee out—but, having said that, qualifying my response with the AFP's position that we are now into the realm of future public policy which has not yet been placed before the AFP in a formal sense by government vis-a-vis policy approval. However, I would like to assure the committee and the CPSU—even to the extent that I have personally written to Mr Hall and the CPSU, as I think Mr Hall himself adverted to in his evidence—that consultation will occur in the lead-up to the one act,

one agency process. During meetings with Mr Hall, one several months ago over the telephone, we discussed off-the-record issues in relation to how we would position ourselves conjointly with the CPSU vis-a-vis negotiations, and likewise with the association. That is the extent to which consultation has occurred to date. My assurance is unequivocal in relation to continuing those negotiations with any representative body that represents one protective service officer or one federal police officer that might be affected by the integration process.

**Senator LUDWIG**—You put out a newsletter *One act, one agency* in respect of the Australian Federal Police in apparently in August 2003. I am curious whether similar information has been directed by you to go to the APS.

**Federal Agent Jackson**—That newsletter covers the portfolio that hired responsibility for protection and guarding, which includes every member of the APS as well as every member of the AFP currently performing a protective security function. To place it in context, the total strength of that portfolio numbers almost 1,500 officers across the country and overseas.

**Senator LUDWIG**—So all officers, both Australian Protective Service and Australian Federal Police, would have had the opportunity to have a look at this document?

**Federal Agent Jackson**—That is correct. Those bulletins are issued on a monthly basis to give effect to our assurance as a management team to engage in full and frank consultation and communication.

**Senator LUDWIG**—Are they routinely sent to the unions as well?

**Federal Agent Jackson**—No, they are not as a matter of course. However, they are sent to all stations wherever possible—noting that there are 27 stations around the country and overseas. I attend personally as many consultative meetings as I can, as do other members of the management team. It is a difficult job. Those bulletins are expected to go up on the board and are expected to be made available to every protective service officer in the organisation.

**Senator LUDWIG**—And who have the slides been provided to? Was that a course that was being run or an internal consultative process?

**Federal Agent Jackson**—The slides were presented last week to a gathering of all APS officers in charge and station managers from around the country. The OICs conferences, as we refer to them, are held every six months—again, to assist in delivering the message and to ensure that station managers know the message because effectively they are, if I can use these words, my ‘agents on the ground’ to deliver that message.

**Senator LUDWIG**—In respect of this bill currently before us, which amends the earlier bill, is that part of the legislative package that was going to head towards one act, one agency that has been brought forward, or is it separate and distinct from that? I am happy for either Mr McDonald or you, Mr Jackson, to answer that.

**Federal Agent Jackson**—I will just give the AFP context. It was initially considered that the issue of federal agent powers would be addressed through the next round of amendments to the AFP act and, in fact, the integration suite of amendments. But, after further consideration, it was noted from a practical safety and security point of view that there would be a significant time lag between the APS powers bill that you are currently examining and any future amendment to the AFP act rolling everything together. We considered, in

consultation with my commissioner, that that gap would not be in the interests of Australia's national security; hence the late inclusion of the AFP amendment, or the concurrent powers for AFP officers.

**CHAIR**—You mean why we are doing this twice?

**Federal Agent Jackson**—That is correct.

**Senator LUDWIG**—So I am correct in assuming then that it was part of the legislative package but has now been brought forward to be included as an amendment to this current bill, which has been twice amended? So it was not a good idea that came belatedly to you after the initial bill?

**Federal Agent Jackson**—Absolutely not.

**Mr McDonald**—No.

**Senator LUDWIG**—Then why, if you have known about it, has there not been consultation? Your excuse cannot be that it was a belated good idea at the time.

**Mr McDonald**—In terms of a record of consultation, I would like to point out that certainly, with legislation that is run from my office, we have quite a good record of consulting when we possibly can on matters.

**Senator LUDWIG**—You are chipping away at it, I must say.

**Mr McDonald**—You wait until you see the new bill we have got lined up.

**CHAIR**—That sounds like a threat. The committee responds badly to those.

**Mr McDonald**—We will have an exposure draft. We have quite a lot of legislation coming through. One of the difficulties with all this is juggling the drafting resources and ensuring that we get the bills done in a timely manner. I was probably more optimistic about how quickly the AFP integration bill could be done and certainly our thought was that it would probably be closer to this bill than has happened. At the time we were putting this bill together there was concern to get it into the parliament quickly because of concerns about security. A judgment was made that the main thing was to fix the powers for the APS officers. But, as time went by and it became more apparent that the integration bill would take longer, we started to become concerned—certainly about the gap in time between the two pieces of legislation. I am very sorry that this has caused you to have an extra hearing but, at the end of the day, we had to be concerned about our protective security arrangements.

**CHAIR**—There is no need for that. The committee does its job as requested by the Senate. With the original intention now stated to include this amendment in the integration suite—but the time frame pushed out so far that that was regarded as an inappropriate approach—does that mean that the amendments were originally going to be made to the AFP Act and now they are being made to the APS Act? Why has the time frame meant that you are now amending the APS Act?

**Mr McDonald**—The main reason is that it is a bill to amend the APS Act. So the bill itself has a scope already set by the bill that is being introduced as an amendment to the APS Act. Consequently the approach was to work within the framework of that bill and put the powers into that bill. It has been mentioned earlier that there are other examples of where—say, the

Customs Act and the Crimes Act—the powers are located in other legislation. But the amendment had a lot to do with the fact that we already had a bill in the parliament that related to an amendment to the APS Act, and of course you are caught by the scope of the particular bill you are dealing with. Once the bill dealing with the integration process is put in place, there will be one piece of legislation and the question of whether it is in the APS Act or not goes out the door. This amendment is essentially one to deal with the next period during which we will try and resolve the integration bill.

**CHAIR**—Do you want to add anything, Mr Jackson?

**Federal Agent Jackson**—I would certainly like to reiterate the fact that previous witnesses made about other pieces of head legislation containing concurrent powers for the AFP. I certainly note for my part, for what it is worth, the angst of the committee. I have, as previously indicated, given my personal assurance to union representative bodies that consultation will continue into the future better than it has in the past. That is probably as far as I can take it, and I place that assurance on the table.

**CHAIR**—Thank you very much for placing that on the record.

**Senator LUDWIG**—I think you have already ruled out the issue of integration until the legislation is drafted and put before parliament and passed or not passed, and whatever happens after that.

**Mr McDonald**—Yes. I guess the fact that we are recognising here—that we need quite a bit more time—is, in a sense, a recognition that the parliamentary process may take some time and of course it is always open to the parliament to reject the bill.

**CHAIR**—Are you suggesting that we might see that in 2003?

**Mr McDonald**—The decision has to be made by the minister as to when the bill would be introduced, but the bill is on the legislation program for the spring sittings in 2003. That means that it is category A of the legislation program in 2003, and you would normally expect a bill to be introduced in the year that it gets on the legislation program. There are all sorts of things of course that can occur, that can slow things up, including issues raised in consultation.

**Senator LUDWIG**—Then you have a short consultative time frame to be proceeded with, have you not? Are you giving an undertaking to the committee that that is going to be fully completed prior to the introduction of the bill, or will you be able to give me a more definitive date by which you will be able to conclude?

**Mr McDonald**—We would need to confer with the minister about the exact timing of the consultation. Clearly the bill has not yet even been shown to the minister. The minister may say, ‘Go back and start again; it’s still not good enough,’ or something like that.

**CHAIR**—Not through your section, surely?

**Mr McDonald**—We have heard what are you saying about the need to have consultation and we do take that very seriously.

**Senator LUDWIG**—I do not want to belabour that point, I just do not want you to end up sitting on the other side of the table with the same issue arising again. I do not know whether I could deal with it a third time.

**CHAIR**—It would not be the third.

**Senator LUDWIG**—No. In respect of the training and all those things, they will be dealt with—I have asked previous witnesses and I am sure you had an opportunity to hear that—and they will then become part of the program should that need to occur post the issue.

**Federal Agent Jackson**—Indeed. In fact, the training issue is obviously a very important part of the consultation process to ensure that we are not rolling out a training scenario or training regime once the legislation is in place. That would be most inappropriate and, indeed, practically unsound. There would be a new training package for all Protective Service officers. We are not anticipating a firm outcome of this committee's consideration, but we are addressing what we might need to do in relation to the AFP dimension as well. That training regime will ensure that the legislation is clearly understood. Officers will be made aware of their obligations and responsibilities. If I could give you an indication of the type of delivery platforms we would be looking at, the AFP does not rely solely on face-to-face delivery but uses a suite of mechanisms including online learning, CD-ROM based training. We should not forget either the fact that PSOs and federal agents are provided a baseline level of training. So we are not going back to scratch; it is effectively a top-up. As General Manager, Protection and Guarding, I will not be issuing station instructions for these powers to be used until I am absolutely satisfied that officers in the community are protected and that they understand clearly their obligations and responsibilities.

**Senator LUDWIG**—And you will be developing, or have developed, operational procedures to work out who is in control of a particular site as the situation arises so that there is no confusion as to who takes command?

**Federal Agent Jackson**—Absolutely. Perhaps I could add a little more context to that issue because it is very important; command and control is something that I personally take very seriously. I am able to bring to future dialogue with officers within the portfolio my own personal involvement with the APS and AFP working together. I was the AFP's operational commander during Sydney 2000 and also during the *Tampa* crisis, where we were deployed together with the APS on the island. I was also the AFP's field commander in Bali, where AFP officers worked alongside APS officers. I would like to unequivocally dismiss the notion of these concurrent powers being used to sever that tie. In fact, the contrary argument is manifest: these concurrent powers will provide a more robust, flexible arrangement for continuing to work together with the APS as part of my portfolio.

**Senator LUDWIG**—Paragraph 5 of the Australian Federal Police submission mentions that New South Wales has passed the Terrorism (Police Powers) Act 2002; similarly, by the look of it, there is a Northern Territory act and a Queensland act. Do the powers that you are now assuming go no further than those currently held by the APS and those that might also be held by the various state police forces? There is always a concern that you are being given powers that exceed what the community expects of the role in society of the Australian Federal Police.

**Federal Agent Jackson**—Indeed, from a practical perspective, your assertion is correct. As I said in my opening statement, the powers would apply only to the scenarios that currently are manifest within section 13 of the APS Act. Indeed, as you have pointed out, in paragraph 5 of our submission we make reference to extant state and territory police powers that they currently enjoy at the same threshold of belief—that is suspicion. Hence the AFP’s absolute support to bring this all together very neatly so that we can be as proactive and as preventative as we possibly can be.

**Senator LUDWIG**—That will allow operations to be dealt with more easily between the AFP, the APS and state police in a particular location in responding to an emerging issue.

**Federal Agent Jackson**—That is correct. Indeed, the current national counter-terrorism plan prescribes multilateral investigations. It is a rare occurrence today for the AFP to be involved in a major, complex multijurisdictional—indeed, transnational—investigation where we would not join with other agencies, including Commonwealth and state and territory agencies. Ensuring that we achieve the outcome of having no disconnect on the basis of legislative power is, from a practical policeman’s point of view, very comforting.

**Senator LUDWIG**—One of the reasons for this being brought forward was to ensure that that could happen now rather than to wait for the integration to occur, because it then would have been envisaged, as it seems to have been, as part of that process.

**Federal Agent Jackson**—That is correct.

**CHAIR**—Mr Jackson and Mr McDonald, you would have heard me say to previous witnesses that, if other issues became apparent during the rest of this morning’s proceedings, we would welcome their response on those. It may be that we have gone some distance to clarify some of the earlier concerns expressed, and the committee will seek advice on that. Similarly, if further issues become apparent on your reading of the *Hansard* that you would like to respond to or address, we would appreciate your input on them. We are required to report by 7 October. I understand the demands on your organisations and on the committee but, if you do have anything to add, we would be grateful to receive it. I appreciate the assurances that you have given the committee on a number of issues. Mr Jackson, thank you for the apologies of the commissioner and Ms Fagan. We will receive any further information if you have it. On behalf of the committee, thank you very much for your assistance this morning.

**Committee adjourned at 10.34 a.m.**