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AUSTRALIAN FEDERAL POLICE

6 June 2023

Senator Nita Green  
Chair, Senate Legal and Constitutional Affairs Legislation Committee  
Parliament House  
Canberra ACT 2600

Via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Chair,

**Inquiry into the Crimes and Other Legislation Amendment (Omnibus) Bill 2023**

1. The Australian Federal Police (AFP) welcomes the opportunity to provide the Senate Legal and Constitutional Affairs Committee (the committee) additional information to inform its inquiry into the Crimes and Other Legislation Amendment (Omnibus) Bill 2023 (the Bill).
2. The AFP has worked closely with the Attorney General's Department (the department) on the amendments to the Commonwealth *Witness Protection Act 1994* (WPA) and Part IC of the *Crimes Act 1914*. The AFP supports these amendments.

***Witness Protection Act 1994***

3. The WPA provides a statutory basis for the National Witness Protection Program (NWPP), which is administered by the AFP. The NWPP provides protection and assistance to people who may require protection because they have given, or agreed to give, evidence or a statement on behalf of the Crown in criminal or certain other proceedings, or are otherwise in need of protection or other assistance under the NWPP, or because of their relationship to such persons.
4. The WPA has been subject to minimal amendment since it was enacted in 1994 despite the operational environment having changed significantly since that time. The proposed amendments seek to enhance the operation of the NWPP in the current operational environment and to ensure the NWPP continues to provide effective protection for participants and is able to respond flexibly to operational needs.

***Transitional Provision***

5. The proposed amendment at section 29A will clarify that participants of previous AFP-run witness protection programs ('past participants') are included under the WPA as 'former participants'.
6. This includes individuals who were not in the program immediately before the commencement of the WPA in 1994. This will remove the current ambiguity about the extent to which the AFP

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can provide protection and assistance to past participants. For example, assistance to past participants in applying for documents that support the ongoing maintenance of their identity.

### *Suspension provisions*

7. Currently, in situations where the AFP's ability to provide protection or assistance to a participant may be limited, the AFP must consider whether to terminate the participant from the NWPP. If a person's participation in the NWPP is terminated, the participant would need to be re-assessed in order to be included (i.e. to re-enter) in the NWPP. The re-assessment process can be time and resource intensive for the AFP, as well as the participant.
8. The proposed amendments would allow greater flexibility and protection for current participants by allowing the AFP to temporarily suspend a participant's protection and assistance in circumstances where their conduct may limit the Commissioner's ability to provide that protection and assistance.
9. This may occur when a participant does, or intends to do something, that places them outside the jurisdiction of the AFP, which may limit the AFP's ability to access (and therefore protect) and communicate with (and therefore assist) the participant.
10. The benefit of a provision to temporarily suspend a participant's protection and assistance under the NWPP, is that it allows a participant to remain in the NWPP (as they are not terminated). This is less administratively burdensome and means the participant can be immediately afforded full protection once the suspension ceases. A temporary suspension will not impact the individual's status as a participant of the NWPP, and the memorandum of understanding they agreed to at the time of entering the NWPP will remain in effect.
11. A participant will still be able to receive protection and assistance whilst a suspension is in force if the Commissioner is satisfied that, in the circumstances, it is necessary and reasonable for the protection or assistance to be provided despite the suspension. For example, this could include circumstances where the participant has ongoing employment or education through the suspension period and the AFP provides assistance to facilitate and ensure continuity.

### *Proposed delegation amendments*

12. Currently, under subsection 25(4) of the WPA, the Commissioner's powers in respect of taking actions to protect former participants may only be delegated to a Deputy Commissioner or an Assistant Commissioner.
13. The proposed amendment to repeal the existing subsection 25(4) will allow the Commissioner to delegate these powers to the position that they assess is operationally appropriate, aligning the decision-making powers for former participants with those for current participants. This will ensure the AFP is able to respond quickly and flexibly to circumstances that require expeditious operational decisions to be made.
14. A new subsection 25(4) will be introduced which instead addresses the delegation of the new suspension powers in the Bill. The proposed delegation in the Bill acknowledges that it is appropriate for a senior decision maker (such as an Assistant Commissioner) to determine whether to suspend the provision of protection and assistance under the NWPP.
15. The proposed amendments do recognise, however, that circumstances may arise where decisions must be made quickly, in response to serious and urgent circumstances, on whether to suspend the provision of protection and assistance to a participant under the NWPP. In these scenarios, it is likely to be impractical to seek a decision from a senior decision-maker such as an Assistant Commissioner.
16. In such serious and urgent circumstances, a Commander or Superintendent would be better placed to assess, and form the opinion, that the participant has done or intends to do



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something that limits, or would limit, the AFP's ability to provide protection or assistance to a participant noting their relevant operational knowledge. For example, where a participant does or intends to do something that places them outside the jurisdiction of the AFP. Similarly, in such serious and urgent circumstances, a Commander or Superintendent would be better placed to determine if, in the circumstances, it is necessary and reasonable for the protection or assistance to be provided despite the suspension in place.

17. The AFP notes in the *Scrutiny Digest* 5/23 the Senate Standing Committee for the Scrutiny of Bills sought further advice on the meaning of the term 'Assistant Commissioner'. The AFP notes the Attorney-General's Department has proposed an approach within their submission to define the term 'Assistant Commissioner' and the AFP supports this.

### *Minor technical amendments*

18. The Bill also contains minor technical amendments to remove references to outdated security clearance requirements and reflect current security clearance language used by the Australian Government.

### **Crimes Act 1914**

19. Part IC of the *Crimes Act 1914* (Cth) sets out the powers and obligations of Commonwealth investigating officials in relation to persons under arrest and protected suspects.
20. At present, the definition of 'judicial officer' in ss 23B(1) means a person who commits an offence in one state/territory, but is arrested in another, can only be brought before a magistrate to have their bail application heard.
21. Under the proposed amendments, references to 'judicial officer' within parts of Part IC will be replaced with 'bail authority'. This term is already defined in s 3 of the *Crimes Act* and refers to 'a court or person authorised to grant bail under a law of the Commonwealth, a State or Territory'.
22. These amendments will ensure a person can be brought before a person authorised to grant bail in any state or territory, instead of limiting it to a person authorised in the state or territory in which the arrest occurs. This addresses operational and procedural concerns arising from the existing wording.
23. The amendments do not change the legislative timeframes that a person can be held in pre-charge detention. The amendments do not change existing rights and safeguards for arrested persons. Rather by broadening who an arrested person can be brought before, the amendments may reduce the period of time before a person is brought before the court.
24. The amendments do not otherwise expand the AFP's arrest or other investigative powers within Part IC.

### **Conclusion**

25. We hope this information assists the Committee in understanding the need for these amendments, particularly those that ensure the NWPP can continue to be effectively administered by the AFP in the current operational environment.
26. As the nature of the NWPP is highly sensitive, the AFP is limited in the information it can disclose about the NWPP in a public submission. If the Committee requires additional

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information, the AFP would welcome the opportunity to provide appropriate information in a PROTECTED setting. We note the AFP would not, however, be in a position to provide operationally sensitive information in such a forum.

Yours sincerely

Lesa Gale APM  
Commissioner  
Deputy Commissioner  
International and Speciality Capabilities

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