



25 January 2013

Senator Trish Crossin
Chair, Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Madam Chair,

[RE: Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Regulatory Powers \(Standard Provisions\) Bill 2012.](#)

It is with pleasure that we present this submission to this Committee's Inquiry on behalf of the Police Federation of Australia (PFA) and the Australian Federal Police Association (AFPA). The PFA, as the national organisation representing over 50 000 law enforcement officials across Australia, is always concerned with changes in policy and legislation affecting law enforcement.

Since 1942, the AFPA (in various registered names) has continuously represented Federal Law Enforcement Officers. Our members have continuously and successfully provided policing services in the Australian Capital Territory (ACT).

The AFPA and our membership operate in an increasingly complex and dynamic law enforcement, national security and employment environment, not just in the ACT but throughout Australia and Internationally.

The Australian Federal Police Association and the Police Federation of Australia (PFA) wish to express some concern about the powers granted under the Regulator Powers (Standard Provisions) Bill 2012. We have two major concerns with the bill as it currently stands:

1. The Option in Structure of the Bill does not allow powers to be tailored appropriately to a given regulatory context
2. The Bill grants broad, police-like powers in circumstances which may not be appropriate and lack extensive oversight

We are making a submission on this bill because we believe that granting broad police-like powers to other agencies may have the unintended effect of undermining transparency and the appearance of legitimacy in the enforcement of federal law. The proliferation of policing powers in non-policing areas poses a significant public policy risk which in turn undermines confidences in our public institutions.

There are ongoing situations which exemplify our concerns. Recently, agencies with police-like powers have been subject to an investigation into systematic corruption. Given this situation we believe that caution should be exercised when legislating to grant police-like powers to non-law enforcement agencies that are subject to the less onerous *Public Service Act 1999*. Therefore, the PFA and AFPA believe that these proposed legislative changes should be deferred until government's independent review of Customs and Border Protection Service has concluded.

We are both happy to speak to this submission.

Yours sincerely,

Jon Hunt-Sharman

President
Australian Federal Police Association
Vice President
Police Federation of Australia

Mark Burgess

Chief Executive Officer
Police Federation of Australia

1. The Option in Structure

- 1.1. The PFA and the AFPA believe that in order to be transparent and accountable, the powers granted under this bill should be tailored specifically by the legislation which they will be used to enforce. This ensures that proper scrutiny of whether appropriate agencies are being granted appropriate powers.
- 1.2. The 'opt in' framework approach utilised by this Bill makes such scrutiny more difficult, as minor and seemingly innocuous amendments to other legislation could enliven some of the extensive powers available under this Bill. Accordingly, important assessments may not be considered to the extent they would if a stand-alone piece of legislation granted certain powers to certain people for certain purpose. These include whether an agency or person is suitable to hold such a power, whether such a power is necessary for the purposes it is being granted for, or whether a power infringes on the rights of those affected. This potential risk is exacerbated further by the ability for the powers in the Bill to be granted by regulations.
- 1.3. The PFA and AFPA understand that certain legislation already grants powers such as these for the purposes of monitoring compliance with provisions. For instance, the *Fair Work Act 2009* (Cth), Part 5-2, Subdivision D: Functions and powers of Fair Work Inspectors, grants extensive powers. But the key difference with the granting of those powers was that they were granted in the context of the entire legislative purpose, the specific provisions being monitored, and the agency that would use them. Tailoring contextually appropriate powers to regulatory situations becomes more difficult when using this Bill's opt in structure.

2. Granting of Police like Powers

- 2.1. Both our organisations are concerned with the granting of police-style power to non-policing entities. The Bill has the potential to grant regulatory bodies extensive powers such as entering and searching premises, and the ability to compile evidence used to establish a criminal offence. These are significant powers and should not be granted lightly.
- 2.2. We are concerned that the method by which agencies may be granted powers under the Bill may inhibit appropriate scrutiny. For example; ensuring that police-style powers are not granted to inappropriate agencies may not be assessed properly. The PFA and the AFPA believe regulatory power should be uniquely characterised to target the specific subject matter. This will allow for a contextual assessment of the appropriateness of the powers. At the very least, the Bill should clearly outline the types of agencies and people which can be granted the powers outlined in the Bill, and ensure that minor and innocuous legislative amendments cannot result in significant powers being granted without proper consideration.
- 2.3. It should be noted that the police agencies and law enforcement agencies which traditionally hold these kinds of powers are subject to a rigorous integrity regime. At the Commonwealth level, the Australian Federal Police, the Australian Crime Commission, and recently Customs and Border Protection are subject not only to internal investigation, but also to the oversight of ACLEI, the Law Enforcement Ombudsman and the Parliamentary Joint Committee on Law Enforcement. Further, these police and law enforcement officers are extensively trained in how to exercise their coercive powers properly.
- 2.4. Overall, we believe that the proliferation of policing powers to non-policing agencies poses a significant risk to the integrity of our public institutions.