



Australian Federal Police Association

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House

Email: legcon.sen@aph.gov.au

13 December 2016

Dear Committee Secretary

CRIMES LEGISLATION AMENDMENT (INTERNATIONAL CRIME COOPERATION AND OTHER MEASURES) BILL 2016 - AMENDMENTS TO THE AUSTRALIAN FEDERAL POLICE ACT AND REGULATIONS 1979 – SUBMISSION TO INQUIRY

The Australian Federal Police Association (AFPA) is the professional employee organisation representing the interests of its members who are Australian Federal Police (AFP) appointees. The AFPA has approximately 4000 members.

We welcome the opportunity to provide a submission to the Senate and Constitutional Affairs Committee Inquiry into the Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016 (the Bill), following its introduction into the House of Representative on 23 November 2016. We would also welcome the opportunity to give evidence on the Bill before the Committee.

The Explanatory Memorandum notes that the Bill “contains a range of measures to improve and clarify Commonwealth criminal justice arrangements, including amendments to...ensure the Australian Federal Police’s alcohol and drug testing program and integrity framework is applied efficiently and effectively to the entire workforce and clarify and enhance processes for resignation in cases of serious misconduct or corruption.”

AFPA position on amendments

The AFPA has no concerns regarding the following proposed amendments:

- changes to the *Australian Federal Police Act 1979* to replace the term employee to ‘appointee’ as it relates to sections 40LA, 40M and 40N — drug and alcohol testing; and
- changes to Australian Federal Police Regulations 1979 section 13V to reflect the standard used for urine testing as in force at a particular time or from time to time.



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However we strongly oppose the proposed changes to s.30A(2) of the AFP Act 1979 which will see changes from 90 days to 180 days where the Commissioner can nominate a substitute date of effect for resignation.

Background

Section 30A(2) of the AFP Act currently provides that:

"The Commissioner may, by written notice to the AFP employee, substitute a day, no later than 90 days after the day specified in the employee's notice of resignation, as the day on which his or her resignation is to take effect."

This provision was introduced by the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* (the Professional Standards Act), which implemented the recommendations of the 2003 Fisher Review into Professional Standards in the AFP. The Fisher Review found that the AFP's disciplinary regime at that time was out of date, too focused on punitive outcomes, and lacked transparency and flexibility.

In our 24 April 2006 submission to the Legal and Constitutional References and Legislation Committee on the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006*, the AFPA argued against the introduction of the 90-day substitution mechanism in section 30A of the AFP Act. Our position has not changed. We submit that there continues to be no practical justification for the existence of this provision, and certainly not for its increase to 180 days.

Reasons for concerns

The key reasons for the AFPA's concerns about this amendment are:

1. There is a conspicuous lack of evidence about:
 - a. how this will enhance the Commissioner's powers to provide for a safer Australia, as asserted by the AFP; and
 - b. why the existing provision that allows the Commissioner to extend an employee's resignation date by 90 days is inadequate, including any data or specific cases. There is no information, for example, on the number of occasions the existing power has been exercised by the Commissioner.
2. Normally, the employee against whom serious allegations of misconduct are made is suspended from duty during their investigation. It is not uncommon for employees to be suspended for up to two years. Recently, an employee returned to duty after a

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suspension that lasted four years. The impact on affected employees is significant. They lose any faith in the organisation, lose touch with their colleagues, lose skills and proficiencies, and many consequently suffer from mental health issues. Their reintegration into the workplace is often difficult and their recovery prolonged. This is comparable to employees who suffer from Post Traumatic Stress Disorder and the issues they face in returning to meaningful employment. The proposed amendment will potentially force an additional three months of suspension on employees for no reason other than the AFP lacks sufficient resources to investigate and finalise a conduct matter within a reasonable time frame.

3. The only practical purpose for this amendment appears to be that it will provide an extension of time for the AFP to undertake or continue an investigation into allegations of misconduct against employees, which is clearly a resource issue rather than an effective evidence-based improvement to the current regime.
4. Delaying resignation in circumstances where the employee's conduct has been or is being investigated as a Category 3 conduct or corruption issue provides no advantage to the AFP, which can continue to investigate the matter even after the employee has left the AFP.
5. Recording adverse findings on an employee's record is not the only way of notifying other agencies of national security concerns. There are a number of reporting and communication channels already available to the AFP to convey national security concerns, including those involving former employees.
6. This provision operates to apply a pecuniary penalty to an employee subject to administrative action (particularly if the employee is suspended without pay). Absence of this provision would allow the AFP to focus on practice and procedural issues arising from the conduct or complaint in question rather than punishment for an individual who has chosen to leave the AFP in any event.
7. If a conduct issue is sufficiently serious, the AFP can elect to investigate in accordance with the criminal law. In this case, it is not relevant whether the person continues as an AFP employee.
8. We acknowledge that only AFP appointees are subject to directed interviews under section 40VE of the AFP Act. However, in our experience, employees rarely if ever resign prior to participating in such an interview as they are not notified of an investigation or the substance of a complaint against them until after the interview has commenced.

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9. Delaying an employee's opportunity to resign in our view contributes further to the imbalance of power already experienced between the AFP and its employees. It also impacts significantly on the welfare of the employee and their families when a member has been suspended from duty for a long period. The amendment will unreasonably prolong the resignation process for employees, keeping them out of the workplace for longer periods and potentially preventing them from obtaining other employment or opportunities to move on with their lives.

Thank you for taking our submission into consideration and we would appreciate appearing before the Committee.

Yours faithfully

Angela Smith
President

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