



**Australian Federal Police Submission to**

**The Parliamentary Joint Committee on ASIO, ASIS and DSD**

**Review of Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* – Questioning and Detention Powers**

**March 2005**

## **Introduction**

The AFP's submission focuses on the review by the Parliamentary Joint Committee on ASIO, ASIS and DSD (PJCAAD) of Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* (the Act), ASIO's questioning powers (non-custodial warrants requiring a subject to appear before a prescribed authority) and detention powers (custodial warrant which authorise a police officer to take the subject into custody and bring them before a prescribed authority immediately) in relation to terrorism offences.

This submission outlines the AFP's involvement in the use of non custodial warrants established by these provisions and its view on the operation of these warrants. The AFP believes that the questioning and detention powers have been used appropriately by ASIO, that the powers have worked well in practice and that ASIO still needs these powers to assist in the collection of intelligence that is important to terrorism offences.

## **The AFP role in the use of questioning and detention powers**

### Background

The AFP's role in the exercise of these powers is set out in the publicly available Protocol published in accordance with section 34C of the Act and in operational guidelines which the AFP and ASIO have developed to guide the execution of non-custodial and custodial warrants in line with the Protocol including the procedures to be followed to contact and involve State and Territory police services.

The AFP's role is to provide law enforcement support to ASIO in the exercise of these powers in terms of:

- Planning the execution of a warrant, which in the case of a custodial warrant would include undertaking an operational risk assessment of the subject and their premises to determine the appropriate preparation and anticipated level of force which may be required and evaluating the premises proposed to be used for the questioning or detention;
- Executing the warrant (where that assistance is requested by ASIO);
- Transporting the subject of a custodial warrant to the place where they will be detained;
- Being present during questioning;
- Supervising the subject of a custodial warrant when they are not being questioned or during their detention; and
- Assessing the impact of the proposed warrant action on current and future criminal investigations.

### Operational experience

At ASIO's request, the AFP have been present when ASIO served non-custodial warrants on the subjects. The AFP believes that the protocol and guidelines have ensured that the execution of non-custodial warrants have gone smoothly.

The protocol and guidelines have not yet been used in respect of the detention powers.

**The sunset clause**

The AFP believes that the sunset clause for these powers should be removed because the terrorism environment which required the establishment of these powers is unlikely to change in the near future and the current statutory system for the approval and use of these powers appropriately balances operational needs with accountability safeguards.