

AUSTRALIAN FEDERAL POLICE ASSOCIATION



SUBMISSION

House of Representatives

Standing Committee on Legal and Constitutional Affairs

**Inquiry into Crime in the Community:
Victims, Offenders, and Fear of Crime**



Preface

The Australian Federal Police Association (AFPA) is a registered organisation of employees representing the interests of the entire workforce of the Australian Federal Police. As the sole registered entity with coverage of the AFP workforce we are uniquely placed to comment on the broad spectrum of issues impacting on the stakeholders within and external to the AFP.

As part of the AFPA strategic positioning, the AFPA has increasingly developed partnerships and engaged with a range of community organisations with interests in the law enforcement environment. To this extent we believe that the AFPA also has a strong role in assisting the advocacy of issues relevant to the community within the broader role of the AFP.

Our role is greater than mere industrial representation. We have an obligation to ensure that the Australian Federal Police functions to the best of its capabilities. We have an obligation to the Australian people to ensure that the Australian Federal Police can truly protect them from criminal attack.

Our submission is based on a wide and diverse range of issues canvassed amongst our membership, other partnership organisations and represents the collective and majority viewpoint of those members. We have sought to detail the real, present and eminent dangers that lay ahead for federal law enforcement should the decision makers ignore the recommendations of those who are the true federal law enforcement stakeholders.

The following Submission has been prepared by the national office of the Australian Federal Police Association on behalf of the National Executive.

The AFPA acknowledge the assistance AFPA members have provided in the preparation of this submission. The AFPA also wishes to express its thanks to our colleagues at Child Wise and other organisations for their assistance in preparing this submission.

Jon Hunt Sharman
National President

Glossary Of Law Enforcement Acronyms and Terms

ABCI	-	Australian Bureau of Criminal Intelligence
ABDC	-	Australian Bomb Data Centre
ACC	-	Australian Crime Commission
ACID	-	Australian Criminal Intelligence Database
ACPR	-	Australian Centre for Policing Research
ACS	-	Australian Customs Service
AFP	-	Australian Federal Police
AFPA	-	Australian Federal Police Association
AFR	-	Advanced First Response
AGPSM	-	Australian Graduate School of Police Management
AGD	-	Attorney General's Department
AG's	-	Attorney General's Department
AIPM	-	Australian Institute of Police Management
ALEIN	-	Australian Law Enforcement Intelligence Net
APS	-	Australian Protective Service
ASIO	-	Australian Security Intelligence Organisation
ASO	-	Air Service Officer
ATO	-	Australian Taxation Office
AUSTRAC	-	Australian Transaction Reports and Analysis Centre
AQIS	-	Australian Quarantine and Inspection Service
CLEB	-	Commonwealth Law Enforcement Board
COO	-	Chief Operating Officer
CPP	-	Close Personal Protection
CTFR	-	Counter Terrorism First Response
D/C	-	Deputy Commissioner
DFAT	-	Department of Foreign Affairs and Trade
DPP	-	Director of Public Prosecutions
DIMIA	-	Department of Immigration, Multicultural & Indigenous Affairs
GD's	-	General Duties
IED	-	Improvised Explosive Device
JCLEC	-	Joint Criminal Law Enforcement Command
JSIG	-	Joint Strategic Intelligence Group
LECP	-	Law Enforcement Co-operation Program
NCA	-	National Crime Authority
NICLE	-	Nationally Integrated Criminal Law Enforcement Model
NIDS	-	National Illicit Drugs Strategy
NMPU	-	National Missing Persons Unit
NSCC	-	National Security Co-ordination Centre
NSIT	-	National Strategic Intelligence Team
OSCA	-	Office of Strategic Criminal Assessments
OSA	-	Office of Security Assessment
PFA	-	Police Federation of Australia

PJC	-	Parliamentary Joint Committee
PSCC	-	Protective Security Co-ordination Centre
PSO	-	Protective Service Officer
SACPAV	-	Standing Advisory Committee on Commonwealth/State Co-operation for Protection Against Violence
SIDL	-	Security Intelligence and Diplomatic Liaison
TSOT	-	Trans-national Sexual Offences Team

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Introduction

Introduction

The Australian Federal Police Association sees itself as a professional law enforcement overseer. The Association strives to enhance the operational capability of the Australian Federal Police through representing its people, the law enforcement practitioners themselves.

The Australian Federal Police Association is an independent branch of the Police Federation of Australia (PFA) and is the sole component of the PFA with the experience and ongoing obligation to represent the interests of Commonwealth law enforcement employees and stakeholders. The Police Federation of Australia represents in excess of 40,000 Police employees nationally.

Since the introduction of the Workplace Relations Act, the AFPA has also utilised the Bargaining Agent provisions of the legislation, to allow us to represent a broader group of Commonwealth Law Enforcement Employees including Australian Protective Service Officers, Parliamentary Security staff and individuals within agencies such as the Australian Customs Service and the Australian Tax Office. The AFPA also represents the interests of employees with agencies such as the Australian Bureau of Criminal Intelligence, Australian Institute of Police Management and the National Crime Authority. The AFPA represents employees within the full spectrum of functionality of the Commonwealth Law Enforcement environment including Civilian Police Peacekeeping, the Air Service Officer program (so called sky marshals), ACT Community Policing, Forensic Services, Federal Police National and International Criminal Investigations and Protective Security to name but a few.

A.1 Terms of Reference - General Submission to the Inquiry

The AFPA welcomes this inquiry being conducted through the House of Representatives Standing Committee on Legal and Constitutional Affairs. The scope of the terms of reference for this submission have been fairly broadly interpreted against the terms of reference defined by the House of Representatives.

As Committee members would acknowledge, the scope of this submission could not hope to adequately address all matters referred in substance. As such, we have adopted the approach with our submission that we sought to canvass several substantial issues in detail rather than seek to comment across the broader spectrum of matters capable of being discussed.

The AFPA has sought to raise specifically in this submission some key concerns. Included are areas such as Drugs and Guns, Child Protection, Missing Persons, the proposal to establish an Australian Crime Commission, the Commonwealth activities in Forensic Services, Electronic and Fraud related criminal issues,

Protective security involving the Australian Protective Service and other aspects of Commonwealth interest.

In this section of the submission we have attempted to place some general commentary on the broader terms of reference for this inquiry. As has been noted elsewhere in this document, the AFPA would urge the Committee to determine that there is a need for an annual mandated oversight by the House of Representatives into the key elements, structures and resources of the Commonwealths interests with respect to law enforcement, crime and policing.

The AFPA has raised in previous submissions to the Parliament that we believe there should be ongoing Parliamentary oversight through a standing committee of agencies such as the AFP, APS, ACS and criminal investigation sections of Commonwealth agencies. It still seems an anomaly that the National Crime Authority was subject to oversight by a Parliamentary Committee and yet the main provider of its investigative capacity, the AFP, is not.

This recommendation is in no way intended to suggest that there are any particular concerns to warrant such oversight. Rather, the AFPA acknowledges a key aspect of this Inquiry about public fear of crime and believes this is best combated through appropriate public accountability and transparency by law enforcement.

The law enforcement environment is complex and has a myriad of agencies and structures that make clear accountability as to the Commonwealth response to crime very difficult to assess by an outsider or a member of the public. In the content of this submission the AFPA proposes to the Committee that urgent consideration be given to establishing an integrated structure to the Commonwealth law enforcement framework. This would provide a long term strategic response and performance measurement structure to deal with the emerging criminal environment that is currently lacking.

In a country with a relatively small population in global terms, it is not appropriate that the national co-ordination and response to criminal activity currently remains dispersed across a large number of layers, agencies and jurisdictions. Any serious consideration by the Commonwealth of issues relating to the combating of crime and its threat to the community must address structural issues arising from the broader law enforcement framework.

The AFPA believes that there remains substantial scope for greater efficiencies within the Commonwealth structures and a capacity to remove the expanding bureaucracy of the law enforcement framework. It concerns the AFPA that Operational activities and priorities are increasingly becoming subject to non-operational decision makers, non-operational organisational models and processes dominated by administrative complexity.

The detail of these matters would be best considered in a specific review by the Parliament of the Commonwealth structural response and while touched on in this submission and our proposal for a new model, does not seem a key matter for this Inquiry.

In more general terms the AFPA recognises the substantial increase in funding of the AFP by the Commonwealth Government in recent years and recognises the beneficial impact that this will have on addressing the Commonwealth response to crime. This submission does not seek to address resourcing issues relating to Policing as such, although many recommendations have resource implications.

The extent and impact and fear of crime within the Australian community is naturally pervasive, impacting daily on the lives of many within the community. Within the body of this submission, the AFPA has called for a bi-partisan approach to crime in the belief that this alone is the best strategy to reduce fear in the community. The use of crime as a general political tool at all levels of Government and across all political interests only exacerbates community apprehension and misunderstanding of crime.

In an environment that requires complex and at times sophisticated strategies to tackle ever more malevolent criminal threats to the Australian national interest, agencies and law enforcement strategies should not be dictated by lowest common denominator imperatives (often short term political objectives).

The average citizen does not differentiate between levels of government and jurisdictional responsibility when it comes to crime. Sadly this fact is often exploited politically. In almost every Federal election of recent times, all parties have discussed community policing policies for a national audience, when in general terms the Commonwealth has little or no role in such areas other than with respect to the ACT and then only as a result of a contract obligation.

The measures for the Commonwealth in countering and preventing crime can best be viewed in respect of the increasingly trans-national nature of organised criminal activity and the fundamental obligation the Commonwealth has in this area.

The expansion of the AFP activities in overseas locations has been a major success for Australia in a number of respects. Any further recognition of this and expansion of efforts in this area will only continue to benefit the national interest at all levels. Sadly the general public seem to have little if any understanding or knowledge of these activities.

UN Civilian Police peacekeeping, whilst not specifically referenced in this submission, has been a significant measure taken by the Commonwealth to enhance stability in Australian relationships with our neighbours in East Timor and other locations. As a facet of inter-governmental co-operation, the

deployments have achieved great respect for the Australian contribution and achieved greater recognition for the professionalism and effectiveness of Australian policing. Yet again, the efforts of these Police employees has often been forgotten against the prescient military profile, in spite of the fact that AFP officers in East Timor served un-armed, with great courage, and in the very worst circumstances imaginable.

In more general terms, the Commonwealth is at its best in combating crime when co-ordinating national efforts, providing educational capacity to inform the public, and when providing the infrastructure to provide a national defence against trans-national criminal activities (such as people smuggling , drug importations and child exploitation).

The types of crimes committed against Australians and others will continue to evolve with technology and the expansion of a globalised community. As a country we are no longer immune from international trends in crime and with faster and more effective communications and transport infrastructure, time is a commodity that is ever changing.

Perpetrators of crime and motives for their actions are as many and varied as could be imagined. With the motive spectrum spanning everything from "profit motive" to "cultural" and "thrill based" imperatives the perpetrators of crime are reflective of the diverse nature of the Australian and international community. Many crimes have their own demography and the sophistication available within Australia to collect and analyse data on such matters is substantial. Naturally the access to detailed data is only a facet of an appropriate response to crime and often responses by Government will be dictated by other factors.

Fear of crime in the community is often out of proportion to the reality of it's threat to the average person. In many respects the capacity for the media to make the worst excesses of humanity accessible to the broader community on a daily and greater basis, serves only an expansion of fear and loathing.

The impact of being a victim of crime and fear of crime is becoming better understood by both law enforcement employees and the broader community. Empathy with victims has increased in recent years although it remains to be seen in the longer term what impact this will have on policy making.

Strategies to support victims and reduce crime are impacted on by increasing the delivery of better support services to victims. This area can be improved at all levels but is certainly better than in historical times. In specific terms it is worth noting that sexual assault is slowly becoming better understood within the broader community for its impact and human cost and this will have only a positive impact on reporting of incidents and a more effective response by Police services. The same can be said for child sexual exploitation, although the AFPA believes there is still great scope to increase activity in this area.

Effectiveness of sentencing is a debate that often rages in all jurisdictions. The AFPA supports appropriate sentencing where it can be seen to provide value to the efforts of Police in conducting investigations. It can still be disappointing to Police employees when they see sentencing outcomes that do not seemingly fit the crime or validate the effort involve in securing the prosecution. However, the AFPA supports the independence of the judiciary to make determinations based on available evidence rather than the increasing trend to consider legislatively imposed sentences. The professional independence of a Police officer and a member of the judiciary must remain fundamentally free from the political process if the society is to retain faith the institutions of the law.

The AFPA commends this submission to the Inquiry in the hopes that Community safety and policing priorities may benefit from the perspectives and recommendations presented.

A.2 The Australian Federal Police

The purpose of this inquiry is to investigate crime, its impact on the Australian community and the Commonwealth response. As the premier law enforcement agency of the Commonwealth, the Australian Federal Police naturally play a front line role in any effective strategy to counter and prevent crime against the Australian community. To assist the deliberations of the Committee the AFPA submits that long term strategic consideration must be given to the role and future of the AFP and the Commonwealth infrastructure in the law enforcement environment.

It is the contention of the AFPA that any such inquiry must also fundamentally consider the structure of the Commonwealth law enforcement response and the role played within that environment by the Australian Federal Police.

A.2.1 Original Role of the Australian Federal Police

The AFP was formed in 1979 based largely on the recommendations made by Sir Robert Marks in his review conducted in 1978. Following that review the AFP was formed under the provisions of the Australian Federal Police Act 1979.

When the Australian Federal Police Bill was presented to parliament, the broad functions of the AFP were prescribed in that Bill. Upon presentation, the then Minister for Administrative Services stated that those functions were:

“In the main they provide for the functions associated with the policing of the Australian Capital Territory, the investigation of offences against the Commonwealth and the protection and safeguarding of the Commonwealth’s interests.”

It can therefore be seen that as long ago as the formation of the AFP, the government envisaged that the AFP would take in a very wide and varied area of responsibility within the Commonwealth law enforcement and investigative sphere.

To properly consider the Commonwealth interests with respect to crime and its impact on the Australian community, it is relevant to look at a brief overview of the historical development of the Australian Federal Police.

A.2.2 Australian Capital Territory Police (1927-1979)

The ACT Police came into being on 28 September 1927 when ten members of the Commonwealth Peace Officer Guard were sworn in to the new force under Major (Later Lieutenant Colonel) Harold Jones, the Director of the Commonwealth Investigation Branch, Superintending Peace Officer and Chief Officer of the Federal Capital Territory Police.

The ACT Police were first known as the "Commonwealth of Australia Police" or the "Federal Capital Territory Police". The name was officially changed to the Australian Capital Territory Police in 1958 when a new Commonwealth Police Bill was presented to Federal Parliament. This bill proposed a new force comprising members of the Peace Officer Guard and the Commonwealth Investigation Service.

The organisation existed until March 1975 when it was amalgamated with the Northern Territory Police and the Commonwealth Police to form the short lived Australia Police.

The ACT Police then came back into being until its' permanent amalgamation into the Australian Federal Police along with the Commonwealth Police and the Federal Bureau of Narcotics in 1979.

The ACT Police was known variously as The Federal Capital Territory Police, The Commonwealth of Australia Police and the Commonwealth Police at different stages of its history.

A.2.3 Peace Officer Guard (POG) (1925-1960)

The POG came into existence in 1925 after the NSW Police refused to serve Commonwealth warrants on striking dockers.

The POG were the uniform element of Commonwealth law enforcement until its' eventual amalgamation with the Commonwealth Investigation Service to form the Commonwealth Police in 1960.

A.2.4 Defence Establishment Guard (DEG) (1935-1939)

The Defence Establishment Guard was formed under the Peace Officer Guard Act in 1935 after civilian watchmen went on strike along with the civilian workers at munitions factories.

The Defence Establishment Guard was absorbed by the Peace Officer Guard in 1939 at the outbreak of World War Two.

A.2.5 Billy Hughes Commonwealth Police (1917-1919)

In November 1917 amidst a divisive debate about conscription, the then Prime Minister, William Morris Hughes, while addressing a crowd during a train stop at Warwick, Queensland was hit by an egg thrown by a bystander.

The local police sergeant, Kenny, refused to take action against the offender when ordered to do so by Hughes. He inquired as to what authority the order was under. When Hughes replied that he was the Attorney General, Sergeant Kenny replied that he was answerable to the Government of Queensland, not the Commonwealth.

This incident is said to have inspired Hughes to form the Commonwealth Police. The first Commonwealth Police were formed in 1917 by Prime Minister Billy Hughes under the War Precautions Act.

In 1919, as part of a re-organisation, the Commonwealth Police became known as the Special Investigations Branch, which was later re-named the Investigations Branch and later still the Commonwealth Investigations Branch.

A.2.6 Commonwealth Investigations Branch (CIB) (1919-1945)

The CIB was the eventual successor of the Billy Hughes Commonwealth Police. The CIB existed between 1919 and 1945. As an organisation, the CIB was responsible for the investigation of breaches of Commonwealth law and the monitoring of foreign nationals in Australia. The intelligence on these aliens was so good that all of them were interned within three days of Australia entering the war. The CIB also conducted counter-espionage work during World War Two. In 1945, as a result of the Pinner Report into post war public service, the CIB was amalgamated with the Commonwealth Security Service to form the Commonwealth Investigation Service.

A.2.7 Commonwealth Security Service (CSS) (1941-1945)

Formed as a part of the British Empires intelligence network, the Commonwealth Security Service came into being in 1941. It carried out investigations and counter-espionage work as a "go-between" agency for the Commonwealth Government, State Governments and Police, the armed forces and the Allies.

In 1945, its' functions and remaining personnel were absorbed into the Commonwealth Investigations Branch, the new organisation being known as the Commonwealth Investigations Service.

A.2.8 Commonwealth Investigation Service (CIS) (1945-1960)

The CIS was the primary Commonwealth law enforcement agency and intelligence service in the immediate post war period. The Commonwealth Investigation Service existed between 1945 and 1960. In 1949, the functions of the former Commonwealth Security Service were separated into the new Australian Security Intelligence Organization (ASIO). In 1960, the CIS amalgamated with the Peace Officer Guard to form the Commonwealth Police.

A.2.9 Commonwealth Police (COMPOL) (1960-1979)

This organisation was the third Australian agency to be known as the Commonwealth Police. The previous two, being Billy Hughes' Commonwealth Police and the ACT Police.

The force was made up of plain clothes detectives from the Commonwealth Investigation Service and the uniform members were from the Peace Officer Guard.

The Commonwealth Police existed between 1960 and 1975, when it was briefly a part of the Australia Police. It then carried on its' functions until the final amalgamation with the ACT Police and the Federal Bureau of Narcotics in 1979.

A.2.10 Australia Police (1975)

The Australia Police Bill went before Parliament in March 1975. The new force was to be an amalgamation of all Commonwealth Police Services into one agency. The Services in question were the ACT Police, the Commonwealth Police and the Northern Territory Police. The Bill was due for its' second reading on the 11th of November 1975, the day the Whitlam Government was dismissed by the Governor General. The Bill was later rejected by the Fraser Government and the three Police services returned to their former roles.

A.2.11 Federal Bureau of Narcotics (FBN) (1969-1979)

The Federal Bureau of Narcotics was established as part of the Department of Customs in 1969. The role of the FBN was to combat the growing international drug trade. The FBN established liaison posts around the world to cooperate with overseas law enforcement agencies in sharing intelligence that could be used against international drug traffickers. Its functions and staff were amalgamated into the AFP in 1979.

A.2.12 Australian Federal Police (AFP) (1979 -)

The AFP came into existence on October 19, 1979 as the result of the amalgamation of the ACT Police, the Commonwealth Police and the Federal Bureau of Narcotics. In 1984, the Protective Services Component of the AFP was separated to form the Australian Protective Services.

The AFP is a statutory body established by the Australian Federal Police Act 1979 (AFP Act). The creation of the Federal Police was the recommendation of the report of Sir Robert Mark in April 1978, to the Minister for Administrative Services. The then Government believed that the establishment of a single Federal Police would provide a basis for more effective co-operation and co-ordination of resources in the Commonwealth arena.

The AFP enforces Criminal laws on behalf of the Commonwealth including the provision of police services in relation to property of the Commonwealth (including Commonwealth places) and property of the authorities of the Commonwealth and the safeguarding of Commonwealth interests. The AFP also provides Close Personal Protection (CPP) for certain individuals including Federal Court Judges, foreign Diplomatic representatives, dignitaries and Federal Parliamentary representatives.

A.2.13 Australian Protective Service (1984 -)

The Australian Protective Service was established in 1984 from the AFP and it saw those functions of the AFP removed. The APS is responsible for the protection of; property in which the Commonwealth, a foreign country or an international organisation has an interest in, persons holding office under the Commonwealth, their families and internationally protected persons. The APS also operates some functions in the contestable private sector area. With the sale of Australian airport facilities the APS has contracted for the provision of security services to the airport operators.

As a key contract function the APS retains provision of Counter Terrorism First Response (CTFR) at airports around Australia and has trained and deployed the Air Security Officers required by the Commonwealth in response to the September 11 events. Increasingly, the APS has deployed highly trained professional security personnel with much of its workforce being previously employees of the AFP, State Police services and the Defence force.

A.3 The Role of the AFP Today

In 2002 the main objectives of the AFP are to:

- Strengthen global law enforcement and criminal intelligence cooperation in ways which advance Australia's interests;
- Work with partner agencies to promote a secure regional and global environment and enhance Australia's security by combating trans-national and organized crime, illegal immigration and illicit drug trafficking;
- Maintain a financial environment hostile to money laundering, major crime, tax evasion and fraud on the Commonwealth by disrupting, dismantling and thwarting criminal activities and organized criminal enterprises;

- Contribute to domestic and international confidence in Australia’s economic, financial and law enforcement systems;
- Increase levels of compliance with Australia’s laws through investigation of criminal offences on behalf of Commonwealth agencies;
- Provide community policing to the ACT, Jervis Bay and Island Territories;
- Provide law enforcement assistance, community policing to the Asia Pacific region and to provide peacekeeping and peace monitoring as part of United Nations contingents; and,
- The Commonwealth Government has also outlined further amendments to the role and function of the AFP through the determination to make the Australian Protective Service an operating division of the AFP and by the establishment of the Australian Crime Commission, through the amalgamation of the Australian Bureau of Criminal Intelligence (ABCI), the National Crime Authority (NCA) and the Office of Strategic Criminal Assessments (OSCA).

A.3.1 Alternative Capability Models For The Australian Federal Police

Some in Government would argue for an increase in specialisation for the AFP with the shedding of functions such as Protection, Community Policing/Peacekeeping, and even Drug Enforcement thereby forming a “Federal Bureau of Investigation (FBI)” type model for the AFP with it only conducting Federal investigations. Such a model will lead to an array of other federal law enforcement agencies being developed with similar functions to the US Drug Enforcement Administration (US DEA), US Secret Service (USSS) and US Marshal Service (US Marshals) etc.

At the other end of the spectrum it has been argued that the AFP should not just keep its current jurisdictional responsibilities but reduce the current compartmentalization that exists within federal law enforcement. It is argued that the AFP should expand its role to include administrator and coordinator of all federal criminal investigations plus expand its role in providing law enforcement & community policing/peace keeping assistance for the Asia-Pacific region.

Others claim no change of function is necessary but that the AFP still lacks adequate funding and resources for its current role.

Set out below is a Law Enforcement comparison chart. Interestingly, the AFP Model is almost identical to the Royal Canadian Mounted Police (RCMP) model. The RCMP differs from the AFP in that it is directly responsible for criminal investigations in relation to Customs & Excise,

Immigration, Quarantine and coastal enforcement as well as protection of Consular & VIP premises including the Prime Minister and Governor General residence.

AFP officers have jurisdictional powers under the relevant Federal Acts similar to the RCMP but currently do not perform those extra functions.

Comparison of Australian, Canadian and US Law Enforcement Agencies									
	AFP	NCA	APS	FBI	DEA	Secret Service	US Marshals	RCMP	MPS
Organised Crime					Partial				Partial
Govt. Agency Fraud									Partial
Financial Org. Fraud/ Counterfeit Currency									Partial
Commercial Crime									Partial
Electronic Crime									Partial
Corruption									Partial
Drugs									Partial
People Smuggling									Partial
Customs & Excise/ Coast Enforcement									Partial
Proceeds of Crime					Partial				
VIP Protection			Partial				Federal Judiciary		
Consular & VIP premises Family Court	Partial						Federal Courts		
Witness Protection									
National Security	Partial								
Domestic Terrorism	Partial								
International Liaison									
Regional LE/ Peace Keeping									
Community Policing				Partial					

When considering emerging criminal activity affecting Australia and anticipated to affect Australia in 2002 and beyond it is interesting to note that those criminal activities are already within the RCMP investigative charter:

- E-crime
- Commerce crime
- People Smuggling
- Customs and excise and prohibited imports not declared to Customs
- Coastal enforcement in relation unauthorized entry between immigration and custom points
- Community policing contracts
- Peacekeeping and International Liaison
- Youth Services

A.3.2 Current Capabilities Of The AFP

The AFP operates in a volatile and dynamic environment, consequently the deployment of resources can and does vary considerably throughout the year. There is no one deployment that can be used as a realistic “base reference” which would be the most efficient and effective at all times.

The AFP has organized its functions on the basis of “Operations” and “Commercial”.

The main activities undertaken by the AFP are:

Operational

- Economic Crime
- Special Investigations
- Organized Crime
- Trans-national Crime/ International Drug Trafficking
- Money Laundering
- Community Policing
- Protective Security

Commercial

- Commercial and Operational support

A.3.2.1 Economic Crime

A major role of the AFP is the investigation of crimes that have a major impact on Commonwealth programs, other agencies’ interests or legislation.

The Crimes Act 1914(Cmwth) provides guidance and distinguishes between indictable offences and summary offences.

The Fraud Control Policy of the Commonwealth provides that the AFP should conduct all investigations that are directed towards prosecutions under the Crimes Act 1914, subject to three exceptions:

- a) Agencies which prosecute fraud cases under their own legislation should continue to investigate matters where the Crimes Act is considered more relevant and the Director of Public Prosecutions (DPP) is satisfied that the prosecution brief does not require AFP involvement
- b) Agencies which can satisfy both the AFP and the DPP that they have the capacity and capability to investigate criminal cases
- c) Matters involving multi-jurisdictional organized crime referred to the NCA.

This provides guidance in determining whether a particular matter, fraudulent or otherwise, is of sufficient seriousness that it should be referred to the AFP for investigation.

The policy directs Commonwealth agencies to consult with the AFP to determine whether a matter is appropriate for referral and specifies criteria, which assists in assessing the seriousness of the matter.

Matters appropriate for referral include:

- Significant monetary or property loss to the Commonwealth or its agencies
- Exploitation or attempted exploitation of a Government program, project scheme, or allocation
- Matters involving Commonwealth officers, employees or persons engaged on contracts to the Commonwealth
- Organized or conspiratorial criminal activity
- Bribery or corruption of public officials or persons performing a duty on behalf of the Commonwealth or a Commonwealth agency, including Members of Parliament
- Matters affecting the security, standing or integrity of the Commonwealth or its agencies, resources and interests
- Matters affecting relations between the Commonwealth, State or local governments or the national or international interests of the Commonwealth
- A sustained course of conduct or activity over a protracted period of time a matter which is known or suspected to involve criminal activity committed on more than one agency of the Commonwealth

- The existence or generation of criminal intelligence likely to be of value to the AFP in its role as the Commonwealth's primary law enforcement agency

A.3.2.2 Special Investigations

The AFP receives a significant number of referrals which are of a sensitive and/or complex nature and which may breach Commonwealth law or impact upon Commonwealth interests. Generally, these matters are referred to the Minister for Justice by the relevant Ministers, who then refers them to the AFP.

Examples of special investigations referred through the Minister are:

- Allegations concerning paedophile activity in the Department of Foreign Affairs and Trade
- Allegations into electoral fraud by political parties
- Allegations of fraud or corruption against Members of Parliament and other holders of public office

The nature of these investigations is unpredictable and may be protracted. They are often resource intensive, particularly where there are complex issues involving overseas inquiries.

Because of the often politically sensitive nature of these special referrals, they are closely monitored by AFP Head Office to ensure that statutory reporting obligations are complied with.

A.3.2.3 Organised Crime

The AFP has directed its efforts into the investigation of those serious offences which cause significant harm to the Australian community and which are within its legislated functions.

This means that the AFP does not investigate the street level manifestation of organized crime such as prostitution and street level drug dealing, which are matters for the State and Territory police services. The AFP concentrates upon particular elements such as major drug importations, the sex slave industry and money laundering. It focuses on the connections between Australian and overseas criminal enterprises.

A.3.2.4 Trans-national Crime/ International Drug Trafficking

In the last decade new criminal organizations and networks have come to fruition in Australia. With the restrictions of national borders declining and the mobility of criminals increasing, crime trends evident for some time in other parts of the world are now appearing in our country. Criminal organizations in Australia and throughout the world have increased in size, sophistication, mobility, and efficiency. They are quick to harness developing technology to enhance criminal activities and to launch new criminal enterprises.

According to the Office of Strategic Crime Assessments, the growth of trans-national crime has been the most significant development in criminal activity over the past decade. Whether it is narcotic or synthetic drug importations, e-commerce fraud, corporation fraud, tax evasion, copyright offences or money laundering, child prostitution, sex slavery or paedophilia. Criminals now have electronic and travel access to enable them to commit the crime in numerous countries whilst their illegal gains are remaining outside law enforcement jurisdictions.

There is ample evidence that various organized criminal enterprises operating at the international level are now forging closer working relationships in areas of mutual dependence. As with any business enterprise, they are seeking the greater profitability afforded by larger world markets.

Not only are such activities conducted across the political borders between countries, states and territories, but also across legal, cultural and religious boundaries.

The AFP's jurisdiction is quickly becoming Australia's borders and the rest of the world. Trans-national crime is a threat to national security. The economic, political and social implications for Australia are almost as serious as a military invasion.

A.3.2.5 Money Laundering

The AFP conducts money-laundering investigations but most matters are as secondary enquiries coming out of other principle investigations.

A.3.2.6 Community Policing

The AFP provides policing services to the Australian Capital Territory (ACT) in accordance with an arrangement between the Commonwealth Government and the ACT Government. The ACT funds the community-policing component of AFP activities in the ACT Region whilst the Commonwealth funds those activities performed in support of the Commonwealth.

The AFP also provides ongoing policing services to the Island Territories and regional community policing assistance to the Asia Pacific region.

A.3.2.7 Protective Security

The AFP provides protective security services to individuals and interests identified as at risk by the Commonwealth Government or the AFP. It provides security to very important persons (VIP), federal parliamentarians, internationally protected persons and to Judges of the Family Court of Australia.

It also provides intelligence to other police services via the Australian Bomb Data Centre (ABDC) and Security Intelligence and Diplomatic Liaison teams (SIDL).

It administers the National Witness Protection Program and ensures the security of witnesses for the AFP and other law enforcement agencies.

It contributes to security planning of special events.

The nature of the AFP relationship with the function of Australian Protective Service and its integration into the AFP are dealt with as a separate section of this report.

A.3.2.8 Commercial and Operational Support

“Commercial” is a composite of Operational support tasks, as well as activities traditionally associated with corporate support.

Traditional corporate activities include administrative support, IT, Operations monitoring and reporting, human resources, personnel, finance, transport, communications, accommodation, library, registry, and archives etc.

Operational support tasks include functions such as the Documentary Evidence, Fingerprint Examination, Forensics and Electronic Crime. It also includes the Strategic Intelligence function, Target Development and the co-ordination and management of Operations. These tasks are all clearly operational tasks, but labelled with activities traditionally associated with corporate support.

A.4 Integrity and Anti-corruption Measures for AFP Personnel

All Operations of the AFP are governed by three over-arching common principles:

1. To be ethical and to work efficiently as a motivated, talented and flexible team in which each individual has the opportunity to realize his or her potential.
2. To embrace continuous improvement as a work ethic.
3. To work with, and be trusted and respected by our partners and clients in a united effective law enforcement effort.

These principles and values guide all aspects of AFP activities and set the standards for conduct in the workplace.

If the AFP is to work with, be trusted by its partners and maintain public confidence, it has to be free from corruption and operate according to the highest professional standards. The AFPA has supported all initiatives in this area.

In 1989, The Government introduced legislative amendments to the Australian Federal Police Act to eradicate and prevent any corrupt practices amongst its personnel.

The amended Act provided for existing and former AFP personnel to lose certain Superannuation rights and benefits and imprisonment for twelve months or greater if convicted of an offence involving corruption or if found guilty of a relevant disciplinary offence and dismissed from the AFP.

Coupled with the loss of entitlements was the replacement of life tenure with a fixed term appointment system (in most cases for a term of five years) for all AFP personnel. The system also enabled the Commissioner not to re-appoint personnel who were no longer contributing or able to effectively contribute to the organization's goals. While this decision was non-appealable, to ensure due process and natural justice occurred, the AFP with the AFPA established an internal review panel to assist in the decision-making process.

Further, in the fight against corruption during 1995-2000 the AFP has:

- Introduced random and voluntary illicit drug testing for all personnel to provide an illicit drug-free workforce.
- Introduced a policy covering the inappropriate use and, abuse of pharmaceutical products by AFP personnel;
- Suspicion based drug testing where appropriate;
- Implemented an effective summary dismissal power that allows the Commissioner to expeditiously deal with the unsuitability of personnel separate from criminality and to remove from the organization those people in whom he has lost confidence;
- Introduced measures which will serve as disincentives to corruption: for example – all personnel are required to declare their private interests and are subject to financial auditing of those interests where necessary;
- Introduced through the AFP Complaints Act, a direction that all AFP personnel shall not without reasonable excuse, refuse or fail to furnish information, produce a document or other record or answer any question in relation to any complaint made against them. In addition, should any AFP personnel provide any information or make any comment that is knowingly false or misleading they shall be imprisoned for a period of six months;
- Introduced a professional reporting (whistleblower) policy;
- Introduced a mentor and confidants program.

In 2000 the AFP Act was amended to include legislated anti-corruption tools. Including:

S.2P Termination of employment by Commissioner subject to WR Act

S 40 K Termination of employment for serious misconduct

S 40 L Submission of financial statements by employees

S 40 M General testing of AFP employees or special members for alcohol and prohibited drugs

S 40 N Testing of AFP employees or special members for alcohol or prohibited drugs after certain incidents

Part VA Loss of superannuation for corruption offences

Part VA Loss of superannuation for relevant disciplinary offences

A.4.1 Case Categorization and Prioritisation Model (CCPM)

The CCPM is used nationally to evaluate criminal matters as they come to the attention of the AFP. The CCPM considers the nature of the alleged crime, the impact of the criminality involved, and the resources required for the AFP to investigate the matter. It categorizes cases by impact and priority.

Federal Crime and the Impact on Local Communities

Federal Crime and the Impact on Local Communities

In discussing resource issues it is important to appreciate the current criminal environment that the AFP faces along with the current responsibilities under the AFP charter.

Of equal importance is to make a valued assessment of the future criminal environment that the AFP faces along with future responsibilities likely to be put on the AFP by government over the next 3 years.

Budget allocations are all too often based on past expenditure with increases to cover standard variables such as anticipated inflation, purchasing costs, product costs and employee costs etc. With most organizations in the private and public sector there is no significant and unpredictable change to the organizations work environment that is not anticipated. The Computer and Electronics industry are clear exceptions due to the exponential growth in information technology.

The AFP is similar to the computer and electronic industry in that emerging organized criminal activity is also at exponential growth often due to criminal enterprises riding on the back of the latest electronic technology, or sudden moves by criminals to target Australia such as the recent European organized crime groups and the organized criminal enterprises involved in people smuggling, and unpredictable terrorist activity such as September 11th.

The criminal environment in the 21st Century is different to five years ago.

B.1 Commonwealth Investigations

The broad area of responsibility in relation to Commonwealth investigations can be categorized in terms of Narcotics Investigations, Organized Crime, Commonwealth Fraud, General Crime and Asset Recoveries.

B.2 Prohibited Imports - Narcotics Investigations Environment

The NIDS funding needs to be increased, as there is a direct correlation between the increased seizure of illicit drugs by the AFP and the increased NIDS funding.

The AFP's primary responsibility in the area of narcotics is the policing of the Prohibited Import provisions of the Customs Act 1901. The Commonwealth legislation relating to narcotics law enforcement is currently the subject of ongoing reviews, however there are no plans at this stage to alter the AFP's jurisdictional responsibilities in this regard.

Significant quantities of narcotics are being detected but the increase in seizure quantity is staggering as can be seen by the amounts seized by Federal Police over the last 8 years.

International drug trafficking generates as much as \$500 Billion dollars (US) per annum, of which approximately \$3.5 Billion dollars is generated in Australia.

Illicit drugs in all their forms continue to be a huge transnational law enforcement problem. The production and trafficking in synthetic drugs is one of the fastest growing, and most worrying trends in the region.

It is only now; following the government's "tough on drugs" initiative that the AFP can afford some target based pro-active investigations, but this function and budget allocation needs to be expanded over the next three years.

When comparing 1997/98 with 1998/99 and 1999/00, there has been an enormous increase in seizures of heroin, cocaine and amphetamines. Although this is an excellent result by law enforcement, it is also clearly frightening, in that such seizures have rarely led to an increase in price. Using the "supply and demand" formula, this would indicate that the quantity being imported into this country is so great that such seizures have not significantly reduced supply. The criminal enterprises have still been able to supply enough drugs to satisfy the demand of the drug users.

Drug Seiziures, Federal Agencies (1999/ 00 – 2000/01)

Type of Drug	1999/ 00		2000/ 01	
	Number of drugs seized	Weight (g)	Number of drugs seized	Weight (g)
MDMA	148	172,020	211	380,312
Amphetamine	117	58,859	101	96,383
Cannabis	637	18,110	719	103,437
Cannabis Resin	413	13,620	362	164,957
Cocaine	131	813,013	128	450,379
Hallucinogens	47	6,134	26	2,863
Heroin	78	495,007	79	249,268
NPSD	95	68,837	103	113,590
Other	53	11,669	89	124,475

Source: Australian Federal Police Annual Report

There is little doubt that the investigation of narcotic related crime is very resource intensive both in a human sense as well as a financial one. Investigations

of this type more often than not require a large amount of physical and electronic surveillance. Both round the clock physical and electronic surveillance can be very expensive but nonetheless vital.

By way of example, limited human and technological surveillance resources dictate that on most occasions when a controlled delivery operation is conducted, there is limited scope to maintain surveillance of the narcotics for a significant length of time.

Many members of the AFPA have expressed their concern that even with the NIDS funding the lack of human resources and the lack of high technological surveillance equipment has led to investigations not being continued and the drugs only being seized by the AFP and destroyed.

On the question of intelligence, it is the view of the AFPA that significant resources have been devoted to developing strategic intelligence projects resulting in valuable information concerning drug flows and trends.

However, it is also our view that this build up of strategic intelligence has little value if it is not complemented by an appropriate amount of tactical intelligence and capacity to deploy Federal Agents to follow up on intelligence leads.

The suggestion of AFPA members is that all too often the AFP relies upon its overseas liaison network and Australian Customs Service (ACS) for information concerning impending importations of narcotics, rather than quality, locally based information which taps directly into the operations of criminals within Australia.

Whilst the AFPA is not advocating that the AFP should investigate street level narcotic distribution with a view to building up appropriate levels of tactical intelligence, it does put forward the view that greater resources should be allocated in order to develop AFP members' access to this intelligence and the use of AFP strike forces, based on that intelligence directly targeting organised narcotics syndicates operating in the local community.

AFP members must be given greater opportunity to develop their own informants, work closer with the local communities and State Police at the local level. This is an untapped resource to counter domestic organized crime syndicates involved in narcotic importations and then supply. Currently an artificial barrier exists between law enforcement jurisdiction. Once narcotics are being sold on the street it becomes a State Police issue. With State Police resources being largely involved in reactive complaints from the police, the drug syndicates local operators become less likely to be under investigated by State Police. Ironically, the only charges available for "supplying" relate to state Anti drug Legislations with no equivalent federal offence.

AFP members have also raised concerns about inadequate federal legislation in regards to people being found to be supplying prohibited imports (drugs) or knowingly taking part in their supply. An inappropriate charge of possessing a prohibited import (drugs) does not represent the seriousness of the crime committed. Legislation change is required.

B.3 Prohibited Imports – Illegal Firearms, Explosives, Credit Card Fraud & Child Pornography

Under the Customs Act there are a range of prohibited imports that find their way onto Australian streets. Although Commonwealth offences the transfer of responsibility improperly falls into the State Police jurisdiction to enforce. The crimes not concerning the public relate to illegally importing goods. Under Schedule 1 and 1AA of the Customs Act. The list isn't legally including all forms of illegal drugs, illegal steroids, explosives, child pornography, firearms, counterfeit credit and debit charge cards, human body parts, radioactive material, military warfare items including combat vests and body armour and armour and specified knives, daggers and chemical compounds.

Again, once imported the only federal charge that can be laid against the individual within Australia is possession of a prohibited import. The organised criminal syndicate members within Australia can not be charged with the appropriate federal offence of supply as it does not exist.

B.4 DUMA Program: 2001 Summary

Much of the discussion on the link between drugs and crime is based on anecdotal evidence, or localized studies. More rigorous national collections are required for evidence-based policy-making purposes. The long term goal of DUMA is to overcome a significant limitation in Australia's national surveillance of illicit drug use by including detainees as a key group requiring ongoing monitoring of their involvement in illicit drugs and crime markets. DUMA data demonstrate that illicit drugs are widely used by police detainees at the specific sites, and around 48 percent have used illicit substances at or around the time of arrest. Furthermore, use of illicit is spread across a range of offending behaviour, although there tend to be stronger links between particular drugs and particular kinds of offences. The site-by-site tables provide more detailed information.

The institutions of the criminal justice system potentially represent key intervention points in the criminal justice system to focus on prevention, treatment and rehabilitation of illicit drug users. These data indicate the extent to which police detainees are in frequent contact with those institutions. The data show that 57 percent of detainees had a prior arrest in the past 12 months (excluding the current arrest) and these, 52 percent tested positive to either heroin, amphetamines

or cocaine. In terms of prior imprisonment, 20 percent of detainees had been in prison during the past 12 months. Of these, 59 percent tested positive to either heroin, amphetamines or cocaine. To gain better data on which interventions can be implemented, the Australian Institute of Criminology will be producing a number of reports from another study-The Drug Use Careers of Offenders (DUCO) project. This study will provide the most comprehensive information on drugs and crime among incarcerated offenders in Australia.

The law enforcement sector concerns itself not just with demand but also with the supply side of illicit drugs. To enact successful policies for intervening in illicit drug markets, long-term monitoring of those markets is required. Like all commercial markets for a major product, local markets are inextricably tied to global markets; it is not possible to understand one without the other. To understand supply it is necessary to understand where, how and when demand occurs and changes. As markets are where demand and supply converge, intervention strategies to tackle local illicit drug markets will effect both and will ripple upwards to the high end of the supply market. Similarly, factors that effect supply, if sufficiently effective, will ripple down to the local drug market. Furthermore, markets are potentially susceptible to manipulation by dealers at the low level and suppliers at the high level.

DUMA enhances understanding of the supply and demand for illicit drugs among detainees at the local level while at the same time providing comparable data across sites.

DUMA is affiliated with the International Arrestee Drug Abuse Monitoring (I-ADAM) Program. Members of this network are collecting comparable data in a range of countries including the United States, England, Chile and South Africa. This will enable comparisons of local illicit drug markets at an international level for the first time. The AIC produced a short bulletin ("Drug Use Amongst Police Detainees: Some Comparative Data") that has reported on the international data and is available from the AIC web site. In conclusion, DUMA represents research platform within the criminal justice system that potentially enables monitoring of supply and demand for illicit drugs at the local, national and international level.

Consistently across all sites, adult male and female detainees tested positive to a range of drugs regardless of the charge. Due to the small sample size, breakdowns of female offending drug use are not provided. Males detained for minor offences up to the most serious violent offences tested positive. The rates testing positive to cannabis will be higher than for the other drugs as the test can detect use up to 30 days whereas it can only detect use of benzodiazepines up to 14 days and, for the last two up to three or four days. These data are averaged across the sites but there are differences in the offence and the drug use profiles of the sites; readers should consult the site-by-site tables to determine the extent of variation from the average results presented below.

VIOLENT CHARGE: ADULT MALE DETAINEES

Those detained for a violent offence tested positive to a range of drugs:

- 25 percent to amphetamines;
- 25 percent to benzodiazepines;
- 57 percent to cannabis;
- 16 percent to opiates;
- 70 percent tested to any drug; and
- 45 percent tested positive to any drug excluding cannabis

PROPERTY CHARGE: ADULT MALE DETAINEES

Of those detainees whose most serious charge was property offending:

- 33 percent tested positive to amphetamines;
- 26 percent to benzodiazepines;
- 57 percent to cannabis;
- 23 percent to opiates;
- 77 percent to any drug; and
- 60 percent to any drug excluding cannabis.

DRUG OFFENCES: ADULT MALE DETAINEES

For those who were detained on a drug offence as their most serious charge:

- 44 percent tested positive to amphetamines;
- 19 percent to benzodiazepines;
- 69 percent to cannabis;
- 17 percent to opiates;
- 84 percent to any drug; and
- 55 percent to any drug excluding cannabis

DRINK DRIVING OFFENCES ADULT MALE DETAINEES

Of the people detained for a drinking offence as their most serious charge:

- 11 percent tested positive to amphetamines;
- 3 percent to benzodiazepines;
- 39 percent to cannabis;
- 8 percent to opiates;
- 49 percent to any drug; and
- 20 percent to any drug excluding cannabis

TRAFFIC OFFENCES: ADULT MALE DETAINEES

People detained for a traffic offence as their most serious charge tested positive to a range of substances:

- 34 percent to amphetamines;
- 12 percent to benzodiazepines;
- 57 percent to cannabis;
- 15 percent to opiates;
- 75 percent to any drug; and
- 53 percent to any drug excluding cannabis.

B.5 Recommendations**Recommendation B.1**

Greater use of resident Agents placed in high population coastal and country areas will assist in detecting organized criminal activity by accessing local community and local Police based knowledge.

Recommendation B.2

Amendments to the Customs Act 1901 to include the offences of “Supply prohibited import reasonably suspected of being imported” and “Knowingly take part in the supply of a prohibited import reasonably suspected of being imported”.

The Australian Crime Commission

The Australian Crime Commission

Recent months have seen a rigorous debate within the public arena on the establishment of an Australian Crime Commission. With legislation yet to be drafted, the following provides a perspective on the background and needs underpinning the need for the new agency. The AFPA proposes that careful consideration be given to the new legislation before it is passed through the Parliament. Getting this right is becoming increasingly crucial.

C.1 The Struggle to Establish a Proper National Intelligence Agency

In recent weeks the AFPA has been strongly lobbying the Federal and State Governments over the future construct of the Australian Crime Commission and the future of its component parts the Australian Bureau of Criminal Intelligence (ABCI), The Office of Strategic Criminal Assessment (OSCA) and the National Crime Authority (NCA).

The AFPA has become increasingly concerned with the agenda being mounted by some Senior NCA management to turn the new ACC agency into a new 9th Police Force built from the ashes of the NCA's inadequacies.

It is increasingly the AFPA view that the new agency must be constructed out of new, purpose built legislation and not cobbled together out of the current NCA Act. If the ACC is to be an effective force in the criminal law enforcement environment, it must develop from the effective elements of the NCA and the success of the ABCI.

In the process of lobbying it has also become increasingly clear the ABCI as an agency has failed to penetrate the thinking of either the political masters or many of the Police Commissioners charged with its oversight.

At least one Police Commissioner apparently believes that the ABCI only re-packages statistics sent by the State Services and issues them back with fancy covers. The AFPA believes that it is this shortsightedness that has seen the ABCI become largely irrelevant in the ACC debate to the benefit of the NCA. Within this submission we have detailed the Role and activities of the ABCI to assist the consideration of the intelligence aspect of the proposed ACC model. It is not considered necessary to detail the NCA in similar terms given its higher profile.

The AFPA is concerned that very few of the people we have spoken to actually had a view of what the ABCI was or does. This would explain much of the failure to grasp the need for the ACC to be an effective intelligence agency rather than purely an investigative one.

The AFPA has placed on the public record its views on the ACC exercise, our commitment to our members at the ABCI and NCA and our position as to the best practice model that can achieve the needs of the Australian community. The latest in principle agreement between the Commonwealth and the State/Territory Governments provide some indication that the debate is now back on track.

C.1.1 The Intelligence side of the ACC - What is the existing ABCI?

The Australian Bureau of Criminal Intelligence is a non-incorporated body that exists as a result of an inter-governmental agreement. All ABCI operational (sworn) staff are therefore seconded from a police service or other agency, as the ABCI cannot employ staff in its own right. Permanent employees are employed under section 37 which enables common place services to existing the AFP Act. Therefore all staff are subject to the integrity regime of the AFP.

C.1.2 Who are the ABCI clients?

The principal clients are Australian police services. Other clients include the broader Australian law enforcement community (Customs, Immigration, Environment Australia etc) as well as the international law enforcement community. Historically the ABCI has had limited liaison with defence and national security agencies. However, the link between criminality and national security issues (terrorism, September 11 and people smuggling) has witnessed a rapidly developing relationship between the ABCI and national security agencies.

C.1.3 What does the ABCI do?

The ABCI is an organisation that brings benefits to all governments within Australia, but especially to the Commonwealth. The ABCI is the only Australian law enforcement agency that is capable of:

- Securely communicating with all Australian police services;
- Coordinating a national response to either a criminal or national security threat that needs to utilise the resources of all police jurisdictions;
- Running, maintaining and continuously developing a national criminal intelligence database;

- Maintaining an environment in which police from all Australian police services and the Commonwealth are represented; and,
- Establishing a national dialogue on criminal intelligence through a range of forums. These forums include the Heads of Criminal Intelligence, Chemical Diversion Conference and the National Illicit Drug Reporting Format Conference. In addition a range of national and international gatherings dealing with fraud, child sexual abuse, violent and serial crime, organised crime and missing persons are also sponsored by the ABCI.

These capabilities will be integral to the future existence of the ACC.

C.1.4 What Does the ABCI Cost and Who Pays?

In recent years the ABCI has cost governments approximately \$6-7 million each year. This figure is a substantial reduction on the earlier budgets of the Bureau with financial resources being cut approximately by one third in 1996. The cost of the ABCI is shared by the Commonwealth and the states (including the Northern Territory) on an approximate 60/40 basis respectively. The Commonwealth allocated an additional \$11.4 million dollars over the next four years to improve ACID.

The ABCI received no additional funding for the 2000 Olympic Games or the post September 11 investigations despite playing a major role in both events. Australian police services constantly request the ABCI to expand its services in areas such as firearms, child sex offenders and property theft. Unfortunately these demands cannot be met due to limited resources.

C.2 Existing ABCI resources

C.2.1 Information Technology

The ABCI has some very powerful IT resources in conjunction with very limited human resources. The Bureau runs and maintains a sophisticated IT platform, the Australian Law Enforcement Intelligence Net (ALEIN). Law enforcement and national security officers throughout the world visit the ABCI to view this system. No other country has a system with the same degree of functionality. Other organisations view ALEIN as being better practice and are attempting to emulate the system within their own jurisdictions.

Given adequate resources it would be possible to make ALEIN available to all law enforcement and national security officers within Australia. ALEIN is also available to all AFP overseas liaison officers who have access to the AFP PROMIS network.

As part of ALEIN the ABCI offers two intelligence data bases. The first is the Australian Criminal Intelligence Database (ACID). ACID is the principal intelligence data base for all Australian police services with the exception of the AFP and NSW Police. All police services contribute intelligence in varying degrees to the system. However, much of the information is restricted to small access groups and some agencies are not actively contributing their information/intelligence despite repeated requests by the ABCI. This reluctance on behalf of some agencies, especially at the Commonwealth level to share intelligence not only assists criminality but also has the prospect of not detecting and preventing intelligence targets that may also be of national security interest. This concern must be addressed as a matter of priority within the new ACC structure.

C.2.2 Human Resources

The ABCI is staffed by approximately 65 officers from Australian police services at any one time. The bulk of these officers are from the AFP, with most jurisdictions only providing one officer to the ABCI. NSW is the exception seconding five officers. State police services may supply additional officers to national positions on a merit selection basis. The majority of ABCI officers are located within Canberra with one outposted officer in each of the mainland states.

Given the low level of staffing the ABCI has to carefully select which areas will attract analysis. At present the ABCI deploys:

- Four officers on organised crime
- Three officers on drug investigations
- Three officers on fraud and e-crime
- One officer on national missing persons
- Two officers on violent crime, including child sexual abuse
- One officer on terrorist issues.

These officers are assisted by intelligence support staff in project management, editorial assistance, statisticians and data entry. This totals an additional seven officers. The remainder of staff are deployed against a range of IT duties as well as corporate support.

It is important that staff at the ABCI come from police services for a number of reasons. Most importantly if there are concerns on corruption issues the officer can be quickly removed from the workplace by sending them back to their home force. Also of importance is the skills and knowledge sets that police employees, either sworn or unsworn bring to the ABCI. While these may in some cases be similar to that of other areas of the public sector it is crucial that intelligence staff are able to interpret government policy accurately into the law enforcement environment. Without a background in law enforcement this process is unlikely to happen smoothly with a subsequent dysfunctional outcome for both government and the community.

It is these unique issues that demand that the new ACC be established with a similar employment framework to the existing ABCI model. The existing ABCI function and future ACC model require the highest level of integrity by employees and accountability well beyond any protections created under employment through the Public Service Act.

The AFPA is firmly of the belief that the new ACC must demand the highest level of accountability of its staff, well beyond that of the existing NCA Act. For this reason we do not support the existing Act being utilised as the vehicle for the ACC and seek new purpose built legislation referencing the AFP as the Statutory Employer.

C.3 What Could the ABCI/ACC do?

With a minor increase in resources the ABCI, or its possible ACC alternative, could provide a 24 hour seven day a week service to clients, instead of the current nine to five, Monday to Friday service. Ideally the ABCI/ACC should be able to access all Australian police data so that any one jurisdiction only has to ask the ABCI/ACC for assistance instead of seven other jurisdictions.

Given access to data the ABCI/ACC must inevitably produce national criminal intelligence assessments, a product that is not really available to decision makers at this time. This would provide governments and senior law enforcement officers with timely and accurate data so that they could make more informed policy decisions.

The Police Federation of Australia (PFA) National Council previously resolved that the NCA public service investigators should not conduct criminal investigations as those functions should be the responsibility of Police not public service investigators. This equally applies to the ACC model.

C.3.1 Towards the New ACC

The AFPA has been lobbying for a restructure of OSCA, ABCI, and NCA into a national criminal intelligence agency and that the intelligence product developed should be provided to the appropriate Police Commissioner to investigate either alone or in charge of a multi agency team, if required. In April 2001 the AFPA submission to the Senate Inquiry into the AFP and NCA stated:

In 2002 the Government announced an amalgamation of the OSCA, ABCI and the NCA to be titled the Australian Crime Commission (ACC). The AFPA has been lobbying for the ACC not to be limited to organised crime intelligence but for it to develop strategic, operational and tactical intelligence in relation to all crime impacting on Australia.

The Attorney General is apparently intending to only amend the current NCA Act with employee conditions remaining under the Australian Public Service Act with no special integrity provisions or police professional accountability regime being attached to the ACC Act. The AFPA rejects this position outright and supports new specific purpose legislation being introduced.

The AFPA supports the ACC being a national criminal intelligence agency to provide intelligence product to the most appropriate Police Service to investigate individually or as a multi agency investigation, if appropriate.

The AFPA opposes the ACC having its own public services investigative section as that function should be the responsibility of Police Investigation Teams to ensure a further layer of transparency and accountability.

The Police Federation of Australia has already opposed the NCA conducting investigations on the basis that it is a Police function.

The AFPA believes that the personnel within the ACC must be subject to the same integrity and professional regime as all other Police Service sworn and non sworn employees.

The ACC should have a Board comprising of the AFP-APS Commissioner and State & Territory Police Commissioners. Other agencies such as ASIO, ACS, AGD, DPP ATO etc could advise the Board but not sit on it.

The ACC should have coercive powers and pro-actively collect intelligence about criminal trends, networks and criminal enterprises.

The ACC should utilise Australian Police service employees and special members (sworn & unsworn) on secondment agreements (up to 5 years) to give effect to its Corporate function within the ACC. They must be subject to the same integrity and professional regime as all other Police Service sworn and non sworn employees.

All employees of the AFP including sworn, non sworn, and special members, are subject to the rigorous AFP integrity and professional accountability regime. On behalf of the Commonwealth, the AFP could therefore supply on secondment a significant proportion of Corporate Administration and Intelligence Function personnel, from within and outside the AFP. Via the AFP special member status it could also supply specialists from other Commonwealth agencies, after those employees are approved as special members of the AFP and therefore subject to the rigorous AFP integrity and professional accountability regime.

The ACC should focus on criminal intelligence collection and should establish national criminal intelligence priorities. This nationally integrated criminal intelligence model should develop national criminal intelligence on all crime trends impacting on Australian policing and not be limited to organised crime references. This general intelligence will lead to the targeting of criminal enterprises by the ACC and appropriate Police services.

The ACC should utilise Australian Police service sworn members on short term detachment (for the duration of the specific investigation only) for specific criminal investigations. Those Police Investigation Teams should be under the control of the most appropriate Commissioner of Police, in consultation with the AFP Commissioner who represents the Commonwealths interest.

The intelligence product developed should be referred to the most appropriate Police Commissioner. The Police Commissioner of that service may request the formation of an ACC multi agency Police Investigation Team, if appropriate. Such multi agency Police Investigative teams would be under the control of the appropriate Police Commissioner.

The costs of the Police Investigative Teams should be reimbursed out of the ACC budget and not deployed without the prior authorisation of the appropriate Commissioner(s).

C.3.2 The ACC Board

The ACC Board should prioritise criminal targets based on intelligence analysis derived by the ACC. It should arrange lead agency control and composition of Police Investigation Teams.

The Chair of the Board must be (and has now been announced as) the AFP Commissioner representing the Commonwealths interests in a largely Commonwealth funded agency.

The Board should be responsible for;

- Determining priorities for the ACC's Intelligence Function, including Target Development, based on ACC national intelligence collection
- Overseeing the strategic direction of the ACC
- Ratifying use of the coercive powers by the ACC Criminal Intelligence Monitoring Team (CIMT) in relation to Intelligence Functions, including Target Development
- Arranging appropriate long term secondment of Police Service employees and special members for Corporate Administration and Intelligence Functions, including Target Development
- Arranging appropriate Police Service short term detachment for ACC Police Investigation Teams for criminal investigations formed as a result of successful Target Development outcomes;

C.3.3 Criminal Intelligence Monitoring Team

The CIMT should establish intelligence teams and authorise the use of the coercive hearing powers to assist intelligence teams in support of the ACC's intelligence function. The CIMT should comprise the Chair of the Board, the Head of the ACC and any other member of the Board representing an agency participating in, or likely to participate in a criminal investigation formed as a result of successful Target Development outcomes. It should report to the Board in relation to outcomes.

C.3.4 Corporate Administration, Intelligence Function & Police Investigation Teams

- "Corporate Administration" means ACC People and Finance administration and management functions. It is envisaged that Corporate Administration would be undertaken by in-house non sworn members and special members seconded from a police service or

agency on long term secondment arrangements (Up to 5 year agreements)

- “Intelligence Function” means a project approved by the Board for intelligence purposes. It is envisaged that the Intelligence Function would be undertaken by in-house specialist investigators, analysts, lawyers, accountants, who are members and special members seconded from a police service or agency on long term secondment arrangements (Up to 5 year agreements)

- “Police Investigation Team” means a team of sworn members investigating a person or persons suspected of having engaged in serious or organised crime identified as a result of outcomes of the ACC Intelligence Function. It is envisaged that it would cover investigation, arrest and prosecution. It is envisaged that Police Investigation teams would comprise of sworn police members responsible to the appropriate Police Commissioner (multi agency teams would consist of secondees to that investigation team from other agencies or police services). The resourcing of that Police Investigation Team would be the responsibility of the appropriate Police Commissioner. The costs of such investigation would be reimbursed to that service out of the ACC budget allocation and Proceeds of Crime.

The Head of the ACC should be responsible for:

- Maintaining an overview of Intelligence Functions and Police Investigation Teams to ensure a coordinated and consistent national approach
- Advising the Board in relation to the Intelligence Function and Police Investigation Teams outcomes
- Advising the Board on the changing priorities
- Advising the Board on the utilisation of the ACC coercive powers.
- Employing core staff utilising S.37 of the AFP Act

C.3.5 Intelligence Function

The ACC’s coercive hearing powers and other powers (including surveillance, controlled operations, obtaining documents etc) should be available in support of the ACC Intelligence Function.

There should be in-house personnel on long term secondment to support the Intelligence Function supplemented as required by short term detachment of police employees.

C.3.6 Police Investigation Teams

The ACC's role in relation to assisting Police Investigation Teams should not detract from its ability to develop any project within its Intelligence Function.

The ACC should have the capacity to participate in, but not lead Police Investigation Teams.

The ACC Board should arrange the establishment of Police Investigation Teams and specifically authorise the Police Investigation Teams to have access to coercive hearing powers upon a request of assistance from a Police Commissioner. Those Police Investigation Teams would then be generally authorised to apply to a Coercive Hearings Officer and that independent person would then assess requests on a case by case basis.

C.3.7 Use of Proceeds of Crime to supplement ACC costs

The Proceeds of Crime Bill 2002 and relevant State and Territory legislation should be utilised for the purpose of seizing criminal assets identified as a result of the ACC.

The AFPA envisages the Commonwealth legislation being strengthened to include the use of Telephone Intercept material in relation to civil forfeiture and the inclusion of unexplained wealth declarations. Further, that forfeiture funds be directed into the administration and operation of the Bill including the reimbursement of Police Investigation Teams expenses back to the relevant jurisdictions involved in specific investigations.

C.3.8 Coercive Powers

Authorisation for the use of the ACC's coercive powers should be given to CIMT (Chair of the Board, Head of the ACC and any other member of the Board participating or likely to participate, in the criminal investigation).

Such authorisation should be ratified by the ACC Board at a later date.

The authorisation of the use of coercive powers should be kept separate and distinct from those requesting those powers. The Coercive Hearing powers should be vested in an independent statutory officer or officers. Those Coercive Hearing Officers should assess requests from the ACC Intelligence Function or from Police Investigation Teams on a case by case basis.

Currently the use of the coercive powers and most investigative tools are predicated on the investigation of a criminal offence or offences. The ACC legislation must allow coercive and other powers to be used for intelligence purposes such is the case with numerous State Commissions of inquiry.

C.4 PFA/AFP A NCA/ACC Policy

The following is the final Police Federation of Australia Policy as endorsed at a recent National Executive meeting:

- “The ACC have an intelligence & investigative function performed by sworn police and the ACC be staffed by employees of police services on secondment from all jurisdictions.
- That the ACC have a judicial officer with the power to exercise the coercive powers of the ACC & to conduct hearings but not be involved or have control over the operational or investigative arm of the ACC
- The operational and investigative arm of the ACC be under the control of a senior police officer (the Chief Executive Officer) with extensive investigative experience. This position could be staffed on rotation among the Australian Police Forces or on selection by the ACC Board
- The precise roles, relationships & responsibilities of the judicial officer and the CEO be the subject of further discussion
- The Boards of the ACC be made up of all Police Commissioners plus the Judicial Officer of the ACC. The Commissioner of the Australian Federal Police be the Chair of the Board & the CEO report directly to the Board
- An Intergovernmental Committee of State and Commonwealth Ministers provide a Ministerial oversight of the Board
- Commonwealth groups such as Customs, the Australian Securities and Investments Commission, Attorney General’s Department, the Director General of Security, the Australian Crime Commission, Taxation and any State or Territory based agency deemed appropriate, be used to give advice to the ACC Board to assist them in their deliberations
- That legislation be enacted to allow for the sharing of information between the ACC and other federal agencies in circumstances where the information would assist in an ACC investigation and current law prevents the easy sharing of such information.”

C.4.1 Intelligence Function

The ACC’s coercive hearing powers and other powers (including surveillance, controlled operations, obtaining documents etc) should be available in support of the ACC Intelligence Function.

C.5 Conclusion

The existing ABCI has done a great deal on a very limited budget. The current funding of the Bureau does not allow governments, especially the Commonwealth to maximise their policy options. In essence governments expect the existing ABCI to do for criminal intelligence what ASIO does for national security on a fraction of the budget. If this situation continues under the proposed ACC, criminals and possibly terrorists will be the only ones to benefit.

C.6 Recommendations

Recommendation C.1

The new ACC be established with a similar employment framework to the existing ABCI model,

Recommendation C.2

The new ACC must demand the highest level of accountability of its staff, well beyond that of the existing NCA Act.

Recommendation C.3

The ACC be created out of new purpose built legislation referencing the AFP as the Statutory Employer.

Recommendation C.4

The ACC should be able to access all Australian police data so that any one jurisdiction only has to ask the ABCI/ACC for assistance instead of seven other jurisdictions.

Recommendation C.5

The ACC must produce national criminal intelligence assessments for decision makers. This would provide governments and senior law enforcement officers with timely and accurate data so that they could make more informed policy decisions.

Recommendation C.6

The ACC should not have its own investigative section (other than Police secondees) as that function should be the responsibility of seconded Police Investigation Teams to ensure a further layer of transparency and accountability.

Recommendation C.7

The ACC employees must be subject to the same integrity and professional regime as all other Police Service sworn and non sworn employees.

Recommendation C.8

The ACC should focus on criminal intelligence collection and should establish national criminal intelligence priorities.

Recommendation C.9

The ACC should develop national criminal intelligence on all crime trends impacting on Australian policing and not be limited to organised crime references;

Recommendation C.10

The ACC should have a Board comprising of the AFP-APS Commissioner and State & Territory Police Commissioners. Other agencies such as ASIO, ACS, AGD, DPP ATO etc could advise the Board but not sit on it.

Recommendation C.11

The ACC should have coercive powers and pro-actively collect intelligence about criminal trends, networks and criminal enterprises.

Recommendation C.12

The ACC should utilise Australian Police service employees and special members (sworn & unsworn) on secondment agreements (up to 5 years) to

give effect to its Corporate within the ACC must be subject to the same integrity and professional regime as all other Police Service sworn and non sworn employees.

Recommendation C.13

The ACC should utilise Australian Police service sworn members on short term detachment (for the duration of the specific investigation only) for specific criminal investigations. Those Police Investigation Teams should be under the control of the most appropriate Commissioner of Police, in consultation with the AFP Commissioner who represents the Commonwealths interest.

Recommendation C.14

The ACC Board should prioritise criminal targets based on intelligence analysis derived by the ACC. It should arrange lead agency control and composition of Police Investigation Teams.

Recommendation C.15

The ACC The Board should be responsible for;

- Determining priorities for the ACC's Intelligence Function, including Target Development, based on ACC national intelligence collection
- Overseeing the strategic direction of the ACC
- Ratifying use of the coercive powers by the ACC Criminal Intelligence Monitoring Team (CIMT) in relation to Intelligence Functions, including Target Development
- Arranging appropriate long term secondment of Police Service employees and special members for Corporate Administration and Intelligence Functions, including Target Development
- Arranging appropriate Police Service short term detachment for ACC Police Investigation Teams for criminal investigations formed as a result of successful Target Development outcomes.

Recommendation C.16

The ACC CIMT should establish intelligence teams and authorise the use of the coercive hearing powers to assist intelligence teams in support of the ACC's intelligence function. The CIMT should comprise the Chair of the Board, the Head of the ACC and any other member of the Board

representing an agency participating in, or likely to participate in a criminal investigation formed as a result of successful Target Development outcomes. It should report to the Board in relation to outcomes.

Recommendation C.17

The Head of the ACC should be responsible for:

- Maintaining an overview of Intelligence Functions and Police Investigation Teams to ensure a coordinated and consistent national approach
- Advising the Board in relation to the Intelligence Function and Police Investigation Teams outcomes
- Advising the Board on the changing priorities
- Advising the Board on the utilisation of the ACC coercive powers.

Recommendation C.18

The ACC's coercive hearing powers and other powers (including surveillance, controlled operations, obtaining documents etc) should be available in support of the ACC Intelligence Function.

Recommendation C.19

The Proceeds of Crime Bill 2002 and relevant State and Territory legislation should be utilised for the purpose of seizing criminal assets identified as a result of the ACC.

Recommendation C.20

Commonwealth legislation being strengthened to include the use of Telephone Intercept material in relation to civil forfeiture and the inclusion of unexplained wealth declarations. Further, that forfeiture funds be directed into the administration and operation of the Bill including the reimbursement of Police Investigation Teams expenses back to the relevant jurisdictions involved in specific investigations.

Recommendation C.21

Authorisation for the use of the ACC's coercive powers should be given to CIMT (Chair of the Board, Head of the ACC and any other member of the

Board participating or likely to participate, in the criminal investigation). Such authorisation should be ratified by the ACC Board at a later date.

Recommendation C.22

The authorisation of the use of coercive powers should be kept separate and distinct from those requesting those powers. The Coercive Hearing powers should be vested in an independent statutory officer or officers. Those Coercive Hearing Officers should assess requests from the ACC Intelligence Function or from Police Investigation Teams on a case by case basis.

Recommendation C.23

The ACC legislation must allow coercive and other powers to be used for intelligence purposes such is the case with numerous State Commissions of inquiry. The ACC's coercive hearing powers and other powers (including surveillance, controlled operations, obtaining documents etc) should be available in support of the ACC Intelligence Function.

Commonwealth Security
The APS and the AFP

Commonwealth Security - The APS and the AFP

The Australian Protective Service Amendment Bill 2002 was introduced into the Parliament with the intention of giving effect to the Australian Government proposal that the Australian Protective Service (APS) become an operating division of the Australian Federal Police (AFP). In reality this is far from the case, with the APS structurally a separate statutory agency yet increasingly functionally bound to the cultural views of the AFP.

The environment in which the Bill has been advanced has been shaped by the manifest need to overhaul the Australian counter-terrorist response since the September 11, 2001 terrorist attack in the United States.

D.1 Are APS and AFP Co-Existing?

The AFPA fully supports an appropriate integration of the two functions, yet we are becoming increasingly concerned that there has been no strategic implementation of true a true integration model, creating an environment of uncertainty and decreasing morale within the Australian Protective Service and confusion within the AFP.

The recent moves by the AFP to withdraw the APS from the tender process conducted by the Department of Immigration have further impacting on the climate between the two agencies. It is understood that a great deal of effort had been undertaken with respect to the APS tender and it was generally viewed as the preferred tendering. Employees generally view the decision as taken unilaterally against the interests of the APS and with either explanation or rationalisation. The AFPA views the decision as indicative of a policy vacuum in Government where the issue of the Commonwealth role with respect to security services is yet to resolved. In principle the AFPA supports the decision if it can better respond to terrorist activities.

However, it is now time that the Commonwealth Government defined where it sees its obligations, how they are to be resourced (currently off-budget in the case of the APS) and how these obligations are to be absorbed as an operating division of the AFP.

Public statements that second stage legislation with respect to the integration of the functions is to come forth within twelve to eighteen months are a concern when there is still no policy framework for the legislation to be drafted within.

D.2 The APS and the AFPA NICLE Model

In March 2001, prior to the September 11 incident, the Australian Federal Police Association participated in an inquiry conducted by the Senate Legal and Constitutional Committee into "The Management Arrangements of Funding of the Australian Federal Police and the National Crime Authority". The AFPA submission to this Inquiry proposed a model for Commonwealth law enforcement predicated on the need for greater integration of functions.

The AFPA "Nationally Integrated Criminal Law Enforcement model" (NICLE-addressed in detail elsewhere within this submission) proposed that the APS higher order activities be integrated into a strategic framework under the co-ordination of the Federal Investigation and Policing structure:

It has been the view of the AFPA for some time that the role of the APS and its counter-terrorism functions should be operationally integrated with the activities of the Australian Federal Police.

The general position adopted by the AFPA remains that all Commonwealth functions working within the Criminal law enforcement field should share common standards and accountability and be structured around best practice coordination and operational models.

The model for the APS as an "Operating Division" of the AFP should also be considered for other Commonwealth functions that contribute to the criminal law enforcement framework. The AFPA believes it is no longer defensible for Commonwealth Agencies whose primary focus is distinct from criminal law enforcement obligations to conduct criminal intelligence activities and investigations in isolation from a common integrity and accountability model. This has been supported by ex NCA Chairman Mr John Broome who stated:

"A fundamental problem for the AFP is it is no longer the national or the Commonwealth law enforcement agency, because vast amounts of Commonwealth crime are no longer investigated by the AFP... we are seeing the distribution of policing or law enforcement activity across more and more agencies."¹

National criminal intelligence and investigation in relation to terrorism and other organised crime is fragmented and duplicated. We have the Australian Federal Police (AFP), Australian Protective Services (APS), Australian Bureau of Criminal Intelligence (ABCI) Office of Strategic Criminal Assessment (OSCA) National Crime Authority (NCA), Customs, AUSTRAC, Australian Security & Intelligence Organisation (ASIO), Standing Advisory Committee on Commonwealth/State Cooperation for Protection Against Violence (SACPAV),

¹ Transcript of evidence, Mr. John Broome P.109 Senate Legal and Constitutional Reference Committee - Order in the Law August 2001.

National Security Coordination Centre (NSCC) Australian Bomb Data Centre etc., each with their own intelligence/investigation functions.

For example the Australian Security & Intelligence Organisation investigates threats to national security which includes politically motivated threats against diplomats and public officials, whilst the Australian Protective Service provides protection to those individuals and their families and the premises they occupy.

The AFP provides special intelligence, diplomatic liaison and close protection to those officials, and the National Security Coordination Centre provides training and coordination advice. The Standing Advisory Committee on Commonwealth/State Cooperation for Protection Against Violence (SACPA\/) comes directly under the Attorney-General's Department and plays a similar role. The Australian Bomb Data Centre (ABDC) has an intelligence and investigation role into the use of explosives and incendiaries, particularly in relation to terrorism whilst the AFP and APS both have bomb and dog teams.

The AFPA notes the recent experience of the United States Government in attempting to integrate their law enforcement functionality after the disastrous failure of their collaboration model in relation to September 11, 2001.

The AFPA endorses the Secretary of the Attorney Generals Department being removed from the role of statutory employer of a law enforcement workforce. We also recommend that there should be a further consideration of the Departments role in the broader operational criminal law enforcement environment with a view to extracting the Department from directing operational matters.

Sir Robert Marks stated:

"Administratively, a police force should be seen to be accountable to government ...Operationally, it should be seen to be as free as possible from political influence...Any operational decision by a police force unduly subject to political interference will never be generally acceptable with consequent impairment of the reputation and status of the force... The ideal relationship is that the Chief Police Officer should pay the closest attention to the views of those whom he is administratively accountable to but that he, and he alone, should make operational decisions".²

The AFPA supports the proposed integration of the AFP and APS functions and notes that the 1984 split of the agencies has failed to improve services to the Commonwealth or co-ordination of the functions. While both agencies have developed separately and have developed expertise in their defined roles, the emerging environment clearly demands operational co-ordination of counter

² Report to the Minister for Administrative Services on the organisation of Police Resources in the Commonwealth area and other related matters 1978 pg8.

terrorism activities. The provision of investigative, intelligence and security services should not be seen as distinct entities.

The history of the AFP demonstrates that as needs varied the flexibility of the agency has accommodated a broad range of operational functions. This history supports the AFPA view that integration with the APS higher order functions is not analogous to the AFP or its continued development. Given the relatively recent separation of the AFP and APS functions the AFPA believes that the re-integration of the functions will not only be operationally effective, but is also historically substantiated.

Sir Robert Marks statement is as relevant in 2002 as it was in 1978:

"Those who framed the Constitution can hardly have foreseen the motor vehicle and the aeroplane. Arrangements for the governance of States which were adequate for trade, public order and the social requirements of the nineteenth century are not appropriate for dealing with serious wrongdoing which transcends State jurisdictions and affects the interest of the Commonwealth as a whole; terrorism, narcotics, and organised crime being perhaps the three most obvious examples. In this context, terrorism includes politically motivated shooting, bombing, kidnapping, hijacking or other acts of violence. All such acts, when not politically motivated, should be classified as ordinary crime to be dealt with in the usual way, but never the less requiring the advanced specialist training appropriate for countering all terrorism. There is today an undoubted need for one federal agency to coordinate the efforts of all police forces against interstate crime and terrorism. But in my view it must have a metropolitan territorial base if it is to achieve the status and recognition necessary to its role".³

D.3 Should The AFP Commissioner be the APS Employer?

Under the AFP Act the Commissioner is appointed by the Governor General by Commission. The Commissioner can be appointed for a period not exceeding 7 years and is eligible for reappointment. The AFP Commissioner holds office on the terms and conditions determined by the Governor General and as defined in part by the AFP Act.

The Governor General is responsible for the termination of the Commissioner's appointment and may terminate the Commission on a number of grounds.

³ Report to the Minister for Administrative Services on The Organisation of Police Resources in the Commonwealth Area and other Related Matters by Sir Robert Marks, GBR, QPM pg.2, 1978.

The AFPA believes that the AFP Commissioner is the best choice for the role of statutory employer of the APS given the operational environment and the high level of integrity, accountability and experience attributable to the occupants of the role of AFP Commissioner.

D.4 The Australian Protective Services Amendment Act 2002

The Act is intended to give effect to the Commonwealth commitment to provide greater co-operation between the AFP and the APS to provide a response to the emerging terrorist threat.

The provisions of the Act replace the Secretary of the Attorney Generals Department as the statutory employer of the APS workforce and place the AFP Commissioner into the role. The Act also establishes the APS as a Statutory Agency with the AFP Commissioner as the Agency head.

The Act proposes that the APS continue to be governed under the Australian Protective Service Act 1987 with the same powers and with the employees also regulated under the Public Service Act 1999 with respect to administrative matters.

This Act has been frequently described as enacting the "business as usual model" pending a further process of change to take place through legislative reform in approximately 12-18 months.

It is the view of the AFPA that in so far as the Act commences a process, we endorsed it and supported its enactment. However, it is also the view of the AFPA that the Act did not achieve the creation of the APS as an "Operating Division" of the AFP and we find that a matter of regret.

Clearly the Government must commit to a time frame for intended restructure with appropriate amendment to the APS Act and/or AFP Act and the AFP (Complaints) Act to ensure that APS employees are subject to the same integrity and anti-corruption regime as is required of current AFP employees.

When Sir Robert Marks was considering the role currently conducted by the APS he stated:

"Bearing in mind the need for public support in countering terrorism,...a police force discharging the duties assigned to the AFP will not enjoy public confidence and trust unless it is accountable, and moreover, is seen to wish to be accountable..."

The object should be to satisfy the public that every complaint is investigated thoroughly and impartially".⁴

The AFPA believes it is fundamental that both agencies expedite the introduction of common standards of integrity and accountability under the AFP Act and the AFP Complaints Act provisions having regard to the lesser provisions of the Australian Public Service Act 1999. It is the expectation of the community that the employees of the Commonwealth charged with criminal law enforcement obligations be accountable to the highest possible level.

The AFPA has great confidence in the professional standards of the operational workforce of the APS and believes that it is imperative to consolidate this professionalism by introducing an integrity framework as soon as practicable that is common between the two organisations and meets the highest possible community standard.

It will be unsustainable in the long term for the Commissioner of the AFP to be the statutory employer of two groups of operational employees working under two differing anti-corruption & integrity models. In many circumstances, the APS and AFP employees already work in a co-located environment and work side by side as was evidenced on foreign embassies in the days following the September 11 events.

The AFPA also notes with interest the developments with respect to the expansion of the AFP role as a counter-terrorist agency and the potential contribution to be made by the APS employees in this effort. The development of bridging competencies between the workforces and introduction of mobility provisions must be a significant priority.

The AFPA believes that the AFP Commissioner must have the maximum flexibility for the deployment of resources in support of the counter- terrorist and Commonwealth criminal law enforcement response.

D.5 Airport Security

The AFPA places on record its concern that in any future integration of the agencies, the current structure of the APS relationship with private contracting and arrangements with airport operators must be reviewed. The work of the APS at airports particularly, has always been complicated because of the relationship with private operators and their historical reluctance to fund the CTFR function.

The current proposal is that existing commercial arrangements remain in place after integration. However, the Association is concerned that the APS functions

⁴ Report to the Minister for Administrative Services on The Organisation of Police Resources in the Commonwealth Area and other Related Matters by Sir Robert Marks, GBR, QPM pg.20, 1978

should be operationally predicated when integrated with the AFP, and not driven by cost based performance indicators.

The APS currently deploys Bomb Appraisal Officers and Explosive Detection Dogs at designated airports although the security scan entry points are currently operated by the private sector on contract.

The AFPA has viewed with interest the United States response to the September 11 events and their program to return responsibility of airport security to the United States Government and out of the hands of the private sector.

The AFPA does not believe it appropriate to deploy ASO members on an aircraft as a Commonwealth response, whilst abrogating the obligation at the entry point to an aircraft through the X-ray points to the private sector.

AFPA officials frequently travel interstate in the conduct of their responsibilities. On any given day there will be no consistency between the readings provided by metal detecting equipment from city to city. One AFPA employee was required to remove different parts of their clothing or equipment (ie, laptop bag contents, shoes, belt etc) at different cities on the same day to pass through the equipment. This reduces confidence in the application of a common national standard being applied every day. The provision of these services by the private sector also seems more financially justified than operationally.

If the legislation regarding the APS integration is to be underpinned by the current cost recovery model, it will be imperative that the operational governance arrangements of the airport security functions, the accountability and performance indicators, the private sector involvement and the role requirement be properly reviewed.

The AFPA has met many of the APS Officers currently deployed at Australian airports and we commend these employees for their ongoing dedication and commitment to their function. It concerns the AFPA that these employees fail to be recognised for their inherent deployment in a quasi- "general duties" policing role in the precincts of the airports. Without question, the State Police services have abandoned any historical role they performed, providing a policing function, at the national Airports. The APS is apparently signed to MoU's with State Governments that impart a policing role to the APS, in spite of the fact that the employees are neither trained or paid to perform this function.

The AFPA believes that this matter is now at a point of urgency and requires the Commonwealth to consider formalising its obligation and role to ensure the proper policing of Australian ports of entry. The cost recovery for AFP/APS activities at the airports could eventually be sourced from the "Ansett levy" and we believe that the Australian community would endorse the funding of a higher profile commonwealth presence at these terrorist target locations.

In recent times the AFP have apparently identified this issue as a priority issue to address, although the AFPA does not believe it either practical or in the long term even appropriate, to assume that the Commonwealth employees deployed at airport locations, will not have the majority burden for the provision of security fall on them. Through sheer presence alone, the APS officers will always be faced with responding to incidents that involve protecting life or property in a first response capacity.

Within this context the AFPA also believes that it would be timely to review the AFP/APS role in providing counter-terrorist first response at all ports of entry including the Australian waterfront.

The question will need to be resolved as to whether the AFP Commissioner will inevitably be accountable for functions operationally directed by the private sector. This matter greatly concerns the AFPA and is not resolved within the terms of the current framework.

D.6 Industrial Framework

On 23 December 1982 the then Minister for Administrative Services announced that the AFP was to be split to establish the APS as an independent uniformed force to protect government property. The structure for the separation of the two agencies was oversighted by a working party chaired by Mr Geoff Halliday who had earlier been associated with the merger of the Australian Capital Territory and the Commonwealth Police Services.

The AFPA was an important player in these formation negotiations. The Association was generally opposed to the proposed transfer of members of the Protective Service Component from the AFP. It was the AFPA position that many of the members involved had been recruited with the expectations of transferring to general policing duties with a continuing career structure.

The AFPA advocated at the time that if the split were to take place, that the pay and conditions of our members should be preserved. This created an environment in which the conditions of these members were protected in the development of the new APS award and we understand that to this day there is a small cluster of these former employees still working within the APS.

Under the "business as usual" model these matters will be dealt with under the phased approach the AFP and APS have agreed to, and the AFPA is in ongoing discussions to ensure that at such time the interests of both workforces can be professionally represented by us.

The AFPA has not only a historic role with the APS, but also a contemporary one. Utilising the Bargaining Agent provisions of the Workplace Relations Act, the AFPA is uniquely positioned as the only professional, law enforcement industrial body representing employees in both organisations.

The AFPA profile as the professional representative of law enforcement employees has allowed us to already participate in negotiations with respect to the future arrangements for the workforce and we feel confident that the APS employees will only find their future employment options enhanced upon completion of the integration program.

We believe in the short term that the employees of the APS can only benefit from having a statutory employer with an operational perspective rather than an administrative one. The historical governance of the APS by the Attorney Generals department could be seen to have disadvantaged the employees given their distinctly operational culture and responsibilities.

As stated previously in this submission, the AFPA is concerned that in the future legislation to give greater effect to the integration of the APS into the AFP, the issues of mobility between functions must be addressed.

It worth noting a historic parallel to this environment, dating back to the original birth of the APS. In June 1984 the ACT Branch of the AFPA made submission to the then Minister for Administrative Services on the establishment of the new APS agency. That submission stated:

"Currently, morale in the Protective Service Component is at its lowest level since the inception of the AFP. This is mainly due to the manner in which serving members have been notified of their ineligibility to gain lateral transfer to the General Policing Component and the decision to transfer these members from a Police Force to a Public Service type organisation."

The AFPA intends to remain vigilant to ensure that these historic concerns do not manifest themselves in the current environment and that neither group of employees is disadvantaged.

D.7 The ASO Program

In response to the September 11 incidents, the Commonwealth instituted an Air Service Officer Program under the APS. These employees are generally referred to in public commentaries as "Sky Marshall's".

To date the program has drawn from a pool of applicants that includes Defence personnel and employees of State Police Services and the APS. The program is

generally running smoothly, on the surface, with only some minor hiccups which have been resolved.

The ASO members have been well received by the airport community and the local police and are working closely with state specialist police teams in building working relationships and are putting MoU's in place for joint training and development exercises.

The current ASO's are highly motivated about the job and are looking forward to the future. However, there are already worrying signs that cracks are emerging within this environment. The AFPA currently represents the majority of ASO members and we have conducted a number of detailed discussions with entrants to the program.

An initial concern has been that lack of employment security offered to these members who are supposed to be accepted as highly trained professionals. The prevailing situation has ASO members deployed on short term contracts of a couple of years duration and no proposal as to what happens at the end of the contract.

State Police services are increasingly reluctant to release employees to enter the program and some require officers to resign prior to entering the APS. Without an ongoing offer of employment, the APS/AFP will increasingly face a reluctance from targeted employees within the identified law enforcement markets to enter the program. Currently the ASO program has four year funding approval and with no further determination as to the options for employees after this time, the issue of job security continues to cause concern.

D.8 Other Issues

The following industrial concerns have been raised by the ASO members of the AFPA and reflect increasing concern about the governance of these employees under their existing employment regime.

D.8.1 Travelling Allowances and Meals

The award allows for a meal payment to be made when an officer works over the following meal periods:

0700 - 0900
1200 - 1300
1800 - 1900
0001 - 0100

The current management has stated to all ASO's that if they are flying over any of these meal periods they must eat the meals provided and forgo the meal payment.

This would be all well and good if the meals were substantial and of a high quality bearing in mind that the meal allowance is of a certain value and officers are entitled to take a meal of their choosing. A good example of this disparity is that of the member who flew to Cairns recently over the breakfast meal period, which is valued at \$17.90, and was given a small bowl of fruit a cup cake and a can of drink which would be valued at \$5.00 which is a substantial saving to the APS considering they don't pay for the flights or meals. Officers are entitled to the meal allowance, and should not have to eat substandard meals as on some days officers do fly over 3 meal periods. The perception is that employees' rights are being undermined by efforts at cost reduction.

Bearing in mind that the fitness requirement for the function has just been raised to be one of the highest in Australia, and is tested biannually, it seems ridiculous that these employees must rely on the provision of generally sub standard Airline food as their primary source of energy. It is anecdotal that the availability of adequate meals on flights has only diminished with the lack of market competition, and there is little doubt that the diet required by an operational officer on duty has not been factored into the planning of meal deliveries to the general passenger profile.

D.8.2 Flying / Overnight Allowances

At this stage there is no overnight allowance but there is a flying allowance of \$35.00 per domestic flying day. The overall OIC has made mention of a figure of \$55.00 per overnight stay when the ASO's start doing overseas flights, this is totally inadequate as there is an overseas separation allowance of \$100.00 already provided for in the award. There seems to have been little real consideration or genuine discussion with ASO members as to appropriate conditions when deployed for overseas trips as part of their duty.

D.8.3 New Determination

The ASO members are currently governed under a determination rather than a more appropriate industrial instrument and this was initially cobbled together to give quick effect to the Government's urgency on establishing the program. This determination is currently due for updating, although members have not had any input nor have they seen the

rumoured draft document. This is a matter of priority in consideration of the accepted professionalism of the employees in this function.

D.8.4 Remuneration

When examining the pay scales of most of the police services in Australia and of overseas counter parts, at first year entry level, (including - but not limited to AFP CPP, US and Israeli Air Marshall's) we find that the current composite wage for ASO members is woefully inadequate.

When a base grade APS PSO1 is potentially earning more for their function than an ASO and when ASO's are rated as being as good if not better than some of the police specialist units in Australia, the AFPA is concerned that the program itself will be increasingly undermined by the lack of a professional salary.

D.8.5 Overtime

ASO members are supposed to have access to Overtime in their Determination, but are not given access to it, rather their time sheets are balanced from fortnight to fortnight so as to eradicate any access to such entitlements. This would be acceptable if a composite compensation was substantial but that is not the case.

D.8.6 General ASO Program Concerns

Employees have expressed to the AFPA that they believe the program is being undermined with excessive budgetary considerations to the point it has become disenchanting for the participating members. The overall ASO OIC boasts of a 2 million dollar budget saving this year within the program. This is all the more galling when the Perth office has to beg for ammunition for training from the local police.

D.8.7 APS Integration Concerns

A number of the APS officers have become disillusioned with the changeover. As they were expecting changes that have not eventuated or show no sign of being manifested. The Minister for Justice and Customs has made it clear that APS officers were not to be treated as "second class citizens" as a result of the integration with the AFP, and yet this seems to be the prevailing opinion of APS officers. The AFPA shares this concern

on the basis that there is yet to be an articulated strategy as to how the AFP will give effect to making the APS an operating division.

D.8.8 Advanced First Response (AFR) and Training Concerns

Increasingly there has been concern amongst employees as to the implementation of the Advanced First Response training within the APS. As this provides a basis for a supposed upgrading of operational effectiveness and a greater level of remuneration, the AFPA has generally supported the concept. However, the selection of the stations deemed to be AFR, has been driven largely by the clients preparedness to pay the cost. The contribution of this training to appropriate counter-terrorism strategies is therefore fundamentally undermined.

The AFPA believes that the AFR program must be suspended pending a proper review of the AFR competency and the requirement for all APS officers and stations to meet this standard without the requirement being determined largely by client expenditure considerations. An example of the confusion on this training is that key terrorist targets such as the Commonwealth Parliament are not deemed as requiring AFR competencies. A decision that does not seem to meet an operational standard within a risk management strategy.

This again highlights the pressing need for the Commonwealth to reconsider the "off-budget" nature of the APS function within the Commonwealth's obligation to provide an appropriate security framework. The AFPA supports a cost recovery model being applied to clients and beneficiaries of the APS functions within a budget under-pinned by Commonwealth appropriations.

The AFPA is increasingly concerned that the professionalism of APS employees and the fundamental integrity of the function is being undermined by priorities that exclude operational best practice in favour of financial considerations. It is untenable that APS clients should determine operational responses by the Commonwealth on the provision of security and counter terrorist services.

The AFPA has the hope that the AFP Commissioner will initiate an early strategic framework for review of the APS and AFP functions to commence a clear program whereby the professionalism and obligations of each function complement rather than contradict each other.

D.8.9 Recruitment Issues

Increasingly the AFP and the APS seek new recruits from within a similar market in the broader community. It concerns the AFPA that both agencies maintain separate recruitment and training strategies. This only further delays the necessary move towards common standards of accountability and integrity across the agencies.

The AFPA firmly believes that the AFP should conduct all recruitment for APS functions as part of a unified model and provide such officers back to the APS agency on a purchaser - provider basis for deployment to the APS functions. In the longer term this then creates an environment for those officers to access career opportunities within the general AFP environment.

With respect to the ASO program this would seem to be a logical model as such employees could then be deployed to the APS role as a function of the AFP Protective Security structure, rather than existing in isolation.

D.8.10 Administration Issues

With the introduction of the SAP system within APS stations, the AFPA has become concerned that the requirement to maintain the functionality of the system has fallen on operational members within the stations, now absorbing large amounts of their time. In any other circumstance this would be unacceptable and given the existing workload of employees, it would seem inappropriate to devote limited operational resources to the administration of SAP. Immediate consideration of the deployment of administrative employees to administer this requirement must be undertaken.

D.9 Conclusion

The AFPA has great faith in the benefits of the integration of the AFP and APS functions and professionalism of employees. We are concerned, however, that the AFP Commissioner now presides over two distinctly separate workforces each with separate standards and no seeming integration of functionality.

If the Commonwealth is to meet its obligations to the Australian community with respect to the provision of Security and counter-terrorism functions, the current situation must be addressed immediately through the articulation of a program to give effect to the operating division model.

D.10 Recommendations

Recommendation D.1

The Commonwealth must define where it sees its obligations with respect to Commonwealth Security obligations, how they are to be resourced (currently off-budget in the case of the APS) and how these obligations are to be absorbed as an operating division of the AFP.

Recommendation D.2

All Commonwealth functions working within the Criminal law enforcement field should share common standards and accountability and be structured around best practice coordination and operational models.

Recommendation D.3

The model for the APS as an "Operating Division" of the AFP should also be considered for other Commonwealth functions that contribute to the criminal law enforcement framework.

Recommendation D.4

The Secretary of the Attorney Generals Department be removed from the role of statutory employer of all Commonwealth law enforcement employees.

Recommendation D.5

Further consideration be made of the Attorney-General's Department role in the broader operational criminal law enforcement environment, with a view to extracting the Department from directing operational matters. These responsibilities should be transferred to the AFP Commissioner with a reporting line to the Minister of Justice & Customs.

Recommendation D.6

The Commonwealth Government must commit to a time frame for intended restructure with appropriate amendment to the APS Act and/or AFP Act and the AFP (Complaints) Act to ensure that APS employees are

subject to the same integrity and anti-corruption regime as is required of current AFP employees.

Recommendation D.7

The development of bridging competencies between the AFP/APS workforces and introduction of mobility provisions must be a significant priority.

Recommendation D.8

The current structure of the APS relationship with private contracting and arrangements with airport operators must be reviewed.

Recommendation D.9

The operational governance arrangements of the airport security functions, the accountability and performance indicators, the private sector involvement and the role requirement must be properly reviewed.

Recommendation D.10

The Commonwealth to urgently consider formalising its obligation and role to ensure the proper policing of Australian ports of entry. The Commonwealth determine its commitment to a "general duties" policing role at all Australian Airports and urgently implement either appropriate training or appropriate structural relationships with State Governments to resolve this issue.

Recommendation D.11

The Commonwealth to review the AFP/APS role in providing counter-terrorist first response at all ports of entry including the Australian waterfront.

Recommendation D.12

The APS AFR program be suspended pending a proper review of the AFR competency and the requirement for all APS officers and stations to meet

this standard without the requirement being determined largely by client expenditure considerations.

Recommendation D.13

The Commonwealth to reconsider the "off-budget" nature of the APS function within the Commonwealth's obligation to provide an appropriate security framework.

Recommendation D.14

The AFP should conduct all recruitment for APS functions as part of a unified model and provide such officers back to the APS agency on a purchaser - provider basis for deployment to the APS functions.

Recommendation D.15

That there be urgent consideration to the structure of all APS contracts including those for airport security functions, to ensure that operational primacy remain with the Commonwealth and that this not be sacrificed to other market driven imperatives or performance indicators.

Recommendation D.16

That there be a broader consideration of the NICLE and other models for law enforcement co-ordination and accountability, given the events of September 11 2001.

Commonwealth Forensic Services

Commonwealth Forensic Services

Increasingly the role of forensic services within the policing of crime is becoming a major factor in the success in achieving operational outcomes. As a cutting edge component of the smart policing model, the resourcing of effective Forensic Services is fundamental to the commonwealth response to crime.

As a field of continual advances in both technique and technology there is no capacity for any Government to "sit on its hands" in response to maintaining an appropriate level of capacity in this area. The AFPA believes that the AFP is deserving of recognition for both the high level of professionalism by its employees within this field and its commitment to this aspect of its operational culture. The following matters are submitted as serious issues requiring a response by government, to ensure that the advances in the effectiveness of the Commonwealth Forensic services activities are maintained.

E.1 Forensic Services Equipment Needs

Specifically, Forensic Services members complain that the DNA facility is not capable of conducting full DNA testing to hair and other human body samples. They state that they require the ability to conduct mitochondria DNA testing as well as the current nuclear DNA testing.

Forensic Services members also complain that the AFP Heroin Signature Program funded under NIDS is too limited and needs to be expanded to all drugs and in particular synthetic drugs being imported into Australia. Analysis of drug chemical signatures and packaging can link drugs up to other importations, sources and suspects leading to identification of criminal enterprises.

The greater availability of portable forensic laboratories would assist investigators involved in national and international/regional investigations as well as being available for peacekeeping/monitoring missions and war crime investigations such as in East Timor. The AFPA acknowledges there has been some movement in this area already, but considers additional resourcing should be considered.

Forensic Services members, supported by PTT and PST members, also complain that traditional photography now needs to be replaced with digital technology to enable real time communication of images to assist investigative teams.

E.2 Current Issues Identified Within AFP Activities

E.2.1 Australian Bomb Data Centre (ABDC) Issues

Legislation does not currently exist which requires mandatory reporting of all bomb related incidents to the ABDC. This national legislation is necessary for the ABDC to perform their function comprehensively. The US Congress, for example, has ordered that the ATF is the repository for all Bomb related reports and information, which provides the ATF with a legislated 'authority' to do what they do.

The ABDC needs National legislation dealing with fireworks (both legal and illegal), as the current State and Territory legislations are inconsistent. and there should be consideration of urgent national uniformity being pursued in this area. The use of national Dangerous Goods legislation may be an appropriate response for this.

Some jurisdictions don't have any offence relating to the building of a hoax Improvised Explosive Device (IED). A consistent National approach is necessary for these matters to be treated seriously. Legislative consistency is needed for offences relating to the building and placement of an IED. Current legislation makes it an offence to import a prohibited import (eg. publication on how to make an IED), but does not cover electronic transfer of such material. The legislation needs to be expanded to include these forms of information transfers.

Tougher control and regulation of the importation of Dangerous Goods including explosives, fireworks and other dangerous chemicals must be considered as a matter of urgency. Customs Legislation should be reviewed as a vehicle to address this matter as an urgent priority.

There needs to be legislated power for police to order the evacuation of civilians in emergency circumstances. Fire Brigade Station Officers have the power to order evacuation of buildings in specific circumstances. Police powers to reflect this in case of bomb related incidents must be considered.

It is also a concern that there is no mandatory reporting of theft or loss of pre-cursor or dangerous chemicals, both biological and radiological. The relevant materials should be subject of a legislative provision to address this oversight..

E.2.2 Forensic Issues

Fingerprinting of all Australian visa applicants is currently a legislative requirement of the AFP. Legislation should be altered to allow other agencies to also be responsible, eg. State Police Services, or Immigration themselves should be responsible for this function and there should be centralised data basing of the product.

Current legislation requires that all imported firearms have to be subjected to safety testing by an authorised AFP officer. All paperwork and storage relating to firearms importations are Customs responsibility, so this Act should be amended so that Customs officers are able to also provide the safety testing. (Customs Act 1956).

Current legislation has attached schedules detailing what drugs are considered to be prohibited imports. These schedules need to be updated to include chemical pre-cursors (chemical used in the manufacture of illicit drugs), recently identified illicit drugs, and to ensure that there are commercial quantities for all listed illicit drugs. (Customs Act 1901)

With respect to illicit drugs, current legislation requires that offenders are charged with the total net weight of substance containing the illicit drug. Offenders are then sentenced based upon the total net weight of pure illicit drug. Case law and practices over time have allowed the situation to develop where offenders are both charged and sentenced with the total net weight of pure illicit drug. This situation causes Forensic Services major issues relating to the length of time it takes to do an illicit drug investigation, the health & safety of the members as exposure levels to illicit drugs are high and the statistical accuracy of results being reported to courts. This process is an anomaly internationally, and does require larger than necessary analysis costs for the AFP. The AFPA seeks an urgent review of this area to introduce new benchmarks under the legislation. (Customs Act 1901)

E.3 Recommendations

Recommendation E.1

Forensic Services require the ability to conduct mitochondria DNA testing as well as the current nuclear DNA testing.

Recommendation E.2

The AFP Heroin Signature Program funded under NIDS is too limited and needs to be expanded to all drugs and in particular synthetic drugs being imported into Australia.

Recommendation E.3

Traditional photography needs to be replaced with digital technology to enable real time communication of images to assist investigative teams.

Recommendation E.4

National legislation is needed that requires mandatory reporting of all bomb related incidents to the ABDC.

Recommendation E.5

National legislation dealing with fireworks (both legal and illegal), as the current State and Territory legislations are inconsistent. and there should be consideration of urgent national uniformity being pursued in this area.

Recommendation E.6

A consistent National approach relating to the building of a hoax Improvised Explosive Device (IED) must be addressed. Legislative consistency is needed for offences relating to the building and placement of an IED. Current legislation makes it an offence to import a prohibited import (eg. publication on how to make an IED), but does not cover electronic transfer of such material. The legislation needs to be expanded to include these forms of information transfers.

Recommendation E.7

Tougher control and regulation of the importation of Dangerous Goods including explosives, fireworks and other dangerous chemicals must be considered as a matter of urgency.

Recommendation E.8

There needs to be legislated power for police to order the evacuation of civilians in emergency circumstances.

Recommendation E.9

There must be mandatory reporting of theft or loss of pre-cursor or dangerous chemicals, both biological and radiological. The relevant materials should be subject of a legislative provision to address this oversight.

Recommendation E.10

Fingerprint Legislation should be altered to allow other agencies to also be responsible, eg. State Police Services, or Immigration themselves should be responsible for this function and there should be centralised data basing of the product.

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Recommendation E.13

With respect to illicit drugs, current legislation requires that offenders are charged with the total net weight of substance containing the illicit drug. Offenders are then sentenced based upon the total net weight of pure illicit drug. This process is an anomaly internationally, and does require larger than necessary analysis costs for the AFP. The Commonwealth must

urgently review of this area to introduce new benchmarks under the legislation. (Customs Act 1901).

**The Commonwealth Response to Missing
Persons
(The National Missing Persons Unit NMPU)**

The Commonwealth Response to Missing Persons (the National Missing Persons Unit - NMPU)

F.1 The NMPU

F.1.1 Context

Approximately 30,000 people are reported missing in Australia each year. While 99.5% are located, most within hours, one-third will go missing again and under similar circumstances. The National Missing Persons Unit (NMPU) is currently based within the ABCI and within limited resources, achieves a very high quality outcome. With the establishment of the new ACC, it is yet to be resolved as to where this function will be based in future years.

The NMPU commissioned research study, *Missing People: Issues for the Australian Community*, identified widespread community impacts when someone goes missing. For every missing person case, an average of at least 12 other people are affected in some way, either emotionally, through health or work effects, quality of life and other impacts. There are also substantial economic costs in locating missing people and addressing the impacts on families, friends and the community.

There are obvious benefits if missing person issues are addressed in a holistic coordinated way across government and in partnership with the community. This collaboration involves location efforts between police and tracing organisations being supported by government agencies with information that may assist in finding missing people. It also includes empowering families and friends to be involved in the search, as well as encouraging missing people themselves to make contact so that they are no longer considered missing. Further, it extends to addressing the impacts on families and friends so that those affected by the phenomenon have access to appropriate support to alleviate the distress and other consequences experienced. Effective prevention and an informed community could reduce the social and economic costs associated with missing persons.

While missing persons is not solely an issue for non-government organizations, they play a key role. They are also well placed to provide a referral point for missing people and their families to receive appropriate support so that the missing person incident is not repeated. It is vital the NGOs encourage partnerships to build capacity so that the community is confident that if someone is missing, a professional, coordinated service is provided. The community must be simultaneously reassured that the dignity, confidentiality and privacy of families, missing people, and others involved is maintained.

F.1.2 Focus

The four PLEA&S principles (prevention, location, education and support) describe the requirements for a coordinated approach to missing persons:

- Prevention reduces the incidence of missing persons and therefore the emotional and financial costs, promoting and enhancing a safer society for all Australians.
- Location recognises the critical need to find the missing people as quickly as possible through a coordinated, national approach to reduce the impact on families and friends and the missing people themselves.
- Education increases the awareness in relation to missing persons to minimise the incidence, enhance the response and encourage a whole-of-government approach in cooperation with the community.
- Support minimises the trauma suffered by the missing people, family, friends and the impact on the community.

F.2 Principles for Assisting Missing Persons and their Family

F.2.1 Principle One: Prevention

Almost half of those reported missing each year are ‘unintentionally missing’. They have forgotten to let someone know where they have gone or their change in plans. Reminding Australians of the need to maintain connections can prevent the necessity for some missing person reports and allow limited police resources to be targeted to more serious cases. Furthermore, one third of those missing have gone missing before and under similar circumstances. This group needs to be identified to address the underlying causes, reduce their vulnerability and the devastating impacts on those they leave behind.

It is important for police to play a leadership role in developing sound prevention practices both at the jurisdictional and national levels.

This can be achieved through:

- Partnerships with other agencies and within the police service to maximise resources and share good practice.
- Solid research to build appropriate, targeted and measurable prevention strategies including strategic analysis of the missing person population, recidivism, early intervention and the identification of special needs groups.
- Implementation of strategies with sharing of resources within and across jurisdictional boundaries.
- Evaluation and analysis of prevention strategies/campaigns.

F.2.2 Principle Two: Location

Missing people should be located as soon as possible to reduce the impacts on those left behind. Early location also reduces the missing persons' vulnerability to becoming either a victim of crime, or in some cases, an offender. It is mandatory in all jurisdictions that a missing person report is taken, where there are serious or genuine concerns for safety and welfare. Action is then initiated as soon as the report is taken. In over half of the police cases, the missing person returns or makes contact of their own accord. Police, non-government tracing organisations or family members locate the remainder. A multi-faceted approach is required, recognising the variety of ways in which early location can result. Coordination within the jurisdiction and across jurisdictional boundaries, with police and non-government tracing organisations' roles and responsibilities clearly articulated, is essential to prevent gaps in service and duplication of effort. Reviews of those few cases not located quickly are necessary to ensure that all inquiries have been exhausted and that any cases of a similar nature have been identified. Families require regular contact and feedback from police to be reassured that a professional investigation is being conducted and that there is a coordinated national approach.

The key objective here is for police to work in cooperation with non-government tracing organisations to deliver a coordinated national approach to achieve the early location of missing people and a process of continuous review of cases unresolved.

This can be achieved through:

- National minimum standards of operation for jurisdictional police and non-government tracing organisations.
- Clear understanding of roles and responsibilities.
- Mechanisms in place for an immediate response which is both appropriate and effective.
- Specialised coordinated investigative procedures with appropriate monitoring and review (jurisdictional, national, and international).
- High-level, regularly evaluated customer service to those reporting a missing person.
- Professional, accessible and responsive case management systems.
- Appropriate publicity including media liaison and current information available via public internet and jurisdictional intranet.

F.2.3 Principle Three: Education

An objective base is required to better inform policy makers and practitioners so that effective strategies can be established in the missing person arena. All levels of the community need to be informed by

empirical research rather than misguided, ill-informed impressions of missing persons and their issues. Greater awareness within the community of the ongoing impacts when someone is missing, alleviates some of the difficulties encountered by those impacted. Improving the understanding of the missing person phenomenon may also help to prevent or reduce the length of time a person voluntarily stays missing. Awareness can address unrealistic expectations about the police role which, when not met, contribute to family distress and a lessening of confidence in the police. It can also result in positive and helpful media coverage and a more balanced appreciation of personal safety. Finally, education results in more effective partnerships across government and the community to reduce or preferably avoid, the traumas and costs associated with missing people.

Best practice requires police to contribute to strategies which improve awareness of missing person issues.

This can be achieved through:

- Contributing to research on critical issues related to missing persons.
- Aligning research outcomes with existing police services, particularly in regard to training and community liaison.
- Increasing awareness of relevant government agencies about their potential role in missing person incidents.
- Coordination with consistent awareness messages across Australia.
- Maximising existing resources/programs/agencies.
- Developing and sharing successful educational programs.
- Reviewing processes to address identified trends.
- Constantly reinforcing key issues.
- Strengthening relationships and building further partnerships with business and across the community.

F.2.4 Principle Four: Support

Families, friends and the missing people themselves suffer significant impacts associated with the missing person incident. These include impacts related to health, work, quality of life, emotional, relationship and economic issues. In Australia someone goes missing every 18 minutes and at least 12 people are affected for each case. For a few, this impact is ongoing. Families need to be connected with support services to assist them to cope with the impacts while the missing person is located and with the reconnection to ensure that issues influencing the disappearance are addressed.

Police must develop and provide appropriate referrals to support families left behind and missing people when located.

This can be achieved through:

- Research to identify those individuals and groups requiring support; the type of trauma and impact suffered and support services required.
- Resources to establish support networks with government, non-government, and community groups providing emotional and practical support.
- Development of expertise with ongoing identification and alignment of specific services to satisfy the broad range of client needs.

These guiding principles support the vision of a community united in its efforts to reduce the number of missing people and minimise the consequences when people do go missing.

F.3 The National Missing Persons Unit

The NMPU receives \$195,000 per year from the Attorney General's Department to provide a coordination role across the Commonwealth, States and Territories in relation to missing persons. The funding, sometimes supplemented through sponsorship, is not adequate to cover its current services which include:

- information and referral services (1800 public line; 2 websites www.missingpersons.info.au and au.missingkids.com)
- public awareness (such as campaigns such as National Missing Persons Weeks and ongoing media and other promotions in Australia and overseas)
- secretariat and other support to 2 national committees, the National Advisory Committee on Missing Persons⁵ and the Police Consultative Group on Missing Persons⁶
- investigative support (for example, setting and promoting national standards for police and non-government tracing investigations; public awareness of critical issues, advocacy on matters such as access to government information to resolve cases.)
- research (including support to researchers across Australia)

An annual income of \$500,000 would allow for more adequate staffing of the Unit and the delivery of the necessary NMPU services. The Commonwealth must initiate a response to the manifest need in this area as a matter of urgency and determine where this function will be conducted from after the ABCI ceases to

⁵ The National Advisory Committee on Missing Persons involves representatives from the Australian Red Cross International Tracing & Refugee Service; Victorian Missing Persons Committee; Missing Persons Committee NSW Inc; International Social Service, Australia; Salvation Army Family Tracing Services; VICPOL Youth Affairs; Australian Federal Police; Kids Help Line, Link-Up (NSW) Aboriginal Corporation, Families and Friends of Missing Persons Unit

⁶ The Police Consultative Group on Missing Persons is made up of the Officers in Charge of the jurisdictional police Missing Persons Units.

exist. The AFPA supports the AFP retaining this function within an appropriate area of its national function.

The NMPU's mission is to coordinate and promote a national integrated approach to reduce the incidence and impact of missing persons.

The NMPU model is viewed internationally as best practice as it has been able to bring all relevant agencies, both police and non-government together to speak with one voice. National Missing Persons Week is a tangible example of this effective collaboration where all agencies agree to support and promote the campaign. Through working within the NMPU's two national committees, common standards have been agreed and we can now confidently say that there are no gaps in service and that we have agreed protocols for all missing person cases. The NMPU gains agreement then promotes these protocols through its pamphlets and websites.

The NMPU is now viewed as the main point of contact for inquiries relating to missing person issues. It receives many offers of support from the Australian public eg 1.2 million flyers sent to Australian households promoting National Missing Persons Week at no cost to the NMPU. It is also well regarded by the media.

The NMPU plays an important role in advocacy and provides linkages from Commonwealth to State and local government. For example, it has gained agreement with government departments for limited access to resolve outstanding cases. It recently developed a submission on behalf of non-government tracing organisations seeking to resume access to the electoral roll to resolve cases. That submission is still being considered. Another recent one to the Privacy Commissioner has received favourable attention.

The NMPU would sit well alongside the AFP's role in investigating cases of Australians missing overseas and overseas visitors missing in Australia. Its model of operations would also suit the AFP's role in the investigation of child sex offenders. Hosting the NMPU would provide an effective prevention angle to Commonwealth policing interests and show that the AFP was proactive in its approach to such criminality. The NMPU has revealed that through effective campaigns it is possible to change behaviour and to encourage safe practices. These are not costly in either time or resources.

The NMPU is well regarded in the Australian community and would provide a strong public profile for the AFP and its Commissioner. The NMPU is a good news story. It creates an environment where the Australian community feels safe and generally satisfied with its police response. Here in Australia we have an enviable record of locating 99.5% of those reported missing, most within hours. The NMPU is able to promote the positive role played by police in missing

persons while also working through the Police Consultative Group on Missing Persons on the areas which require improvement.

Finally the NMPU would bring a positive angle to the AFP's interaction with jurisdictional police as, through hosting the NMPU it would be delivering a valuable service to law enforcement and the wider community. The AFPA strongly advocates a long term strategic decision be taken by Government on this function as a matter of urgency.

F.4 Recommendations

Recommendation F.1

The Commonwealth must initiate a response to the manifest need in this area as a matter of urgency and determine where this function will be conducted from after the ABCI ceases to exist.

The NICLE Model

The NICLE Model

G.1 What is the NICLE Model?

The Nationally Integrated Crime Law Enforcement (NICLE) model is a conceptual model for handing law enforcement across the country. The NICLE model establishes a Commonwealth framework that is accountable and responsible for the co-ordination of, as the name suggests, Commonwealth and National criminal law enforcement efforts

The model has been designed to:

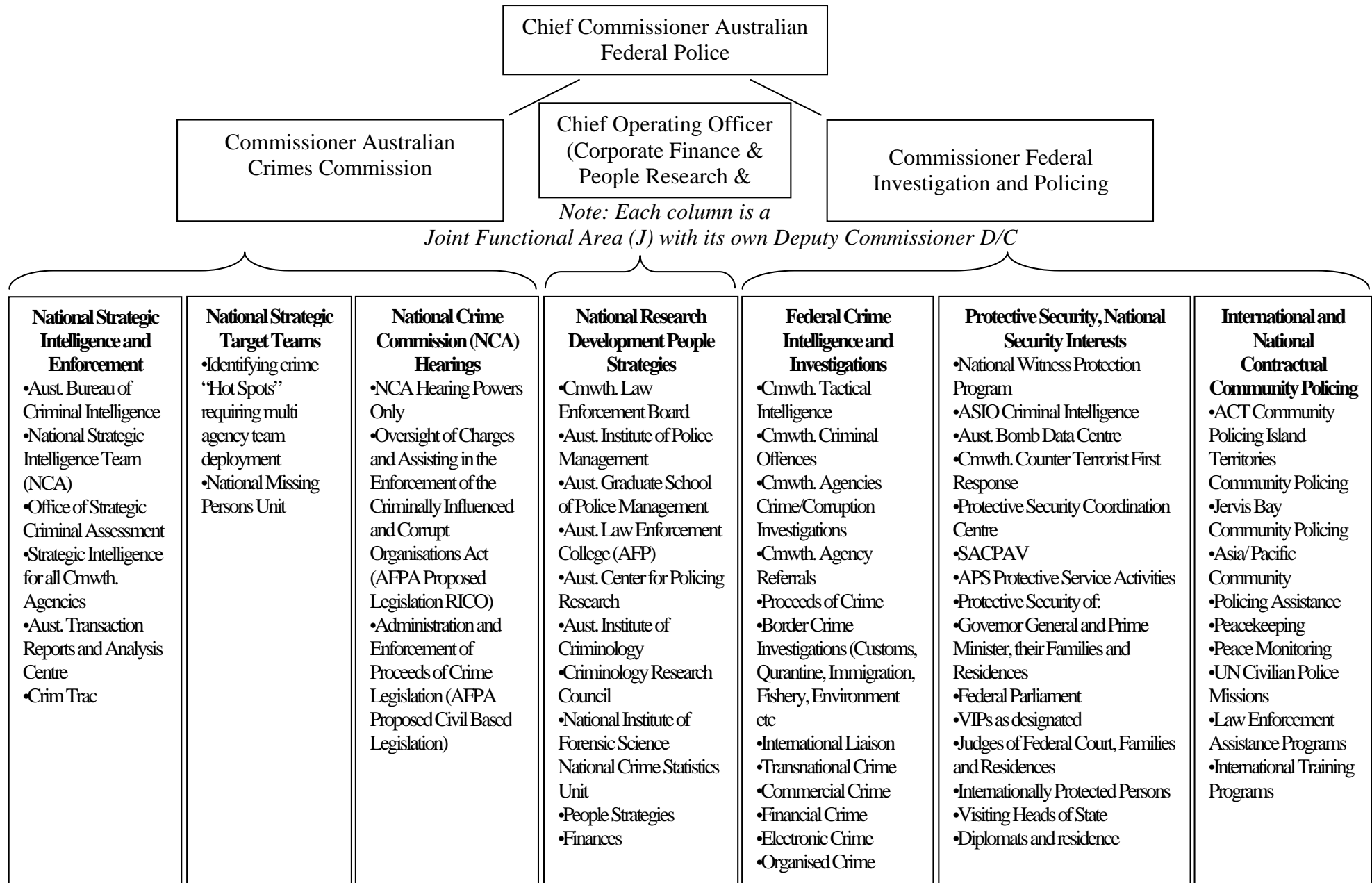
- Provide strategic intelligence and command to all federal law enforcement agencies
- Provide strategic intelligence and direction to national law enforcement agencies that are funded by the Commonwealth
- Rationalise corporate and support services and infrastructures
- Focus on High Impact crime

Currently there is a breakdown in Law Enforcement Coordination & Accountability. For example, under the Fraud Control Policy of Commonwealth agencies there is no longer an obligation to refer serious crime to the AFP, the *Measures to Combat Serious and Organised crime Bill 2001* amended the Customs Act and allows the NCA & Customs to Authorise their own controlled operations in relation to all Commonwealth crime, and compliance & regulatory agencies will be able to conduct their own undercover operations via assumed identities.

The AFPA originally proposed this model in September 2001 in a submission to the Senate Legal and Constitutional Committee in response to the inquiry into the AFP and the NCA. Since that time we have seen the Commonwealth and State Governments respond to the increased threat of organised criminal activity through the in principal agreement on the establishment of the Australian Crime Commission (addressed in more detail elsewhere in this submission).

The AFPA applauds the recent initiatives on the ACC as a major shift to addressing many of the concerns underpinning the NICLE model. In conceptual terms it is, however, on one step in a much broader response required by the Commonwealth.

The Nationally Integrated Criminal Law Enforcement Model



G.2 Towards Unification

The State, Territory and the Commonwealth Governments have jointly recognised that to effectively combat organised criminal activity it is important to have a strategic and unified approach to the law enforcement response.

Sadly. It would now appear through the establishment of an ACC model that the relationship between the State, Territory and the Commonwealth Governments is to be better coordinated and structured than the relationships between the different arms of the Commonwealth on their own terms.

The purpose of the move towards a NICLE style framework within the Commonwealth sector would be to institute best practice co-ordination, common accountability and a currently lacking strategic approach to resource deployment and tactical delivery of identified outcomes.

Increasingly there is little public transparency of the complex inter-agency activities and relationships between the criminal law enforcement roles of agencies such as Customs, Immigration, The Australian Security Intelligence Organisation, The Attorney Generals Department and others. The capacity for appropriate scrutiny by the Parliament of these matters is also less efficient as the structures become more subtle and complex, with each agency having differing levels of accountability and reporting priorities.

G.2.1 Organisational & Personal Relationships

The instigation of cooperation and information sharing on a needs basis between all agencies of interest must be more greatly enhanced for the Commonwealth to effectively respond to the emerging criminal environment.

This priority was acutely identified by the United States Government in respect to their own agency relationships, in the post September 11, 2001 period. The Australian Government response would not require such major structural upheaval to implement a coherent best practice policy, with structured informal relationships or MoU based Bi-lateral relationships being a vehicle to circumvent legislative restrictions. This model can also lead to non-bureaucratic interchange providing timely exchange / cooperation between all layers of Government and the private sector where appropriate.

G.2.2 Information Sharing / Communication

Intelligence sharing across agencies must occur with greater co-ordination, accountability and transparency. The natural tendency for individual agencies to treat intelligence product as an agency asset rather than a Commonwealth resource must cease. Unless a more centralised approach is taken to the utilisation of intelligence product, for both strategic planning and tactical response purposes, the major advancements in general intelligence gathering and analysis will become of little benefit to the Commonwealth.

The establishment of the ACC provides a vehicle to achieve some great advances in this area should its final structure and operating model benefit from the experience gained out of the operation of the ABCI model of utilising a network of liaison officers, across agencies and jurisdictions. This structure allows accessibility to information, provides a tool for communication and allows for relationship building benefits. It can be a costly option and does entrench co-operation, not collaboration.

G.2.3 Inter-Departmental Coordination

The need for the development of a responsive NICLE based model is most pressing as a result of the evolving bureaucratic structures currently revolving around the intervention of the Attorney Generals Department in the operational side of the Commonwealth's law enforcement response.

Increasingly the operational functions of the Commonwealth have seen the AG's department assume an oversight and sometimes an intervening overarching role. The question must be resolved as to what clear role the AG's Department does and should have within an operational context and, whether or not it is best practice to accept the Department as the centre-piece for the co-ordination framework.

There is doubt that the AG's department has a manifest role within the legislation activities of the Commonwealth. It is not, however, an operational agency within the criminal law enforcement arena and arguably should not be.

The move towards the establishment of the ACC was mired in a debate between the Governments over the need for, and appropriateness of, the AG's Department having a role on the Board of the new agency. The AFPA not only shares the concerns of the State and Territory Governments with respect to this issue, but remains confused as to why the Department should retain a role within the operational environment in any way.

Evidence by the AG's Department last year to the Senate Legal and Constitutional Committee Inquiry into the AFP and the NCA, confirmed that they played a "busy body role" within the framework. It provides interesting reading as to the convoluted and clumsy bureaucracy developing under their oversight of the Commonwealth's interests in law enforcement.

The current Commonwealth law enforcement response is predicated in a myriad of Inter-Departmental Committees that function to varying degrees of effectiveness and very little effective scrutiny. It is the contention of the AFPA that there is an increasing need for this entire framework to be subject to effective Parliamentary scrutiny,

The AFPA would propose that both the current framework and any future structures be annually subject to scrutiny by the Parliament under the Standing Committee on Legal and Constitutional Affairs as a standing reference with full and at times confidential disclosure on activities, resources and emerging issues.

Best practice would dictate that a bi-partisan response within the Parliamentary environment to criminal law enforcement issues is in the national interest and should underpin greater ongoing parliamentary scrutiny of the Commonwealth structures and activities.

There must be an overt effort to reduce competing priorities across competing core businesses within the Commonwealth framework if effective Co-ordination meets the public need for best practice in this area. Operational agencies need the ability to identify issues of joint interest without structural impediments creating limited operational coordination.

G.2.4 Joint Agency Outcomes

The need for a NICLE style approach providing integrated co-ordination in the emerging environment is manifest. It can and must be innovative, proactive and self initiating with respect to implementation of targeted operational responses to identified needs.

Any effective response by the Commonwealth to crime, which is increasingly sophisticated, coordinated and resourced must be underpinned by an aggregation of effort across all relevant agencies. The community perspective of crime and the fear of its threat, is often best addressed by an appropriate and articulated re-assurance as to the capacity for government to respond to any given threat. Through the removal of a sense of hopelessness in the face of what is often seen as a malevolent evil

manifested by organised criminal elements, government can reduce apprehension within the community and engage the community more effectively as a stakeholder in the effort.

It is only through the establishment of cohesive framework and a capacity by government to respond, that the public confidence can increase in true terms. A foundation to this must require a clear determining of priorities and obligations. A second stage to this response requires a clear commitment to potential expansion of resources, and a marshalling of existing resources into the most effective response.

The validation required to assure community confidence can only be possible through clear Quality Assurance and Review mechanisms.

G.2.5 How to achieve the Unified Model

In implementing a unified response by the Commonwealth to crime there must be an amalgamation of intelligence and operational responsibilities under an effectively coordinated framework.

To achieve this there must be a single permanent Operational Departmental Head responsible and accountable for coordination of criminal law enforcement efforts.

There must be a holistic approach to Planning; Advice and Policy Formulation within the operational structures, with regular reporting to the Minister and the Parliament on assigned functions and the effectiveness of criminal law enforcement efforts.

This option would achieve operational multiplier effects on Intelligence & Investigation efforts by Government, with a commensurate elimination of the duplication of Operational efforts currently possible under the existing structures.

The cost benefits of this would be most clearly identified through the rationalisation of existing corporate & support functions

G.3 The need for an AFP Chief Commissioner (as per NICLE model)

G.3.1 Planning, Advice, Policy formulation

G.3.1.1 Strategic Direction

It is essential that Australian law enforcement efforts have a strategic direction in relation to how they are planned, executed and how crime is dealt with.

G.3.1.2 Strategic Planning

It is important for there to exist an entity that is responsible for the development of strategic planning that allows for strategies not only to be devised but that are implemented. This also, importantly permits the organisation to conform with its projected resource levels.

It then becomes possible for the preparation of joint logistics plans that support the strategies making it possible to perform assessments that determine the criminal law enforcement capabilities and effectiveness in combating serious crime, organised crime and trans-national crime.

The proposed ACC model will only address one part of the broader framework in this environment.

G.3.1.3 Contingency Planning & Preparedness

As well as having a strategic approach in organising so as to combat crime it is also just as important to have in place, timely prepared contingency plans that reflect changes in the criminal law enforcement environment.

This infrastructure would also have the responsibility of advising the Minister on critical deficiencies in criminal law enforcement efforts as identified during the preparation & review of contingency plans. As can be seen, this would then allow for the assessing of government strengths and deficiencies in meeting criminal law enforcement objectives, policy and strategic plans

As a whole this planning and preparedness helps establish & maintain a unified system of evaluating success of the Joint

Functional Areas (J's) within NICLE to carry out JCLEC directions.

G.3.1.4 Advice on Requirements, Programs & Budgets

Due to the reporting mechanisms of the NICLE model it becomes very important to advise the Minister of priority requirements identified by of each functional area under NICLE. Also it would be of additional interest to the Minister to receive advice on the extent to which budget proposals of the functions within the NICLE for a fiscal year, conform with the priorities established in the JCLEC strategic plans. Reporting, and having all the required information means that it becomes possible for the submission of alternative recommendations & budget proposals in order to achieve greater conformance with the priorities identified.

Recommending to the Minister a budget proposal for activities of each unified functional area within the NICLE by:

- Advising the Minister on the extent to which the major programs & policies in the area of staffing conform with strategic plans;
- Assessing criminal law enforcement requirements for NICLE acquisition programs

G.3.1.5 Doctrine, Research, Development, People Strategies

It is important as a first stage towards Commonwealth integration to:

- Develop a doctrine for joint employment of the NICLE personnel for portability;
- Formulate policies to co-ordinate current research, development & People strategies

G.3.2 Report on Directives of the Functional Areas Within a NICLE Model

1. At least every 3 years submit a report to the Minister containing recommendations for changes in assignment of functions of the functional areas to achieve maximum criminal law enforcement effectiveness including:

- Changes to the nature of the organised and trans-national criminal threats;
 - Unnecessary duplication of effort of functions within the NICLE Model;
 - Changes in technology that can be applied effectively for criminal law enforcement efforts
2. The report will include recommendations for changes in policies, directives, regulations and legislation to achieve greater effectiveness.

G.4 Transitional Model - How to Move to a NICLE

G.4.1 Chief Commissioner

- AFP Chief Commissioner to be appointed;
- In addition to the AFP Chief Commissioner's functions, during the transition period, he is to regularly report to the Minister on the NICLE Reform Program development and implementation; and,
- Relevant Agency Heads be assigned to the Joint Criminal Law Enforcement Command (JCLEC)

G.4.2 JCLEC Directorate members

- Permanent Heads of AFP, ACC, ASIO, ACS (Coastwatch) AUSTRAC, APS, DPP;
- Commissioner Federal Investigations & Federal Community Policing (AFP Deputy Commissioner);
- Corporate COO (AFP COO); and,
- Research & Development Commissioner (Vacant)

G.4.3 JCLEC Additional members

- Could include heads of criminal law enforcement functions of DIMIA, DFAT, ATO, AQIS and other relevant agencies; and,

- Alternatively those criminal investigation functions should come under the control of the AFP for coordination and accountability to a central agency

G.4.4 Deputy Commissioners

- D/C Analysis (ACS/AFP);
- D/C Target Operations (ACC);
- D/C Collection & Coordination (ACC);
- D/C Security Intelligence (ASIO);
- D/C Investigations & Intelligence (AFP);
- D/C Protective Security, National Security (APS); and.
- D/C International & Federal Community Policing (AFP)

G.4.5 Integration of Functions

- Current Agencies should absorb and re-distribute the existing most appropriate functions to assist transition; and,
- All employees involved in criminal law enforcement functions in Federal and National Agencies be deemed special members of the AFP to establish translation and a common integrity framework.

G.5 Summary

The AFPA views this aspect of our submission as requiring the most urgent consideration by the Parliament. To fully appreciate the need for a NICLE style model, we suggest that Committee members imagine that the events of September 11 2001 (or something similar) occurred in Australia. On September 12, the Prime Minister and the National Security Committee of Cabinet would be required to deal with the existing multitude of Commonwealth officials, and attempt to act on the unco-ordinated and over-lapping mountain of relevant and irrelevant material they would provide. Under our proposal, they could deal with the AFP Chief Commissioner who has responsibility for Federal law enforcement as described above instead. In a time of crisis, the existing environment may contribute to rather than resolve problems impacting on an effective Commonwealth response.

G.6 Recommendations

Recommendation G.1

The instigation of cooperation and information sharing on a needs basis between all agencies of interest must be more greatly enhanced for the Commonwealth to effectively respond to the emerging criminal environment.

Recommendation G.2

Intelligence sharing across agencies must occur with greater co-ordination, accountability and transparency.

Recommendation G.3

The current law enforcement framework and any future structures be annually subject to scrutiny by the Parliament under the Standing Committee on Legal and Constitutional Affairs as a standing reference with full and at times confidential disclosure on activities, resources and emerging issues.

Recommendation G.4

A bi-partisan response within the Parliamentary environment to criminal law enforcement issues is in the national interest and should underpin greater ongoing parliamentary scrutiny of the Commonwealth structures and activities.

Recommendation G.5

There must be an overt effort to reduce competing priorities across competing core businesses within the Commonwealth framework if effective Co-ordination meets the public need for best practice in this area. Operational agencies need the ability to identify issues of joint interest without structural impediments creating limited operational coordination.

Recommendation G.6

In implementing a unified response by the Commonwealth to crime there must be an amalgamation of intelligence and operational responsibilities under an effectively coordinated framework.

Recommendation G.7

There must be a single permanent Operational Departmental Head responsible and accountable for coordination of criminal law enforcement efforts.

Recommendation G.8

There must be a holistic approach to Planning; Advice and Policy Formulation within the operational structures, with regular reporting to the Minister and the Parliament on assigned functions and the effectiveness of criminal law enforcement efforts.

Recommendation G.9

It is essential that Australian law enforcement efforts have a strategic direction in relation to how they are planned, executed and how crime is dealt with.

Recommendation G.10

It is important for there to exist an entity that is responsible for the development of strategic planning that allows for strategies not only to be devised but that are implemented. This also, importantly permits the organisation to conform with its projected resource levels.

Recommendation G.11

As well as having a strategic approach in organising so as to combat crime it is also just as important to have in place, timely prepared contingency plans that reflect changes in the criminal law enforcement environment.

Recommendation G.12

All employees involved in criminal law enforcement functions in Federal and National Agencies be deemed special members of the AFP to establish translation and a common integrity framework.

Recommendation G.13

Formation of a new Joint Criminal Law Enforcement Command (JCLEC) with a Chief Commissioner of the AFP as the permanent head who is the principal adviser to a Special Cabinet Minister & Joint Parliamentary Committee.

Recommendation G.14

The House of Representatives Standing Committee on Legal and Constitutional Affairs should have a standing annual reference to provide parliamentary oversight to the Commonwealth Law Enforcement Framework. This annual reference should investigate activities, trends, co-ordination issues, resources and allocation of such, technological trends impacting on activities and emerging priorities. Where appropriate this review should also be conducted partly "In camera" for the consideration of sensitive matters. The greater public scrutiny available to this annual reference, should be viewed as important to building public confidence in the Commonwealth response in this area

Fraud Against the Commonwealth and its Agencies

Fraud Against the Commonwealth and its Agencies

H.1 The Commonwealth Fraud Environment

In a presentation made this year by the Australian Institute of Criminology (AIC) it was noted that fraud cost the community in excess of \$3.5 billion each year and cost the Commonwealth Government last year alone \$150 million.

The AFP has carriage of Commonwealth fraud investigations. The nature and scope of this type of work has altered dramatically over the last decade. As a result of changing priorities the AFP and with greater detection methods being adopted within several Commonwealth departments, the AFP rarely conducts fraud investigations of a minor nature. Whilst the AFPA supports this stance, the resultant affect has resulted in the majority of AFP investigations, being of a complex nature and by their very construction requiring greater resource allocations.

The amount of funds defrauded (and the complexity of the issues) is most often used as the benchmark in terms of determining priorities as far as fraud investigations are concerned. The Fraud Control Policy of the Commonwealth determines in a broad sense, the criteria under which investigations will be referred to the AFP by client departments.

The AFP is clearly limited in the quantity of fraud matters it can investigate due to lack of Federal Agents. Each Major Operational centre is limiting fraud investigations to allocated internal budget allocations.

Interestingly, in 1993/94 when the Government of the day directed the AFP to concentrate on fraud investigations, there were significantly higher fraud investigations and recoveries. This supports the argument that the AFP, due to its limited human resources, can only transfer priorities rather than expand investigational capability.

The AFP will promulgate the argument that the reduction is due to the Fraud Control Policy, which was introduced in 1993. The AFPA would submit that the decrease in referrals has been as a result of the AFP “knocking back” investigations appropriately referred to it for investigation under that same policy or Government agencies avoiding the reporting mechanism.

Within the context of significant decreases in funding support for the investigation and prosecution of offences by Commonwealth law enforcement and regulatory agencies, it should be noted that regulatory agencies are demonstrating an increasing preference for administrative penalties over high cost prosecutions.

A practical example of this occurring can be demonstrated in the diminishing number of referrals from the Australian Taxation Office (ATO). It is the understanding of the AFPA that in recent times the number of referrals of large-scale (\$1M+) matters has decreased dramatically.

Research into this change in regulatory behaviour on the part of government regulatory agencies has found that this preference for administrative solutions is driven out of a necessity to secure cheaper outcomes. This has seen an ever-decreasing emphasis on the punishment of criminal behaviour and an increasing preference for the application of a “slap on the wrist” financial penalty.

This shift in approach has been particularly marked by the ATO’s preference for administrative re-assessments as opposed to prosecutions for tax evasion. The ATO’s increasing preference for administrative outcomes has gathered pace as a result of the AFP’s inability to devote the necessary resources to ATO investigations for the purpose of criminal prosecutions.

The very nature of complex large-scale fraud matters dictates that these matters should be allocated to dedicated teams of Federal Agents.

A decade ago a multi-million dollar Sales Tax fraud would have been allocated to a medium to large size team to exclusively investigate. In the year 2001, in some major operational area offices of the AFP, such an inquiry is all too often allocated to one person to investigate, often with less than 5 years experience.

The simple result is that complex fraud investigations are now taking longer to complete, further strengthening the ATO and other regulatory agencies’ resolve for administrative outcomes.

Economic crime investigations have continued to decline in number and value since the AFP has been focusing on narcotic investigations as a result of the NIDS funding.

High-level tax evaders and their criminal advisors are escaping criminal prosecution because they have the money to pay administrative fines.

There is a requirement to strengthen reporting mechanisms of Commonwealth Agencies along the lines of the NSW Independent Commission Against Corruption. This will ensure that the AFP is fully aware of criminal intelligence and is also accountable for outcomes of federal criminal investigations.

H.2 Mechanisms Available for the Reporting of Fraud

After the 1987 Review of Fraud against the Commonwealth, The Commonwealth Law Enforcement Board (CLEB) was established to

increase cooperation and communication between Commonwealth law enforcement agencies and functions. However CLEB now seems to be largely ineffective as a strategic policy group or as an oversight body.

Reporting and monitoring of crime affecting Australia is compartmentalized through the array of Commonwealth Agencies, there is a lack of central reporting and lack of central strategic criminal intelligence.

H.2.1 The Reporting of Crime by Government Agencies

Outside the Fraud Control Policy of the Commonwealth, there are no other mechanisms available for national reporting of criminal activity in relation to government agencies. A referral to the AFP is at the discretion of individual Commonwealth agencies, which by their nature focus on their own Commonwealth programs rather than having a global picture. Law enforcement is fragmented throughout government agencies with minimal central reporting.

In 2001 the Australian National Audit Office (ANAO) conducted a survey of a range of Commonwealth agencies in relation to their fraud control arrangements.

The ANAO noted that:

- Only 30 agencies had established formal policies and procedures to ensure that consultants, suppliers and other third party providers were aware of, and complied with, agency fraud control policy;
- 24 agencies had not established fraud control plans. This was of particular concern in 7 agencies which were governed by the Financial Management and Accountability Act 1997, and required under section 45 of this Act to have a fraud control plan in place; and
- Almost a third of the agencies that responded had not undertaken any risk assessment to identify fraud risks.
- The value of fraud cases within those agencies was at least \$146 million dollars over 12 months.

National intelligence and investigation is fragmented and duplicated with the:

- AFP
- Australian Protective Services (APS)
- National Crime Authority (NCA)
- Customs
- AUSTRAC
- Australian Security & Intelligence Organization (ASIO)
- Joint Strategic Intelligence Group (JSIG)

- Commonwealth Law Enforcement Board
- Standing Advisory Committee on Commonwealth/State Co-operation for Protection Against Violence (SACPAV)

Protective Security Co-ordination Centre and numerous government agencies with their own intelligence/investigation sections.

This is further duplicated by separate Research & Development areas such as the:

- Australian Bureau of Criminal Intelligence (ABCI)
- Office of Strategic Crime Assessment (OSCA)
- Office of Security Assessment (OSA)
- National Strategic Intelligence Team (NSIT) Australasian Centre for Policing Research (ACPR)
- Australian Institute of Criminology
- Criminology Research Council
- Australian Graduate School of Police Management (AGSPM)
- Australian Federal Law Enforcement College and the Australian Institute of Police Management (AIPM).

H.2.2 Resolving Duplication and Creating Structure

It is the view of the AFPA that there needs to be a consolidation of the criminal intelligence, investigation, research and development functions with one departmental head responsible.

It is the AFPA's view that intelligence and investigation into domestic terrorist activity and organized criminal activities should all be under the oversight and coordination of the AFP, similar to the American FBI charter.

Further, there should be a legislative requirement on government agencies to report any suspect corrupt or criminal conduct immediately to the AFP, (similar to NSW ICAC legislation) and for the AFP to centrally assess, evaluate and collate this intelligence. It would be the AFP's mandate to decide whether the matter can appropriately be handled by the government agency or whether it warrants AFP intervention due to other factors known to the AFP through its more global perspective.

Criminal investigators within government agencies should be made members of the AFP, thereby placing an additional obligation on them to report, suspect criminal or corrupt activity. This would also place them under the integrity and anti corruption measures of the AFP.

It is obvious that one agency must have direct responsibility for federal criminal law enforcement functions rather than it being over sighted by various ad-hoc committees where many of the members are not full time and have competing priorities.

It is also apparent that the Attorney General's functions are too broad to allow a dedicated concentration on Commonwealth criminal law enforcement and its effectiveness against criminal enterprises.

The AFPA believes that the AFPs' role should be strengthened through stronger reporting mechanisms, central collation of criminal intelligence, investigation, and increased enforcement powers along with Commonwealth Agency criminal investigators being made members of the AFP.

With the establishment of the AFP as the central agency responsible for Commonwealth criminal law enforcement functions from policies through to operations and resourcing, there will come direct accountability.

The Association supports the creation of a permanent Parliamentary Joint Committee (PJC) to monitor and review the performance of the AFP in this new role. The PJC would be able to report to both Houses of Parliament on any matter relevant to the AFP or the performance of its functions to ensure that the Commonwealth is adequately addressing crime.

H.2.3 Preparation as Opposed to Reaction

Importantly preventative action needs to be highlighted as the best means for combating fraud. The need for a shift in focus has in recent times been recognised, but it must quickly be made a high priority. Anticipating the possibility of fraud being committed allows for the preparation of combating it. It has been suggested that such programs may be likened to the state neighbourhood watch schemes.

The fact that there is a mechanism available to inhibit the likelihood of fraud being committed means that there is also a deterrent factor present that is likely to stop "low to medium" threats causing a problem later on.

H.3 Recommendations

Recommendation H.1

The following legislative amendments be added to the AFP Act:
A duty to notify the AFP of possible criminal or corrupt conduct;

- This section applies to the following officers:
 - The Ombudsman
 - The principal officer of a public authority
 - An officer who constitutes a public authority;
- An officer to whom this section applies is under a duty to report to the AFP any matter that the officer suspects on reasonable grounds concerns or may concern criminal or corrupt conduct;
- The AFP may issue guidelines as to what matters need or need not be reported; and,
- This section has effect despite any duty of secrecy or other restriction on disclosure.

Recommendation H.2

The AFP should be restructured as the central Criminal Law Enforcement Agency responsible for Federal and National criminal law enforcement functions as per the proposed NICLE Model.

Recommendation H.3

The further strengthening of reporting of crime by Government Agencies through legislative changes to the AFP Act and other Acts or Regulations pertaining to the transfer of responsibilities from other agencies.

Recommendation H.4

In the absence of the NICLE Model all Commonwealth agency criminal investigators should become members of the AFP on efficiency and integrity grounds.

Recommendation H.5

That national intelligence driven policing should be enhanced through the establishment of a peak joint Federal and State Strategic criminal intelligence body incorporating the various strategic intelligence functions currently conducted by numerous law enforcement agencies. The new organization will direct strategic strikes on identified criminal activity. The new organization will report to and will be administered by the AFP as the central Criminal Law Enforcement Agency. The process will be in accordance with the proposed NICLE model.

Recommendation H.6

The creation of a permanent Parliamentary Joint Committee to monitor and review the performance of the AFP as the central Criminal Law Enforcement Agency and to report to both Houses of Parliament on any matter relevant to the AFP on the performance of its functions.

Recommendation H.7

Increased emphasis placed on preventative measures as opposed to concentrating on a reactionary methodology. Prevention must be made a high priority.

Computer/ Internet Crime and E-Crime

Computer/ Internet Crime and E-Crime

I.1 Background

It may be considered that computers and other such electronic devices are simply another tool that criminals can use in order to facilitate their unlawful activities. Traditionally there is the simple usage of the computer/ communications devices to replace older or obsolete methods/ devices but it is important to note that crimes have also arisen based solely on the use of computing technology.

This essentially summarises the main problem that policing this branch of crime faces, the fact that as technology increases so do the opportunities for it to be misused, necessitating increased policing.

Some 'traditional' examples of electronic crime include:

- Theft of telecommunication services
- Coded communication to further criminal conspiracies
- Telecommunication piracy and intellectual property theft
- Dissemination of offensive material
- Electronic money laundering and tax evasion
- Sales and investment fraud

New crimes emerging via technological development:

- Denial of service attacks
- Electronic vandalism, terrorism and national security breaches
- Viruses
- Unauthorised access/ entry
- Cyber-stalking
- Spamming
- Illegal interception of telecommunications and remote monitoring of computer radiation
- Electronic funds transfer fraud

In addition to the evolving nature of E-crime identifying the type and location of criminals isn't easy to keep track of either. New technology has placed 'new weaponry' into the hands of virtually anyone. After looking at the mobility and power of modern communications equipment it becomes quite clear that someone could be standing on a beach illegally transferring money between institutions residing on the other side of the globe.

The Cyber-Crime Act 2001 recognises the necessity for criminal laws to remain malleable and as such several of these new crimes have been legislated for. This now gives rise to the policing of such crimes. The section and recommendations

of this submission relating to Child Protection should also be read in conjunction with this section.

I.2 The General E-Crime Environment

The nature of the crimes being committed and the technology being used makes E-crime a non-jurisdictional problem and attempting to police it regionally would be an effort in vain. This is clearly a matter requiring a national/ federal approach.

Being able to police E-crime effectively means that the police must be as mobile as the criminals themselves, able to transcend state and territory boundaries. Additionally as the crimes may be initiated in other countries it becomes necessary to liaise with other international law enforcement bodies, yet another reason for having a singular national approach. The AFP is ideally suited for this as it is a member of Interpol, a body involved in Law Enforcement Assistance programs within Australia and internationally. It also works closely with national security and intelligence agencies and is increasingly involved in highly sensitive electronic crime investigations.

It is important that this point not be understated. The fact that this type of crime has no borders means that it will require a very close working relationship with international law enforcement agencies. These partnerships will be able to assist with the detection and more importantly the prevention of crimes of this nature.

The circumstances involving crimes that are committed electronically are many and varied. Policing each of them therefore requires a different approach. In the instances of say fraud, cyber-stalking and spamming it would be necessary to initiate an investigation to trace all the different identities involved. An intentional attack on information held by a company by a hacker may invoke the use of 'strike teams' that can react quickly to shut down the perpetrator as it is underway, obviously detecting threats like this beforehand via surveillance or sting activities would also be a key objective.

Increasingly governments worldwide have also recognised that the threat of terrorist activity has become increasingly sophisticated with respect to the use of new technology. The transfer of illegal funds and the capacity to undermine national security interests through Cyber-attack have increased the need for a high priority response by government.

A common complaint from members who investigate this type of criminal activity is that they have nowhere near the resources necessary to combat these growing crimes in terms of specific and specialist knowledge.

By having a half-hearted approach to the problem, E-crime will advance unabated. A serious body that is just as technically proficient and mobile as the criminals they are fighting is the very minimum required. However with that said this entity need not be a large pool of agents just a highly skilled and resourced one. To ensure the quickest possible response time agents are on the ground and spread across the country.

As was stated earlier it would be difficult to cast doubt on the expedient pace of electronic development. It would therefore stand to reason that policing such a field would require a dynamic and nimble police response.

Additionally it is important to note that the combating of E-crime isn't simply the sole responsibility of a policing body. The general community, particularly those with much to lose, must be prepared to defend themselves from attack i.e. the best solution to the problem is prevention.

Just as it is important to tell people to lock their car after parking it is also necessary to inform the business world to the dangers and possible preventative methods available to them.

Defending potential targets before they become actual targets is imperative. The vast and ever-changing nature of the electronic environment necessitates having as many people prepared and ready to react to threats as possible. Simply having the AFP constantly policing copious amounts of internet and related traffic would be virtually impossible not to mention prohibitively expensive.

It is essential that the community can look towards the AFP for advice and guidance when tackling such problems. It is also exceedingly necessary that the information and assistance passed on from the AFP is of genuine substance and not simply paying lip service to the problem as this will help no one.

Logically, restricting the possibilities for criminals to strike inevitability leads to fewer crimes being committed. Achieving this requires a commitment from the private sector, particularly large organizations, to safeguard themselves from potential harm.

I.2.1 Protecting the Business Community

It would be big business, that by definition, would have the potential for big losses and would be potential targets of the profit seeking or people intent on the humiliation or general disruption to the companies electronic infrastructure or more generally it's activities.

Education and the facilitation of services that would strengthen the defensive ability of businesses, would definitely be the first step in

combating E-crime. The simple advertising of enhanced security mechanisms would have a deterrent effect for small to medium attackers. However the more professional and organised criminals with the determination to create serious problems would only really be stopped via a comprehensive anti-hacking strategy.

Dealing with the private sector would be most constructive via education and partnership schemes. The private sector has more to lose than simply the integrity of its information and money, it can lose the faith of customers, shareholders and stakeholders alike.

I.2.2 Protecting the Commonwealth

Just as businesses need to be protected so to does the public sector. The potential for fraud against the Commonwealth through the technological infrastructure is ongoing. Government databases provide great targets for organised criminal interests and can also provide strategic weak points in the government security fabric. The manipulation, eradication or unauthorised distribution of government data and information can be massively damaging to the national interest.

Commonwealth agencies need to have the ability to protect themselves from such crimes and the potential for the unlawful manipulation of the information they process. This threat can be both external and internal in nature, and as with fraud investigations, the agencies often handle the investigations themselves and only in large cases do they forward them to the AFP.

As most, if not all agencies, have internal areas with the sole purpose of maintaining the integrity of their electronic infrastructure, the additional focus on security should not be a major disruption to the structure nor chain of command. Having protection within would also allow the solution to become tailored to the specific needs and sensitivities of the organisation. This self reliance should then integrate with the broader law enforcement structure to ensure an adequate and effective framework for ongoing scrutiny of potential threats.

I.2.3 Protecting the Wider Community

Crimes that the wider community (being home internet users, small business/ community groups and etc) would be most directly affected by would most likely include cyber-stalking, identity theft, offensive material distribution (such as child pornography) and spamming.

Policing this would require the investigation of the circumstance in which the crimes were taking place. Perhaps the most important response to the policing of crimes perpetrated in this realm would be that of effective computer forensics and strategic relationships with key stakeholders such as ISP operators and others.

Clearly the police would need to be able to identify the relevant evidence for which to make prosecutions. This would require high level training and resources. The primary reason for having a specialised police force with the sole objective of enforcing cyber/ E-crime legislation. Elsewhere in this submission (the Child Protection section), the AFPA has recommended the establishment of a dedicated Cybercrime Centre within the AFP jurisdiction. In coming years, Australia may be responding without any effective infrastructure to very serious threats from Cyber-criminals if this matter is not addressed.

In addition to the fact that measures must be taken to combat E-crime, it should also be noted that it should be promoted to the community that something tangible is being done to combat E-crime and that there are strong counter measures being introduced . This is basically to ensure public confidence in electronic activity such as E-commerce and internet shopping. As the community expands its reliance on all forms of electronic activity and communication, these systems are no doubt going to require government level involvement security responses.

On the other hand, as would seem expected, it is important not to advertise the specific methods used by the police to detect criminal activity as they will no doubt be exploited by those in the know.

The establishment of a leading edge national Computer Forensic Team and Computer Forensic Laboratory (preferably under the Cybercrime Centre) would enable the development of methods for successfully identifying, obtaining and protecting admissible evidence relating to E-Crime.

As with the AFP Forensic Services there is the opportunity for the AFP to become leading edge in Electronic Forensics and to be able to assist other Police services within Australia and overseas.

I.3 Internet Specific Crime

The Internet, has resulted in the growth of sophisticated identity fraud. The AFP has seen an increasing use of computer generated false documentation. It has been recorded that investigations in Victoria have identified organised criminal syndicates selling false identity kits over the Internet.

I.3.1 Illicit Material Detection

There are clear indications that the AFP must continue to infiltrate E-Crime. Through the use of “Sting” operations the AFP, if properly resourced, can “surf” the Internet and then make contact with criminals involved in various E-Crime activities.

I.3.2 Spamming and Un-Solicited Mail

Spamming and the blanket delivery of unwanted e-mail, is a crime with a high probability of existing offshore. This is an ideal area for the use of computer forensics to identify the perpetrator/s and subsequent excellent argument for close relations with international law enforcement bodies. Close co-operation with the internet industry must underpin any effective strategies in this area.

I.3.3 Denial of Service Attacks

Firstly, a denial of service attack is the disrupting of a computer network by ‘flooding’ the network with useless information. The falsely generated information saturates the network and as such the servers and other devices on the system can not cope with the additional influx and can therefore not permit the flow of genuine information across the system.

This is now, by virtue of the Cyber-crime Act 2001, an offence of Commonwealth jurisdiction.

The only way in which successful evidence gathering can be achieved would be through the deployment of specialised agents. The need of agents with computer forensic skills in the investigation of this crime is imperative.

Without a police force that is capable of being able to gather and identify evidence of this nature then the crime can not be combated.

In all of these scenarios it is possible to have them committed remotely or even off-shore, reiterating the case that E-crime must be a matter for the Federal police and not that the states.

The force looking after this branch of crime will also need to be specialised in the techniques used by ‘cyber criminals’ and also very well resourced if the laws concerning them are to be properly enforced.

I.4 Recommendations

Recommendation I.1

Tied Funding be allocated to the AFP to develop new technologies to tackle illegitimate electronic activity, develop and deliver training programs to AFP Federal Agents and other interested Law Enforcement agencies and to develop E-Crime prevention measures for the Commonwealth and Australian industry.

Recommendation I.2

Tied Funding be allocated to the AFP to infiltrate E-Crime through the use of “STING” operations by examining Internet traffic.

Recommendation I.3

Tied Funding be allocated to the establishment of a leading edge National Computer Forensic team with capital funding for the building of a Computer Forensic Laboratory at Weston, ACT.

Recommendation I.4

Placing heavy importance on the prevention of E-crime and providing the community with real advice and guidance regarding its defence i.e. the facilitation of ‘safe and secure’ methods for protecting businesses from E-crime education schemes/ programs of heavy users of electronic mediums especially larger businesses etc.

Recommendation I.5

There must be early consideration of the Commonwealth establishing a Cybercrime Centre under the AFP to co-ordinate and investigate criminal activity utilising this technology.

The Commonwealth and Child Protection

The Commonwealth and Child Protection

The AFPA has developed a successful working relationship with *Child Wise* (previously ECPAT), and supports its ongoing efforts to support programs and strategies designed to defend children from criminal exploitation. The AFPA also recognises the Commonwealth Government's Commitment to the expansion of efforts on child protection through the activities of the AFP Trans-national Sexual Offences Team.

J.1 Child Protection Priorities

The main areas of activity within the area of Child Protection relate to:

- Child sex tourism
- Children involved in prostitution
- The sex trafficking of children
- The use of children in pornography and exploitation of children on the Internet
- The establishment of child safe organizations.

The responsibilities for the development of efforts in these areas is an ongoing obligation of both Government and non-government (ie, *Child Wise*) agencies.

In recent years agencies such as *Child Wise* have successfully lobbied for the:

- The enactment of the Child Sex Tourism Law in 1994
- The enactment of the Sex Slavery Laws
- The introduction of child friendly judicial procedures in Commonwealth Law
- Tighter screening procedures for unaccompanied minors coming into Australia
- Australia's National Action Plan Against Commercial Sexual Exploitation of Children

The Australian Government and *Child Wise* are both responsible for raising community awareness about the global child sex trade and mobilising action against it both in Australia and overseas. Arguably the Government has not been as high profile in their promotional efforts in recent years as the community may have expected, and the AFPA believes some greater emphasis to this should be considered.

J.1.1 The AFP Trans-National Sexual Offences Team

There is no doubt that there is an increasing obligation on Government to consider the role of Australian and its citizens in combating the expansion of the global child sex trade. While it may be difficult to suggest an actual expansion in activities relating to the child sex trade given the lack of

historical data, there is no doubt that there is increased reporting on and awareness of this problem. Thousands of Australian citizens are undoubtedly involved in one form or another within this criminal activity.

In recent years the AFP has upgraded its response to the involvement of its citizens and others in criminal offences relating to children. The Transnational Sexual Offences Team (TSOT) is now the primary co-ordinating body in the AFP response to these crimes.

The TSOT has primary responsibility for the co-ordination of the AFP activities in respect to the Crimes (Child Sex Tourism) Amendment Act 1994, the Slavery and Sexual Servitude Act 1999, and the distribution of Child Pornography via the Internet (Section 85ZE of Crimes Act 1914).

In January 1993 the AFP responded to identified needs in the area of child protection through the establishment of national Project MANDRAKE. The Federal Govt response to deficiencies in the legislative response to the matters was to introduce the Crimes (Child Sex Tourism) Amendment Act 1994. An Australian citizen or resident may now be charged and convicted in Australia of a sexual offence committed against a child under 16 years whilst overseas. A body corporate conducting business in Australia may also be charged and convicted for engaging in, encouraging or profiting from sexual offences committed against children overseas under 16 years.

The AFP now acts to identify Australian targets who may commit offences under the Commonwealth legislation. As part of the response the AFP is required to monitor overseas travel, direct and co-ordinate enquiries, and facilitate flow of quality intelligence.

The AFP works closely with the State Police Services on child protection issues, as the States have a strong role to play in this area of enforcement. Investigative taskings are referred to AFP and State Police offices as appropriate.

Integral to the AFP efforts in this area is the Law Enforcement Co-operation Program (LECP), which operates in close co-operation with the AFP's Liaison Officer network. There are currently 40 Officers in 24 posts in 23 key countries throughout the world. This provides the AFP with a pro-active capacity to combat the increasing complexity and sophistication of this criminal activity, which has become global by nature.

The main role of AFP liaison officers is to facilitate the interchange of drug and other crime related intelligence between the AFP, other federal law enforcement agencies, Australian State police services and foreign law enforcement agencies. The liaison officers also provide strategic intelligence reporting on international criminal trends.

The AFP aims to provide all Australian law enforcement agencies with the capacity to effectively undertake international investigations. A principal objective of the AFP is to provide the Commonwealth government with law enforcement advice and support in meeting its foreign policy interests and international obligations. In this regard, the AFP works closely with a number of agencies, in particular the Department of Foreign Affairs and Trade and the Attorney-General's Department.

In its capacity as the Commonwealth's principal law enforcement agency overseas, liaison and intelligence gathering play a major role in AFP operational activity. AFP liaison officers obtain useful and timely criminal intelligence. Liaison officers develop criminal intelligence and coordinate operational arrangements with foreign agencies involved in investigations affecting Australia. The overseas liaison officer network has been instrumental in achieving many major AFP drug seizures.

Liaison officers work closely with host country enforcement agencies, but do not conduct independent investigations or carry out operational police work. They facilitate the exchange of criminal intelligence and report on crime trends and developments in law enforcement, including research, training and operations.

The principal role and function of overseas liaison officers is to establish a relationship of confidence with the police and law enforcement agencies in the host country and other countries within the region of responsibility, facilitating a flow of information to Australian police services.

Liaison Officers initiate inquiries with relevant local law enforcement agencies on behalf of AFP, State police, the Australian Bureau of Criminal Intelligence (ABCI) and other Australian law enforcement agencies, and pass on requests from local agencies to the AFP for inquiries within Australia. The Officers coordinate and provide advice to host countries on joint investigations, assist the host country in the development and execution of controlled operations, assist with extradition of persons wanted in Australia or the host country, and identify new developments in police training, equipment and practices, especially in relation to drugs and organised crime. The officers also provide training and technical advice where appropriate to local law enforcement agencies.

Overseas liaison officers are operationally responsible to the Commissioner of the AFP, but are required to keep the head of mission informed of their activities, particularly on matters which potentially impact upon the Australian Government.

Overseas posts are a major part of AFP efforts to combat both international criminal activity affecting Australia and activities of Australian criminals seeking to avoid detection overseas. The overseas liaison network provides Australian law enforcement with access to international intelligence and policing methodology.

In recent years, increasing emphasis has been given to the identification of Australian nationals travelling overseas, particularly to south-east Asia, for the purpose of child sex tourism. The AFP liaison network aims to gather intelligence relating to such activity and to support the investigation of possible offences under the Crimes (Child Sex Tourism) Amendment Act 1994, in circumstances where the person is not prosecuted in the country where the offences were committed.

The LECP was established in 1997. Expanded funding sourced through the National Illicit Drugs Strategy has underpinned the operation of the program in recent years most particularly in Asia. The program's operation in Melanesia operates on a broad front. Although, the primary focus of the program outside of Melanesia is in the area of Drugs and People Smuggling. As the focus of the program seeks to promote education and capacity building, the AFP would seek the program having limitations on the funding removed to allow the AFP Commissioner to utilise the program more broadly and with a particular expansion of the war against child exploitation.

J.1.2 Australia and Child Sex Tourism

With the introduction of the Commonwealth legislation aimed at fighting Child Sex Tourism in 1994, Australia has enjoyed a significant legislative capacity to fight criminal activity in this area. Recent increases in funding by the Commonwealth Government for the AFP have enabled it to expand its response to this problem and other trans-national crime policy, through the efforts of its overseas liaison officer network.

Hundreds of Australians travel overseas to sexually abuse and exploit children every year and Australian child sex offenders have been identified in over 20 countries. The placement of the TSOT within the proposed trans-national crime centre will now effectively provide a more targeted response to these offences.

The AFP would like to see increased training workshops being conducted for police in child sex tourism destinations on how to investigate child sex tourism crimes. To assist this, it would be appropriate to extend a Memorandum of Understanding to a greater number of countries for bilateral cooperation on child sexual abuse investigations.

There should be an ongoing and sustained education campaign to ensure all Australians are aware of the child sex tourism laws, their legal responsibilities when traveling overseas and where to report child sex tourism. To supplement this there should also be training for Australian travel and tourism students and capacity building in tourism destinations to develop locally effective strategies against child sexual abuse within the tourism industry. There should also be increased funding and support for Governments and NGO's in child sex tourism destinations to help them address the root causes of child sexual exploitation.

J.1.3 Internet Child Sexual Exploitation

The AFP has a role in the investigation of the transmission of Child Pornography on the Internet through Section 85ZE(1b) and 85ZK(1b) of Crimes Act 1914. It is an offence to transmit material, which would be considered offensive to the normal person via a telecommunications service. Penalties of imprisonment exist of 1 and 5 yrs respectively.

In many respects the Australian legislative response in this area is more effective than other countries in that there is a capacity to deal with any image depicting a minor. In recent times the United States has had difficulties with more restrictive legislation in that the distinction between computer generated images and real images has been subject to distinction by the courts.

The AFP TSOT has responsibility to direct and co-ordinate all inquiries received by the AFP in respect of internet exploitation, conduct initial enquiries with Internet Service Provider (ISP) operators and conduct enquiries to establish the full identity of any offender. The TSOT will refer appropriate matters to relevant State / Overseas agencies for investigation. The response by the AFP in this area also addresses matters relating to CD-ROM Child Pornography, and new controlled operations provisions came into effect on 12/10/2001.

Recently there has been 3 referrals received from US, with 2 currently before courts.

Australians have been identified as being involved in international Internet paedophile and pornography networks. These networks which trade in images of child sexual abuse and promote paedophilia include the Wonderland Club, the Orchid Club and more recently Landmark.

The Australian Internet industry is reasonably effectively governed through a self-regulatory model through the Internet Industry Association working with the Police jurisdictions through the Cybercrime Taskforce.

The response in this area is naturally requiring continual monitoring as the industry expands and the technological developments rapidly evolve. Currently there is no capacity to require an ISP to retain data flow records relevant to an investigation. It would benefit the policing response if there were a legislated capacity to enforce a 60-day data retention requirement if necessary. Whilst legitimate operators generally assist Police agencies in this area, the smaller and less well intentioned operators could take advantage of the current loopholes.

Whilst the AFP generally enjoy good working relationships with the industry, the AFPA believes that there should be contemplation of a mandatory licensing requirement for all ISP's that could be utilised to enforce compliance with self-regulatory standards and commonwealth legislation.

The global nature of the new technology marketplace makes this aspect of criminal activity one of the more complex to institute effective strategies. There is an ongoing need to synchronise the national and international child pornography laws and activities of law enforcement if real solutions can be implemented in the long term to the expansion of this problem.

Government must accept the need for greater education of the judiciary on the new technologies and the crimes they are facilitating. Government must also consider expanded education programs for children, teachers and families on Internet dangers and how to avoid them.

J.1.4 Child Sex Trafficking

In 2000 the Government introduced the Slavery and Sexual Servitude Bill in response to the need to respond to sex trafficking into Australia. The legislation deals with persons traded or smuggled to Australia for the purpose of sexual servitude, with penalties up to 20 years possible.

The AFP currently investigates allegations that fall within the terms of the legislation, works to identify syndicate members and their activities, and identifies victims. Efforts in this area are conducted in liaison with the Department of Immigration, Multicultural and Indigenous Affairs

Frequently these enquiries are likely to uncover other Commonwealth/State offences such those relating to drugs.

Australians are naturally involved in the sex trafficking of women and children. It is impossible to estimate how many women and children are trafficked into the illegal sex industry in Australia. Unofficial estimates vary from several hundred to thousands. What is known about sex trafficking is that the girls experience hazardous working conditions and are severely deprived of their human rights. They incur enormous debts to the crime networks that transport them and they earn very little from prostitution until their debts are paid.

Commonwealth agencies within Australia have been ongoingly involved in investigating these networks, this problem has regularly been identified through illegal brothel operations particularly based within the ethnic communities.

Effective strategies to respond to this problem would require the development of a nationally coordinated response to the treatment of girls and women trafficked into Australia, which respects their human rights. With a limited capacity to actually define the full extent of the problem, it is necessary to investigate the nature and extent of sex trafficking into Australia incorporating the views of all key stakeholders, identify the needs and support services required by trafficked persons and direct more resources to address the underlying causes of sex trafficking in sending countries.

An expansion of existing AFP programs with neighbouring countries should assist to develop a regional response to sex trafficking.

J.1.5 Children Involved in Prostitution

CHILD WISE conducted a national inquiry into children and prostitution in 1998. The study entitled Youth For Sale found that in the previous year over 3,700 children and young people were identified as engaging in opportunistic prostitution otherwise known as sex for survival in Australia. The main risk factors driving young people into prostitution were identified as homelessness, poverty, drug use and abusive family backgrounds.

To combat the potential growth of this problem, there must be improved and expanded services for at risk young people (including outreach services and short and long term supported accommodation), implemented by the Commonwealth, State and Territory Governments.

An exclusively law enforcement predicated response will not achieve in isolation an effective counter-measure to these issues. There must be consideration of a broad range of strategies including income support for

young people, a consideration of possible drug reform and the expansion of treatment programs, specific law reforms to ensure children and young people are not criminalised for being in prostitution. There must also be greater community education to raise awareness of the commercial sexual exploitation of children in Australia and training and education for service providers on the needs of young people in the sex trade.

Governments must provide ongoing monitoring of the nature and extent of the problem in Australia and enlist youth participation in the development of effective strategies to address this problem.

J.1.6 Australia's Progress in Tackling the Child Sex Trade

Since 1993 CHILD WISE (formerly ECPAT) has been advocating for stronger laws, increased law enforcement, specialised police squads, more awareness raising campaigns, improved child protection policies, more assistance for overseas police officers and far more resources dedicated to both prevention of child sexual exploitation and protection for the children.

Over the last ten years Australia and the world community have started to recognise the child sex trade is indeed significant and is growing and developing into new forms such as Internet paedophilia and sex trafficking.

The Australian Government/s have taken some important steps to tackle the global child sex trade. Such as:

- The enactment of the Extra territorial child sex tourism law in 1994
- Enactment of the sex slavery laws to tackle trafficking
- Development of a national plan to combat CSEC
- Stronger state laws for the possession of child pornography
- The signing of the Optional Protocol Against CSEC
- The establishment of Net Alert to promote safe Internet use
- Introduction of child friendly judicial procedures in Federal laws
- The establishment of the Australian Federal Police Trans National Sexual Crimes Team (an AFP initiative)

Despite these efforts Australia and the world community are failing to curb the child sex trade. The trans-national sexual exploitation of children by Australians is increasing. It is resilient, changing in nature and moving into new regions of the world.

For this reason the AFP has been requiring its network of overseas liaison officers to give greater consideration to issues within this spectrum and

currently enjoys generally high levels of co-operation from foreign governments.

An example of the expansion of these efforts is the current moves towards the establishment of a trans-national crime team in Cambodia with an AFP Officer and five Cambodian officers being deployed to deal with all types of trans-national crime including child sex tourism and slavery matters.

J.1.7 Addressing the Community Concern on Child Protection

In conjunction with other recommendations in this submission, the Commonwealth can act to address community concern on Child Protection issues through demonstrating a greater political commitment to protecting children everywhere from all forms of sexual exploitation.

This could be achieved through establishing a national inquiry into the nature and extent of child sexual abuse and the exploitation including Australians abusing children overseas. The subversive nature of these crimes, The sophistication of the criminals involved and the pervasive nature of the networks involved must ultimately be considered through such an inquiry.

The Commonwealth should consider a national awareness campaign on the rights of children to be safe from harm. All governments must collectively increase resources dedicated to the early detection of and intervention on sex offenders. This should also be done on conjunction with an increase in the funding of projects in Australia and overseas that targets the causes and consequences of the global child sex trade.

The Commonwealth should move to implement a National Plan to combat commercial sexual exploitation of children which includes time frames and monitoring mechanisms and establish a national steering committee with various key stakeholders to review, monitor and implement such a National Plan to combat the commercial sexual exploitation of children.

Consideration should be made to re-establishing Operation Paradox, a previously successful national, multi-jurisdictional initiative designed to identify children at risk. This model was based on the Operation Noah “Dob in a Drug Dealer” campaign.

In a broad consideration of emerging needs in the effort to defend children against exploitation, the AFPA calls on the Commonwealth to give serious consideration to the establishment and funding of a dedicated Cybercrime Centre (CC) under the jurisdiction of the AFP. This establishment of such a centre would require substantial funding, staffing of a multi-disciplinary

and multi jurisdictional nature and with a focus on trans-national capacity. The United States Government has set up a similar model to attempt to deal with the expansion of criminal activity in Cyberspace.

The volume of if Internet traffic and expansion of the criminal utilisation of new technology across a spectrum of activities will inevitably demand a co-ordinated and profound response by the Commonwealth Government. As it stands, no single agency or jurisdiction can currently combat this tide. Through the establishment of such a centre, a focused response could be built over a period of time and respond more effectively to the increasing reporting of criminal activity already building daily.

As the majority of crime involving children in cyberspace has an element of trans-national activity underpinning its expansion, the AFPA recommends that the AFP be recognised and developed as the primary vehicle for any Commonwealth response in this area. This would recognise the strong role the AFP has played with Interpol since 1992, and the effective contribution the AFP has made to an international working party with over 30 countries participating. The AFP has contributed to the development of an investigative handbook to assist police agencies in this area, which was translated and distributed to all Interpol member countries to assist in investigating these offences. The handbook is currently being updated.

Established protocols between the Commonwealth and State/Territory Governments must recognise and the strengthen the AFP's national co-ordination role and in the future consideration should be given to the AFP establishing a national Australian Images Library as a part of the response to the investigation of internet child pornography. This database must be centrally administered and co-ordinated but must be available for all jurisdictions in the investigation of offences.

In more general terms, it should be recognised that child sex offenders are no longer able to assault children overseas without a real fear of prosecution within Australia.

Through International cooperation Australia will ensure that paedophile networks using the Internet to distribute child pornography will not go undetected and international organised crime groups targeting Australia in relation to illicit trade of women and children for purposes of prostitution will be investigated. The building of capacity in this area must obviously remain a key priority of Government.

J.2 Recommendations

Recommendation J.1

The Law Enforcement Co-operation Program have limitations on the expenditure of funding removed to allow the AFP Commissioner to utilise the program more broadly and with a particular expansion of the war against child exploitation.

Recommendation J.2

The Commonwealth fund and facilitate increased training workshops being conducted for police in child sex tourism destinations on how to investigate child sex tourism crimes.

Recommendation J.3

The Commonwealth to extend a Memorandum of Understanding to a greater number of countries for bilateral cooperation on child sexual abuse investigations.

Recommendation J.4

The Commonwealth implement an ongoing and sustained education campaign to ensure all Australians are aware of the child sex tourism laws, their legal responsibilities when traveling overseas and where to report child sex tourism.

Recommendation J.5

The Commonwealth institute training for Australian travel and tourism students and capacity building in tourism destinations to develop locally effective strategies against child sexual abuse within the tourism industry.

Recommendation J.6

The Commonwealth provide increased funding and support for Governments and NGO's in child sex tourism destinations to help them address the root causes of child sexual exploitation.

Recommendation J.7

Currently there is no capacity to require an ISP to retain data flow records relevant to an investigation. The Commonwealth legislate a capacity to enforce a 60-day data retention requirement if necessary for the purposes of an investigation.

Recommendation J.8

There should be contemplation of a mandatory licensing requirement for all ISP's that could be utilised to enforce compliance with self-regulatory standards and commonwealth legislation.

Recommendation J.9

The Commonwealth seek to synchronise the national and international child pornography laws and activities of law enforcement where possible.

Recommendation J.10

The Commonwealth provide greater education of the judiciary on the new technologies and the crimes they are facilitating.

Recommendation J.11

The Commonwealth Government consider expanded education programs for children, teachers and families on Internet dangers and how to avoid them.

Recommendation J.12

The Commonwealth seek a nationally coordinated response to the treatment of girls and women trafficked into Australia for sex trade purposes.

Recommendation J.13

The Commonwealth to investigate the nature and extent of sex trafficking into Australia incorporating the views of all key stakeholders, identify the needs and support services required by trafficked persons and direct more

resources to address the underlying causes of sex trafficking in sending countries.

Recommendation J.14

The Commonwealth consider an expansion of existing AFP programs with neighbouring countries to assist in developing a regional response to sex trafficking.

Recommendation J.15

The Commonwealth investigate improved and expanded services for at risk young people (including outreach services and short and long term supported accommodation), to be implemented by the Commonwealth, State and Territory Governments.

Recommendation J.16

The Commonwealth, State and Territory Governments consider a broad range of strategies including income support for young people, a consideration of possible drug reform and the expansion of treatment programs, and specific law reforms to ensure children and young people are not criminalised for being in prostitution.

Recommendation J.17

The Commonwealth implement greater community education to raise awareness of the commercial sexual exploitation of children in Australia and training and education for service providers on the needs of young people in the sex trade.

Recommendation J.18

The Commonwealth provide ongoing monitoring of the nature and extent of the Child prostitution in Australia and enlist youth participation in the development of effective strategies to address this problem.

Recommendation J.19

The Commonwealth establish a national inquiry into the nature and extent of child sexual abuse and the exploitation including Australians abusing children overseas. The inquiry to investigate the subversive nature of these crimes, the sophistication of the criminals involved and the pervasive nature of the networks involved.

Recommendation J.20

Commonwealth should consider a national awareness campaign on the rights of children to be safe from harm. All governments must collectively increase resources dedicated to the early detection of and intervention on sex offenders. This should also be done on conjunction with an increase in the funding of projects in Australia and overseas that targets the causes and consequences of the global child sex trade.

Recommendation J.21

The Commonwealth move to implement a National Plan to combat commercial sexual exploitation of children which includes time frames and monitoring mechanisms and establish a national steering committee with various key stakeholders to review, monitor and implement such a National Plan to combat the commercial sexual exploitation of children.

Recommendation J.22

Consideration should be made to re-establishing Operation Paradox, a previously successful national, multi-jurisdictional initiative designed to identify children at risk.

Recommendation J.23

The Commonwealth to give serious consideration to the establishment and funding of a dedicated Cybercrime Centre (CC) under the jurisdiction of the AFP.

Recommendation J.24

Established protocols between the Commonwealth and State/Territory Governments recognise and the strengthen the AFP's national co-

ordination role and the future consideration be given to the AFP establishing a national Australian Images Library as a part of the response to the investigation of internet child pornography. This database must be centrally administered and co-ordinated but must be available for all jurisdictions in the investigation of offences.

Summary of Recommendations

Summary of Recommendations

Federal Crime and the Impact on Local Communities

Recommendation B.1

Greater use of resident Agents placed in high population coastal and country areas will assist in detecting organized criminal activity by accessing local community and local Police based knowledge.

Recommendation B.2

Amendments to the Customs Act 1901 to include the offences of “Supply prohibited import reasonably suspected of being imported” and “Knowingly take part in the supply of a prohibited import reasonably suspected of being imported”.

The Australian Crime Commission

Recommendation C.1

The new ACC be established with a similar employment framework to the existing ABCI model,

Recommendation C.2

The new ACC must demand the highest level of accountability of its staff, well beyond that of the existing NCA Act.

Recommendation C.3

The ACC be created out of new purpose built legislation referencing the AFP as the Statutory Employer.

Recommendation C.4

The ACC should be able to access all Australian police data so that any one jurisdiction only has to ask the ABCI/ACC for assistance instead of seven other jurisdictions.

Recommendation C.5

The ACC must produce national criminal intelligence assessments for decision makers. This would provide governments and senior law enforcement officers with timely and accurate data so that they could make more informed policy decisions.

Recommendation C.6

The ACC should not have its own investigative section (other than Police secondees) as that function should be the responsibility of seconded Police Investigation Teams to ensure a further layer of transparency and accountability.

Recommendation C.7

The ACC employees must be subject to the same integrity and professional regime as all other Police Service sworn and non sworn employees.

Recommendation C.8

The ACC should focus on criminal intelligence collection and should establish national criminal intelligence priorities.

Recommendation C.9

The ACC should develop national criminal intelligence on all crime trends impacting on Australian policing and not be limited to organised crime references;

Recommendation C.10

The ACC should have a Board comprising of the AFP-APS Commissioner and State & Territory Police Commissioners. Other agencies such as ASIO, ACS, AGD, DPP ATO etc could advise the Board but not sit on it.

Recommendation C.11

The ACC should have coercive powers and pro-actively collect intelligence about criminal trends, networks and criminal enterprises.

Recommendation C.12

The ACC should utilise Australian Police service employees and special members (sworn & unsworn) on secondment agreements (up to 5 years) to give effect to its Corporate within the ACC must be subject to the same integrity and professional regime as all other Police Service sworn and non sworn employees.

Recommendation C.13

The ACC should utilise Australian Police service sworn members on short term detachment (for the duration of the specific investigation only) for specific criminal investigations. Those Police Investigation Teams should be under the control of the most appropriate Commissioner of Police, in consultation with the AFP Commissioner who represents the Commonwealths interest.

Recommendation C.14

The ACC Board should prioritise criminal targets based on intelligence analysis derived by the ACC. It should arrange lead agency control and composition of Police Investigation Teams.

Recommendation C.15

The ACC The Board should be responsible for;

- Determining priorities for the ACC's Intelligence Function, including Target Development, based on ACC national intelligence collection
- Overseeing the strategic direction of the ACC
- Ratifying use of the coercive powers by the ACC Criminal Intelligence Monitoring Team (CIMT) in relation to Intelligence Functions, including Target Development
- Arranging appropriate long term secondment of Police Service employees and special members for Corporate Administration and Intelligence Functions, including Target Development
- Arranging appropriate Police Service short term detachment for ACC Police Investigation Teams for criminal investigations formed as a result of

successful Target Development outcomes.

Recommendation C.16

The ACC CIMT should establish intelligence teams and authorise the use of the coercive hearing powers to assist intelligence teams in support of the ACC's intelligence function. The CIMT should comprise the Chair of the Board, the Head of the ACC and any other member of the Board representing an agency participating in, or likely to participate in a criminal investigation formed as a result of successful Target Development outcomes. It should report to the Board in relation to outcomes.

Recommendation C.17

The Head of the ACC should be responsible for:

- Maintaining an overview of Intelligence Functions and Police Investigation Teams to ensure a coordinated and consistent national approach
- Advising the Board in relation to the Intelligence Function and Police Investigation Teams outcomes
- Advising the Board on the changing priorities
- Advising the Board on the utilisation of the ACC coercive powers.

Recommendation C.18

The ACC's coercive hearing powers and other powers (including surveillance, controlled operations, obtaining documents etc) should be available in support of the ACC Intelligence Function.

Recommendation C.19

The Proceeds of Crime Bill 2002 and relevant State and Territory legislation should be utilised for the purpose of seizing criminal assets identified as a result of the ACC.

Recommendation C.20

Commonwealth legislation being strengthened to include the use of Telephone Intercept material in relation to civil forfeiture and the

inclusion of unexplained wealth declarations. Further, that forfeiture funds be directed into the administration and operation of the Bill including the reimbursement of Police Investigation Teams expenses back to the relevant jurisdictions involved in specific investigations.

Recommendation C.21

Authorisation for the use of the ACC's coercive powers should be given to CIMT (Chair of the Board, Head of the ACC and any other member of the Board participating or likely to participate, in the criminal investigation). Such authorisation should be ratified by the ACC Board at a later date.

Recommendation C.22

The authorisation of the use of coercive powers should be kept separate and distinct from those requesting those powers. The Coercive Hearing powers should be vested in an independent statutory officer or officers. Those Coercive Hearing Officers should assess requests from the ACC Intelligence Function or from Police Investigation Teams on a case by case basis.

Recommendation C.23

The ACC legislation must allow coercive and other powers to be used for intelligence purposes such is the case with numerous State Commissions of inquiry. The ACC's coercive hearing powers and other powers (including surveillance, controlled operations, obtaining documents etc) should be available in support of the ACC Intelligence Function.

Commonwealth Security

Recommendation D.1

The Commonwealth must define where it sees its obligations with respect to Commonwealth Security obligations, how they are to be resourced (currently off-budget in the case of the APS) and how these obligations are to be absorbed as an operating division of the AFP.

Recommendation D.2

All Commonwealth functions working within the Criminal law enforcement field should share common standards and accountability and be structured around best practice coordination and operational models.

Recommendation D.3

The model for the APS as an "Operating Division" of the AFP should also be considered for other Commonwealth functions that contribute to the criminal law enforcement framework.

Recommendation D.4

The Secretary of the Attorney Generals Department be removed from the role of statutory employer of all Commonwealth law enforcement employees.

Recommendation D.5

Further consideration be made of the Attorney-General's Department role in the broader operational criminal law enforcement environment, with a view to extracting the Department from directing operational matters. These responsibilities should be transferred to the AFP Commissioner with a reporting line to the Minister of Justice & Customs.

Recommendation D.6

The Commonwealth Government must commit to a time frame for intended restructure with appropriate amendment to the APS Act and/or AFP Act and the AFP (Complaints) Act to ensure that APS employees are subject to the same integrity and anti-corruption regime as is required of current AFP employees.

Recommendation D.7

The development of bridging competencies between the AFP/APS workforces and introduction of mobility provisions must be a significant priority.

Recommendation D.8

The current structure of the APS relationship with private contracting and arrangements with airport operators must be reviewed.

Recommendation D.9

The operational governance arrangements of the airport security functions, the accountability and performance indicators, the private sector involvement and the role requirement must be properly reviewed.

Recommendation D.10

The Commonwealth to urgently consider formalising its obligation and role to ensure the proper policing of Australian ports of entry. The Commonwealth determine its commitment to a "general duties" policing role at all Australian Airports and urgently implement either appropriate training or appropriate structural relationships with State Governments to resolve this issue.

Recommendation D.11

The Commonwealth to review the AFP/APS role in providing counter-terrorist first response at all ports of entry including the Australian waterfront.

Recommendation D.12

The APS AFR program be suspended pending a proper review of the AFR competency and the requirement for all APS officers and stations to meet this standard without the requirement being determined largely by client expenditure considerations.

Recommendation D.13

The Commonwealth to reconsider the "off-budget" nature of the APS function within the Commonwealth's obligation to provide an appropriate security framework.

Recommendation D.14

The AFP should conduct all recruitment for APS functions as part of a unified model and provide such officers back to the APS agency on a purchaser - provider basis for deployment to the APS functions.

Recommendation D.15

That there be urgent consideration to the structure of all APS contracts including those for airport security functions, to ensure that operational primacy remain with the Commonwealth and that this not be sacrificed to other market driven imperatives or performance indicators.

Recommendation D.16

That there be a broader consideration of the NICLE and other models for law enforcement co-ordination and accountability, given the events of September 11 2001.

Commonwealth Forensic Services

Recommendation E.1

Forensic Services require the ability to conduct mitochondria DNA testing as well as the current nuclear DNA testing.

Recommendation E.2

The AFP Heroin Signature Program funded under NIDS is too limited and needs to be expanded to all drugs and in particular synthetic drugs being imported into Australia.

Recommendation E.3

Traditional photography needs to be replaced with digital technology to enable real time communication of images to assist investigative teams.

Recommendation E.4

National legislation is needed that requires mandatory reporting of all bomb related incidents to the ABDC.

Recommendation E.5

National legislation dealing with fireworks (both legal and illegal), as the current State and Territory legislations are inconsistent. and there should be consideration of urgent national uniformity being pursued in this area.

Recommendation E.6

A consistent National approach relating to the building of a hoax Improvised Explosive Device (IED) must be addressed. Legislative consistency is needed for offences relating to the building and placement of an IED. Current legislation makes it an offence to import a prohibited import (eg. publication on how to make an IED), but does not cover electronic transfer of such material. The legislation needs to be expanded to include these forms of information transfers.

Recommendation E.7

Tougher control and regulation of the importation of Dangerous Goods including explosives, fireworks and other dangerous chemicals must be considered as a matter of urgency.

Recommendation E.8

There needs to be legislated power for police to order the evacuation of civilians in emergency circumstances.

Recommendation E.9

There must be mandatory reporting of theft or loss of pre-cursor or dangerous chemicals, both biological and radiological. The relevant materials should be subject of a legislative provision to address this oversight..

Recommendation E.10

Fingerprint Legislation should be altered to allow other agencies to also be responsible, eg. State Police Services, or Immigration themselves should be responsible for this function and there should be centralised data basing of the product.

Recommendation E.11

All paperwork and storage relating to firearms importations are Customs responsibility, so this Act should be amended so that Customs officers are able to also provide the safety testing. (Customs Act 1956).

Recommendation E.12

Current legislation has attached schedules detailing what drugs are considered to be prohibited imports. These schedules need to be updated to include chemical pre-cursors (chemical used in the manufacture of illicit drugs), recently identified illicit drugs, and to ensure that there are commercial quantities for all listed illicit drugs. (Customs Act 1901).

Recommendation E.13

With respect to illicit drugs, current legislation requires that offenders are charged with the total net weight of substance containing the illicit drug. Offenders are then sentenced based upon the total net weight of pure illicit drug. This process is an anomaly internationally, and does require larger than necessary analysis costs for the AFP. The Commonwealth must urgently review of this area to introduce new benchmarks under the legislation. (Customs Act 1901).

Missing Persons

Recommendation F.1

The Commonwealth must a initiate a response to the manifest need in this area as a matter of urgency and determine where this function will be conducted from after the ABCI ceases to exist.

The NICLE Model

Recommendation G.1

The instigation of cooperation and information sharing on a needs basis between all agencies of interest must be more greatly enhanced for the Commonwealth to effectively respond to the emerging criminal environment.

Recommendation G.2

Intelligence sharing across agencies must occur with greater co-ordination, accountability and transparency.

Recommendation G.3

The current law enforcement framework and any future structures be annually subject to scrutiny by the Parliament under the Standing Committee on Legal and Constitutional Affairs as a standing reference with full and at times confidential disclosure on activities, resources and emerging issues.

Recommendation G.4

A bi-partisan response within the Parliamentary environment to criminal law enforcement issues is in the national interest and should underpin greater ongoing parliamentary scrutiny of the Commonwealth structures and activities.

Recommendation G.5

There must be an overt effort to reduce competing priorities across competing core businesses within the Commonwealth framework if effective Co-ordination meets the public need for best practice in this area. Operational agencies need the ability to identify issues of joint interest without structural impediments creating limited operational coordination.

Recommendation G.6

In implementing a unified response by the Commonwealth to crime there must be an amalgamation of intelligence and operational responsibilities under an effectively coordinated framework.

Recommendation G.7

There must be a single permanent Operational Departmental Head responsible and accountable for coordination of criminal law enforcement efforts.

Recommendation G.8

There must be a holistic approach to Planning; Advice and Policy Formulation within the operational structures, with regular reporting to the Minister and the Parliament on assigned functions and the effectiveness of criminal law enforcement efforts.

Recommendation G.9

It is essential that Australian law enforcement efforts have a strategic direction in relation to how they are planned, executed and how crime is dealt with.

Recommendation G.10

It is important for there to exist an entity that is responsible for the development of strategic planning that allows for strategies not only to be devised but that are implemented. This also, importantly permits the organisation to conform with its projected resource levels.

Recommendation G.11

As well as having a strategic approach in organising so as to combat crime it is also just as important to have in place, timely prepared contingency plans that reflect changes in the criminal law enforcement environment.

Recommendation G.12

All employees involved in criminal law enforcement functions in Federal and National Agencies be deemed special members of the AFP to establish translation and a common integrity framework.

Recommendation G.13

Formation of a new Joint Criminal Law Enforcement Command (JCLEC) with a Chief Commissioner of the AFP as the permanent head who is the principal adviser to a Special Cabinet Minister & Joint Parliamentary Committee.

Recommendation G.14

The House of Representatives Standing Committee on Legal and Constitutional Affairs should have a standing annual reference to provide parliamentary oversight to the Commonwealth Law Enforcement Framework. This annual reference should investigate activities, trends, co-ordination issues, resources and allocation of such, technological trends impacting on activities and emerging priorities. Where appropriate this review should also be conducted partly "In camera" for the consideration of sensitive matters. The greater public scrutiny available to this annual reference, should be viewed as important to building public confidence in the Commonwealth response in this area.

Fraud Against The Commonwealth

Recommendation H.1

The following legislative amendments be added to the AFP Act:

A duty to notify the AFP of possible criminal or corrupt conduct;

- This section applies to the following officers:
 - The Ombudsman
 - The principal officer of a public authority
 - An officer who constitutes a public authority;

- An officer to whom this section applies is under a duty to report to the AFP any matter that the officer suspects on reasonable grounds concerns or may concern criminal or corrupt conduct;

- The AFP may issue guidelines as to what matters need or need not be reported; and,
- This section has effect despite any duty of secrecy or other restriction on disclosure.

Recommendation H.2

The AFP should be restructured as the central Criminal Law Enforcement Agency responsible for Federal and National criminal law enforcement functions as per the proposed NICLE Model.

Recommendation H.3

The further strengthening of reporting of crime by Government Agencies through legislative changes to the AFP Act and other Acts or Regulations pertaining to the transfer of responsibilities from other agencies.

Recommendation H.4

In the absence of the NICLE Model all Commonwealth agency criminal investigators should become members of the AFP on efficiency and integrity grounds.

Recommendation H.5

That national intelligence driven policing should be enhanced through the establishment of a peak joint Federal and State Strategic criminal intelligence body incorporating the various strategic intelligence functions currently conducted by numerous law enforcement agencies. The new organization will direct strategic strikes on identified criminal activity. The new organization will report to and will be administered by the AFP as the central Criminal Law Enforcement Agency. The process will be in accordance with the proposed NICLE model.

Recommendation H.6

The creation of a permanent Parliamentary Joint Committee to monitor and review the performance of the AFP as the central Criminal Law Enforcement Agency and to report to both Houses of Parliament on any matter relevant to the AFP on the performance of its functions.

Recommendation H.7

Increased emphasis placed on preventative measures as opposed to concentrating on a reactionary methodology. Prevention must be made a high priority.

Computer/Internet and E-Crime

Recommendation I.1

Tied Funding be allocated to the AFP to develop new technologies to tackle illegitimate electronic activity, develop and deliver training programs to AFP Federal Agents and other interested Law Enforcement agencies and to develop E-Crime prevention measures for the Commonwealth and Australian industry.

Recommendation I.2

Tied Funding be allocated to the AFP to infiltrate E-Crime through the use of "STING" operations by examining Internet traffic.

Recommendation I.3

Tied Funding be allocated to the establishment of a leading edge National Computer Forensic team with capital funding for the building of a Computer Forensic Laboratory at Weston, ACT.

Recommendation I.4

Placing heavy importance on the prevention of E-crime and providing the community with real advice and guidance regarding its defence i.e. the facilitation of 'safe and secure' methods for protecting businesses from E-crime education schemes/ programs of heavy users of electronic mediums especially larger businesses etc.

Recommendation I.5

There must be early consideration of the Commonwealth establishing a Cybercrime Centre under the AFP to co-ordinate and investigate criminal activity utilising this technology.

Child Protection

Recommendation J.1

The Law Enforcement Co-operation Program have limitations on the expenditure of funding removed to allow the AFP Commissioner to utilise the program more broadly and with a particular expansion of the war against child exploitation.

Recommendation J.2

The Commonwealth fund and facilitate increased training workshops being conducted for police in child sex tourism destinations on how to investigate child sex tourism crimes.

Recommendation J.3

The Commonwealth to extend a Memorandum of Understanding to a greater number of countries for bilateral cooperation on child sexual abuse investigations.

Recommendation J.4

The Commonwealth implement an ongoing and sustained education campaign to ensure all Australians are aware of the child sex tourism laws, their legal responsibilities when traveling overseas and where to report child sex tourism.

Recommendation J.5

The Commonwealth institute training for Australian travel and tourism students and capacity building in tourism destinations to develop locally effective strategies against child sexual abuse within the tourism industry.

Recommendation J.6

The Commonwealth provide increased funding and support for Governments and NGO's in child sex tourism destinations to help them address the root causes of child sexual exploitation.

Recommendation J.7

Currently there is no capacity to require an ISP to retain data flow records relevant to an investigation. The Commonwealth legislate a capacity to enforce a 60-day data retention requirement if necessary for the purposes of an investigation.

Recommendation J.8

There should be contemplation of a mandatory licensing requirement for all ISP's that could be utilised to enforce compliance with self-regulatory standards and commonwealth legislation.

Recommendation J.9

The Commonwealth seek to synchronise the national and international child pornography laws and activities of law enforcement where possible.

Recommendation J.10

The Commonwealth provide greater education of the judiciary on the new technologies and the crimes they are facilitating.

Recommendation J.11

The Commonwealth Government consider expanded education programs for children, teachers and families on Internet dangers and how to avoid them.

Recommendation J.12

The Commonwealth seek a nationally coordinated response to the treatment of girls and women trafficked into Australia for sex trade purposes.

Recommendation J.13

The Commonwealth to investigate the nature and extent of sex trafficking into Australia incorporating the views of all key stakeholders, identify the

needs and support services required by trafficked persons and direct more resources to address the underlying causes of sex trafficking in sending countries.

Recommendation J.14

The Commonwealth consider an expansion of existing AFP programs with neighbouring countries to assist in developing a regional response to sex trafficking.

Recommendation J.15

The Commonwealth investigate improved and expanded services for at risk young people (including outreach services and short and long term supported accommodation), to be implemented by the Commonwealth, State and Territory Governments.

Recommendation J.16

The Commonwealth, State and Territory Governments consider a broad range of strategies including income support for young people, a consideration of possible drug reform and the expansion of treatment programs, and specific law reforms to ensure children and young people are not criminalised for being in prostitution.

Recommendation J.17

The Commonwealth implement greater community education to raise awareness of the commercial sexual exploitation of children in Australia and training and education for service providers on the needs of young people in the sex trade.

Recommendation J.18

The Commonwealth provide ongoing monitoring of the nature and extent of the Child prostitution in Australia and enlist youth participation in the development of effective strategies to address this problem.

Recommendation J.19

The Commonwealth establish a national inquiry into the nature and extent of child sexual abuse and the exploitation including Australians abusing children overseas. The inquiry to investigate the subversive nature of these crimes, the sophistication of the criminals involved and the pervasive nature of the networks involved.

Recommendation J.20

Commonwealth should consider a national awareness campaign on the rights of children to be safe from harm. All governments must collectively increase resources dedicated to the early detection of and intervention on sex offenders. This should also be done on conjunction with an increase in the funding of projects in Australia and overseas that targets the causes and consequences of the global child sex trade.

Recommendation J.21

The Commonwealth move to implement a National Plan to combat commercial sexual exploitation of children which includes time frames and monitoring mechanisms and establish a national steering committee with various key stakeholders to review, monitor and implement such a National Plan to combat the commercial sexual exploitation of children.

Recommendation J.22

Consideration should be made to re-establishing Operation Paradox, a previously successful national, multi-jurisdictional initiative designed to identify children at risk.

Recommendation J.23

The Commonwealth to give serious consideration to the establishment and funding of a dedicated Cybercrime Centre (CC) under the jurisdiction of the AFP.

Recommendation J.24

Established protocols between the Commonwealth and State/Territory Governments recognise and the strengthen the AFP's national co-ordination role and the future consideration be given to the AFP

establishing a national Australian Images Library as a part of the response to the investigation of internet child pornography. This database must be centrally administered and co-ordinated but must be available for all jurisdictions in the investigation of offences.