

AUSTRALIAN FEDERAL POLICE ASSOCIATION

SUBMISSION

Workplace Relations Amendment (WorkChoices) Bill

*“WorkChoices:
A clash of Values and Obligations for Police
and Law Enforcement”*



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Introduction

The Australian Federal Police Association (AFPA) represents the industrial, social and professional interests of all employees of the Australian Federal Police (AFP). Our membership interests span across Commonwealth law enforcement functions through the wide-ranging dispersment of AFP employees across a range of Commonwealth interests. Our Activities are predominately within the Australian Crime Commission (ACC), Federal Parliamentary Security Service, and the AFP across the entirety of its functions.

The AFPA is the Federal Branch of the Police Federation of Australia and as a long running participant in the Federal Industrial marketplace; we are well situated to advance practitioner's perspectives in respect of the Bill before the Parliament on this matter. The earlier section of this submission will address general issues of concern with the proposals and the latter will address specific recommendations.

We thank the Committee for the time to address these matters. The AFPA notes the increasingly short time being made available to community and other governmental stakeholders to assess and contribute to the development of public policy and the legislation that underpins it within the Parliament. We hope to make further supplementary submission to this document prior to the Committee commencing Public Hearings.

Executive Summary

We have attempted in this submission to address in a substantial and meaningful way our concerns with respect to the Bill under consideration. In terms of context we note that during the period of the 1996 reforms to industrial relations, the Australian Federal Police Association embraced the new Act and in fact welcomed the then Minister Peter Reith as the keynote speaker to the AFPA National Council later in the year after the passing of the new Workplace Relations Act.

We note this, as reference to the fact the AFPA does not adopt a reactionary approach to government reforms. As an outcomes focused organisation, we have embraced AWA's for a number of members where they have benefited both parties. During the establishment phase of the Air Security Officers program, the AFPA worked vigorously with new members to negotiate an AWA to create stability within the program.

It is with some regret that we now feel compelled to strongly criticise these proposals, both in their generality and in some parts in their specificity. Our concerns are predicated under one philosophical oversight in the Bill and its attempt to create criminally enforced secrecy over remuneration and entitlements and remove a due process to underpin rights within the Policing and law enforcement environment.

In an attempt to extend the scope of the industrial system through the Corporations power - driven as it is by its objective to underpin trade, profit and commerce - the question key to our democracy has not been addressed with respect to whether such provisions and application also being similarly imposed on Federal Police employees, Customs Officers, Australian Crime Commission Officers and other government law

enforcement officers in whom the public demands confidence in the conduct of their office, is appropriate. Roles and functions of Government where conduct determined as integral to be free from corrupt intent or profit will be regulated by this Bill as if they were commercial and profit driven relationships.

At its heart, this concern encompasses the broad parameter of our objections to this Bill. The elements of the Bill which most starkly *require amendment* for police and law enforcement personnel are the following provisions of the Bill:

1. **The application of secret remuneration agreements (AWA's) to policing and law enforcement roles, where the independent Officer/Constable can be corruptly influenced without independent scrutiny.**
2. **Re-definition of Duress to allow an employer to impose an AWA as a condition of employment;**
3. **Unilateral rights for an employer to terminate an agreement without a public interest test;**
4. **Use of 6 months prison through criminal sanction as an underpinning provision to facilitate the negotiation of and secrecy of AWA and employee non-union agreements;**
5. **Expansion of termination without rights being made possible through the "operational" provisions of the Bill;**
6. **The imposition of an employers religious beliefs over employees to deny unions a right of entry and therefore a capacity to represent the employees should they desire;**
7. **Overt limitations on the content of existing arrangements, through the Bill providing the Employment Advocate with the capacity to strike out provisions of existing industrial agreements;**
8. **A mechanism for the content of future agreements to be limited by regulation of the Minister;**
9. **The Disputes procedures preventing parties requesting the AIRC to arbitrate and issue orders on disputes, even when they agree;**
10. **The enhanced limitations for Police and essential services employees to a right of protected action in bargaining, with a diminished access to arbitration and the scope of matters that can be arbitrated; and,**
11. **The confused distinction between the rights of representatives between the union and non-union streams of the Bill.**

With respect to this submission, the available timeframe and given the broader issues of the Bill have been identified by other parties, we have concentrated our consideration of the Bill to these above matters

A clash of values with law enforcement and office of Constable

This Bill manifestly and untenably impacts on the AFP Act, The Values enshrined in the AFP and its integrity framework, the Agency itself and its operational and anti-corruption activities. This would unquestionably be the case in other law enforcement agencies as well.

It is also concerning as to the application of this Bill as it stands to other Commonwealth employee roles and agencies wherein they maintain an obligation and adherence to values and accountability in roles of community importance and public office. As the Bill by scope proposes a unitary reach, it is disturbing that it has apparently been crafted in isolation of the many other State and Federal Government interests that will be roped into its provisions.

The Bill as it stands fundamentally dislocates the AFP integrity regime jointly developed with the AFP workforce over ten years. It will demand of the AFP employer, being the Commissioner of the AFP, conduct and processes that repudiate elements of the AFP Act and its Values (attachment 1) and similarly directly conflicts with the INTERPOL Articles on Global standards to combat corruption in police forces/services (attachment 2) to which Australia and the AFP are a party.

Similarly the Bill conflicts with the position endorsed in the United Nations resolution (attachment 3) adopted by the general assembly on the report of the Third Committee (A/51/610)] in resolution 51/59 - Action against corruption, and its Code of Conduct.

Some of the more onerous and bluntly interventionist provisions of the Bill, provide directions and obligations on the AFP Commissioner and other public sector employers. Employers with current obligations to maintain Merit, transparent and integrity based processes, codified by legislation. This scope often, if not always extends to the workforces concerned and the employer/employee relationship.

This quantum shift in law, culture and regulation of the Master Servant relationship to the Corporations power has a clear and manifest impact on the many complex and regulated employment, criminal and contract relationships defined in law and underpinning the day to day operations of the national law enforcement framework.

The philosophical and articulated provisions of many parts of the Bill will inevitably and almost immediately gridlock entire functions within the law enforcement and security communities, as they will demand immediate focus by all employees and employers involved on the industrial frameworks that enable their operational activities to occur.

Employment relationships and the conduct of office

It is seemingly ignored in the public clash of economic virtues that industrial law and culture not only facilitates the terms of trade, commerce and profit for the economy and its commercial stakeholders. Over 100 years the evolution of Industrial law, particularly as it pertains to public sector employees, has embodied the public aspiration for transparency and accountability for decision making in the public sector. This mechanism has been the only ongoing mechanism to counter administrative corruption in Government, open to all and subject to no pecuniary interest.

Both at law and in reality, the last 100 years of federated industrial arrangements and systems have also embedded themselves in the operational environment and in many areas the interests have converged, as in 2000 when the AFPA supported moves by government and the AFP to extract industrial and personnel regulations from the AFP Act, and provide those vehicles to the Australian Industrial Relations Commission for the employer and employees to determine in a transparent, regulated and fair environment. At the time, the environment still provided that the principles of natural justice, and the public interest, were embedded in the Act and its operation. With the passing of this Bill as it stands that will cease. AFP personal are deemed employees under the Workplace Relations Act – this would seem inappropriate given the current amendments.

Police Officers, sworn under the Office of Constable, Special Members, and increasingly as it applies to the many and expanding quasi policing activities of government and unsworn employees, maintain the requirement for the principles of *transparency* and *natural justice* to be applied to their activities.

With respect to the application of employment relationships, these imperatives are not merely the rights of the employee involved, they are fundamental terms in which the public, community and Parliament ensure accountability and combat corruption in the conduct of office of constable

This is a separate pillar of this debate from most of that being argued loudly in the very short, and as a result hyper focused debate, being made available to the Parliament on the generality of this Bill. A fact that concerns the AFPA as equally as any specific content also mentioned in this submission. Whilst the Parliament must determine the parameters of their own concerns with regard to this matter, we urge the Committee members and the Parliament not to be distracted by the *easiest* and *louder issues* presented by the Bill. The matters referred in this debate by this submission and the Police Federation must be addressed as there will be real manifest impacts, apparently unforeseen, from this Bill.

This is not merely a debate on economics. As the Bill in both policy terms and provisions directly interacts with and references the Criminal code, this debate is as much if not more about law enforcement, the Master Servant relationship between public officials and Government, its application to the public interest in the conduct of public officials and at the present time even the broader environmental relationship between this Bill and the proposed terrorism laws.

This is not a philosophical debate about individual terms of employment being struck between employees and employers. The Bill creates a much more significant and onerous concern in this old debate, in that it clearly propositions choice through the prism of the individual needs of the employer, and, largely repudiates collectivist and broader social outcomes derived through the employment relationship. This again would not be an unreasonable view were its application only to an employer with a singular interest in profit under current corporations law. As in governmental terms the people are the employer, a broader balance of priorities is now challenged by the direction of these proposals.

Again, we acknowledge that is not for the AFPA and its members to express a view on Government policy in this regard, in so far as it relates to the private sector, and the commercial interests of the private sector marketplace and the Government.

The Prime Minister stated during debate on the Bill that he had an "ideological obsession" with workplace reform. He is quoted as saying that "I do not seek to Americanise the Australian economy, I seek to modernise the industrial relations system of the Australian economy for the benefit of the men and women of Australia. What we are fashioning is an Australian model for an Australia of 2005"

This inherent Policy position is both noble and supported by possibly a majority of those whom we represent. A constituency that in general terms is very supportive of the Federal Government, its achievements and direction. Unfortunately this objective is seeking expression in the industrial relations system, which has historically recognised the very separate and distinct private and public sector markets within the system for their own circumstance. The Bill steers directly into intervening in the regulation of obligations, practices and procedures that have both evolved, been recognised and integrated into the operational nature of law enforcement and the aspiration of the public's need for transparency and accountability in this area.

Commercial Confidentiality and Corruption

The Australian Industrial Relations Commission, having evolved based on industry panels with broad scope as to the articulation of terms and conditions of employment, recognised the distinction between Public and Private sector market places and different competing marketplaces of Public service and private endeavour rewarded by profit. In many ways, the system provides a wage and salary environment where both needs could be met independently of each other. The convergence of the interests by predicating the wages system in the 1980's around the Metal Trades, ultimately ensured that both market places would be perceived in public and political terms as the same thing.

In 1996, the introduction of AWA's provided a needed recognition in private market terms, specifically for greater recognition of personal contribution and reward, and the ongoing requirement, in terms of profit and commercial interests, for commercial confidentiality. The AFPA in terms of the private market place expresses no view on this although has generally recognised the principles as appropriate.

This profit motive is now proposed in this Bill as potentially underpinning the nature of the relationship between a Police employee or for that matter other government employees in similar law enforcement roles, with the employer. It is not only contrary to the values that do and must apply in this arena, but is contrary to the public interest, as

has been recognised increasingly in moves to combat corruption and restore confidence in public institutions. All governments have and are making substantial efforts to increase transparency and accountability for the exercise of duty, the expenditure of public monies and attempts to identify and prevent the systemic corruption of relationships in these areas as promoted by individual reward or profit. This priority is not contemplated or addressed in the singular unitary impositions of the current Bill.

The 1996 Workplace Relations Act still provides a general environment where the competing markets and needs are to be met. Alarming, not only does this bill repudiate this in its entirety, it uses the criminal code to underpin the commercial nature of the AWA relationship as one between individuals with a protection that recognises the principles of commercial confidentiality. Any penalty, civil or criminal cannot be defended in application to sustaining a commercial, confidential and individual relationship between a public official and the Government.

The Office of Constable has in its underpinning recognition that a Police Officer (defined as a member or special member) must be free from the direction of the Government of the day in their application of their duties, and in fact is an independent statutory officer. This is clearly at odds with the Bills codification and extension of a master servant relationship defined by commercial and profit based considerations. In application it affects a significant number of roles and agencies at the Federal and State level

For example, an individual who inclines to exercises his or her discretion in a way consistent with their supervisors inappropriate prejudices may be very ably rewarded on a high dollar secret deal (at the tax payers expense) that is subject to no independent scrutiny. Nationally, the substantial development of anti corruption and integrity regimes over the last ten years for Police, law enforcement and enforcement officers and associated public servants, has embedded integrity mechanisms designed to provide confidence, due process and accountability.

The independent office of constable demands a consistent and transparent link between ranks/level and remuneration level. In relation to police employees, AWA's may inadvertently provide a tool to conceal corrupt activity.

Unfair Dismissal and the Public Interest

To the extent that administrative corruption has been subject to transparency within the public sector, there is no doubt that the accountability derived from the various industrial systems has met the broader objectives of the community to maintain transparency and accountability over activities and decision making within government. The "by right" conferral of access and process for employees and employers to independent review and direction on personnel practices has provided a forum for the Public interest to be more broadly embodied than just the rewards derived from the employment relationship.

This role of the industrial system is not about holding the executive accountable, as much as it ensures that those tasked to manifest the will and direction the Parliament, in their decision making, relationships and processes are accountable in an open review forum. Protecting the integrity of the individuals' rights and the communities expectations.

The right of a Police Officer, law enforcement officer or police employee to have their dismissal tested should be absolute at any time as recognition that the public interest is not served if that termination served a commercial, unjust, illegal or unreasonable motive (as potentially now provided for in the *Operational provisions*, addressed further on in this submission).

Nor should it be seen as appropriate for such individuals to develop personal/individual relationships with the employer. Relationships predicated on criminally protected secret agreements. The Act clearly provides for a person to serve 6 months jail should they say anything that may assist in the identification of a person subject to an AWA without the express written permission of the employee and the employer (as defined as a person by the Bill being a party to the agreement).

This attack on discourse, free communication and discussion is not only excessive, but to what end is such level of penalty designed to serve the public interest. This proposal by statute creates a greater penalty than is often applied to actions in other areas that manifestly threaten life or property. A drink driver could now have an expectation of more lenient treatment at law than a person in any workplace discussing at the water cooler what the boss pays his staff. On face value, the priorities seem confused here.

This provision is onerous of itself. Sadly the Bill also gives a green light to the employer to effectively apply the now “redefined out of existence” negotiating tactic of duress (up to apparently but not including sacking) to an employee to sign an agreement (AWA or employee non union agreement) that can legally remove current minimum entitlements by definition.

To give effect to the capacity for the Bill to have resonance sooner rather than later, it proposes most of its impacts for new employees. It does not preclude a new employee being as defined, any AFP or government employee who is promoted through merit selection after the Bill is passed, any non-ongoing employee up for renewal and we believe any casual employee employed or otherwise at the time the Act passes. As a casual employee is a *day laborer* by definition, arguably the capacity of any preserved entitlements in the Bill having effect to a casual work will cease the *day after* the Bill is operative. In many industries with average 25% loadings for casual workers, this would mean that the new commencement minimum of 20% could be applied sooner rather than later and against the new duress and mandating provisions, offer little choice but to sign or leave.

This provision introduces new conceptual issues to the debate in and of itself that cannot clearly be addressed by the immediate passing of the Bill in its current form. In terms of AWA's, the AFP is not only a nominated representative of approximately thirty Australian Crime Commission members in various roles, we represent approximately 99% of the 100 or so Air Security Officers, of whom all work on AWA's.

The Bills sanctions with respect to AWA's will criminalise fair discourse and transparency on activities and relationships. It cultivates an environment for corruption and a culture at odds with values of the AFP and many other law enforcement organisations and would culturally lead these agencies in directions at odds with the public interest.

As there is widespread and increasing use of the office of a special member being conferred on other Commonwealth and state law enforcement roles and employees, this problem is not solely restricted to community police officers. The conferral of broader policing powers on a range of government functions extends the problem across classifications and agencies.

There is no simple solution to this dilemma other than to bring the elements of the Bill referred to into a consistent framework with the concerns raised here. To pass the Bill unamended will have significant consequences almost immediately given it will immerse a large part of the counter terrorism framework into a major distraction on employment issues and the interaction of the Bill with operational regulation and remuneration, whilst their focus is currently dedicated to their duty.

WorkChoices will, when properly understood more broadly, give rise to great public concern over the application of criminal and counter terrorism laws. It is ironic that at the same time as the Parliament considers unprecedented impositions on personal rights in an effort to fight terrorism, we will see a conversion of the Police and the enforcement sector into rigid employment environment where criminal or civil sanctions could be used to sustain the extension of a master servant relationship between law enforcers and the Government.

It is disturbing that at this very time we now face the real prospect of the introduction of employment practices and administrative requirements that clearly contradict international best practice in anti-corruption measures and with respect to the AFP will only be subject to the accountability of the AFP Commissioner as he alone, and without independent oversight, self regulates the application of AFP values.

Fighting Corruption and the Role of Industrial Relations

The operation of the Conciliation and Arbitration Commission has long provided the structural integrity to the public sector employment market that is fundamental to the establishment of public confidence. The crafting of an industrial system seemingly ignorant of these unique challenges will have potentially enormous impacts on the interests of the broader community.

The significance of this concern is no more manifest than with respect to all members of the AFPA who under these proposals will have diminished rights to bargain collectively, with stronger provisions in the Bill to further limit their right to strike and with no alternate merit based arbitration. In fact, employer and employee can't even request the AIRC to arbitrate if they wish to. This limiting of rights on one hand without appropriate relief is a breeding ground for the diminishing of standards of integrity and ethical behaviour.

WorkChoices not the First Choice Operationally

With the proposition that the Bill provides WorkChoices, we find it indefensible that most of the transactional and representational provisions are clearly discriminatory in that they institute discrimination against unions and union officers in many cases, and in some cases, any employee representative of any description is limited if not denied their capacity to operate. Due process is no longer guaranteed, nor is a right to representation. Many of the provisions are inconsistent with the objects of the Act itself in that they

limit what employers and employees may agree upon (either in process or outcome) with respect to the settlement of disputes and content of agreements.

The proposals with respect to Unfair dismissal undermine the capacity for all AFP employees to be assured access to a merit based assessment of their termination should they seek it. In future the AFP may easily meet the “operational” test on a range of their activities given the nature of the work and its responsiveness to environment and government direction. The redundancy test for dismissal in the Bill seems to ignore the difference between voluntary and involuntary redundancy.

Strangely, to meet Government objectives it needed only to preclude parties seeking relief under unfair dismissal provisions whilst also receiving payments for redundancy, it in effect now prevents an individual who has been paid involuntary redundancy to effect a termination from having that tested. In effect the fairness test is now precluded on a payment made and the employer’s description, rather than testing the reasonableness of the termination itself.

Lest it be forgotten that the outsourcing of some law enforcement functions (such as criminal records checks) will place the scope of some entire activities further away from active scrutiny. The Bill will remove opportunities and incentives for employees to come forward and actively participate in a corruption free work place with the knowledge of the protection previously afforded by the Workplace Relations Act. Whistleblowers will now have an even greater cause for concern as their review mechanisms may be diminished.

This tectonic shift in culture, sweeping Police and law enforcement employees along with it, goes to such elaborate efforts to preclude the future content of agreements and at the same time alters so call “prohibited” content of existing agreements. We must state with some concern that the Industrial framework developed for ten years, in a co-operative manner with employees, to facilitate operational requirements will be placed in crisis by the provisions of the Bill and unseen regulations.

Through a series of transparent, individual and collective. agreements known as “Part 6 agreements” under the AFP Certified Agreement, the AFPA has assisted members and management to craft some operational environments directly to the need or the circumstance. The Bill will require such processes in future to be under AWA’s and their processing model, rather the current in-house and flexible approach being utilized by employees and the AFP today. With the internationalising of the AFP and its “drop it and run” operational status in response to terrorism within the region, it will not and has not been efficient or viable for AWA’s to recognise operational situations at short notice.

This has occurred most notably as a flexible mechanism to address the Bali bombings and other counter terrorist activities when urgent need has arisen. This Bill seeks to prohibit this form of collective flexibility outright, and possibly would have precluded us from assisting management and the employees to address the situation. Because the Bill attempts to prefer individual arrangements through AWA’s, it also defines as prohibited the nature of these agreements as they approximately apply to over 1600 AFP personnel to give effect to their day-to-day activities. The immediate crisis created by the passing of this provision, across the law enforcement workforce, is a serious question of public concern, given the lack of derived benefit for the community in making this happen at this moment of time.

Where structural change benefits the community or enhances operations we support it. This Bill will demand that each and every employee in law enforcement almost immediately direct their consideration to their work practices, remuneration, access to rights and protection in the conduct of their duty. Employers will also be required to spend time and resources regularizing their activities and framework to comply with the new proposals, and as discussed in this report, in some cases even that won't be viable.

The question must be asked, in the current law enforcement and national security environment, is it appropriate to create massive instability to law enforcement personnel? Is it really the time to demand law enforcement and security practitioners spend time and some considerable effort and resources to address their employment relationships? Their focus is better maintained on front line defence of the community against the threat of terrorism.

AFP and Public Sector Values and Their Relationship with WorkChoices

It is important that the core and fundamental issue of *Integrity* be considered as at the forefront of the Parliaments consideration on this Bill and any amendments. The Australian Federal Police Association has been a long-term advocate of the expansion and entrenchment of the AFP integrity regime into the AFP and we manifestly support the need the Australian Federal Police organization and its employees to be seen to represent the highest standards of public accountability and transparency.

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.
4. To be transparent in our activities where ever possible and to welcome external scrutiny.

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. These standards are only achievable and maintained through a perception of accountability and transparency. 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.

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

- 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;
- 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;
- In 1979, 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; and,
- Commissioners Order 6 to allow investigation of allegations from the public relating to “off duty” AFP employees and to allow transparent investigation of allegations made by AFP employees against other AFP employees by mirroring the procedure for Complaints under the AFP (complaints) Act.
- In 2000 the AFP Act was amended to include legislated anti-corruption tools including:
 - S.28 Termination of employment by Commissioner subject to Workplace Relations 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;

Given the mobility within this sector of Commonwealth employment and the frequent use of joint task forces operating on a multi-agency basis, it is untenable to assume that the Commonwealth's interests in mitigating against corruption or inappropriate behaviour can be encapsulated in limited accountability to one or two agencies alone. We firmly believe that these objectives are best met through a broader comprehensive approach based on role activity as well as agency of employment.

The AFPA recommends that all law enforcement roles with a functionality that may expose the occupants to a clear and present risk of corruption, be subjected to the same Integrity regime as employees engaged under the AFP Act. Commensurately they must also have access to merit based review of all employment decisions (as per the proposed model attached).

The AFPA also seeks clarification on the Bill and how it impacts on the values contained within the AFP Act and how they manifest in application and co-existence with the AFP Act and Public Service values other than as rhetorical statements. What options are available to enforce or question AFP adherence to its legislated values to counteract inappropriate or corrupt use of provisions within the WorkChoices Bill?

Values in Practice and the Fight against Corruption

If the application of these principles is free from a comprehensive approach to review, transparency and accountability, they are in effect meaningless. Anti-corruption measures have to be adopted as a seamless garment in their construct and design. Many of the measures with the Bill must be re-written to meet these objectives before the AFPA or our members could feel they were not being disadvantaged with the imposition of these changes. Most pertinently, we desperately urge the Parliament to remove the provisions allowing an employer to unilaterally terminate an agreement at the end of the nominal term, use an unfair duress based bargaining tactic without relief, and then make an AWA a mandatory condition of employment.

The key defining element of the AFP that is designed to ensure public trust is the obligation to be accountable and transparent, and uniquely the AFP Act and integrity regime applies to every employee, not just the sworn members. The AFPA believes that the only method viable to give substance to this aspiration is to ensure that meaningful review is available to ensure the application of these standards.

Recently in practice, the AFP is acting without a sense of accountability or any attempt to establish the core level of transparency for decision-making activity.

This example has manifested itself with respect to ongoing disputes by members with AFP management over the International Deployment Group and the refusal of the AFP to recognise employee representatives in-situ on offshore deployments or establish a transparent disputes handling procedure for these employees. As the AFP Act precludes the Association using industrial mechanisms to ensure these member's rights are protected, these members are now the potential ghosts of Christmas future presented by this Bill. We have asked how this denial of representation is consistent with AFP values, but we understand from the Attorney-Generals Department that the AFP Commissioner and the agency itself, on an ongoing basis, largely enforces the AFP values itself.

If the AFP is currently only regulated by the AFP Commissioner, and the Senate estimates process, it would seem that the AIRC has been the only other mechanism ensuring endemic or structural corruption does not fester in the AFP's administrative or management culture. Please note that the Federal Law enforcement anti-corruption commission will not address administrative or managerial corruption within its terms of reference.

With the unfair dismissal provisions having further limited opportunities for access, the Bill proposes it largely provide a safety net based around the current skills shortages in the market. As a result, it will only really provide comfort for those that believe they can replace their boss faster than their boss can replace them. As government law enforcement is a monopoly employment market (as it should be), such a commercial mentality creeping into a policing command culture should be seen to be repugnant.

The AFPA believes that for the AFP to retain a culture of the highest level of personal ethics and integrity, the application of its values must operate as a seamless garment within the culture of the AFP and at all levels of its activity. You cannot create a paper wall organizationally between one activity and another as far as the application of the values or the capacity to enforce them.

Having listened to the sophistry of the debate with respect to the illegality of an employer sacking anyone for refusing an AWA, the reality for all is much starker than debates suggest.

The conferral of unilateral powers of termination of an agreement, with a substantial reduction of the safety net that the individual falls to without the offered AWA is severe. Added to the fact that relief is now removed, as the Act creates a definition for duress that frees an employer, there will be no test of good faith or public interest to be applied to the unilateral termination.

This naturally makes any suggestion that they need to sack anyone to sign an AWA ridiculous. Employees will be economically savaged on the way through to acquiescence. As for transparency, provisions are proposed to have a standard notice and consideration periods now being reduced to 7 days and agreements can be registered. In the case of the AFP, an employee would likely not even be aware this had happened until after event due to deployments and operations. And, again, the employment advocate is not required to even ensure that the process was properly followed.

The Need for Independent Scrutiny

Particularly as exemplified by the current situation with the IDG, where-in the AFP has outright refused a formal disputes process or review mechanism for employment decisions, where are the AFP values implemented? More broadly it must be asked is it appropriate to remove the current ongoing role the AIRC has with the Federal Police and other such government employees at time when this may well adversely interact with the proper conduct of law enforcement individuals in the emerging criminal and national security environment

The AFP Value of trust specifically uses the term confidence and yet how is the confidence underpinned? The concept at law is that justice must be seen to be done. The AFP and law enforcement agencies must operationally adhere to this principle, and are in fact subject to detailed scrutiny for these activities. The administrative and personnel activities within the agency should not be free from the same scrutiny on an ongoing basis.

Royal Commission deliberations over many years now have identified the culture of corruption that can develop where no light can be shone on the basis of decision-making or the activity of the organization.

The AFPA is concerned that moves to a non-transparent remunerative model such as across the board secret individual arrangements, erodes and undermines the application of ethical and integrity based obligations on employees. It can create an environment where an individual may find their loyalties shift from the organization and its values to meaningful relationships that can be developed within the workplace to impact on personal outcomes.

This circumstance when combined with an environment, which provides no broad review of administrative, and Human Resource based decision-making is counter-intuitive to ongoing developments in enhancing personal and corporate standards of integrity and ethics.

The AFPA believes that for the AFP and other Federal law enforcement agencies to maintain their standing as the most accountable law enforcement agencies in Australia, that a new comprehensive approach to remuneration, discipline, setting of conditions, process for review and accountability must be implemented as soon as possible, in league with a comprehensive and merit based arbitral review of matters as defined in the Interpol Articles.

Specific provisions of the Bill

The Following proposed amendments require the consideration of the Parliament, as we believe they illustrate the general concerns identified above with respect to the Bill and its content.

Section 223 Limitation on Rights – conscientious objection certificates.

Section 223 is clearly in contravention of section 116 of the Constitution:

Commonwealth not to legislate in respect of religion

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

The 20 (or less) employees are being forced, under section 223, to observe the religious doctrine of the employer. If preclusion of membership of an association, other than the religion, is part of the doctrine of the employer's religion, and a certificate is issued, then all the employees must also follow that part of the doctrine.

If one were to ask one of the employees why they can't seek the assistance of their industrial association on the premises in a dispute or negotiation, the reply would be 'I can't seek to have my association come onto the premises to assist me because I must follow the religious doctrine of my employer, which states I cannot join an industrial association because it is outside the religion'. There is simply no other reason under this section for why the employees cannot have his/her association on the premises. If the employer did not have the beliefs then they would and could not fall under the section. This is therefore a clear case where the Commonwealth is imposing religious observance on the 20 or less employees if a certificate is issued.

Another question arises here. The certificate is given if the religion of the employer *precludes membership* of another organisation other than their own. Ok fine, but the section *precludes entry and conduct of an industrial association on the premises*. It does not stop the 20 employees seeking membership outside the employer's premises. There is therefore an obvious disjuncture between the purpose of the section and the religious beliefs of the employer. That is, the religious beliefs of the employer preclude him/her from joining another association, they do not preclude another association coming on the premises of the employer if the employee's wish for that. One would assume the employer wishes suppliers, Australia Post, couriers, business colleagues etc can enter the premises and that would not be against the religious doctrine of the employer, just as it is not against the employers religion for an association to represent and conduct negotiations etc on the premises.

The third issue with section 223 is that it prohibits the free exercise of religion of those of the employees whose religious beliefs state they must have the right to freedom of association. This is the converse of the employer whose beliefs deny association. It would be hypocritical to argue a religion may have a belief of denying association but not one providing a right of association. If one of the employees being restricted under a certificate chooses to follow his religion and seek the entry of the industrial association,

then sanctions under the Act will be enforced. The employee is directly being prohibited by section 223 from freely exercising his/her religion.

In *Kruger v Williams 1912*¹, the High Court stated a law prohibiting the ‘doing of acts done in the practice of religion’ would contravene section 116². Section 223 of the Bill directly prohibits any employees, whose belief it is that they have the right to freely associate with their industrial organisation, from practising their religion.

For the employer to then argue the Bill (or WRA) in itself prohibits him/her from practising their religion can be answered by Latham CJ’s comments in *Adelaide Company of Jehovah’s Witnesses v Commonwealth (1943)*³, where a law⁴ (generally ‘forcing’ the members of the religion to take part in WWII and not negate the efforts of the War) was not seen as prohibiting the free exercise of the members religion as its purpose was to protect the security of Australia during WWII. Latham CJ stated the law had to be one for the prohibition of religious practices⁵. Here we see first Section 223 is invalid as it directly prohibits the religious practice of the employees and second, the Bill or WRA does not set out to prohibit the religious practices of those whose belief it is they cannot join another association.

Simply put, if the employer does not like to join another association then s/he doesn’t have to. What is the logic behind forcing the employer’s employees to observe the religious doctrine of the employer when the employer simply has the choice anyway not to join an industrial association?

Recommendation: section 223 must be struck out of the Bill. It explicitly forces employees to observe the religious doctrine of the employer and could also limit the employees from practising their own religion if they are a member of such a religion that believes in representation. There is also not a connection between the employer’s religious beliefs and what the section prohibits – the employer’s beliefs *preclude joining*, the section *precludes entry*, and entry is not against the employer’s religion.

The considerable constitutional concerns with respect to this matter are more resonant as the AFPA believes law such as this could constitute a direct factor to enhancing the social marginalisation of citizens in a potentially incendiary manner. As a determination of Parliament at any time and most certainly at this time, it would be inappropriate for such a provision to be passed in the same era as legislative impediments to civil liberties are subject to intense concern within the community.

¹ CLR 336

² Griffith CJ at 369

³ 67 CLR 116

⁴ *National Security Act 1939 (Cth)*

⁵ Latham CJ at 132.

Division 3 Termination of Employment – Subdivision B – Application to Commission for relief in respect of termination of employment

Division 3 section 170CE(5C)

The section uses a number of broad overarching reasons for denial of relief in respect of termination of employment. The reasons leave the interpretation of ‘operational reasons’ open to serious misinterpretation and abuse on the part of the employer. Due to the every nature of the employee/employer relationship, it will always, without doubt, be the employer who makes the one handed decision whether the reason for termination is for operational reasons.

The most serious problem here is that there is no mechanism for checks and balances on the employer’s actions, and no mechanism for review – be it by simple report to the Commission or formal review by the Commission – for the interpretation by the employer as to what is an operational reason. Under this model, the employer alone - outside the ambit of the Commission - plays the judge and jury of legislative interpretation. In the absence of procedural fairness and an assessment of merit, the unfair dismissal law will serve to regulate only the basis of the notification as to reasons provided to the employee without testing the truth of the intent. IT is in effect an unfair notification right as the dismissal itself will possibly rarely if ever meet the test to be tested.

Section 5C allows for termination on harsh, unjust and unreasonable ground so long as it is for operational reasons or for reasons that include a genuine operational reason. When one looks at the broad interpretation of an operational reason, it is highly foreseeable that an employee can be terminated for any reason. The reasons include reasons for economic, technological, structural or similar nature relating to the employers undertaking, establishment, service or business, or part of the employer’s undertaking, establishment, service or business.

The effect of 5C is as follows; an employee may be terminated for harsh, unjust and unreasonable reasons that need to, at the very least, only be for reasons that *include* genuine operational reasons, and this genuine operational reason can be for a reason of a *similar nature* to economic, technological and structural reasons. One can only argue that this scenario will cover 100% of all terminations.

The basis of a mechanism to defeat a merit test being applied to the basis of the termination against a harsh, unjust and unreasonable measure provides no clear and necessary right for the public interest test to be applied to the dismissal of a Police, sworn or other public officer of significant standing in whom the public must retain trust.

Recommendations:

1. First, section 170CE must be omitted from the Bill, if not in its entirety, at least in terms of its application to public sector employees and those for whom the profit, trade and commerce test in terms employment does not apply. If the termination is for harsh, unjust or unreasonable grounds, then there must be an option for review. It is simply against all ethical concepts in the workplace environment for such

matters not to be reviewed. The section, in its current form will lead to unchecked abuse by employees. Such abuse will also lead to existing (or surviving) employees reacting negatively to the threat of termination for operational reasons.

2. Where this section remains in effect, the employer must be made to file a **'termination for operational reasons report'** to a body (preferably the Commission) capable of analysing the report and seeking further particulars from the employee on the 'genuiness' of the operational reason. This is a must, as it would minimise misuse and abuse of the section by employers, and allow the Commission to keep a check on the employers in the event they are using section 5C on an ongoing basis to circumvent the power of the Commission. As the section stands, there is simply nothing stopping employers from doing this. The Author is without doubt, that if a checking mechanism is not put in place, employers will utilise 'operational reasons' as the reason for all terminations. How can one then say that this view is not possible if there is not a checking mechanism in place to support such a view? There must, at a minimum, be a system for reviewing the use of 5C.
3. '[F]or reasons that include genuine operational reasons' must be omitted. This broadens the definition of 'genuine operational reasons' to the nth degree. All aspects of a business include operational elements. Omission of the part would also limit abuse by employers.
4. Likewise, section 5D must be narrowed to avoid abuse by employers. '[O]r similar nature' would cover everything. Furthermore, 'similar nature', tied in with 'for reasons that include' effectively place infinite variables in the equation – the answer to which is unreviewed and unrealised termination. The section must be narrowed to minimum reasons and placed in the 'termination for operation reason report' so that the employer will need to outline the reason.

Division 4 – Pre-Lodgement Procedure

Section 98 - Providing employees with ready access and information statement

This section reduces the existing provisions for a consideration period of an agreement to 7 days. This provision is untenable for the AFP workforce as it would genuinely exclude a substantial section of the workforce potentially having access to due process prior to certification of an agreement that may reduce their entitlements. Since the commencement of the “War on Terror” there have been periods of time when up to approximately 10% of the AFP workforce off-shore at any one time compared to an average in the Defence force of under 2%.

Due to the nature of operational activity and offshore commitments it is simply unviable for the AFP employees and presumably some other Commonwealth employees to attain access to their rights within a 7 day period.

Recommendation: All references to 7 days be amended to 21 days in this section.

Subdivision D – Unilateral termination after nominal expiry date

This provision potentially embeds the greatest inequity into the bargaining relationship between employees and employers. Through legislatively reducing the existing safety net for all employees, the Government is providing a duress based bargaining mechanism to employers without a mechanism for re-dress.

This section promotes the process for unilateral termination of an agreement but not the basis under which it would be appropriate or in the public interest for it to occur. The re-definition of duress in this bill precludes the capacity of an employer to reduce conditions of an employee through unilateral termination with the intention of offering an AWA or agreement of a lesser standard or longer duration (which could in itself constitute an erosion of conditions through extending existing conditions without change for up to five years).

Section 103N of this subdivision does not require the employment advocate to even ensure that the applicant has met the requirements of the subdivision.

This section, in so far as it inter-relates to the provisions of the Bill to Essential Services employees particularly fails to meet the intent of Schedule 1 – Main amendments, Section 3 (i), in that employees with a diminished right to bargain freely also face the prospect of unilateral termination of their agreement.

It would be untenable that employees subject to inhibitions in bargaining should contend with an employer without limitation to their actions.

Recommendation: That a public interest test be required with appropriate due process for the parties to determine an application for unilateral termination and that Section 103N be deleted

Recommendation for a New Division in the Bill

The AFPA proposes that AWA's as now defined in the Act be excluded from application to AFP employees and other Public officials as referred to in this submission.

Should this recommendation be re-buffed, we urge that the secrecy and sanction provisions attached to the AWA process be exempt from application to the roles and functions referred to in this submission.

Further the following model is proposed for incorporation under the new anti corruption Commission as a method of addressing the issues of this submissions and to allow these roles to be removed from the Workplace Relations Act in the future.

Recommendation:

1. **The new Commonwealth anti-corruption Commission be tasked with a proactive role in addressing administrative and employment integrity and that it establish a standing tribunal (see model below) similar to the AFP Board of Reference as recognised in the AFP Act and Regulations, for the purposes of regulating Police, law enforcement and public officials remuneration and entitlements in keeping with a comprehensive anti-corruption strategy.**
2. **The exclusion of AWA's in relation to AFP employees and law enforcement personnel as other flexibility provisions exist within the AFP Act which have transparent application, rather than secret application.**
3. **In the event of rejecting recommendation 2, that the AWA secrecy provisions be excluded in relation to AFP employees and law enforcement personnel as an anti-corruption measure.**

A model Proposal for a Police and Public Official Tribunal

This proposal rests on the twin planks of the Commissioner of Police being able to effectively manage the Australian Federal Police (AFP) and comply with the AFP values as articulated in the AFP Act together with a workforce confident that issues of equity, operationally balanced decision making and sustainable life balance issues can be addressed by an entity of sufficient authority and credibility. This model while primarily crafted for AFP employees, should have application to other functions and agencies of Government will similar requirements for public accountability and transparency.

This submission seeks to create an Australian Federal Police Tribunal (or other name) to amalgamate the functions of all the current Tribunal/Boards used/retained by the AFP. They include as present –

- **The Australian Federal Police Board of Reference (Certified Agreement & Regulation 24 of AFP Act) which is able to determine AIRC eligible matters and issue directions.**
- **The Australian Federal Police Discipline Tribunal (Complaints AFP Act) – soon to be repealed by Government.**
- **Australian Federal Police Review Panel (by agreement between AFP & AFPA for non-economic matters outside the AIRC) which has ceased to operate subsequent to the AFP Act amendments in 2000.**

The proposed Tribunal will have jurisdiction over all aspects of the AFP Act that reflect the Commissioner's powers including the command and control sections of the AFP Act, the employment powers under the Act and disciplinary/managerial action subject to the Complaints Act and AFP Disciplinary Regulations.

In particular the Tribunal would be broken into three (3) Divisions & would have jurisdiction to hear and determine all matters relating to –

1. Workplace Relations Division

- Remuneration and terms & conditions of service of AFP employees other than the Commissioner and Deputy Commissioners including:
 - Work and the days & hours of work
 - General remuneration & superannuation
 - Rights & duties of employer
 - Powers and duties of employees
 - Mode & conditions of employment
 - Commissioners orders and instructions
 - Occupational, Health and Safety
 - Demarcation of functions/roles between particular employees or classes of employee
 - Resignation and retirement
 - Retrenchments and redundancies

- Retirement due to physical or mental incapacity

2. Discipline/Managerial Division

- Review of decisions relating to discipline and managerial action including:
 - Misconduct or unsatisfactory performance
 - Disciplinary appeals
 - Suspension of duty
 - Demotions
 - Termination of employment
 - Unfair dismissals
 - S.40K declaration of serious misconduct
 - Submission of financial statements
 - Drug testing
 - Loss of superannuation rights and benefits

3. Advancement and Deployment Division

- Review of decisions relating to Advancement, deployment and Commissioners Determinations including:
 - Assignment of duties
 - Advancement disputes (by JSC/JRC) panel members
 - Transfer/deployment appeals
 - AFP Determinations - terms and conditions
 - Deployment both domestic and abroad
 - Declarations in relation to sworn status of employees
 - Declarations in relation to rank, grade and title of employees

Establishment –

It our recommendation that such a Tribunal be established under the proposed Federal Anti-Corruption Commission. *(The Tribunal itself being formed under the structure of the Federal Court of Australia as is the current Federal Police Disciplinary Tribunal).*

Constitution –

The Tribunal be made up of:

- Chairperson who shall be a member of the *(AIRC/Federal Court)* whose appointment to the Tribunal has been agreed to by the President of the Commission or who is a person in the opinion of the Minister has suitable qualifications & experience to be appointed Chairperson
- The *Minister's/ AFP* nominee
- The Australian Federal Police Association's nominee
 - There be provision for Deputy nominees

Duration of Appointment –

A person appointed to the Tribunal shall not hold office for a period of not longer than three (3) years unless agreed by the parties

Procedures –

Any matter before the Tribunal is to be resolved by a decision of the majority of the members of the Tribunal and the procedures to be adopted at the hearings of the Tribunal shall be determined by the Tribunal.

The rules of evidence do not apply and the Tribunal may be informed on any matter in any way it considers appropriate.

The Tribunal shall have power to demand further information or inquiries to be conducted by either of the parties in relation to a matter before the Tribunal.

Legal representation will occur only in exceptional matters where the Chairperson is of the view that such representation is required to adequately illuminate the issues.

The Tribunal is committed to achieving conciliated outcomes with as little formality or contest as possible

Meetings –

The Chairperson at the written request of the Commissioner or the Police Association must call a meeting of the Tribunal about matters relating to –

- Remuneration and terms & conditions of service of AFP employees other than the Commissioner and Deputy Commissioners
- Review of decisions relating to discipline and managerial action
- Review of decisions relating to Advancement, deployment and Commissioners Determinations

Attempts at conciliation –

All matters coming before the Tribunal must be attempted to be resolved by conciliation in the first instance by a conciliator appointed by the Tribunal Chairperson. The Chairperson should have discretion to bypass conciliation if they believe an outcome is unlikely. In these cases the Tribunal must conduct a hearing and make a decision in relation to the matter which is binding upon the parties.

Conciliation –

A conciliator, drawn from a panel of conciliators appointed by the Minister after consultation with the Commissioner and the Police Association, must do everything that appears to him or her to be right and proper to assist the parties to reach agreement in relation to the matters at issue between the parties and will determine the procedures to be adopted in relation to the conciliation.

A conciliator shall have the power to request the Tribunal to demand further information or inquiries to be conducted by either of the parties in relation to a matter on which they have been asked to conciliate. No request should be binding on the Tribunal.

Referral of matters to the Tribunal –

The Commissioner and the Police Association may together request the Tribunal to conduct a hearing and make a decision in relation to all and any aspects of a matter referred to it

Determinations –

Determinations of the Tribunal must be in writing and disseminated to the Commissioner and the Police Association and be made available upon request by affected employees.

Determinations of the Tribunal will be binding on all parties and issues of merit are final.

Any determination made by the Tribunal shall be binding on the Crown, the Commissioner, the Police Association and the members of the Police Force to whom it is expressed to relate. A person shall not fail or omit to abide by any determination or do, or procure any person to do, anything in contravention of the provisions of a determination.

Penalties should apply to this section.

Interpretation of determinations –

The Tribunal may, on its own motion or on the submission of any person or organization interested in any determination, give an interpretation of any term of an existing determination which is binding on the parties. Provision should be made for submissions from interested persons prior to such determination being given

Witnesses –

The Tribunal may in writing summon any person to attend the Tribunal to give evidence *under direction* or any documents which the Tribunal deems relevant to any proceedings.

Penalties should apply for breach of a summons or false evidence

Protection of members of the Tribunal –

Members of the Tribunal are not liable for any action taken or not taken in good faith by the Tribunal

Appeals –

The Commissioner or Police Association may, with the leave of the Federal Court, appeal to the Federal Court against a determination of the Tribunal, but only on a question of law

ATTACHMENT 1 – AFP VALUES

The AFP Act contains a defined set of values, which enshrine the overall corporate ideals of the AFP. In the context of the broader consideration of these issues, the AFPA questions what gives resonance to these values and how to the attain meaning in application to the workforce.

AFP VALUES

Values are one's principles or standards. Values are instilled and they develop as a result of influences in our culture. They are important because values provide the foundation for building professional competence that is the key to high performance in an organisation.

The AFP has identified its core values to be the following:

Integrity

Integrity is a quality that underpins an individual's soundness of moral principles. It is manifested in their uprightness, honesty, sincerity in their approach to themselves, others and to their work.

In the AFP, this means that we:

- Show a genuine commitment to the success of people;
- display complete honesty and forthrightness in all commitments with people;
- exhibit consciousness of the standard of our own personal conduct and character at all times;
- approach our work with honesty, including the handling of property, money and information.

Commitment

Commitment is characterised by dedication, application, perseverance and a belief in a personal capacity to achieve and add value.

In the AFP, this means that we:

- apply ourselves to the tasks/jobs we accept responsibility for;
- persist with jobs until objectives are achieved or are no longer reasonably attainable;
- strive to uphold the vision and mission of the AFP;
- strive to achieve individual, team and corporate deadlines.

Excellence

Excelling at work involves adopting approaches that seek never-ending improvement in everything we do and in the quality of the services we provide.

In the AFP, this means that we:

- empower our employees and involve them in providing a quality service;

- coach and develop people rather than control and direct them;
- strive to deliver the best product that meets the needs of our clients;
- constantly improve work performance by seeking to remove waste and inefficiencies;
- dedicate time and effort to self improvement;
- encourage innovation, experimentation and risk taking;
- Support teamwork by: communicating with each other, participating together with problem solving, sharing work, delegating and taking responsibility for individual tasking, dealing with conflict, performance problems and discipline issues.

Accountability

Accountability is about ownership of work or results, and being answerable for outcomes.

In the AFP, this means that we:

- accept personal responsibility for the consequences of our efforts;
- ensure people know what is expected of them, how their work will be evaluated and how success is measured or determined;
- give latitude to individuals and teams to make decisions about their work;
- do not assume credit for the work of others;
- give feedback on work performance.

Fairness

Fairness is a value that accommodates the characteristics of impartiality and equitableness.

In the AFP, this means that we:

- respect people as individuals and for their differences;
- apply promulgated anti-discrimination, fairness and equity principles in our daily work;
- do not act from malice, prejudice or personal bias when making decisions;
- approach people and issues with tolerance and with an open mind.

Trust

Trust is a value that involves having faith and confidence, and being able to rely and depend on others.

In the AFP, this means that we:

- Assume that people can be relied on to do the right thing;
- Declare conflicts of interest if they arise;
- Do not subject people to an abuse of power;
- Respect each other regardless of role and status;
- Support an environment in which people do not fear punishment for making honest mistakes.



9 November 2005

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ICPO-Interpol - General Assembly
71st Session - Yaoundé - 21st-24th October 2002

**Resolution No AG-2002-RES-01**

Select a session

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Environmental Crime
Forensic
NCB Regional activities

Adopting the global standards to combat corruption in polic forces/services

The ICPO-Interpol General Assembly, meeting in Yaoundé from 21 to 24 October 2002 at its 71st session:

RECALLING Resolution No. AG-2001-RAP-04 adopted by the General Assembly at its 70th session (Budapest, September 2001),

CONVINCED that corruption undermines the effectiveness of law enforcement, the efficiency and legitimacy of police forces/services in the performance of their functions and public confidence in law enforcement and justice,

FURTHER CONVINCED that corruption within police forces/services can be prevented and eradicated by determined and forceful national action by all Member States and international co-operation,

CONSIDERING that effective policing requires the combating of all forms of corruption, the performance of policing functions and the promotion of high standards of honesty, integrity and ethical behaviour for police officers and other employees of police forces/services,

PERSUADED that determined efforts to fight corruption and promote high standards of honesty, integrity and ethical behaviour increase the efficiency and effectiveness of police forces/services and enhance support for law enforcement by civil society,

FURTHER PERSUADED that policing will only be effective if those involved in the criminal justice system, such as prosecutors, magistrates and judges, also have high standards of honesty, integrity and ethical behaviour and are determined to give leadership to others also involved in the criminal justice system,

RECOGNIZING the need to make the citizens of Member States aware of the detrimental effects of corruption on law and order, public and individual safety, the preservation of property and the cost of law enforcement,

FURTHER RECOGNIZING the responsibility of Member States to detect and hold accountable corrupt police officers and other employees of police forces/services and bring them to justice,

DETERMINED to take forceful action to prevent, detect, punish and eradicate corruption, and in connection with, the performance of policing functions and to promote high standards of honesty, integrity, ethical behaviour and efficiency in police forces/services within their national boundaries,

ACCEPTING that each of the principles and measures included in the "Standards" has been deemed as sufficiently important in the fight against Corruption to be included in the Interpol Group of Experts in this document,

ACKNOWLEDGING that the document read as a whole represents an ideal which Member States should strive to reach, but that the implementation of any of these principles and measures is a step in the right direction,

Information Technology Crime
Criminal Intelligence Analysis
Recruitment

AGREES to adopt the "Global standards to combat corruption in police forces/service appended to Report No. 10 as standards whose endorsement and implementation by police throughout the world would improve the quality of police and the quality of the service they provide. Member countries are therefore encouraged to disseminate the global standards as widely as possible within their police forces/services.

Adopted

GLOBAL STANDARDS TO COMBAT CORRUPTION IN POLICE FORCES/SERVICES

Appendix

► **Article 1**

Objectives

(a) To ensure that the police forces/services of each Member State of Interpol have high standards of honesty, integrity and ethical behaviour in and in connection with the performance of their policing functions.

(b) To promote and strengthen the development by each Member State of Interpol of measures needed to prevent, detect, punish and eradicate corruption in the police forces/services within its national boundaries and to bring to justice police officers and other employees of police forces/services who are corrupt.

► **Article 2**

Definitions

Corruption includes:

(c) The solicitation or acceptance, whether directly or indirectly, by a police officer or other employee of a police force/service of any money, article of value, gift, favour, promise, reward or advantage, whether for himself/herself or for any person, group or entity, in return for any act or omission already done or omitted or to be done or omitted in the future in or in connection with the performance of any function of or connected with policing.

(d) The offering or granting, whether directly or indirectly, to a police officer or other employee of a police force/service of any money, article of value, gift, favour, promise, reward or advantage for the police officer or other employee or for any person, group or entity in return for any act or omission already done or omitted or to be done or omitted in the future in or in connection with the performance of any function of or connected with policing.

(e) Any act or omission in the discharge of duties by a police officer or other employee of a police force/service which may improperly expose any person to a charge or conviction for a criminal offence or may improperly assist in a person not being charged with or being acquitted of a criminal offence.

(f) The unauthorized dissemination of confidential or restricted police information whether for reward or otherwise.

(g) Any act or omission in the discharge of duties by a police officer or other employee of a police force/service for the purpose of obtaining any money, article of value, gift, favour, promise, reward or advantage for himself/herself or any other person, group or entity.

(h) Any act or omission which constitutes corruption under a law of the Member State.

(i) Participation as a principal, co-principal, initiator, instigator, accomplice, accessory before the fact, accessory after the fact, conspirator or in any other manner in the commission or attempted commission of any act referred to in the preceding provisions of this Article.

Police force/service means each police force or police service or other official body a responsibility to perform policing functions within the national boundaries of the Member State.

► Article 3

Principles

(a) To make corruption within police forces/services a high-risk crime.

(b) To promote and maintain a high standard of honesty, integrity and ethical behaviour within the police forces/services of each Member.

(c) To foster the recruitment and training as police officers of persons of high levels of integrity, honesty, ethical standards and expertise.

► Article 4

Measures

4. Each member of the General Assembly commits to:

Standards of Conduct

4.1 Establishing and maintaining high standards of conduct for the honest, ethical and effective performance of policing functions.

4.1.1 Such standards should mandate and be directed towards an understanding and application of honest, ethical and appropriate behaviour, the avoidance of conflicts of interest, the proper use of public resources in and in connection with the fair and impartial application of the law, the performance of policing functions, the reporting of acts of corruption in and in connection with and the performance of policing functions and the establishment and strengthening of public confidence in police officers and police forces/services as part of the system of justice.

4.1.2 Such standards should accept that it is an obligation of the police force/service to seek out and effectively deal with corruption within the police force/service.

4.1.3 Such standards should impose an obligation on police officers and other employees of a police force/service to report to the appropriate person or authority acts or omissions, which constitute or may constitute corruption within the police force/service.

4.2 Setting up and maintaining effective mechanisms to oversee and enforce the high standards of conduct required in and in connection with the performance of policing functions;

Recruitment, posting, promotion and termination

4.3 Having and maintaining effective systems for the recruitment of police officers of high levels of integrity, honesty, ethical standards and expertise;

4.4 Ensuring that the systems for recruitment, posting, promotion and termination of police officers and other employees of the police forces/service are not arbitrary but are based on fairness, openness, ability and performance.

Training

- 4.5 Having a system for instructing police officers and others engaged in and in connection with the performance of policing function of the standards and ethical rules applicable to the performance of such functions;
- 4.6 Having and maintaining a system for the training, including on-going training of police officers and other employees in the police forces/services which reinforces the high standards of conduct referred to in Article 4.1;

Corruption

- 4.7 Putting in place deterrents to the bribery of those performing or engaged in in connection with the performance of policing functions;
- 4.8 Using their best endeavours to ensure that the mechanisms and systems for the prevention, detection, punishment and eradication of corruption in and in connection with the performance of policing functions in its police forces/services are kept abreast of current practice as recognized by the General Assembly of Interpol;
- 4.9 Having an effective system that obliges police officers and other employees of the police forces/services to report, enables them and members of civil society to report corruption and that protects those who report corruption in good faith;
- 4.10 Establishing mechanisms to encourage participation by civil society in activities and efforts to prevent corruption in the police forces/services;
- 4.11 Establishing and enforcing procedures for the declaration and registration of the income, assets and liabilities of those who perform policing functions and appropriate members of their families;

Systems

- 4.12 Having and maintaining systems of revenue collection, money and property handling and for the control and preservation of evidence that ensure that those collecting or handling public money, dealing with evidence or handling property are accountable and that the systems are such as to deter corruption;
- 4.13 Having and maintaining systems for the procurement of goods and services that are based on openness, efficiency, equity and certainty of the rules to be applied and that seek the best value for money;

Monitoring

- 4.14 Establishing a mechanism such as an oversight body or bodies to monitor the systems and measures established for preventing, detecting, punishing and eradicating corruption within the police forces/services and the adequacy, application and effectiveness of such systems and measures;
- 4.15 Conferring or causing to be conferred on a designated authority, whether internal or external, such powers to carry out investigations and bring to justice without fear or favour, affection or ill will those who engage in corrupt and dishonesty in the course of or associated with the carrying out of policing functions and adequately resourcing and funding such authority;
- 4.16 Providing for a system for the recruitment of officers for such designated authority who are of high integrity and that ensures that such officers are not disadvantaged by recruitment to any such designated authority;
- 4.17 Providing adequate safeguards to prevent abuse of powers by those engaged in the anti-corruption system and to minimize unnecessary infringements of individual rights;

Review, reporting and research

- 4.18 Requiring public reporting at least once each year of the work and findings in relation to the monitoring of the systems and measures referred to in Article 4.14 and their adequacy, application and effectiveness;

► **Article 5**

Review

The operation of this protocol shall be reviewed by the General Secretariat of Interpol on an ongoing basis and shall be the subject of a report to each session of the General Assembly that is held after the expiration of two years from the adoption of this protocol.

Last modified on 18 Nov 2002

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General Assembly

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RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the Third Committee (A/51/610)]

51/59. Action against corruption

The General Assembly,

Concerned at the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development,

Also concerned about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Convinced that, since corruption is a phenomenon that currently crosses national borders and affects all societies and economies, international cooperation to prevent and control it is essential,

Convinced also of the need to provide, upon request, technical assistance designed to improve public management systems and to enhance accountability and transparency,

Recalling the Inter-American Convention against Corruption, 1/adopted by the Organization of American States at the Specialized Conference for Consideration of the Draft Inter-American Convention against Corruption, held at Caracas from 27 to 29 March 1996,

Recalling also its resolutions 45/121 of 14 December 1990 and 46/152 of 18 December 1991, and Economic and Social Council resolutions 1992/22 of 30 July 1992, 1993/32 of 27 July 1993 and 1994/19 of 25 July 1994,

Recalling in particular its resolution 50/225 of 19 April 1996, adopted at its resumed session, on public administration and development,

Recalling Economic and Social Council resolution 1995/14 of 24 July 1995 on action against corruption,

Recalling also the work carried out by other international and regional organizations in this field,

including the activities of the Council of Europe, the European Union, the Organisation for Economic Cooperation and Development and the Organization of American States,

1. Takes note of the report of the Secretary-General on action against corruption 2/ submitted to the Commission on Crime Prevention and Criminal Justice at its fifth session;
2. Adopts the International Code of Conduct for Public Officials annexed to the present resolution, and recommends it to Member States as a tool to guide their efforts against corruption;
3. Requests the Secretary-General to distribute the International Code of Conduct to all States and to include it in the manual on practical measures against corruption, 3/ to be revised and expanded pursuant to Economic and Social Council resolution 1995/14, with a view to offering both those tools to States in the context of advisory services, training and other technical assistance activities;
4. Also requests the Secretary-General to continue to collect information and legislative and regulatory texts from States and relevant intergovernmental organizations, in the context of his continuing study of the problem of corruption;
5. Further requests the Secretary-General, in consultation with States, relevant intergovernmental and non-governmental organizations, as well as in cooperation with the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, to elaborate an implementation plan and submit it to the Commission on Crime Prevention and Criminal Justice at its sixth session, in conjunction with his report to be submitted pursuant to Economic and Social Council resolution 1995/14;
6. Urges States, relevant intergovernmental and non-governmental organizations, as well as the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network, to extend to the Secretary-General their full support in elaborating the implementation plan and in implementing paragraph 4 above;
7. Urges Member States carefully to consider the problems posed by the international aspects of corrupt practices, especially as regards international economic activities carried out by corporate entities, and to study appropriate legislative and regulatory measures to ensure the transparency and integrity of financial systems and transactions carried out by such corporate entities;
8. Requests the Secretary-General to intensify his efforts to closely cooperate with other entities of the United Nations system and other relevant international organizations and to more effectively coordinate activities undertaken in this area;
9. Also requests the Secretary-General, subject to the availability of extrabudgetary resources, to provide increased advisory services and technical assistance to Member States, at their request, in particular in the elaboration of national strategies, the elaboration or improvement of legislative and regulatory measures, the establishment or strengthening of national capacities to prevent and control corruption, as well as in training and upgrading skills of relevant personnel;
10. Calls upon States, relevant international organizations and financing institutions to extend to the Secretary-General their full support and assistance in the implementation of the present resolution;
11. Requests the Commission on Crime Prevention and Criminal Justice to keep the issue of action against corruption under regular review.

82nd plenary meeting
12 December 1996

ANNEX

International Code of Conduct for Public Officials

I. GENERAL PRINCIPLES

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government.
2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.
3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

II. CONFLICT OF INTEREST AND DISQUALIFICATION

4. Public officials shall not use their official authority for the improper advancement of their own or their family's personal or financial interest. They shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.
5. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest.
6. Public officials shall at no time improperly use public moneys, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.
7. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.

III. DISCLOSURE OF ASSETS

8. Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and/or dependants.

IV. ACCEPTANCE OF GIFTS OR OTHER FAVOURS

9. Public officials shall not solicit or receive directly or indirectly any gift or other favour that may influence the exercise of their functions, the performance of their duties or their judgement.

V. CONFIDENTIAL INFORMATION

10. Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.

VI. POLITICAL ACTIVITY

11. The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in the impartial performance of their functions and duties.

Notes

1/ See E/1996/99.

2/ E/CN.15/1996/5.

3/ International Review of Criminal Policy, Nos. 41 and 42 (United Nations publication, Sales No. E.93.IV.4).