

CHAPTER 5

THE RELATIONSHIP BETWEEN THE CERTIFIED AGREEMENT (CA) 1999-2002 AND AFP BUDGET MANAGEMENT; AND ANY OTHER ISSUES ASSOCIATED WITH THE IMPLEMENTATION OF THE CERTIFIED AGREEMENT

5.1 The Certified Agreement 1999-2002 (CA) marked a transition period for the AFP, through formalising new employment conditions, accepting new disciplinary provisions, and ending an era of compensatory payments. The essential features of the CA are a more flexible use of both people and time to achieve better outcomes, paid for through a new remuneration structure,¹ and implemented through appropriate people and budget management strategies.

5.2 The previous fixed-term contractual appointments were replaced by 'continuous employment', and the AFPAS arrangements were terminated. Staff eligible to receive AFPAS payments were given a greater choice about the form in which these were paid. Certain of the changes were formalised through the *Australian Federal Police Legislation Amendment Act 2000*² to enable disciplinary issues to be dealt with by the Commissioner, in accordance with the AFP's continuing role as a police force, albeit a modern management-oriented one:

The exclusion of command powers from federal legislation regulating industrial relations has been a feature of the AFP's statutory framework since the AFP's establishment. The command powers include the Commissioner's right of summary dismissal in order to safeguard the integrity of the organisation and the individuals who work within it.³

5.3 The changes in employment conditions reduced the possibility of a situation where substantial numbers of contract staff might be leaving the organisation at the same time. They also acknowledged the effectiveness of previous reforms, in that, if the AFPAS payments had been both a means of controlling corruption⁴ and

1 See *Submission 6*, Australian Federal Police, p. 12: 'The major objectives in introducing the CA included the modernisation of the remuneration framework, and the elimination of restrictive terms and conditions which unduly impacted on work practices.'

2 This legislation was considered by the Senate Legal and Constitutional Legislation Committee, *Report on the Provisions of the Australian Federal Police Legislation Amendment Bill 1999* (December 1999)

3 *Submission 6*, Australian Federal Police, p. 13

4 Although, as noted below, this objective was not as explicit at the beginning of reform as was later suggested: see Paragraphs 5.43-5.44

compensating for loss of tenure, they were no longer necessary. The nature and skills of the staff and of management was sufficient:

The move to five and 10 -year fixed term contracts, which we entered into in 1990, was done for a very important purpose at that time. It had a very strong integrity component to it. At that time, some of the things we now have available to us...to deal with people about whom we had strong suspicions of corruption...or other malpractice were not available to us so readily. ...

Because of the new regime of integrity checking and the new arrangements embodied and embraced by the certified agreement in regard to drug testing and the move towards declaration of assets and the powers of summary dismissal or proper loss of confidence dismissal ... we felt we could confidently move back into a more permanent tenure of employment which really gives people much more certainty in terms of longevity while at the same time providing for appropriate rigour... in the oversight and the capacity to move people on ...⁵

Relationship between AFP Budget management and the Certified Agreement

Budgeting practices overall

5.4 According to the Ayers review, previous budgeting practices in the AFP had been seriously deficient, with debts going unpaid and most managers having little idea of how to account for funds or limit spending.⁶ Extensive reforms and training since that time has created greater stability, with high level financial management input and essential training being provided:

The AFP now operates a devolved financial management structure. Within this structure, General Managers are responsible for management of most of their direct costs, including people costs.

The composite salary provisions enhance operational effectiveness by empowering managers and team leaders to determine the best ways to meet peaks and troughs in operational demands...By subsuming previously unpredictable overtime and penalty rates, the use of composites also allows managers to more accurately budget for salary costs. Scarce resources can therefore be more effectively and more efficiently applied, as people can be used in the right place at the right time.⁷

5 *Estimates Hansard*, Legal and Constitutional, 9 February 2000, p. 74

6 See above, Chapter 3, Paragraphs 3.15, 3.70-3.72

7 *Submission 6*, Australian Federal Police, p. 12; see also *Submission 6D*, Australian Federal Police, pp. 3-4

Financial Issues

5.5 The basis of the salary structure for the Certified Agreement was a 22 grade salary spine. Salary packaging (or flexible remuneration packaging) was introduced as part of the CA.⁸ Performance payments were introduced from 1998. The new salary structure is also linked to the more flexible system of advancement, and both were dependent on the ratification of the Agreement.⁹ Under the Agreement, an employee is paid a particular base rate (all 22 points on the scale are known as base rates), and then, according to the nature of the work in which he/she is employed, is also paid a base composite.

5.6 The Certified Agreement provides a bonus, plus three salary increases, which are intended to compensate for the loss of previously existing additional payments.¹⁰ The 6% 'sign on bonus' was based on 'the employee's base salary as of the date of certification,' but as a one-off payment it was not counted towards superannuation.¹¹ The salary increases were to be rolled into salary and count towards superannuation.

5.7 These additional payments, to a degree, were to make up for the loss of those allowances and payments that had been attached to overtime and other work arrangements.¹² These associated work practices were considered 'outdated',¹³ and Ayers Finding 21 had reinforced the need for a change towards a more white-collar, organisational, approach:

Changes such as the introduction of a new performance and competency-based rewards environment, the replacement of blue-collar awards and conditions, the replacement of overtime and penalty rates and a more flexible mobility approach should be negotiated with the AFPA.¹⁴

5.8 However, although there has been considerable emphasis on the surrender of old allowances, a new allowance was introduced with the Agreement¹⁵ as was a 'location adjustment factor'.¹⁶

8 *Australian Federal Police Certified Agreement 1999-2002*, Clause 11.8

9 *Estimates*, Legal and Constitutional, 1 December 1999: Additional Information Volume 1, pp. 82-83. The Employment Management Plans (EMP), which assisted in the management of staff performance, were delayed: *Estimates*, Legal and Constitutional, 1 December 1999: Additional Information Volume 1, pp. 83-84; in December 1999 they were not expected to be introduced until early to mid 2000

10 The 'sign on' attracted a six per cent bonus, to be followed by three 4% payments, on each 12 month anniversary of the certification of the Agreement. *Estimates Hansard*, Legal and Constitutional, 2 May 2000, p. 43. The last increase would be made in November 2002 - *Transcript of evidence*, Australian Federal Police Association, p. 85, and *Australian Federal Police Certified Agreement 1999-2002*, Clause 11.2.2

11 *Australian Federal Police Certified Agreement 1999-2002*, Clause 11.2.1

12 *Estimates Hansard*, Legal and Constitutional, 2 May 2000, p. 43

13 *Estimates Hansard*, Legal and Constitutional, 1 December 1999, p. 21

14 Ayers, Finding 24

15 See below, Paragraphs 5.9-5.10

Allowances

5.9 The AFP, in accordance with Ayers Finding 24, decided to end overtime payments and certain other allowances, which was expected to provide some \$20.3 million per annum to be redirected towards funding for the CA:

The AFP is funding its CA principally through the abolition of overtime and penalties payments (approximately \$15m p.a.) and the abolition of most allowances (approximately \$5.3m p.a.).¹⁷

5.10 The base 'composite' is the new allowance. For operational staff the composite is 33% of the employee's annual base salary; for community operations, the composite is 25% of the annual base salary plus double time overtime for any duty worked after 84 hours 'in any paid fortnight'. For commercial staff, the composite is 3% of annual base salary.¹⁸

Funding of the Certified Agreement

5.11 Information about the source of savings and the extent of savings to fund the Certified Agreement varied somewhat.¹⁹ The greater part of the cost of the CA was originally expected to come from internal savings associated with the implementation of aspects of the Ayers report.²⁰ As at March 2001, the estimated savings achieved through the Ayers reforms (by the end of 2000-2001) would total some \$44 million.²¹ As the AFP had been fully funded for the reform program, these savings were available to be used for other expenditure.²² Of the available savings, \$8m was used to pay out the accrued leave liability,²³ leaving \$36m. However, it is not clear whether this \$36m is also part of the estimated savings from allowances.

5.12 In theory this would mean that if the savings *per annum* from old allowances totalled \$ 20.3m, they would be \$60.9 m over three years, which would more than pay the expected three year cost of the new allowances of \$30. 8m. The AFP stated that

16 See *AFP Certified Agreement 1999-2002*, Clause 15.1. *Estimates*, Legal and Constitutional, 1 December 1999: Additional Information Volume 1, p. 92 (Q 44)

17 *Submission 6*, Australian Federal Police, p. 12

18 *AFP Certified Agreement 1999-2002*, Clause 7

19 *Estimates*, Legal and Constitutional, 1 December 1999: Additional Information Volume 1, p. 92 (QoN 44)

20 See *Estimates Hansard*, Legal and Constitutional, 1 December 1999: Additional Information Volume 1, p. 92 (QoN 44)

21 *Transcript of evidence*, Australian Federal Police, p.46; see also *Submission 6A*, Australian Federal Police, p. 8

22 *Transcript of evidence*, Australian Federal Police, p. 46

23 *Submission 6*, Australian Federal Police p. 29. See also *Submission 6A*, Australian Federal Police, p. 4: The accrued leave liability 'did not become an issue for the AFP until the introduction of accrual based budgeting'

the total cost of the CA (excluding AFPAS which was funded separately) was \$115.7m over the three year period 1999-2002, as follows:

- 1999-2000: \$29.6m
- 2000-2001: \$39.0m
- 2001-2002: \$47.1m

5.13 The AFP continues:

This additional cost is funded through the abolition of certain salary entitlements, such as penalty and overtime payments, restriction on Higher Duties Allowance, and most other allowances.²⁴

5.14 The AFP has therefore estimated the net cost of the Agreement to be \$51.9m over the three years. In this context, the net cost is presumably the additional amount that has to be funded by other economies within the budgeted amount, after the deduction of the savings that have already been made. Assuming that the estimated savings from allowances total \$60.9m,²⁵ the net cost should be \$54.8m rather than \$51.9m.²⁶

5.15 The Committee notes that information about the net costs is in fact incomplete, at least relative to what was stated in the Senate Estimates hearing of 28 May 2001. At this hearing, it was stated that some of the new Reform Program funding would be applied to the Agreement. In discussing the new funding for the second part of the reform program, the following information was provided:

[Senator McKIERNAN](#) —What are the priorities identified in that?

Mr Keelty —The recruitment of staff, the learning and development strategy, funding of the certified agreement, equipment upgrades and some mobility costs.²⁷

5.16 This would appear to be contrary to the expectation that all Certified Agreements were to be funded from internal efficiencies, and not through additional monies.²⁸

24 *Submission 6D*, Australian Federal Police, p. 10

25 *Estimates*, Legal and Constitutional, 1 December 1999: Additional Information Volume 1, p. 81 (Q39) and p. 92 (QoN 44)

26 See above, Paragraph 5.12

27 See *Estimates Hansard*, Legal and Constitutional, 28 May 2001, p. 89

28 See above, Chapter 4, Paragraph 4.24

Effect on staff of problems with Budget

5.17 According to the AFPA, the then most recent AFP budget process was flawed in a number of ways, all of which impact on the potential achievements of the Certified Agreement. These factors include:

- Inability of staff to move beyond certain points on the salary scale;
- Underpayment of staff relative to skills;
- No access to Higher Duties Allowance (HDA);
- Insufficient human resource and IR practitioners;
- Lack of standardisation ; and,
- Incomplete information or reporting systems regarding staff entitlements.²⁹

Concerns about the salary structure - salary scale and underpayment of skilled staff

5.18 A major concern of the AFPA was that it was not possible to move across different increment points.³⁰ The main reason given was that incremental increases ‘may not have been budgeted for by the AFP,’³¹ and that there were quotas established at different points.³² As a result, there was some loss of morale and some feeling of lack of recognition, given that recent employees with the same or higher levels of skills than more established employees received less pay:

What has actually occurred is that at the different increment points...are what are called hard bars. So, with regard to these new people who have come into the organisation that are highly skilled and so forth, right at this moment they cannot actually move across the hard bar from the pay point that they came into the organisation on.³³

5.19 A major objective of the CA is the retention of skilled and experienced staff through two factors: the first is the increase in salary, and the second was the revised AFPAS payout arrangements, enabling persons to remain in employment and still be paid their entitlement.³⁴ Previous to this, the reprofiling of the AFP led to a reduction in staff, presumably including those who would be of less value, or some who were less able to adapt to the new structure and skills. The intention was to attract skilled and able staff and to retain them by offering pay based on ability.

29 *Submission 9*, Australian Federal Police Association, p. 102

30 *Transcript of evidence*, Australian Federal Police Association, p. 84

31 *Transcript of evidence*, Australian Federal Police Association, p. 85

32 *Submission 9*, Australian Federal Police, p. 99

33 *Transcript of evidence*, Australian Federal Police Association, pp. 84-85

34 See below, Paragraphs 5.52-5.53

5.20 The deadlock in the pay structure has meant that some skilled staff are being paid at a rate lower than that which they feel is commensurate with their capacities:

...we now have a situation where we have federal agents working with no differential in obligation, expectation and work pattern but on completely different salary scales....there is a degree of unfairness in the fact that you are working side by side with people who are three or four salary points above your own and you have no capacity to attain that level.³⁵

5.21 The second issue, in addition to loss of expectation, is that the reformed structure was meant to reward ability rather than seniority in accordance with the change in the nature of the AFP.

5.22 According to the AFPA, the capacity to move has been limited by various factors. Although the AFPA has stated that the inability to progress was ‘an unintended consequence’,³⁶ it has also said that ‘this may not have been budgeted for by the AFP’,³⁷ suggesting that there could be a financial problem even if other factors were overcome. In their submission, the AFPA stated that in fact the AFP *had* failed ‘to budget for the “soft bar” introduction into the 22 point salary spine.’³⁸

Movement along the salary spine

5.23 The AFPA suggested that ‘it was always intended that differing “soft bars” would be developed relative to each Principal Functional Area’.³⁹ While the intention to review is clearly expressed in the Agreement, there is no specific timeframe in which this is to occur:

11.3.3 Ongoing review of the Salary Spine

The parties agree to review the structure of the 22 grade Spine including the current hard bars between the grades with a view to ensuring that the Spine appropriately reflects Operations and Commercial streamlined appointments and progression requirements.⁴⁰

5.24 However, timeframe does not appear to be the whole problem in that it is stated negotiations began with respect to the use of the soft bars for one group,⁴¹ but that, at the time of the submission in March 2001, these had not been resolved. In

35 *Transcript of evidence*, Australian Federal Police Association, p.85

36 *Transcript of evidence*, Australian Federal Police Association, p. 85

37 See *Transcript of evidence*, Australian Federal Police Association, p. 85

38 *Submission 9*, Australian Federal Police Association, p. 95

39 *Submission 9*, Australian Federal Police Association, p. 98

40 *AFP Certified Agreement 1999-2002*, Clause 11

41 *Submission 9*, Australian Federal Police Association, p. 99

addition, other arrangements in respect of another grade of officers was planned,⁴² but this had also not led to specific increases.⁴³

5.25 It could be argued that on the one hand, the AFPA failed to guarantee its members that progression would occur at a particular point by not ensuring that specific timeframes were a part of the Agreement.

5.26 On the other hand, the suggestion that the AFP had in any event failed to budget (or, possibly, failed to progress negotiations because it had failed to budget), would suggest that major reforms in budgeting still have some way to go. The Committee does not consider it feasible that substantial amounts of salary funding could have been forgotten, especially given the link between the salary increases and the reform and skilling process. It is more logical to assume that there are still barriers within the soft bar system.

AFP Response

5.27 From answers provided to Estimates Questions, it appears that a substantial proportion of AFP staff/agents had in fact progressed by February 2001. In answer to a specific question on staff advancement, the AFP advised that some 2029 persons had progressed since the time the Agreement came into operation:

In addition to the two main modes of advancement provided for in the agreement, a significant number of advancements occurred in relation to team members ...to rectify some classification anomalies. The anomalies were identified through the application of the AFP's role evaluation system known as Job Size.⁴⁴

5.28 In addition, the AFP stated that:

Progression through the spine was controlled by cap-out incremental barriers at each grade, and all progression between salary points, within each grade, is subject to satisfactory performance. However, movement beyond and past the top salary increment of each grade is subject to the AFP's advancement mechanisms.⁴⁵

5.29 Further negotiations with the AFPA had resulted in a more satisfactory outcome:

The AFP and the AFPA have reached a mutual agreement on a review of the salary spine to allow for more flexible movement through a learning path and associated grade range in accordance with Clause 11.3.3 of the CA. This reflects the development of new recruits with little on the job

42 See *AFP Certified Agreement 1999-2002*, Clause 11.1.1

43 *Submission 9*, Australian Federal Police Association, p. 99

44 *Estimates*, Legal and Constitutional, 19 February 2001, Answer to QoN57

45 *Submission 6D*, Australian Federal Police, p. 6

experience and who are in need of further coaching and mentoring, to highly effective operatives who autonomously manage a number of complex and difficult cases and who can lead, mentor and coach newer members.⁴⁶

5.30 The AFP also stated that ‘the issue of hard bars will be resolved for ‘effective’ operational staff at the Grade 7-10 range’ when the new advancement strategy was in place later in 2001.⁴⁷ If there is any relationship between the ‘more flexible movement’ and the additional funding granted for the Certified Agreement, this has not been stated.⁴⁸

*Related issues*⁴⁹

The AFPA also noted a number of other problems that had been identified with the operation of the Agreement. These included the fact that varying circumstances in different offices could result in less favourable conditions, and inadequate remuneration.⁵⁰ The last twelve months has indicated to all parties that due to often-arduous work patterns, Operational members have accumulated large amounts of time in lieu. An analysis of this indicates that the AFP failed to budget for the impact of the new Certified Agreement due to a lack of real knowledge and that for employees to work acceptable hours of duty...the AFP may need to increase employee numbers.

Our members are being denied access to Higher Duties Allowance (HDA), as different regions attempt to reduce expenditure.

Due to internal budgetary pressures within both the NCA and the AFP for example, the AFPA has discovered that State based arrangements were made to reduce the costs of employees on secondment. The AFP has been failing to deploy employees at the salary level appropriate to the role as determined by its own role-sizing tool.⁵¹

5.31 Another issue which was of concern to the AFPA was the lack of access to HDA. However, the extent to which this would continue to be an issue depends very much on the arrangements that had been made in respect of this payment as part of the CA. At Clause 11.9 of the Agreement, the terms of availability of HDA were specified in detail; any complaints should be within these boundaries.

5.32 Some of these issues are no doubt of concern to members, and could affect morale especially in light of the substantial reform process. On the other hand it is also important that sufficient time be allowed for these problems to be resolved,

46 *Submission 6D*, Australian Federal Police, p. 6.

47 *Submission 6D*, Australian Federal Police, p.7

48 See above, Paragraphs 5.15-5.16

49 As at above, Paragraph 5.17

50 *Submission 9*, Australian Federal Police Association, pp. 101-102

51 *Submission 9*, Australian Federal Police Association, p. 102

resulting in standard practices in all AFP offices, insofar as this is possible. For example, if there are budgeting constraints, it may be necessary to restrict access to some payments. Other issues are not peculiar to the AFP, and can be found in most public sector departments which have far less generous salary progression mechanisms. Moving to a white-collar organisational basis⁵² can result in fewer 'entitlements',⁵³ and the Certified Agreement reflects this.

Morale

5.33 According to the AFPA, there had been concerns about aspects of the Agreement, and some loss of morale,⁵⁴ but generally there was a belief that the employment situation was much better than it had been under the contractual basis:

In summary, what we have now seems to be working very well. The commissioner still has significant powers with regard to losing confidence in an employee and so forth, but at the same time we have removed the artificial barrier that was in people's minds, where they were saying, 'I've only got five years tenure in the AFP, so after three years I'm looking for another job,' and they were not really focused on the organisation. This has certainly changed the morale of the employees right around. They are very happy with the fact that they feel they have a career there.⁵⁵

5.34 The AFP agreed that there had been a morale problem, but also that this was more a result of the previous uncertainty in employment under contractual arrangements than the current employment conditions:

[Senator COONEY](#) —... I would have thought uncertainties could result in a fall in morale.

Mr Palmer —I think it is one of the strongest things in the certified agreement's favour, frankly. There was a lot of concern about the ongoing fixed term appointment arrangement because, obviously, members wished to get access to their money without having to leave the organisation... This allows them to get access to that and stay in the organisation.⁵⁶

5.35 The AFP also stated clearly that there had been no underfunding of the Agreement:

Mr Kelaher —I reassure you that we did not make a mistake and underprovide for the certified agreement. My response on double-counting

52 See above, Paragraph 5.7

53 See *Estimates Hansard*, Legal and Constitutional, 31 May 1999, p. 102

54 *Transcript of evidence*, Australian Federal Police Association, p. 89

55 *Transcript of evidence*, Australian Federal Police Association, p. 90

56 *Estimates Hansard*, Legal and Constitutional, 9 February 2000, pp. 74-75

was to try to assure you that we had not underprovided for the funding of the certified agreement.⁵⁷

Administration and Disciplinary Issues

5.36 According to the AFPA, other concerns related to the CA are the actual management of new arrangements and the extent to which the disciplinary powers and processes are appropriate.⁵⁸ Some of the management issues have been mentioned above, and little evidence was provided enabling the Committee to go into these in detail. The other major concern of the AFPA was in the area of grievances and complaints, and to a degree, in the use of the Commissioner's power to discipline and dismiss staff.

5.37 The Certified Agreement, as indicated above, makes provision for the management of some disputes.⁵⁹ The *Australian Federal Police Act 1979* makes further provision for the Commissioner to dismiss staff where he has lost confidence in them.⁶⁰ This power is not subject to review through the usual industrial relations processes. However, while there is no link between command powers and external tribunals etc, there is the capacity to make a complaint in respect of employment issues, under the *Workplace Relations Act 1996*.

5.38 Disciplinary issues are considered in Chapter 6.

AFPAS payments

Australian Federal Police Adjustment Scheme (AFPAS)

5.39 The AFPAS was developed in order to compensate sworn and unsworn members of the AFP for required changes to terms and conditions of employment. AFPAS commenced in 1990, when the amended AFP legislation came into effect. The legislation ratified the following changes:

- Fixed term appointments, and the end of continuous or tenured appointment;
- All staff, including civilians, to be employed under the AFP Act;⁶¹
- Terms and conditions to be the same as far as was possible;⁶²

57 *Estimates Hansard*, Legal and Constitutional, 9 February 2000, p. 74; *Estimate Hansard*, Legal and Constitutional, 9 February 2000, p. 72 and 1 December 1999, p. 21

58 *Transcript of evidence*, Australian Federal Police Association, pp. 90, 92

59 *AFP Certified Agreement 1999-2002*, Attachment 3

60 See above, Chapter 2, Paragraphs 2.23-2.25; *Australian Federal Police Act 1979*, Clause 28, Clause 40K

61 Civilians had formerly been employed under the Public Service Act 1922 – see *Senate Hansard*, 4 October 1989, p. 1632

62 Transformation in the Australian Federal Police, www.afp.gov.au/corp, 1995, p. 15

- As much as possible, civilians would be used for work that did not require the use of police powers, thereby freeing police for specific tasks integral to policing; and,
- The provision of a 12.5% bonus 'of accumulated salary over the period of the police member's or staff member's fixed term appointment or appointments.'⁶³

The intended objectives of the AFPAS payments

5.40 The major reasons given for the introduction of AFPAS concern the need to be more flexible in staff arrangements, both for cost reasons and for efficiency reasons. A non-tenured staff would reduce the risk of burnout and consequent invalidity.⁶⁴ Staff who were not productive or could not change would be provided with a payout of the tenure they might otherwise have clung to.⁶⁵

Burnout

5.41 The argument that people were subject to burnout and wanted to leave the force does not appear to have been a valid argument for providing a financial incentive to leave. In 1999 Mr Whiddett, then Deputy Commissioner, stated that 'the average period of time that a street officer would stay with us is probably about 10 to 12 years'.⁶⁶ If this was the case, the use of AFPAS could be seen as an additional payment for a move that some individuals may well have made in any event.

5.42 The issue of burnout with respect to civilian staff has not been discussed, but would apparently be less likely – therefore, eligibility for AFPAS was a substantial bonus.

Limitation of corruption

5.43 Limitation of corruption is also a reason given for the need for change, although this is specifically linked with the payment of AFPAS, rather than the introduction of contracts - an officer was not eligible to receive AFPAS if he or she

63 *AFP Legislation Amendment Act (No. 2) 1989*. Provisos included not being eligible for the payment if resignation occurred prior to the end of the appointment or if the individual had his/her appointment annulled

64 See *Senate Hansard*, 4 October 1989, p. 1632. One of the objectives of the new system was to allow persons who might want a career change to make a decision about leaving the force, and to fund a new career with the accumulated payments. This option was intended to help avoid invalidity and thereby reduce high invalidity payments. See *House of Representatives Hansard* 28 November 1989, p. 3078: 'Currently the Australian Federal Police incurs very high invalidity costs. With the introduction of the unified work force there will be greater flexibility for redeployment of staff... Additionally, members will have the opportunity at the end of their fixed term appointments to make career changes with the financial support offered by the accumulated adjustment scheme, thereby avoiding the stress related illness so common in the force' (Attorney-General)

65 Inefficiency procedures were available, but it is not known how often they were applied

66 *Estimates Hansard*, Legal and Constitutional, 8 February 1999, p. 79

had been *proven* to have been involved in corruption.⁶⁷ However, it is not clear how much the issue of corruption was considered when AFPAS was being considered or came into effect from 1990, since it is not given as one of the main reasons for the scheme.⁶⁸ The *Australian Federal Police Legislation Amendment Bill 1989* dealt more specifically with the issue of corruption in the AFP through introducing penalties such as loss of superannuation benefits for those found to have been corrupt.⁶⁹

5.44 Less directly, if tenure and lack of movement within an organisation leads to corruption, the cessation of tenure and the use of a changing team structure would inhibit its development. The introduction of continuous employment under the Certified Agreement 1999-2002 suggests that corruption had been checked. However, it could be asked if additional payment to limit corruption is an appropriate process.⁷⁰

The effect of contractual arrangements

5.45 To say that the introduction of contract employment by itself changed police culture substantially in a short time would be inaccurate. In 1989 legislative change had affected the superannuation rights of former and existing police officers,⁷¹ and included the Cessation Payment arrangements.⁷² Other changes, arising from the 1988-89 Career Structure review, were intended to improve flexibility and reduce the importance of seniority, make a police career more financially attractive and recognise other achievements of staff when making placements.⁷³ These changes were introduced via regulation in 1989.

67 *Estimates Hansard*, Legal and Constitutional, 11 June 1997, pp. 222-223 where reference is made to the AFPAS as an 'anti-corruption' measure. However, the key point is whether the person has been demonstrably corrupt: in discussing the effects of the Harrison inquiry (see below, footnote 70), Commissioner Palmer stated that the majority of persons suspected of wrongdoing had left the AFP. They would have been eligible for the AFPAS payout if there had been 'no finding' of corruption, rather than 'no suspicion' (*Estimates Hansard*, Legal and Constitutional, 11 June 1997, p. 215)

68 See *House of Representatives Hansard* 28 November 1989, p. 3078, where reference to possible corruption is very indirect

69 See *Senate Hansard*, 25 May 1989, p. 2743; similar provisions were introduced later for the Australian Public Service (APS) generally

70 The Harrison inquiry in 1997 may have supported the idea that permanent appointments could also encourage corruption. See report by Ian Harrison QC, *Report of Inquiry into Allegations Made about the Australian Federal Police*, April 1997. Aspects of this report are discussed in *Estimates Hansard*, Legal and Constitutional, 11 June 1997, pp. 215-218

71 *Senate Hansard*, 4 October 1989, p. 1632; see also *Submission 6B*, Australian Federal Police, p. 6

72 The Cessation Payment was a special arrangement for police officers on the basis that they had to retire at 60 but the Commonwealth Superannuation Scheme (CSS) was structured to persons who retired at 65. See also *Submission 6B*, Australian Federal Police, p. 6

73 See *Senate Hansard*, 4 October 1989, p. 1632

5.46 Contractual appointments commenced in 1990 for sworn and unsworn AFP staff,⁷⁴ including new appointments.⁷⁵ However, although several key components of reform were in place by 1990, there is limited evidence of training and development courses which may have assisted in relating the structural changes to ideological change. Even in 1995 the organisation was still seen as very much a police force than a public sector department or an organisation.⁷⁶ The reforms put in place from 1995, which included an extensive training program, also indicate that some training and management processes lagged behind the structural changes. In 1998, the Ayers review made it clear that training in several areas was still deficient, albeit as a result of funding problems rather than lack of interest. In short, a contractual arrangement by itself may not result in cultural change, and requires support from a number of processes.

The structure of AFPAS

5.47 The *Australian Federal Police Legislation Amendment Bill (No. 2) 1989* provided that AFPAS would comprise 12.5% of accumulated salary:

...over the period of the police member's or staff member's fixed term appointment or appointments, on the basis that it will be treated as an eligible termination payment.⁷⁷

5.48 This was gross salary, exclusive of overtime, penalties or non-skilled allowances.⁷⁸ Higher Duties Allowance was counted towards salary.

5.49 The percentage payable on a pro-rata basis varied for 5 and 10 year appointments, with the percentage being 1.25% for the first year for 10 year appointments and 2.50% for the first year of a five year appointment,⁷⁹ for persons retired under (then) S26E of the Australian Federal Police Act. Additionally, if such persons met various criteria,⁸⁰ they were eligible for payment for any unexpired

74 Public Service staff were eligible for the additional payments if they chose to stay on in the AFP, at least for the first term, and could also be seen as part of the Public Service. At the end of the first contract period, such staff had to make the choice of returning to the Public Service or move to the AFP- which would enable them to retain access to AFPAS payments - *Senate Hansard*, 4 October 1989, p. 1632

75 These appointments appear to be of five or ten years' duration, with a majority of staff coming to the end of either one ten-year or two five-year contracts in mid 2000: *Estimates Hansard*, Legal and Constitutional, 8 February 1999, p. 88

76 See above, Chapter 1, Paragraphs 1.13, 1.15-1.19 ; *Submission 6*, Australian Federal Police, p. 23

77 *Senate Hansard*, 4 October 1989, p. 1632- the estimated cost of payments of AFPAS in the year 2020 was \$5.4 million in 1989 dollar terms. See also *Estimates Hansard*, Legal and Constitutional, 11 June 1997, p. pp. 221-223. In 1997 the basis of payments was described as 12.5% of *accrued* salary See *Estimates Hansard*, Legal and Constitutional, 11 June 1997, p. 223, but the relevant determination uses the word 'accumulated'- see Determination No. 5, 1989, *Submission 6B*, Australian Federal Police, Attachment B, p.12

78 Australian Federal Police, *Annual Report 1990-1991*, p. 76

79 Determination No. 5, 1989, see *Submission 6B*, Australian Federal Police, Schedule, p. 15

80 *Submission 6B*, Australian Federal Police, Attachment C, p. 17,

portion of the contract. The various staffing arrangements throughout the first years of AFPAS may well have had a substantial effect on the amount of money required to fund it appropriately.

Interaction with Superannuation Payments

5.50 There was no conflict between CSS and AFPAS, but the maximum benefit rules of the PSS affected the amount of benefit that could accrue.⁸¹

Eligibility

5.51 AFPAS did not apply only to those who were in the AFP at 1989. Under the Agreement, new members were also eligible for AFPAS after two years,⁸² even though they could not have previously had an expectation of ongoing employment for which AFPAS was compensation. In addition, the two years' period was then counted towards the scheme, rather than being a non-funded probationary period.⁸³ Even persons who were dismissed because of inefficiency were eligible.⁸⁴

Payment

5.52 AFPAS was originally structured so that it could only be available when an individual had left the AFP, on the basis that, among other things, it was a means of funding another career and would help avoid burnout.⁸⁵ New arrangements established through the Certified Agreement⁸⁶ enabled members to retain the payment even though they had not resigned. The same options were also available to persons seeking a Cessation Payment:⁸⁷

- Retain the money as an Eligible Termination Payment (ETP), although there is no interest and no adjustment for inflation;
- Arrange for the payments to be made as pre-tax employer contributions to a superannuation fund – with the exception of CSS; however, this could attract superannuation surcharge; or,
- Have the money paid out as taxable wages, which could attract a higher rate of tax;⁸⁸

81 *Submission 6B*, Australian Federal Police, Attachment C, pp. 18-19

82 Determination No. 5, 1989, *Submission 6B*, Australian Federal Police, p. 13, Attachment B, Paragraph 3

83 Determination No. 5, 1989, *Submission 6B* Australian Federal Police, p.13, Attachment B, Paragraph 3

84 Determination No. 5, 1989, *Submission 6B*, Australian Federal Police, p. 12, Attachment B, Paragraph 1

85 See above, Paragraphs 5.43-5.44

86 *Submission 6B*, Australian Federal Police, p. 7

87 *Australian Federal Police Certified Agreement 1999-2000*, Paragraph 17.1

88 See *Submission 6B*, Australian Federal Police, Attachment D, p. 20,

5.53 By the year 2000, therefore, the nature of AFPAS (and the Cessation Payment)⁸⁹ had changed substantially from the original.

Costs of AFPAS

5.54 The original formula for the estimated cost is not known. It was stated during the Parliamentary debate on *the Australian Federal Police Legislation Amendment Bill 1989* that AFPAS would cost \$5.4m in 2020, and that the first payout of note would be around \$800,000 in 1991-92.⁹⁰ The only reason for any payout at that time would be as a result of 'management initiated retirement',⁹¹ given that the contractual period only began in 1990.

5.55 In 1997 it was stated that there had been an agreement to provide additional funding for AFPAS – although the date of this agreement was not specified:

...as part of the move from tenured to contract employment, members of the AFP are entitled to an allowance, called AFPAS, which is payable only at the time of their departure from the force and only on conditions related to creditable service.

When that was introduced it was not possible to estimate the time at which payments under that scheme would fall due, because it is a payment that is not made on a PAYE basis. The government therefore agreed that AFP funding would be adjusted from time to time. This adjustment takes care of accrued liability up to a point some distance in the future...and there is to be further consideration of the best way to fund liability beyond that point.⁹²

5.56 This suggests that there were regular adjustments in addition to the special funding paid later on. In 1999-2000, the Department of Finance and Administration also provided some assistance to the AFP with respect to AFPAS:

...DOFA analysed the Australian Federal Police balance sheet and established a need for an equity injection to enable the [AFP] to extinguish liabilities which had accumulated under the [AFPAS] scheme and the Cessation Payment Scheme. This injection was provided through the 1999-2000 Additional Estimates process and placed the Australian Federal Police on a much firmer financial base.⁹³

89 See below, Paragraphs 5.60-5.64

90 *Senate Hansard*, 4 October 1989, p. 1632 ; in fact, the first major payment was \$1.079m in 1993-1994 – see below, Table 5.1

91 Determination No. 5, 1989, *Submission 6B*, Australian Federal Police, p. 12, Attachment B, Paragraph 1

92 *Estimates Hansard*, Legal and Constitutional, 11 June 1997, p. 221

93 Department of Finance and Administration, *Annual Report 1999-2000*, Chapter 3 'Increased use of Ownership Analysis'. This process is not referred to in the *Australian Federal Police Annual Report 1999-2000*

5.57 Although there have been no specific statements with respect to the earlier funding of AFPAS and the Cessation Payment, it is likely that insufficient provisional allocations were made at least in the first few years, possibly on the basis that no substantial amount would be required until the late 1990s. In 1996, the Government Actuary advised that it would be necessary to restructure current and future liabilities, which meant that then current liabilities for AFPAS amounted to \$66million.⁹⁴

5.58 It is difficult to reconcile the information provided on funding for AFPAS.⁹⁵ The figures provided in AFP Annual Reports appear to be sums that are provisionally allocated but not actually paid, and, on occasion, adjustments to this provisional funding. As far as can be determined, little money was actually set aside, and the total amount for which the Government became liable has been continually adjusted upwards. From material provided by the AFP it appears likely that the total cost will be in the region of \$125.813 million.⁹⁶

5.59 In additional material provided to the Committee, the AFP also stated that some \$10m had been transferred in 1999-2000 from 'Timor funds to Capital (AFPAS payments)',⁹⁷ a fact which had not previously been obvious. However, this is more relevant to the issue of flexibility of tied funding⁹⁸ than to the amount allocated to AFPAS overall, as this \$10m was a loan.

5.60 As at 20 June 2001, \$92m had been paid as a result of the closure of both AFPAS and the Cessation Payment schemes. \$17.5m had been paid as at June 30, 2001, under option (iii) of the Cessation Payment (that is, having the sum paid out as taxable wages)⁹⁹ and the value of payments deferred until the individual leaves the AFP is \$5.8m.¹⁰⁰

5.61 In respect of the Cessation Payment, the AFP also advised that:

The termination of Cessation Payment presented a particular difficulty in that a prerequisite to receiving this payment, and a factor which determined the amount, related to attaining the age of 55. To overcome this difficulty,

94 *Budget 2000-2001*, Statement 6:Expenses and Net Capital Investment, p. 6.

95 See Table 5.1, below. In the year 2000 a consultant was engaged to 'review the methodology used by the AFP to calculate the final balance of payments for AFPAS to members and staff members of the AFP; and final balance of Cessation Payments to members and staff members of the AFP.' (Correspondence from the Australian Federal Police to the Committee, 24 April 2001). The assessment of calculations indicated that most were made correctly, but no details were provided on the cost of the scheme

96 *Submission 6 F*, Australian Federal Police, p. 2

97 *Submission 6B*, Australian Federal Police, p. 4

98 See above, Chapter 4, Paragraph 4 40-4.51

99 See above, Paragraph 5.52

100 *Submission 6D*, Australian Federal Police, p. 10

the Certified Agreement provided that the age 55 factor (0.0378) applied to all police members of any age up to and including age 55.¹⁰¹

5.62 In effect this meant that the nature of the Cessation Payment had also changed, since it was previously intended to benefit those persons on the CSS scheme who were retiring between the age of 55 and 60. The CSS closed in 1990, to be replaced by the PSSS, therefore the majority of persons joining the AFP from 1990 would not have been eligible for the Cessation Payment.

5.63 The original terms of the Cessation Payment were that the payment was calculated on three factors: final rate of salary, age at retirement and the number of years of relevant police service.¹⁰² In the Certified Agreement, the variables are period of relevant service, final salary for superannuation purposes as at 5 January 2000,¹⁰³ and factors reflecting age.¹⁰⁴

5.64 The move does not change the existing situation for persons aged 55 and up to 60 on retirement,¹⁰⁵ but does provide an advantage for those under 55 who wished to choose the Cessation Payment over the AFPAS (individuals could take only one of the two benefits). The most advantageous age to retire under the Cessation Payment was 55¹⁰⁶ when the factor by which sums were multiplied was at its highest – 0.0378; after that, while the number of years in the service and the age of the individual increased, the factor decreased.¹⁰⁷ Persons under 55 therefore received a benefit through being able to have their payment multiplied by the highest factor, and, in fact, having this payment as an alternative to AFPAS.

Effect of AFPAS on performance

5.65 It seems that there were few real benefits arising from the AFPAS scheme in its early years. Although contractual or fixed-term arrangements were in place, there were no real performance indicators against which to measure achievements that would be valued at such a high rate. Most sources – perhaps unfairly – only speak of meaningful reforms occurring from about 1995.¹⁰⁸ If this is the case, then any funding allocated prior to the 1995 period appears to have been a benefit for employees with relatively little required in return, apart from a contractual form of employment.

101 *Submission 6B*, Australian Federal Police, p. 7

102 *Submission 6B*, Australian Federal Police, p. 9, Attachment A

103 The day of closure of the schemes

104 *Australian Federal Police Certified Agreement 1999-2000*, Paragraph 17.3

105 Although the mandatory retirement age of 60 was also abolished under the *Australian Federal Police Amendment Act 2000*

106 See *Submission 6B*, Australian Federal Police, p. 6

107 See *Australian Federal Police Certified Agreement 1999-2000*, Clause 17.3, and *Submission 6B*, Australian Federal Police, p. 10

108 *Submission 9*, Australian Federal Police Association, p. 52

Additional Payments

5.66 Redundancies were also another option available under the Certified Agreement, although the period between 1 July 1990-12 November 1999 was not counted on the basis that AFPAS was in operation.¹⁰⁹ It is therefore possible for a person to have taken an AFPAS payment and a redundancy at much the same time. Redundancy payments can include up to a maximum of 52 weeks pay, although the usual maximum is 48 weeks for other agencies.

Conclusions

5.67 The arrangements made under the 1999-2000 Certified Agreement, and as a result of earlier agreements, have meant that sworn members of the AFP have generally been in an extremely favourable financial situation.¹¹⁰ Although there have been some complaints about the rate of certain changes, and some concerns expressed about disciplinary procedures, overall sworn officers have received considerable benefits in training, opportunities and payments.

5.68 The consideration of AFPAS, and the Cessation Payment, has indicated that much more precise information should be maintained on the costs of special payments of this nature. The Committee believes that, although there may have been difficulties in making cost estimates arising from the changes that have occurred to accounting systems, this in itself is not an adequate excuse for the incomplete data provided. It was known to the AFP that various calculations and estimates had been made both by DOFA and by the Government Actuary, and that \$10m had been temporarily transferred from East Timor funds, and discussion of this would have facilitated an understanding of the problems involved in funding the scheme.

5.69 The Certified Agreement appears to have received funding additional to that to be achieved from internal savings. This is an additional indication of favourable arrangements being made for the AFP, although the general uncertainty about how Certified Agreements have been funded may mean they are not unique.¹¹¹

109 *Submission 6B*, Australian Federal Police, p. 8

110 Sworn members are advantaged especially because of the high level of their composite

111 See above, Paragraph 5.15

TABLE 5.1 AFPAS –REFERENCES AND PAYMENTS

Year	Amount- estimated requirement both current and non-current	Reference /Source)	Actual amount paid out –based on i figures provided by AFP; Submission 6F
1990 -91	X	x	x
1991-92	X	x	x
1992-93	X	x	\$0.161m
1993-94	22, 044m (current) 51,761m(non-current)	AFP Annual Report 1994-95, p. 129	\$1.079m
1994-95 –based on ABS sampling, see AFP Annual Report 1995-96, p. 115	16.746m(current) 57.380m (non-current)	AFP Annual Report, 1994-95, p. 129; see also p. 123 re 5% discounting of non-current liabilities	\$0.482m
1996-96* year of new calculation by Govt Actuary, AFP Annual Report 1995-96, p. 115	Current 3.330m Non-current \$24.1m; (AR,p.115)or \$20.770m(p.116)	AFP Annual Report 1995-96; there is no expl. of the different sums for non-current liabilities as at p. 115 and p. 116	\$3.763m
1996-97	1)Abnormal item \$8,800; 2)38,600	AFP Annual Report 1997-98, p. 157	\$2.776m
1997-98 also calculated by Government Actuary	1)Abnormal item\$9,900 ¹¹² 2)54,600	AFP Annual Report 1997-98, p. 157	\$4.057m
1998-99	62,000m	AFP Annual Report 1999-2000, p. 127	\$17.950m
1999-2000	1)5.265 m; part of Ayers Reforms 2)38,596m ((part 1 of \$105m)	Answers to Q on Notice No. 50, Estimates 19/2/01 AFP Annual Report 1999-2000, p. 127	\$66.589m
2000-2001	\$9.892M-part of Ayers reforms; 2 nd part of \$105m	Answers to Question on Notice 50,Estimates 19/2/01	\$28.956M

112 This abnormal item under employee expenses is explained in the 1998-1999 Annual report as follows: 'The 1997-98 provision for AFPAS reflects an increase of \$16m from that of 1996-97. Of the increase, \$9.9m is attributable to a change in the assumptions applied by the Australian Government Actuary and a change in the interest rate. Accordingly, the amount of \$9.9 m has been recognised as an abnormal item in the calculation of Employee Expenses.' However, this is not a sum paid, but an adjustment to a future payment, as is the sum of \$8.8m in the previous year