

The Senate

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Legal and Constitutional  
Legislation Committee

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Proposed government amendments to the  
Australian Protective Service Amendment  
Bill 2003

October 2003

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## CONCLUSIONS AND RECOMMENDATIONS

The Committee considers that the proposed Government amendments are appropriate to address security concerns in situations where an Australian Protective Service (APS) officer may not be present and where an Australian Federal Police (AFP) officer should have similar powers to stop and search suspects. The Committee notes statements by representatives of the AFP and the Attorney-General's Department that there is no intention to remove APS functions from that agency by stealth.

The Committee considers that the CPSU's concerns may have been alleviated had the AFP and the Attorney-General's Department consulted with them more fully about the need for and purpose of the proposed amendments. The lack of consultation was also apparent in the Committee's previous inquiry into the Bill as drafted, and was an issue on which the Committee registered its concern.<sup>1</sup>

The Committee notes the AFP's assurances that consultation processes will be improved in developing the proposed legislation to integrate the APS into the AFP. In light of the history of this issue, the Committee regards it as imperative that the AFP and the Department ensure that this occurs. This is particularly important in light of the likely short timeframe before the introduction of that legislation.

### Recommendation 1

**The Committee recommends that the proposed Government amendments to the Australian Protective Services Amendment Bill 2003 be agreed to.**

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1 Senate Legal and Constitutional Legislation Committee *The Australian Protective Service Amendment Bill 2003*, para 2.78, pp. 17-18.





## **ABBREVIATIONS**

CPSU	Community and Public Sector Union
AFPA	Australian Federal Police Association
AFP	Australian Federal Police
APS	Australian Protective Service
PSOs	Protective Service Officers



# CHAPTER 1

## INTRODUCTION

1.1 On 10 September 2003, the Senate referred the Australian Protective Service Amendment Bill 2003 to the Legal and Constitutional Legislation Committee for inquiry and report by 7 October 2003.

1.2 While the Selection of Bills Committee report in fact referred the Bill itself to the Committee, the Committee had already inquired into and reported on the Bill on 18 August 2003.<sup>1</sup> The appendix to the Selection of Bills Committee report noted that it was the proposed Government amendments that had been circulated after this Committee's report that were of concern. Consequently the Committee has inquired into and reports on those proposed Government amendments here.

### The Committee's earlier report

1.3 The Bill as drafted proposes amendments to the *Australian Protective Services Act 1987* by giving extra powers to Australian Protective Service (APS) officers:

- to request a person's name, address, identification and reason for being in or near a place the officers are protecting;<sup>2</sup>
- to stop, detain and search a person in or near such a place;<sup>3</sup> and
- to seize things that are likely to cause death or serious harm.<sup>4</sup>

1.4 Subject to its recommendation that the wording of proposed subparagraphs 18B(1)(a)(iii) and 18B(2)(b)(iii) be changed from "vehicle" to "vehicle or vessel",<sup>5</sup> the Committee recommended the Senate agree to the Bill.<sup>6</sup>

### Key provisions of the Government amendments

1.5 There are three provisions in the proposed amendments:

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1 Senate Legal and Constitutional Legislation Committee *The Australian Protective Service Amendment Bill 2003*, August 2003.

2 *Explanatory Memorandum*, p. 4.

3 *ibid*, p. 5.

4 *ibid*, p. 6.

5 *ibid*, p. 8.

6 Senate Legal and Constitutional Legislation Committee *The Australian Protective Service Amendment Bill 2003*, August 2003, p. 46.

- to insert a definition of ‘vehicle’ in proposed section 18B, to include vessels and aircraft. This amendment is a response to the Committee’s earlier recommendation;<sup>7</sup>
- to extend the extra powers proposed to be given to Australian Protective Service officers (APS) to the Australian Federal Police (AFP). The amendments provide that where powers are exercised by a member of the APS, this includes the exercise of the same powers by a member or a special member of the Australian Federal Police;<sup>8</sup> and
- a new subsection 21(4A) which provides that the new powers and duties are additional to any powers and duties AFP officers have under other Commonwealth, State or Territory laws and do not exclude or limit the operation of any other law. These provisions will allow AFP officers to continue to carry out investigations of suspected offences under other legislation.<sup>9</sup>

### **Justification for the proposed amendments**

1.6 The Supplementary Explanatory Memorandum states that the purpose of the amendments is to ensure the powers of the AFP and the APS:

... are consistent when operating in the same locations under the same circumstances. The powers will enable all officers to operate cooperatively and effectively to remove potential threats to national security.<sup>10</sup>

1.7 The proposed provisions will give AFP officers the same powers ‘in situations where officers must be able to react quickly in circumstances which give rise to legitimate security concerns’.<sup>11</sup> The powers are not intended to limit any other powers that AFP officers might have.<sup>12</sup>

### **Conduct of the inquiry**

1.8 The Committee advertised this inquiry in *The Australian* newspaper on 17 September 2003. It also wrote to 36 individuals and organisations inviting submissions. The Committee received four submissions, including one supplementary submission, and these are listed at Appendix 1.

1.9 The Committee held a public hearing in Sydney on 24 September 2003. A list of witnesses is at Appendix 2.

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7 *Supplementary Explanatory Memorandum*, p. 3.

8 *ibid.*

9 *ibid.*, p. 5.

10 *ibid.*, p. 1.

11 *ibid.*

12 *ibid.*, p. 2.

## **Acknowledgement**

1.10 The Committee thanks those who have contributed to this inquiry.

## **Note on references**

1.11 References in this report are to individual submissions as received by the Committee, not to a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.



## CHAPTER TWO

### KEY ISSUES

2.1 This chapter discusses the key issues that arose in submissions and during the public hearing:

- the effect of the proposed Government amendments;
- operational issues;
- training issues; and
- consultation in developing the amendments.

#### **The effect of the proposed Government amendments**

2.2 The Community and Public Sector Union (CPSU) argued that proposed section 18F(2), which gives the AFP the stop, detain and search powers not only where an APS officer is performing functions but also where the APS has functions, would allow for the APS not to perform its own functions:

In short, it anticipates a scenario where the Protective Service has the function but no longer performs the function—where it has become a statutory shell, if you like, which holds the function, but all employees who are in fact Protective Service officers with those powers are employed under the Federal Police Act 1979.<sup>1</sup>

2.3 The AFP responded to this concern by saying these amendments were not intended to have such an effect:

One of the primary outcomes of the proposed amendments will be the ability for AFP members and PSOs [Protective Service Officers] to render areas safe as quickly as possible, either alongside each other or in isolation of each other. Concurrent powers are particularly important in areas where PSOs perform a function but where they may not be immediately present or available. This could occur at a scheduled airport, for example, where PSOs are performing a function but do not have an immediate presence and where an AFP member or special member may be in attendance.<sup>2</sup>

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1 Mr Evan Hall *Committee Hansard* 24 September 2003, p. 2; see also CPSU *Submission 1*, p. 3.

2 Federal Agent Steve Jackson *Committee Hansard* 24 September 2003, p. 14; see also AFP *Submission 3*, p. 1.

2.4 The Committee notes that the Supplementary Explanatory Memorandum provides a similar explanation.<sup>3</sup>

2.5 The Committee asked if there were premises where the APS did not currently perform ongoing protection functions, leading to a situation where the AFP might be the only agency to exercise the proposed stop, detain and search powers. Mr William Irvine responded that various embassy sites did not have ongoing APS protection,<sup>4</sup> and Ms Alison Rahill added that consulates in Sydney were in a similar situation.<sup>5</sup>

### ***Concerns about integration of the APS and AFP***

2.6 It was clear to the Committee that concerns about the proposed Government amendments needed to be considered against the background of the planned amalgamation of the AFP and the APS. The amalgamation, which has been referred to as ‘One Act, One Agency’, has raised industrial concerns for the CPSU.<sup>6</sup>

2.7 Mr Evan Hall on behalf of the CPSU told the Committee that APS officers had major concerns about the process:

There is widespread concern from members of the CPSU about the one act, one agency process ... Our main concern is that this legislative mechanism would achieve, or at least have the potential to achieve, that abolition of an agency and effective ending of the purpose of the Protective Service Act 1997, without it ever going before the Senate with that stated intention. If we are wrong about this, as I said, we are happy to have this matter cleared up. Unfortunately, we have had no opportunity to consult with the Federal Police on this matter.<sup>7</sup>

2.8 The AFP assured the Committee:

The intent of the amendments is not to, in a secretive way, give effect to one act, one agency; it is ... to reinforce the protective security strategies that we need to have to provide the best possible response to safeguard Australia’s national interest.<sup>8</sup>

2.9 A representative from the Attorney-General’s Department echoed the AFP’s view:

... I would like to reassure witnesses that this legislation is only what it is expressed to be – that is, about ensuring there is protective security. There is

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3 Supplementary Explanatory Memorandum, p. 1.

4 *Committee Hansard* 24 September 2003, p. 8.

5 *ibid.*

6 CPSU *Submission* 1, pp. 2-4; Mr Evan Hall, *Committee Hansard* 24 September 2003, p. 8.

7 Mr Evan Hall, *Committee Hansard* 24 September 2003, p. 2.

8 Federal Agent Steve Jackson, *Committee Hansard* 24 September 2003, p. 16.



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no agenda to use this as a mechanism to have integration. We have been working on an integration bill and we expect that bill to be ready before long.<sup>9</sup>

### ***The reason for the late amendments***

2.10 The Committee asked the Attorney-General's Department why the Government amendments had not been incorporated in the Bill as drafted.<sup>10</sup> A Departmental representative said that the amendments were intended to be included in the planned legislation that will integrate the APS into the AFP. However, concerns had arisen about the timeframe for introducing that planned legislation:

At the time we were putting this bill together there was concern to get it into the parliament quickly because of concerns about security. A judgment was made that the main thing was to fix the powers for the APS officers. But, as time went by and it became more apparent that the integration bill would take longer, we started to become concerned—certainly about the gap in time between the two pieces of legislation.<sup>11</sup>

2.11 The planned legislation is on the legislation program for 2003 and 'significant work' has been done in relation to its drafting, although the decision as to when the bill will proceed is clearly one for the Minister.<sup>12</sup>

### ***Similar legislative powers***

2.12 The CPSU argued that if its concerns about the broader effects of the proposed amendments were unfounded and the amendments went ahead, the proper place for such amendments was in the legislation that governs the AFP, not that pertaining to the APS.<sup>13</sup>

2.13 In response, Mr Hunt-Sharman of the Australian Federal Police Association said that the proposed legislative scheme was consistent with other Commonwealth legislation giving AFP officers specific law enforcement functions:

Australian Federal Police officers have the like powers of law enforcement officers within certain agencies as a result of those agencies' acts ... [AFP officers] also have the like powers of a Customs officer and an immigration officer. Those powers are drawn from the Customs Act and the immigration act—and the same goes for, for example, quarantine. When you are talking about border issues, those acts actually give Federal Police officers those like powers. So it is absolutely consistent that it be put in the APS Act and

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9 *Committee Hansard* 24 September 2003, pp. 15-16.

10 *Committee Hansard* 24 September 2003, p. 17.

11 *Committee Hansard* 24 September 2003, p. 18.

12 *Committee Hansard* 24 September 2003, pp. 16, 18.

13 *Committee Hansard* 24 September 2003, p. 3; CPSU *Submission 1*, p. 3.

not the AFP Act. There is no section in the AFP Act that says we have the powers of a Customs officer, an immigration officer et cetera.<sup>14</sup>

2.14 The AFP also noted that the grant of such powers to police was not unknown: similar stop and search powers (based on a suspicion of terrorist activity) had been granted to State or Territory police in Queensland, New South Wales and the Northern Territory.<sup>15</sup>

## Operational issues

2.15 The Committee inquired as to who would be in charge of how the powers were exercised when both APS and AFP officers were present at a particular location.<sup>16</sup> The AFP's General Manager, Protection and Guarding, Federal Agent Steve Jackson, assured the Committee that operational procedures would be developed to cover such situations. He also emphasised that the two agencies had worked closely together in the past:

I would like to unequivocally dismiss the notion of these concurrent powers being used to sever that tie. In fact, the contrary argument is manifest: these concurrent powers will provide a more robust, flexible arrangement for continuing to work together with the APS ...<sup>17</sup>

## Training issues

2.16 The Committee inquired as to what is involved in implementing the amendments operationally and whether training of AFP officers would be completed by the time legislation was enacted. Federal Agent Steve Jackson commented:

the training issue is obviously a very important part of the consultation process to ensure that we are not rolling out a training scenario or training regime once the legislation is in place. That would be most inappropriate and, indeed, practically unsound.<sup>18</sup>

2.17 While, as the Committee heard in its previous inquiry, training on the new powers was being developed for APS officers, the AFP was also addressing the potential training needs of police if the amendments were passed:

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14 *Committee Hansard* 24 September 2003, p. 11; see also AFPA *Submission 2*, p. 1 and AFP *Submission 3*, p. 1.

15 Australian Federal Police *Submission 3*, p. 1, citing the *Terrorism (Police Powers) Act 2002* (NSW), the *Terrorism (Emergency Powers) Act 2003* (NT) and the *Police Powers and Responsibilities Act 2000* (Qld).

16 *Committee Hansard* 24 September 2003, p. 19.

17 *Committee Hansard* 24 September 2003, p. 18.

18 *ibid.*

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That training regime will ensure that the legislation is clearly understood. Officers will be made aware of their obligations and responsibilities. If I could give you an indication of the type of delivery platforms we would be looking at, the AFP does not rely solely on face-to-face delivery but uses a suite of mechanisms including online learning, CD-ROM based training. We should not forget either the fact that PSOs and federal agents are provided a baseline level of training. So we are not going back to scratch; it is effectively a top-up.<sup>19</sup>

2.18 Additionally, Federal Agent Steve Jackson emphasised:

As General Manager, Protection and Guarding, I will not be issuing station instructions for these powers to be used until I am absolutely satisfied that officers in the community are protected and that they understand clearly their obligations and responsibilities.<sup>20</sup>

## Consultation

2.19 The Committee notes that the CPSU opposed the proposed amendments (other than the extension of the definition of 'vehicle' recommended by the Committee in its previous report), whilst the AFPA was generally supportive. However, during the public hearing it was apparent that both representative organisations were not consulted during the development of the Government amendments.<sup>21</sup>

2.20 The CPSU noted that its suspicions about the intended effect of those amendments might have been alleviated had they been consulted:

If we are wrong about this, as I said, we are happy to have this matter cleared up. Unfortunately, we have had no opportunity to consult with the Federal Police on this matter.<sup>22</sup>

2.21 The AFPA also stated that it was not consulted until the proposed amendments were circulated by the Minister for Justice and Customs.<sup>23</sup> The Committee notes the very short timeframe for considering these amendments.

2.22 The AFP responded by assuring that consultation with representative bodies would improve during the development of the planned legislation to integrate the two agencies:

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19 *ibid.*

20 *ibid.*

21 Senate Legal and Constitutional Legislation Committee *The Australian Protective Service Amendment Bill 2003*, para 2.78, pp. 17-18.

22 Mr Evan Hall, *Committee Hansard* 24 September 2003, p. 2.

23 Mr Jon Hunt-Sharman, *Committee Hansard* 24 September 2003, p. 11.

I have, as previously indicated, given my personal assurance to union representative bodies that consultation will continue into the future better than it has in the past. That is probably as far as I can take it, and I place that assurance on the table.<sup>24</sup>

## **The Committee's conclusions**

2.23 The Committee considers that the proposed Government amendments are appropriate to address security concerns in situations where an APS officer may not be present and where an AFP officer should have similar powers to stop and search suspects. The Committee notes statements by representatives of the AFP and the Attorney-General's Department that there is no intention to remove APS functions from that agency by stealth.

2.24 The Committee considers that the CPSU's concerns may have been alleviated had the AFP and the Attorney-General's Department consulted with them more fully about the need for and purpose of the proposed amendments. The lack of consultation was also apparent in the Committee's previous inquiry into the Bill as drafted, and was an issue on which the Committee registered its concern.<sup>25</sup>

2.25 The Committee notes the AFP's assurances that consultation processes will be improved in developing the proposed legislation to integrate the APS into the AFP. In light of the history of this issue, the Committee regards it as imperative that the AFP and the Department ensure that this occurs. This is particularly important in light of the likely short timeframe before the introduction of that legislation.

2.26 The Committee recommends that the Government amendments to the APS Bill 2003 be agreed to.

## **Recommendation**

**The Committee recommends that the proposed Government amendments to the Australian Protective Services Amendment Bill 2003 be agreed to.**

**Senator Marise Payne**  
**Chair**

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24 Federal Agent Steve Jackson *Committee Hansard* 24 September 2003, p. 18.

25 Senate Legal and Constitutional Legislation Committee *The Australian Protective Service Amendment Bill 2003*, para 2.78, pp. 17-18.

# APPENDIX 1

## SUBMISSIONS RECEIVED

<b>Submission No.</b>	<b>Submitter</b>
1	Community and Public Sector Union
2	Australian Federal Police Association
2A	Australian Federal Police Association
3	Australian Federal Police

### **Documents tabled at the public hearing**

‘One Act One Agency’, AFP/APS newsletter, August 2003.

Extract from Powerpoint presentation ‘Project Merida: One Act, One Agency’, presented to the Station Managers’ Conference, September 2003.



## **APPENDIX 2**

### **WITNESSES WHO APPEARED BEFORE THE COMMITTEE**

**Sydney, Wednesday 24 September, 2003**

#### **CPSU**

Mr Evan Hall, Division Secretary, Border Protection and  
International Affairs Division

Mr Dennis Hayman, Section Counsellor, CPSU & APS officer

Mr William Irvine, Section Counsellor, ACT

Ms Alison Rahill, Organiser, Protection and International Affairs Division

#### **Australian Federal Police Association**

Mr Jon Hunt Sharman, National President

Mr Craig Shannon, Principal Industrial Officer

#### **Australian Federal Police**

Federal Agent Steve Jackson, General Manager, Protection and Guarding

Federal Agent David Batch, Legislation Program

#### **Attorney-General's Department**

Mr Geoff McDonald, Assistant Secretary, Criminal Law Branch