

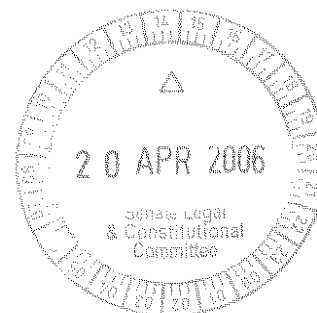
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COMMISSIONER

26 April 2006

Mr Jonathon Curtis
Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600



Dear Mr Curtis

Inquiry into the provisions of the Law Enforcement Integrity Commissioner Bill 2006, the Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006 and the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006

The AFP welcomes the opportunity to make a submission to this Inquiry.

These three Bills represent a significant stage in the development of the integrity and accountability systems that govern Commonwealth law enforcement agencies and the Australian Federal Police (AFP) in particular.

To assist the Committee in its review of the *Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006*, I offer the following points to outline the background to the Fisher Review, the main findings of the Fisher Review, key elements of the Bill and how the approaches to professional standards taken by other Australian police services are consistent with the proposals in this Bill.

Background

In 1996 the Australian Law Reform Commission (ALRC) observed in its report *Integrity but not by trust alone* which examined the AFP's and the then National Crime Authority's disciplinary and complaints handling processes, that the AFP's complaints and discipline process was outdated and unsatisfactory.

In 2000, amendments to the *Australian Federal Police Act 1979* introduced new distinctions between the Commissioner's command and employment powers which enabled the development of a more flexible management culture and supported the implementation of employment reforms within the AFP. These amendments have tended to place the Commissioner of the day (or his delegate) in a revised

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managerial role where issues relating to misconduct, or conduct that could be subject to criticism on the grounds of inadequacy, are concerned.

In 2001, the Senate Legal and Constitutional Reference Committee into the Management Arrangements and Adequacy of Funding in the AFP and NCA also recommended that AFP complaints procedures be simplified and made more transparent.

In May 2002, I engaged Justice William Fisher AO, QC to undertake a review of AFP professional standards, now known as the Fisher Review. The purpose of commissioning the review was to determine how to improve the AFP's professional standards processes within this new management environment. This was partly in response to the views expressed by the ALRC and the Senate Committee, but also because of AFP management concerns that adversarial processes were causing significant delays in resolving complaints, were leading to high levels of sustained anxiety in the workplace and efforts could be better focused on prevention and sustainable performance improvement. Substantial public funds were also being spent on protracted investigations which could be more effectively dealt with by a competent manager or supervisor.

The Terms of Reference required Justice Fisher to undertake a wide ranging review of AFP professional standards in collaboration with AFP management, the Australian Federal Police Association and key stakeholders. There were requirements to conduct a comparative analysis of systems operating in Australia and overseas and to assess the desirability of adopting a managerial approach to professional standards. That is an approach that did not resort to formal disciplinary processes or the current Federal Police Disciplinary Tribunal for minor complaint matters.

The Fisher Report

In the course of his review, Justice Fisher consulted senior ministers, judicial officials and a range of law enforcement officers across the country and also received a number of confidential submissions. Significant analysis was undertaken into systems operating in Queensland, Victoria, New South Wales and Canada. The Fisher Review was completed and delivered to me in 2003. The report of the review focussed on revising contemporary management of AFP professional standards processes, their timeliness and costs to produce a less punitive and better articulated administration, with an appropriate but reduced place for adversarial proceedings. Justice Fisher found that the better way required a focus on reducing the time taken to complete 'disciplinary' matters and a reduction in legal costs to both the Australian Federal Police Association and the Australian Federal Police (and therefore the taxpayer) inherent in the current adversarial procedures.

The Minister for Justice and Customs, Senator The Hon. Christopher Ellison, tabled the Fisher Review in Federal Parliament on 3 December 2003. The *Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006* is the Government's response to the Fisher Review.

Essentially, the Fisher Review recommends that the AFP adopt a professional standards regime based on the principles of a managerial model. The application of

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this model will have the outcomes of reducing the time taken to resolve a minor complaint, deliver timely results for complainants and will be more effective in addressing underperformance and behavioural issues.

The Fisher Review also reinforces as valid, current AFP practice that minor matters are conciliated wherever possible.

In his report, Justice Fisher recommended that better outcomes would come from revising how minor breeches of integrity requirements were dealt with emphasising that some matters could be dealt with at a local level by managers and did not necessarily require the full weight of an internal investigation. Justice Fisher was also critical of the inappropriate use of discipline and punishment in police complaints systems. He observed:

... police services have traditionally tended to focus too much on the aspect of reactive punishment. This has been due to the reliance on military precedence and the notion that good 'discipline' is at the heart of the effective operation of policing. Today, what is really needed is appropriate motivational management. This leads, in relation to policing, to a renewed emphasis on personnel management and less interest in the alleged motivations stemming from military-style discipline.

This criticism recognises that performance failures can be the result of many factors, including inadequate supervision and training. His Honour argued that any system with a punitive regime as its central focus cannot adequately address the causes of poor performance or bring about significant behavioural improvement.

It is important to note that Justice Fisher did not disregard or discount the significance of discipline in policing, acknowledging that the complex role of policing requires a disciplined approach to achieve the high expectations demanded from Government and the community. The real question Fisher raised was the means by which police administrators can achieve discipline to increase and enhance performance. To this end, a new managerial model is proposed as articulated in the *Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006*.

Key proposals in the Bills

The repeal of the *Complaints (Australian Federal Police) Act 1981* and the establishment of a graduated system of categories of conduct to be addressed through the AFP professional standards framework by AFP managers, the AFP Professionals Standards area, the Commonwealth Ombudsman and the Law Enforcement Integrity Commissioner as proposed in the Bills will improve the AFP's current disciplinary and complaints handling system and process.

Coordination of this new framework will be underpinned by appropriate powers for each agency and its officers, the joint determination by the AFP Commissioner and the Law Enforcement Ombudsman of the kinds of conduct that will constitute categories 1, 2 and 3 and a similar written agreement between the AFP Commissioner and the Law Enforcement Integrity Commissioner to establish what conduct constitutes significant corruption and how notification, investigation and reporting processes will work.

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In effect, performance issues will be dealt with by AFP managers, more serious conduct issues and complaints will be investigated by AFP Professional Standards, the Law Enforcement Ombudsman has improved oversight of complaints handling and conduct issues in the AFP and retains its ability to investigate matters, and the new Law Enforcement Integrity Commissioner will investigate allegations of significant corruption within the AFP and have oversight of the investigation of all corruption issues within the AFP.

Compatibility with other Australian police professional standards systems

Both Justice Fisher and the recent Royal Commission into police corruption in Western Australia examined the approaches to discipline and complaints handling taken by other Australian police services. As the Hon G A Kennedy AO QC noted in his final report on the WA police in 2004 the trend in Australian police services is away from the formal discipline process to a managerial approach as proposed by the Fisher Review. For example, the adoption of a managerial model for complaints handling and discipline was a recommendation of the Wood Royal Commission into corruption in the NSW police service in 1997. The Queensland Police professional standards system has moved in the same direction as has the South Australia Police. The WA Royal Commission recommended that the WA Police adapt the findings of the Fisher Review to establish its own managerial approach to complaints and discipline.

I would be happy to appear before the Committee if it would assist in their deliberations on these Bills. The AFP contact officer for this inquiry is Peter Whowell, Manager Legislation Program, ph: 62757467.

Yours sincerely



M J Keelty