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of Australia

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SENATE INQUIRY INTO LAW ENFORCEMENT INTEGRITY COMMISSIONER BILL 2006

The Police Federation of Australia (PFA) makes this submission on behalf of all state, territory & federal police associations.

The PFA does not support corrupt conduct by police or any other law enforcement or public official. The PFA does, however, wish to ensure that any body established to investigate corrupt conduct has, as its underpinning philosophy, a process of procedural fairness and natural justice. Any body or officials of a body that do not have such an underpinning philosophy will not be supported by the PFA.

The PFA's involvement with the issues surrounding this Bill is summarised as follows:

On Wednesday 16 June 2004, the Australian Government announced the establishment of an independent body with telephone intercept powers, which, if required, would be able to address corruption amongst law enforcement officers at a national level. It was proposed this independent body would have the powers of a royal commission.

On Thursday 17 June 2004, PFA representatives met with the Hon Senator Chris Ellison, Minister for Justice and Customs, and representatives from his office. We were asked to provide a model for the proposed body for Government's consideration, by Monday 21 June. The Minister indicated that he required our input as soon as possible so planning for the body could commence.

During our meeting with the Minister, he was adamant that the creation of such a body should not be perceived as a 'witch hunt' within the Australian Federal Police (AFP) or the Australian Crime Commission (ACC), and he stated that he did not want to distract the AFP and ACC from doing their job. The Minister was also adamant that whatever form the body took, it should only deal with serious allegations and not low level issues, a position that was (and

still is) strongly supported by the PFA. He also indicated his concern about the potential to damage the good names of police officers through such bodies and was keen to ensure that no police officer's career was damaged unnecessarily.

It should be noted that in 2004 the PFA suggested that all hearings of such a body should be conducted *in camera* and that there should be no public release of names of persons subject to corruption allegations.

As mentioned, the PFA clearly indicated at the June 17 meeting that only serious issues of corruption should be dealt with by the proposed body, with lower level issues remaining within the Ombudsman's purview, and administrative issues being addressed by police management.

We also recommended that funding for the body should come direct from Government, and not from the AFP budget.

In our response to Government on 21 June 2004, we proposed that the body needed to develop an expertise in the area of Law Enforcement corruption in order to work effectively: we viewed this as being problematic if the body was to operate on a part-time basis. We also suggested that a full-time independent body would not be cost effective if it was limited to investigations within the ACC and AFP only.

We therefore proposed that the independent body be expanded to include all employees of Commonwealth law enforcement agencies, or employees of law enforcement (intelligence & investigation) sections within agencies. Whilst it is apparent that the Government has not gone down this path, we note that such a process could be developed through Regulation, which is allowed for in the current Bill.

We also recommended that the proposed oversight body should have the powers of a Royal Commission and should have access to expert investigators (ie Police) not directly attached to the body but available to it through the Professional Standard areas within Police jurisdictions. It should work with agencies rather than in opposition to them.

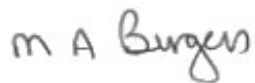
We suggested it should confine itself to the investigation and exposure of corruption and serious criminality only, and that the definition of matters to be investigated should be clearly defined in the legislation. The PFA has concerns about the proposed definition in this current Bill, which we will deal with later in this submission. All matters of performance and service delivery should continue to be managed by the relevant agency and oversighted by the Ombudsman, and the independent body should have a clear accountability mechanism to Parliament.

We also recommended that there be a process whereby complaints can be made and addressed in relation to the activities of the Independent Body.

As part of our submission we suggested that the person in charge of the body must be independent and immune from arbitrary removal, and whilst previous experience as a Judge or retired Judge should not be mandatory, he/she should have the appropriate experience for the role to be performed.

This current public inquiry marks the first opportunity since our submission in 2004 to participate and provide input and comment on this very important issue. We are happy to expand upon this submission as required, and look forward to participating in future public hearings and similar consultations.

Yours sincerely

A handwritten signature in black ink that reads "m A Burgess". The signature is written in a cursive, lowercase style.

Mark Burgess
CEO

24 April 2006

PFA COMMENTS ON THE LAW ENFORCEMENT INTEGRITY COMMISSIONER BILL 2006

Clause 5 page 8:

Definition of "*law enforcement agency*" -

In our submission to Government in 2004 we suggested that a full-time independent body would not be cost effective if it was limited to investigations within the ACC and AFP only.

We therefore believe that the Australian Commission for Law Enforcement Integrity (ACLEI) should be expanded to include all employees of Commonwealth law enforcement agencies or employees of law enforcement (intelligence and investigation) sections within agencies. As we noted previously, this option is available to the Government by way of Regulation. Not taking this course of action during the establishment of this body may send the message that corruption in Commonwealth agencies is only to be found within the AFP and ACC, which is obviously not the case.

Clause 5 page 12:

Definition of "*serious corruption*" -

The PFA is of the view that defining "*serious corruption*" as an offence punishable (on conviction) by a term of imprisonment for 12 months or more will have the unintended consequences of picking up on a range of offences that might be considered of a minor nature. The definition contained in the Bill has the potential for minor matters to be dealt with by the ACLEI, which we understand was never the intention.

For example, in the ACT Crimes Act Section 26, Common Assault is an indictable offence carrying a maximum of 2 years imprisonment. Even some driving offences carry a penalty of a term of imprisonment for 12 months. Whilst not denying that officers indicted on these offences should be treated accordingly, it is inappropriate and untenable that these types of offences are included within the definition's scope.

In the PFA's previous submission we suggested then that the definition of corruption used in the Independent Commission Against Corruption (ICAC) in NSW could be used for the Federal Body.

Clause 6 page 14:

The PFA believes that the ICAC definition of corruption would also assist Clause 6. The inclusion of some examples of what would be considered corrupt activity covered by this Bill, either in the legislation or the Explanatory Memorandum, would also assist.

Clause 10 page 16:

The PFA has concerns about the ACLEI dealing with non-Commonwealth employees who are members of state or territory police forces.

It is our view that unless strict guidelines and protocols are developed between state and territory based integrity agencies and the ACLEI then any allegations against state and territory police officers should only be dealt with within their respective jurisdictional arrangements.

How will matters relating to alleged corruption by a state or territory police officer whilst they were working in their home jurisdiction prior to working with a Commonwealth Agency be addressed?

We believe that the issue of protocols and guidelines will be essential for the efficient operation of the ACLEI. The lack of protocols or the non adherence to protocols will lead to dysfunction between the ACLEI & state/territory based agencies. The protocols should be included in some form of Memorandum of Understanding covering all issues where there is likely to be liaison between the ACLEI & any home agency. There also needs to be a strict process of dealing with alleged breaches of the MOU.

Clause 26 page 32:

How will the ACLEI decide not to investigate a matter, either on the grounds of a vexatious complaint, a complaint from an habitual complainant, the complaint is in the opinion of the ACLEI too old or too trivial to be investigated, or it has already been heard in another judicial forum?

The PFA is concerned that if appropriate processes are not in place in this respect, police will suffer from 'double jeopardy' after the establishment of the ACLEI. Matters dismissed from the ACLEI should not be able to be raised again in another legal forum.

Subdivision B Section 40TF "Discretion to take no further action in relation to AFP conduct or practice issue" of the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 could be used as a guide as it contains a range of options where the Commissioner has discretion to take no further action in relation to conduct of practice issues.

In respect to Clause 26 (2), what protocols would be attached to a joint investigation with another Government Agency or Integrity Agency as outlined in this Clause? Or to an investigation of members of joint investigation teams consisting of representatives of a variety of agencies? This information should be included in a Memorandum of Understanding.

Clause 29 page 34:

Again, how this section will operate will need to be included in the MOU.

Clause 31 (4) page 38:

There should be a section in this Clause that allows the ACLEI to dispense with a matter because of the age of the matter: a 'sunset provision'. Otherwise disgruntled complainants may forward old matters to the ACLEI because they did not feel they received a satisfactory outcome from earlier complaints.

Again, Subdivision B Section 40TF "Discretion to take no further action in relation to AFP conduct or practice issue" of the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 could be used as a guide.

What are the provisions of the ACLEI to determine that a matter will not be dealt with because it has previously been investigated?

Clause 59 page 66:

There should be a presumption that ACLEI will advise the outcome of an investigation to the person who is being investigated, unless there are specific circumstances that would prevent such advice from being given. If the person under investigation is not advised of the outcome, the onus should be with the ACLEI as to why this has not been done. Lack of communication with members subject to investigation by the ACLEI will see the ACLEI losing credibility with police officers.

Clause 71 page 77:

The PFA has concerns about the Minister's ability to request the ACLEI to conduct a public inquiry. As previously indicated, we believe all hearings should be held *in camera* and that there should be no public release of names of persons subject to corruption allegations.

However, restrictions should apply if the Minister was to be granted this ability, due to our concerns over the potential politicization of the ACLEI:

- If public hearings are allowed, they should be limited only to issues of major corruption.
- Hearings held in public at the Minister's request should be identified as such at the commencement of the hearing, and an opportunity given to request reasons for the public nature of the hearing from the Minister.
- Requests for public hearings by the Minister should be reported to Parliament via the Annual Report.

Clause 78 page 82:

This section should contain a provision for a defence of 'reasonable excuse' for not complying with a request.

Clause 103 page 111:

The legislation should allow for the establishment of a specific office of legal representation or the like, where legal practitioners can register with an approved panel, so that any person called before the ACLEI can choose their legal representation from the panel.

Legal and financial assistance should be extended to cover any not-for-profit organization that has sought leave to appear at any hearing and such leave has been granted.

Clause 105 page 114:

This clause should contain a tighter definition of 'any place occupied by a law enforcement agency'. Is a place deemed 'occupied by a law enforcement agency' if members of that agency are lawfully in the premises carrying out an investigation?

In line with defining a place occupied by a law enforcement agency, there needs to be some safeguards in relation to the searching of personal property

in such situations. For example, in relation to the search of a private motor vehicle located in a car park, rather than parked on the street.

Clause 139 page 142:

The PFA is strongly opposed to 'powers of arrest' being granted to anyone who is not a sworn police officer exercising the Office of Constable. We are therefore opposed to the concept of an 'authorised officer' as outlined in the Bill.

In conjunction with Police Commissioners, through the Australasian Police Professional Standards Council (APPSC), the PFA is pursuing police profession issues. The concept of authorized officers under this Bill runs counter to these discussions.

Clause 140 page 143:

As with Clause 139, the PFA is opposed to the concept of 'authorised officers' who are granted police powers when they are not duly sworn police officers who exercise the Office of Constable.

Sub section (2) (a) (i) has provision for someone to be appointed an authorized officer who the Integrity Commissioner considers has suitable qualifications and experience. What guidelines will the Integrity Commissioner use to judge these qualifications and experience?

Clause 141 page 144:

In sub section (6) there should be a penalty for the misuse of an identity card.

Clause 149 page 155:

There should be a reporting process for when the Minister issues a certificate under this section. This will ensure openness and accountability.

Clause 213, 214, 215 pages 206-208:

Sub section (c) should ensure that the Joint Committee holds an Inquiry thus allowing individuals and organizations to make submissions regarding the operations of the ACLEI between Annual Reporting periods, and/or on any Special Report.

Other Matters:

- The PFA also believes that there should be provision for the Act to be reviewed after a specified period. We note that in respect to the “Law Enforcement (AFP Professional Standards & Related Measures) Bill 2006” there is provision for such a process contained in Division 7.
- The PFA also argues that the ACLEI should have an Inspector who at the least could deal with complaints of abuse of power, impropriety and other forms of misconduct on the part of the ACLEI or officers of the ACLEI