

## SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

### INQUIRY INTO THE ADMINISTRATION AND OPERATION OF THE MIGRATION ACT 1958

#### AUSTRALIAN FEDERAL POLICE SUBMISSION

##### 1. Introduction

1.1 The Australian Federal Police (AFP) welcomes the opportunity to provide the Senate Legal and Constitutional References Committee (the Committee) with information relevant to the administration and operation of the *Migration Act 1958*.

1.2 The AFP's focus is on the investigation and prosecution of organisers of people smuggling and trafficking offences, often offshore, and the vessel crews, who are brought to face the criminal justice system. Current proposed changes to the administration and operation of the *Migration Act 1958* are not expected to affect that function.

##### 2. Overview of AFP Role and Function

2.1 The AFP is the major instrument of Commonwealth law enforcement. Its role is to enforce Commonwealth criminal law and protect Commonwealth and national interests from crime in Australia and overseas. The AFP is Australia's international law enforcement and policing representative, and the chief source of advice to the Government on policing issues.

2.2 The AFP's functions are set out in section 8 of the *Australian Federal Police Act 1979* (AFP Act). Under section 37(2) of the AFP Act, the Ministerial Direction outlines the Government's priorities and expectations for the AFP for a given period, including:

- “preventing, countering and investigating transnational and multi-jurisdictional crime, illicit drug trafficking, organised people smuggling (including sexual servitude and human exploitation), serious fraud against the Commonwealth, 'high tech' crime involving information technology and communications, and money laundering”;

2.3 In addition, following the passage of the *Australian Federal Police and Other Legislation Bill 2004*, the AFP incorporated the former Australian Protective Service (APS) into the AFP from 1 July 2004. The specific protective and custodial functions designated for the APS are set out in a separate Ministerial Direction issued pursuant to sections 8A and 8(1)(be) of the AFP Act.

### **3. AFP Focus is on Countering Organised People Smuggling**

3.1 The AFP, as the Commonwealth Government's primary investigative agency, is involved in the investigation of those people who breach Commonwealth laws. The AFP therefore has an interest in the enforcement of the criminal provisions of the *Migration Act 1958*. The role of the AFP is to detect, investigate and prosecute offences against the *Migration Act 1958*. This is done in accordance with the Australian justice system and AFP investigations are undertaken with a focus on obtaining evidence for prosecutions. In particular, to maximise the impact of its efforts, the AFP targets facilitators of people smuggling ventures, i.e. the people who arrange for the marketing of opportunities for potential passengers, organise their travel to embarkation points, coordinate and provide vessels, and employ crews.

3.5 The AFP also investigates and seeks to bring before court, the crews of the suspected illegal entry vessels (SIEVs) arriving in Australian waters. Such investigations are conducted in accordance with the provisions of the *Migration Act 1958*, usually Subdivision A offences.

3.6 The AFP does not as a matter of course investigate the passengers on board those vessels—who are variously described as unlawful non-citizens, refugees, asylum seekers or illegal immigrants. Upon arrival in the Australian migration zone the responsibility for dealing with these people lies with the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). The AFP's dealings with the passengers are normally within the context of interviewing them as potential witnesses for the prosecution of the crews.

### **4. AFP support to DIMIA**

4.1 The AFP's support to, and interaction with, DIMIA is outlined in a Service Level Agreement between the two organisations. Memorandums of Understanding can be agreed to cover specific issues of cooperation and collaboration.

4.2 The AFP's support to DIMIA in terms of the administration and operation of the *Migration Act 1958* covered by the Agreement is primarily in the areas of:

- Investigations
- Search warrants
- Information access and exchange; and
- Policy development.

4.3 In this supporting role, the AFP exchanges information with DIMIA that might impact upon immigration-related investigations. Further support from the AFP includes the execution of search warrants on behalf of DIMIA and operational cooperation during investigations, particularly where there may be difficulties for DIMIA officers in carrying out their duties without police assistance.

4.4 Nauru: AFP Protective Service staff from the AFP's International Deployment Group provide a limited escort service in relation to the provision of security related services to International Organisation for Migration (IOM)

managed Processing Centres on Nauru. They provide escorts where agreed or considered appropriate, including escorting people travelling on Air Nauru for repatriation purposes and for medical transfers to and from Australia. This function is covered under a specific agreement between the AFP and DIMIA regarding the Nauru centre. All costs attributed to this service are paid for by DIMIA and are considered part of the provision of security related services. To date this calendar year there has been one medical escort from Nauru.

- 4.5 ACT Policing: If an unlawful non-citizen is apprehended in the ACT, DIMIA make use of ACT Policing watch house facilities to formally charge the person with offences under the *Migration Act 1958*. DIMIA is then responsible for that person to be transported to a detention facility. There is no ACT Policing specific agreement with DIMIA regarding this arrangement.