

Senate Legal and Constitutional Legislation Committee  
Inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005

PUBLIC HEARING

THURSDAY, 17 NOVEMBER 2005

**Questions on notice**

**Australian Federal Police**

Question 1 (p.65, *Proof Hansard*)

**Senator LUDWIG**—And what is defined as a serious offence?

**Federal Agent Colvin**—A serious offence is defined by the legislation. I would have to consult the legislation to check, but I believe that ‘indictable offence punishable by three years or more’ is the normal definition for a serious offence.

**Senator LUDWIG**—Or two; it is one, I think, in some parts. So perhaps you could clarify that at some point.

Answer

This proposed section will rely on the definition of ‘serious offence’ and ‘serious terrorism offence’ as proposed in the Schedule 5 of the Bill (new definition under subsection 3C(1) of the *Crimes Act 1914*). That is

*serious offence* means an offence:

- (a) that is punishable by imprisonment for 2 years or more; and
- (b) that is one of the following:
  - (i) a Commonwealth offence;
  - (ii) an offence against a law of a State that has a federal aspect;
  - (iii) an offence against a law of a Territory; and
- (c) that is not a serious terrorism offence.

*serious terrorism offence* means:

- (a) a terrorism offence (other than offence against section 102.8 Division 104 or Division 105 of the *Criminal Code*); or
- (b) an offence against a law of a State:
  - (i) that has a federal aspect; and

- (ii) that has the characteristics of a terrorism offence (other than such an offence that has the characteristics of an offence against section 102.8, Division 104 or Division 105 of the *Criminal Code*); or
- (c) an offence against a law of a Territory that has the characteristics of a terrorism offence (other than such an offence that has the characteristics of an offence against section 102.8, Division 104 or Division 105 of the *Criminal Code*).

Question 2 (p.65 Proof Hansard)

**Senator LUDWIG**—And the use of the notice to produce—it requires, what, an AFP officer, sworn or unsworn, to make out a statement? Does that statement have to be a sworn statement? **Mr Lawler**—As I understand it, it is a superintendent—

**Federal Agent Colvin**—That is correct. If the notice is produced in the case of a terrorism offence then the notice can be issued by a senior police officer of the AFP. If the notice is for a non-terrorism serious offence then we are required to go to a magistrate, in which case I believe the evidence would need to be extreme.

**Mr Lawler**—In a lot of instances there may not be the time to actually swear a search warrant, which, as you may be aware, is quite a lengthy procedure.

Answer

No the statement does not need to be sworn. This is consistent with other existing notice to produce powers, such as the power in the *Proceeds of Crime Act 2002*.

Note the AFP will be requesting that the last word in Federal Agent Colvin's statement in the proof Hansard on this point be amended to "sworn".

Question 3 (p.68, Proof Hansard)

**Mr Lawler**—...

**Senator BRANDIS**—Would you kindly take on notice, please, to search for and produce, if need be on a confidential basis, to the committee any minute or other record of a conversation in which your agency was advised by officers of the Attorney-General's Department that changes to the sedition laws were necessary for any of the purposes you have discussed with me in the last few minutes.

Answer

The AFP raised the current vulnerability in dealing with the inciting of terrorist violence in the community during the July-August 2005 review of the Commonwealth counter-terrorism legal framework undertaken at the request of the Government by the Commonwealth Counter-Terrorism Legal Working Group. The sedition offences proposed in the *Anti-Terrorism Bill (No 2) 2005* are the outcome of the Government's consideration of that review.

During the conduct of the review, the AFP was advised by the Attorney-General's Department that there is no offence currently available to address the situation with sufficient penalties where people from one group in the community may be indirectly encouraging terrorist

activity by urging violence against other groups in the community. That advice was given orally during meetings of that Working Group, in writing in the form of records of relevant meetings and in writing in the form of drafts of documents prepared for consideration by the Government. As these documents related directly to the preparation of options for consideration by the National Security Committee of Cabinet, in accordance with the *Government guidelines for official witnesses before Parliamentary committees and related matters - November 1989* it is not appropriate to release them to the Committee.

Question 4 (p.69, Proof Hansard)

**Senator BRANDIS—...**

In a supplementary submission received today—you may want to take this on notice, incidentally—the Human Rights and Equal Opportunity Commission have considered that example and responded in particular that there would be powers to deal with that person on the basis of that information alone, by issuing a warrant under the ASIO Act for questioning. That may be so, but what I would like you to tell the committee, please, from the Australian Federal Police's point of view is how more satisfactorily the threat posed by that example could be dealt with were you to have the additional powers anticipated by this bill, and what gaps there are in the existing suite of legislation, in particular the ASIO Act, that might inhibit dealing with that example. Would you take that on notice for us?

**Mr Lawler—**Thank you.

Answer

The person described in this scenario has made a private statement of intent that, depending on the information available to ASIO, the AFP and other law enforcement agencies may not amount to a threat to commit a terrorist act per s 100.1 of the *Criminal Code Act 1995 (Clth)*.

While the person of interest may be dealt with using the existing ASIO questioning and detention regimes, these powers are not necessarily designed to intervene in these circumstances. Rather, the ASIO questioning and detention powers are intended as a tool for the gathering of intelligence when other available methods would not be effective.

The proposed preventative detention and control order powers offer the relevant authorities additional tools to defuse a threat and support an investigation into the person and any network that they were part of that could lead to the prosecution of the whole group and a greater level of protection to the community. This is particularly so where intelligence gathered on the individual indicates, for example, that the person:

- has received terrorist training in the period before it became an offence, but has not been active with other terrorist suspects since receiving that training; or
- has a history of violent offences and has recently undergone a rapid conversion to an extreme ideology in response to a personal tragedy which indicates their level of commitment to carrying out such an act may be high.

In regards to the proposed scenario, and particularly in light of the above circumstances, it is likely there would be reasonable grounds to suspect that a terrorist attack was imminent and therefore the proposed preventative detention order could be invoked given the making of the order would substantially assist in preventing the attack.

Similarly, a control order could be used in the circumstances to, for example, more effectively monitor the person's movements as well as prohibit the person from possessing certain articles that might be used in a terrorist act. A court would need to be satisfied that the making of the order would assist in preventing a terrorist act.

Question 5 (p.69, *Proof Hansard*)

**Senator BRANDIS**—

Lastly, going back to sedition—you might care to take this question on notice too—the Human Rights and Equal Opportunity Commission suggests that, if the law were to be amended to as per the bill, the defence in section 80.3 should be broadened so as to extend the expression which could be characterised as attempting to encourage discussion on matters of public interest if such expression falls within the proposed sections 80.27 or 80.28, and broadening the proposed section 80.3 to expressly provided a defence in respect to anything said or done in good faith in the performance, exhibition or distribution of artistic work or the course of any statement, publication, discussion or debate held for any genuine purpose or in making or publishing a fair and accurate report of a particular matter. I think you will understand the gist of it having heard it. You may wish to take the question on notice, but if you want to say anything you may respond immediately. My question is, given that you are an advocate of the sedition changes, would you have a problem if the defences were broadened in the two respects recommended by the Human Rights and Equal Opportunity Commission?

**Mr Lawler**—I will take that question on notice.

**Senator BRANDIS**—Thank you

Answer

The AFP does not have a position on the proposal by the Human Rights and Equal Opportunity Commission. The proposed sedition offence would require sufficient evidence to support the criminal standard of beyond a reasonable doubt and any prosecution would need the Attorney-General's consent to proceed. The conduct described as requiring a defence would be unlikely to meet the requirements of proof on the part of the prosecution beyond reasonable doubt that the person intentionally urged the use of force and violence. In the unlikely event that such a person was prosecuted, the good faith defence is currently broadly drafted and would appear to incorporate the defence proposed by the Human Rights and Equal Opportunity Commission.

Question 6 (p.71, *Proof Hansard*)

**Senator MASON**—Back to sedition: I do not think that I am exaggerating to say that over the last couple of days of hearings there has been concern at least—perhaps dissatisfaction—with those offences. I do not think I am gilding the lily to say that. Secondly, we also know that the Attorney-General is going to have a review of the sedition offences; he has announced that already. What we really need—and you just touched on this before in

response to questions from Senator Brandis—are some specifics with respect to how the new sedition offences are necessary to enhance your operational capacity to fight terrorism. We really need that because nearly all the evidence we have heard thus far, except from the Attorney-General's Department, has been that the new sedition offences have not or will not enhance law enforcement's capacity to fight terrorism. We are going to need from the AFP—and indeed from the department—some evidence that these new offences are required. It is important I say this, because I think it is a fair summary of what has happened over the last couple of days. We have not had a sedition offence charge since the late 1940s or whenever it was. We really need for you to give us that evidence, otherwise it is difficult for the committee to come to a recommendation other than that which the majority of submissions have come to.

**Senator BRANDIS**—That evidence has to be the conduct that is not caught by the current law.

**Mr Lawler**—The answer to your question—and I want to be brief here—is that it needs to be put back into the context of our prevention work. If we in a hypothetical situation are seeing, hearing or are aware of activity by people where they are inciting, where they are promulgating jihad—

**Senator MASON**—I understand that. I do not want to waste time. We need to be even more specific than that. We need to be very specific as to the particular conduct. Is that clear? I want to make that very clear.

**CHAIR**—Do you want Deputy Commission Lawler to take that on notice?

**Senator MASON**—If that is possible.

#### Answer

During the conduct of the July-August 2005 review of the Commonwealth counter-terrorism legal framework undertaken at the request of the Government by the Commonwealth Counter-Terrorism Legal Working Group, the AFP was advised by the Attorney-General's Department that there is no offence currently available to address the situation with sufficient penalties where people from one group in the community may be indirectly encouraging terrorist activity by urging violence against other groups in the community. That is, there is no clear offence in the Criminal Code for possessing, publishing, importing or selling publications, recruitment pamphlets and videos that advocate terrorism. Similarly, the provisions in the *Crimes Act 1914* prohibiting sedition, especially defining seditious intention and seditious words, may not adequately address such publications as their fault elements and defences are not suited to countering terrorism.

An emerging area of concern for the AFP is people in the community setting up small extremist group. For example, the leader of such a group may have broken away from a recognised mainstream group, and is urging their followers to take violent action in Australia in opposition to Australia's involvement in foreign conflicts. The leader is not directing the group as to the specific action they should take but is urging them to take violent action in the name of their extreme ideology. During the review of the counter-terrorism legal framework, the AFP was advised by the Attorney-General's Department that this situation is not covered by the existing offence in the Criminal Code, as this offence requires that a person must

intend that the offence incited be committed and that proof of this is proof of a connection to a terrorist act.

Question 7 (p.74, Proof Hansard)

**Federal Agent Colvin—...**

**Senator STOTT DESPOJA**—I suggest that it has not necessarily been individual senators who have often drawn that parallel. That has been presented a number of times in evidence. But I acknowledge your qualifications. As a supplementary to that question, I am not sure what the longest time is that it has taken, for example, to get an urgent interim order and whether or not you have examples that you could share with us in which it has taken too long or you envisage it would take too long. I am happy for that to be taken on notice.

Answer

Given the urgent operational circumstances that preventative detention would be limited to being used in, to prevent an imminent terrorist attack or preserve evidence of an attack, the AFP supports the process as set out in the Bill for initial and continued preventative detention as the appropriate way to balance judicial oversight with the operational requirements of acting to prevent an imminent attacks or respond to attacks that have occurred.

Initial preventative detention orders, as proposed, are necessary for the AFP to be able to quickly detain:

- suspected terrorists in transit to or at the likely targets of terrorist attack; or
- suspected terrorists at or near the site of the terrorist incident or who have fled some distance from that site.

Their detention would be time critical to enable police to locate and intercept their associates in order to prevent related planned attacks and collect evidence relevant to the potential attack that may otherwise be contaminated or destroyed.

In these emergency circumstances the AFP is concerned that for the initial period of detention, an authorisation approach of judicial authorisation and an urgent judicial authorisation would not provide the same certainty. As it is likely that authorisation will be required at any time of day or night, police will need to know quickly whether preventative detention is available in these circumstances. If it is not, police need to be able to develop alternative treatments for the impending threat.

Question 8 (p.74, Proof Hansard)

**Senator STOTT DESPOJA**—I suggest that it has not necessarily been individual senators who have often drawn that parallel. That has been presented a number of times in evidence. But I acknowledge your qualifications. As a supplementary to that question, I am not sure what the longest time is that it has taken, for example, to get an urgent interim order and whether or not you have examples that you could share with us in which it has taken too long

or you envisage it would take too long. I am happy for that to be taken on notice. But why not create an exception, thus having the rule and the basis of this legislation being a requirement that judicial authorisation is required for the purposes of a preventative detention order, and then have an exception for an extraordinary case where if it is—

**Senator BRANDIS**—As they do with control orders.

**Senator STOTT DESPOJA**—Thank you, Senator Brandis. Yes, as they do with control orders. Why not allow for that emergency exception?

**Federal Agent Colvin**—It is a good question. It is one we probably should refer to the department or at least confer with the department on before we answer. We can provide you with some scenarios, I believe, where we feel that the immediacy of the situation requires us to act without the added pressure of—

**Senator STOTT DESPOJA**—But it is not every time, is it?

**Federal Agent Colvin**—No. I think that is quite fair; it would not be on every occasion. Each occasion would be different.

**Senator STOTT DESPOJA**—Thank you very much for that.

#### Answer

The preventative detention provisions proposed in the Bill allow for the approval of an initial preventative detention order by a senior AFP officer for a period of up to 24 hours and any extension of that order as a continued preventative detention order for up to a total period of 48 hours to be by a judicial officer.

Given the urgent operational circumstances that preventative detention would be limited to being used in, to prevent an imminent terrorist attack or preserve evidence of an attack, the AFP supports the process as set out in the Bill for initial and continued preventative detention as the appropriate way to balance judicial oversight with the operational requirements of acting to prevent an imminent attacks or respond to attacks that have occurred.

Initial preventative detention orders, as proposed, are necessary for the AFP to be able to quickly detain:

- suspected terrorists in transit to or at the likely targets of terrorist attack; or
- suspected terrorists at or near the site of the terrorist incident or who have fled some distance from that site.

Their detention would be time critical to enable police to locate and intercept their associates in order to prevent related planned attacks and collect evidence relevant to the potential attack that may otherwise be contaminated or destroyed.

Question 9 (p.75, Proof Hansard)

**Senator NETTLE**—In the example that you described earlier around sedition, you had circumstances of incitement and the advice that you received from A-G's was that this was the way to go about it. Perhaps I am wrong, but that was my understanding of what you said. Could you take on notice for each of these additional powers: when did you request those particular additional powers? It may be that for some of them it is the same scenario as you just described for sedition. I am not expecting you to have all that here now so, if you do not, I am happy for you to take it on notice.

**Mr Lawler**—I think we will have difficulty identifying a date. But as I have explained and as the Director-General indicated, what occurred was there was an interdepartmental committee, a group of people who discussed the issues around the legislation—particularly in the wake of the bombings in London—to ensure that we had all the necessary mechanisms in place that we believed were required. It was in that much broader context that the legislation then took hold.

**CHAIR**—Whatever information you can provide the committee with in relation to Senator Nettle's question and your participation in that RDC would be helpful.

**Mr Lawler**—I will do that.

#### Answer

The AFP requested the powers proposed in *Anti-Terrorism Bill (No 2) 2005* during the July-August 2005 review of the Commonwealth counter-terrorism legal framework undertaken at the request of the Government by the Commonwealth Counter-Terrorism Legal Working Group.

The AFP has been having ongoing discussions with the Attorney-General's Department about the need for preventative detention; stop, question, search and seize powers; and notices to produce since late 2001. The AFP has also raised the utility of a notice to produce in a number of public inquiries during this period.

Discussions between the AFP and the AGD have occurred as part of the ongoing review of the Commonwealth counter-terrorism legal framework initiated by the Government in 2001. These proposals have been assessed, along with a range of other legislative proposals such as the terrorist offences in the Commonwealth Criminal Code, the establishment of an investigation period for terrorist offences in the *Crimes Act 1914*, and legislative support for the use of surveillance devices, against the terrorist environment as it has evolved since 2001 and prioritised in terms of the enhancement to operational capability that they would provide. Previously preventative detention and stop, question, search and seize powers, along with other proposals, have been recognised by the Government as requiring assessment over the longer term.

#### Question 10 (p.75, Proof Hansard)

**Senator NETTLE**—I want to ask about the sedition part of the legislation on advocating a terrorist act. We have had some discussion already in the committee about whether or not an organisation would be deemed an unlawful association if the comments of a member or a leader of an organisation praised the carrying out of a terrorist act. Do you have an idea of



how you intend to deem an organisation an unlawful association? Would it be based on the comments of one member of an organisation or would you require the leader of that organisation to say something or for a statement to be supported by that organisation? Can you give us an idea of how you might implement that part of the legislation?

**Mr Lawler**—It is very difficult to do so. One needs to know the circumstances of a particular event or activity and one needs to know it in intricate detail because facts will impact upon the circumstances and general presentation of what has occurred. So the answer is that it is very difficult to do so and I would not be able to.

**Senator NETTLE**—Perhaps I will give you an idea of why I am asking that question. There is a whole gamut. There is an organisation and the leader of an organisation, and the doctrine of that organisation is, ‘We support position X.’ That is perhaps one end of the spectrum. At the other end of the spectrum is a group of people from a particular church group who are having a meeting about self-determination movement in West Papua. They are making comments which may be seen as praising an organisation, parts of which are armed. In that circumstance, it might be just that particular group of people in that church. Would the entire church be deemed to be an unlawful association? To me there is a gamut or a range. I am trying to understand, in the piece of legislation that I will be asked to vote on in two weeks, what you intend. It is not in the legislation so I am asking you, as the people who would be implementing it, what you intend. That is the framework in which I am asking that question. You can take that on notice if you are not able to provide an answer now.

**Mr Lawler**—Yes, thank you.

The AFP understands that this question relates to the amendments proposed in Schedule 1 in relation to the listing of terrorist organisations, in particular the proposed introduction of advocating terrorist acts as a ground on which an organisation could be listed as a terrorist organisation.

On the facts of the situation given in this question it is difficult to see how the whole church could be specified as a terrorist organisation because it is unlikely that the test outlined in proposed section 102.1(2) would be satisfied.

Question 11 (p.76, *Proof Hansard*)

**Senator NETTLE**—Last week Mick Keelty was interviewed by Kerry O’Brien on the *7:30 Report*. He was asked the question: ‘Does it’—referring to the recent raids—‘demonstrate that current powers are adequate,’ to which he answered, ‘Well, I think they are.’ That seems to contradict the evidence that you have given to this committee today. Can I ask you to take on notice an explanation for the discrepancy between that comment last week made by Mick Keelty and the comments you have made today?

**Mr Lawler**—I would like to respond to that. What I would like to know is the context in which the commissioner said that. I do not believe that the commissioner would have ever said or intended to say that we have all of the legislative tools required for the AFP. I know for a fact that he would not have said that.

**CHAIR**—The context is important. I understand that you will take that on notice.

**Senator NETTLE**—Yes, that is why I have put it on notice. Thank you.

In answering this question, the AFP will refer to the transcript of this interview available on the 7.30 Report's website.

This comment occurred in the concluding part of the interview with Commissioner Keelty:

**KERRY O'BRIEN:** Very briefly, Commissioner, there's been a lot of talk about shoot-to-kill powers in recent weeks, but does last night's operation and in particular the shoot-out between one suspect and police, demonstrate that police already have adequate powers to use firearms in appropriate circumstances? Without going to that individual case?

**MICK KEELTY:** Well, without going to the individual case, but I will say one thing about that individual case of the operation today and this is a real fact, I know it is. The dangers that are presented to police officers and law enforcement officers and indeed the ASIO officers in conduct of operations is real and is present and we've not exaggerated that.

**KERRY O'BRIEN:** No.

**MICK KEELTY:** And police are entitled to protect the community. An innocent bystander can be shot as a result of shots been fired in a confrontation such as that, but of course the police officers are entitled to defend themselves as well and, look, I can assure you, Kerry, that police officers are trained regularly. They have to re-train and qualify for that sort of use of force and no police officer looks forward to having to draw their weapon from their holster, I can assure you of that.

**KERRY O'BRIEN:** I am sure not, but does it demonstrate that current powers are adequate?

**MICK KEELTY:** Well, I think they are and I think the issue about the proposed bill was an issue of transparency and I commend transparency when we've got such difficult issues to work through with the community.

**KERRY O'BRIEN:** Mick Keelty, thank you very much for talking with us tonight.

**MICK KEELTY:** My pleasure, Kerry.

As is evident from the context of that comment, Mr O'Brien and the Commissioner were discussing the public debate over the use of force provisions proposed in the Anti-Terrorism Bill (No 2) 2005, including their characterisation by some commentators as shoot to kill powers. The Commissioner's comment was not about the adequacy of all powers available to police to investigate and prevent terrorism.

## **Inquiry into the provisions of the Anti-Terrorism Bill (No.2) 2005.**

### **QUESTION PLACED ON NOTICE BY SENATORS – FRIDAY, 18 NOVEMBER.**

**Ludwig (Notice to produce)**

#### **1 When were these powers first requested by the AFP to be included in legislation?**

The AFP requested the notice to produce powers proposed in *Anti-Terrorism Bill (No 2) 2005* during the July-August 2005 review of the Commonwealth counter-terrorism legal framework undertaken at the request of the Government by the Commonwealth Counter-Terrorism Legal Working Group.

The AFP has been having ongoing discussions with the Attorney-General's Department about the need for a range of powers including notices to produce since late 2001. The AFP has also raised the utility of a notice to produce in a number of public inquiries during this period.

#### **2 Why is the AFP's power to obtain information and documents drafted so widely? Why is it not drafted to contain a closer nexus with the commission of a terrorism offence or other serious crime?**

The notice to produce powers for serious terrorism offences and serious offences are modelled on the provisions in other Commonwealth legislation such as the *Proceeds of Crimes Act 2002*.

The AFP believes that an appropriate nexus between the relevant offences and the power has been provided by the drafter through proposed sections 3ZQN (1) and 3ZQO (1) which requires the documents requested to be relevant to and of assistance to the investigation of the relevant offences.

#### **3 In what circumstances is it envisaged that the AFP will need to issue a notice to compel the production of information and documents?**

The AFP believes that it will need to use the proposed notices to produce to facilitate essential and basic inquiries related to the investigation of terrorist and other serious offences such as confirming the existence of an account, account holder details (including residential address), account history and payment details. The British police have such a power which was invaluable during the response to the London bombings to identify the suspected terrorists and verify their movements and associations.

The following two scenarios drawn from AFP operational experience and its understanding of the terrorist environment may assist in understanding when the notice to produce powers might be used by the AFP to undertake such inquiries.

##### Scenario 1

The AFP and other agencies receive information from Interpol that a suspected terrorist is en route to Australia.

During the course of the flight which that suspect is on the AFP needs to confirm the information and assess what would be the appropriate response such as to place the person under surveillance upon arrival or even refuse the plane the right to land in Australia.

A relevant source of information for the AFP would be travel agents who may have been involved in booking that person's travel to Australia.

The notice to produce as proposed in the Bill would allow the AFP to access this information quickly while providing appropriate assurances to the travel agent as to the lawfulness of releasing this information to the AFP

## Scenario 2

A number of terrorist attacks in Australia have been prevented as a result of information received in a 24-hour period.

A number of persons have been arrested, however, the extent and location of their network is uncertain.

Expeditious AFP access to information from utility providers, real estate agents and bank accounts is able to provide information that assists the AFP to identify in a timely manner the residences of persons arrested, other persons at those properties, materials recently purchased and recent suburbs visited as well as identifying associates through telephone records.

## **4 How do you respond to arguments that the AFP's power to obtain information and documents will prevent journalists from doing their jobs by, for example, forcing them to reveal the identity of a confidential source? (Fairfax, Sub 88, p. 4)**

The AFP does not believe that the situation contemplated by Fairfax in their submission will occur. Although the power as proposed does relate to any person (sections 3ZQN and 3ZQO) and could relate to documents otherwise protected by legal professional privilege or other duties (section 3ZQR), section 3ZQP sets out the matters to which the documents must relate. As these documents are all, in one way or another, proprietary documents related to transactions and account holder details that the AFP would be able to access directly from the originating organisation, there would be no need for the AFP to seek that information from anyone else than that organisation. In the case of serious offences, it is unlikely that a Magistrate would make such a notice out in relation to a journalist.

## **5 How do you respond to arguments that the AFP (and ASIO's) power to obtain information and documents will compromise freedom of speech and the right to privacy?**

The AFP believes the draft provisions ensure that information is only sought in limited circumstances and that the Bill does not provide greater access than is already available under the information disclosure provisions of the *Privacy Act 1988* or the search warrant regime established by the *Crimes Act 1914*. What the proposed notice to produce system will do is establish an appropriate mechanism for law enforcement to access information about which the information holders may be unsure about their lawful ability to release.

**6 Why is it appropriate for the AFP to be given powers to effectively circumvent the usual procedures for obtaining evidence under a search warrant (including the independent safeguard of an issuing magistrate) in relation to terrorism offences?**

The notices to produce proposed in the Bill will not circumvent the use of search warrants.

The AFP has found in the course of investigating a range of serious crimes, including terrorist offences, that businesses are often anxious about their moral and legal duties of confidentiality to clients despite their ability to disclose information lawfully under the *Privacy Act 1988*. As a result some businesses feel the need to have specific authorisation such as a search warrant to release information that they can otherwise lawfully release.

The AFP believes that it is inappropriate to use search warrants in this way as search warrants are designed to effect the physical search of premises, not to facilitate the lawful provision of information to the AFP by organisations, who are effectively bystanders to the commission of any serious offences but who have factual details of relevance to the investigation.

**6A Why aren't there specific safeguards contained in the Bill to protect privacy and liberty in this context? (see Gilbert & Tobin, Sub 80, p. 15)**

The safeguards are that where the notice is to do with a terrorism offence, it may only be authorised by a senior AFP officer (see item 1 of Schedule 6). If it is for a serious non-terrorism offence, it may only be authorised by a Federal Magistrate. The authorisation requires careful specification of the documentation that is sought and there are restrictions on admissibility (s.3ZQR). In the event of there being a breach of privacy or an undue infringement on a person's liberty, the aggrieved person may lodge a complaint with the Privacy Commissioner or the Ombudsman (who examines complaints against the AFP).

**7 Why has the notice to produce scheme been extended to the investigation of other serious offences (new section 3ZQO of the Crimes Act)?**

- (a) **Why is it appropriate to extend special terrorism powers to the investigation of 'ordinary' crime in such a way?**
- (b) **Why have non-terrorism offences been included in a piece of legislation designed to deal specifically with, and provide an exceptional response to, the threat of terrorism?**
- (c) **How do you respond to arguments that this manipulates exceptional powers, significantly undermines ordinary criminal procedure, and constitutes significant intrusion of privacy and liberty? (see Gilbert & Tobin, Sub 80, pp 15-16; Fairfax, Sub 88, p. 4)**

The AFP believes that notices to produce are just as essential for the investigation of terrorist offence as for all serious criminal offences, particularly as other serious offences can be related to terrorist activity. The AFP does not consider notices to produce to be 'special terrorism powers', they are instead a power that the Parliament has made previously available to a range of law enforcement and regulatory agencies in a form suitable to their enforcement or regulatory role. Including both powers in the one Bill recognises this. It should be noted that other Australian Government agencies such as the Australian Securities and Investment Commission and the Australian Crime Commission have notice to produce powers. The AFP currently has this power in relation to proceeds of crime under the *Proceeds of Crime Act 2002*.

As the Bill proposes a separate issuing process for notices to produce for serious terrorist offences and serious non terrorist offences, the latter requiring the AFP applying for such notices from a Magistrate and a different response period for the recipient of the notice, the AFP does not believe that including both powers in the one Bill or making this power available for the investigation of serious terrorist and serious non-terrorist offences significantly undermines ordinary criminal procedure or significantly intrudes on privacy and liberty.

**8 New section 3ZQR abrogates the protection of legal professional privilege for a person required to produce a document under new section 3ZQN and 3ZQO.**

- (a) **Why is this appropriate? Are there circumstances where it might not be appropriate?**  
(b) **Does the abrogation unduly trespass on the rights of an affected person? (see Gilbert & Tobin, Sub 80, p. 15)**

The proposed legislation does not abrogate legal professional privilege. Indeed, subsection 3ZQR(4) preserves legal professional privilege in the extremely unlikely event that it would be relevant to the class of documents covered by the procedure (s.3ZQP). The documents consist of travel details and the like.

**9 Please provide details of the current size of the AFP? If possible, please break this down into the number of:**

- **sworn officers, unsworn officers;**
- **full time / part time / non-ongoing employees;**
- **outputs and /or functional divisions.**

**If possible, please provide this information for the last five years.**

**What is the current turnover of staff among each of the above-mentioned categories or divisions?**

The following data is provided in relation to staffing demographics of the Australian Federal Police.

The following tables shows AFP staff numbers, as at the end of each financial year since 30 June, 2001.

Sworn and Unsworn Officers

	<b>Total Staff</b>	<b>AFP Members/Sworn</b>	<b>AFP Staff/Unsworn</b>
17/11/05	3738	2355	1383
2004/05	3601	2310	1291
2003/04	3480	2312	1168
2002/03	3496	2297	1199
2001/02	3051	2043	1008
2000/01	2851	2032	819

	<b>Total Staff (PS)</b>	<b>PS Officers/Sworn</b>	<b>PS Staff/Unsworn</b>
17/11/05	1396	1222	174
2004/05	1389	1178	211
2003/04	1327	1138	188
2002/03	1264	1087	177
2001/02	1023	920	103
2000/01	682	N/A	N/A

Full time and Part time Employees

The AFP engages permanent and non-ongoing full time staff; these staff are shown in the “Full Time” count.

	<b>Total Staff</b>	<b>AFP members Full time</b>	<b>AFP members Part time</b>
17/11/05	3738	3569	169
2004/05	3601	3435	166
2003/04	3480	3322	158
2002/03	3496	3362	134
2001/02	3051	2905	146
2000/01	2851	2720	131

	<b>Total Staff (PS)</b>	<b>PS members Full time</b>	<b>PS members Part time</b>
17/11/05	1396	1375	21
2004/05	1389	1366	23
2003/04	1327	1308	19
2002/03	1267	1247	20
2001/02	1023	1013	10
2000/01	682	665	17

## Permanent and Non Ongoing Employees

The AFP engages permanent part time staff; these staff are shown in the “Permanent” count.

	<b>Total Staff</b>	<b>AFP members Permanent</b>	<b>AFP members Non Ongoing</b>
17/11/05	3738	3591	147
2004/05	3601	3452	149
2003/04	3480	3379	101
2002/03	3496	3393	103
2001/02	3051	2923	128
2000/01	2851	2750	101

	<b>Total Staff (PS)</b>	<b>PS members Permanent</b>	<b>PS members Non Ongoing</b>
17/11/05	1396	1385	11
2004/05	1389	1352	37
2003/04	1327	1229	98
2002/03	1267	1120	147
2001/02	1023	925	98
2000/01	682	665	17

## Staff by Functional Division

	<b>Total Staff</b>	<b>Deputy Commissioner</b>	<b>ACT Policing</b>	<b>Support and Corporate</b>	<b>Chief of Staff</b>	<b>PS</b>
17/11/05	5134	1972	802	856	108	1396
2004/05	4990	1898	767	814	122	1389
2003/04	4807	1733	791	625	331	1327
2002/03	4763	2071	774	587	64	1267
2001/02	4074	1621	764	666	-	1023
2000/01	3533	1571	710	570	-	682

Note : The above table reflects actual allocations at the specific points in time. The AFP has undertaken a number of structural changes since 2001, and the fluctuations of numbers in each portfolio is a consequence of separation, recruitment, mobility and structural arrangements. For example, Technical services (close operational support) moved from the Deputy Commissioner portfolio to the Support and Corporate portfolio in 2003.

## AFP Separation Rates

	<b>Total Rate</b>	<b>Deputy Commissioner</b>	<b>ACT Policing</b>	<b>Support and Corporate</b>	<b>Chief of Staff</b>	<b>PS</b>
17/11/05	8.10%	4.70%	6.90%	7.40%	12.30%	13.69%
2004/05	7.13%	4.60%	8.20%	6.40%	7.70%	10.43%
2003/04	5.70%	3.60%	5.00%	6.7%	9.80%	9.37%
2002/03	5.12%	n/a	n/a	n/a	n/a	
2001/02	6.33%	n/a	n/a	n/a	n/a	
2000/01	8.83%	n/a	n/a	n/a	n/a	



## **Question 10 –**

**10 How many new employees – broken down by the above-mentioned categories or divisions – have joined the AFP in the preceding five years?**

From July 2001 to September 2005, the AFP recruited 3617 staff, of which 642 were police officer recruits brought in through the AFP Base Police or Lateral Police recruit programs.

### **AFP Recruitment**

	<b>Total Staff</b>	<b>Deputy Commissioner</b>	<b>ACT Policing</b>	<b>Support and Corporate</b>	<b>Chief of Staff</b>	<b>PS</b>
2005/06	392	88	49	88	5	81
2004/05	783	97	105	131	20	215
2003/04	579	27	50	68	10	212
2002/03	1423	221	73	308	15	403
2001/02	440	107	69	251	13	

Note : AFP recruits are NOT shown against the operational areas of their initial deployment. AFP recruits are required to undertake a lengthy recruitment course prior to their attestation, and the recruit numbers are reflected in the actual training areas.

**11 Do you have any areas within the AFP where allocated budgeted amounts have not been expended within the last financial year and the out years?**

**If so,**

- (a) how much in each area and over which years?**
- (b) What was the reason(s) for the unexpended amounts?**
- (c) Is it intended that these monies, if any, will be reallocated to other areas (if so, where?) or held or carried over for that particular budgeted amount?**

Yes. The AFP reported a 2004-05 end of year surplus of \$24.0m. The surplus was attributed to the following areas:

- \$12m for the International Deployment Group (IDG). The IDG surplus was post the return of \$135m revenue to the Government Budget under the current conditions of returning unspent IDG funds. The remaining surplus for IDG of \$12m was retained to ensure there was a sufficient buffer for unexpected end of year adjustments. Any uncommitted funds out of this surplus will be reviewed with the Department of Finance as part of the ongoing management of IDG funding.
- \$12.0m for other AFP and AFP Protective Services activities. The majority of this underspend is associated with projects which are programmed to be spent over the next 18 months. Internal expense budgets allocated to AFP business areas, were either on or over budget for all areas except for the International Deployment Group (IDG) and AFP Protective Services.

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**12 What additional resources and funding has the AFP been allocated to cover the additional duties and responsibilities imposed by or because of the Bill? Please provide a breakdown of all additional resources that have been allocated to the AFP showing: additional staff; additional equipment (specify); additional training; and any other resources (specify). When are these resources and funding due to be provided?**

No additional resources have been provided to the AFP to implement the measures proposed in the Bill. The AFP is currently scoping the potential implementation costs of administering control orders and preventative detention and if additional resources are required will make representations to the Government in the course of its normal Budget processes.

**13 Schedule 4. Item 12 Regarding tracking devices, please advise:**

- (a) the cost of an individual tracking device used to monitor a person under these or similar provisions;**
- (b) the number of tracking devices that the AFP have at the moment;**
- (c) the number of tracking devices that the AFP intend to procure once the Bill is enacted and commenced;**
- (d) how reliable are the tracking devices (how often do they break down or send a faulty or incorrect signal);**
- (e) the number of staff or officers it takes to monitor a person on a tracking device; and**
- (f) whether the AFP will require additional staff as a result of the increased use of tracking devices.**

The AFP has established a small team to create a framework for the use of control orders. The AFP does not currently have technology appropriate to perform the tracking contemplated by the administration of control orders. This team will scope for the consideration of AFP management and the Government the number of devices required, the most appropriate tracking device, staffing requirements for the administration of control orders and whether this can be met within existing resources. The Government will consider the need for any additional resources for the AFP as part of its normal Budget processes.

**14 What procedures does the AFP have in place for the use and request of tracking devices?**

The small team established within the AFP to establish the control order framework will develop appropriate procedures.

**15 If the AFP does not have these procedures in place, when are they expecting to have these procedures in place?**

The AFP intends to have these procedures in place as soon as practicable, depending on the passage of the legislation.

**16 Is the AFP working with other agencies, stakeholders or interest groups to develop the procedures? If so, which ones? If not, why not?**

The AFP has had preliminary discussions with, and will consult further with, the Australian Security Intelligence Organisation, the Attorney-General's Department, the Commonwealth Director of Public Prosecutions and State and Territory Police.

**17 What procedures does the AFP have in place for the use and request of control orders?**

The AFP has established a small team to create a framework for the use of control orders. However, the procedures to be put in place will depend on the final form of the legislation. At present, the AFP is assessing how to provide national consistent oversight of control orders, operational support for the application for and serving of control orders and monitoring control orders, and coordination with the Australian Security Intelligence Organisation, State and Territory police services and other agencies.

**18 If the AFP does not have these procedures in place, when are they expecting to have these procedures in place?**

The AFP intends to have these procedures in place as soon as practicable, depending on the passage of the legislation.

**19 Is the AFP working with other agencies, stakeholders or interest groups to develop the procedures? If so, which ones? If not, why not?**

The AFP is currently developing a communication and consultation strategy to develop the procedures. It intends to work closely with all state and territory police services and with relevant Commonwealth departments and agencies, including the Attorney-General's Department, the Commonwealth Director of Public Prosecution, and ASIO.