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The Secretary  
Senate Standing Committee on Legal and  
Constitutional Affairs  
Parliament House  
CANBERRA ACT 2600

**RE: Inquiry into Crimes Legislation Amendment (National  
Investigative Powers and Witness Protection) Bill 2006**

The Police Federation of Australia (PFA) represents the professional and industrial issues of Australia's 50,000 police and is pleased to make the following submission to your Inquiry.

In respect to the proposed model laws concerning controlled operations, assumed identities and the protection of witness identity, the PFA raises no concerns. However, in respect to proposals concerning amendments to the Australian Crime Commission Act regarding search warrants, the PFA raises the following issues.

We acknowledge that there are already inconsistencies between the *Australian Crime Commission Act 2002* and the *Crimes Act 1914* in relation to the execution of search warrants.

In the Crimes Act an –

***executing officer*** in relation to a warrant, means:

- (a) *the constable named in the warrant by the issuing officer as being responsible for executing the warrant; or*

- (b) *if that constable does not intend to be present at the execution of the warrant – another constable whose name has been written in the warrant by the constable so named; or*
- (c) *another constable whose name has been written in the warrant by the constable last named in the warrant*

Section 22 (1) of the ACC Act stipulates that an eligible person may apply to an issuing officer for the issue of a warrant. An ***eligible person***, who is defined as a member of the staff of the ACC who is also a member of the Australian Federal Police or the Police Force of a State, must make the application for the warrant.

In respect to this Bill's proposed amendment to the ACC Act an –

***executing officer***, in relation to a warrant issued under section 22 means:

- (a) *the person named in the warrant by the issuing officer under paragraph 22(5)(e) as being responsible for executing the warrant; or*
- (b) *another person whose name has been inserted in the warrant by, or on behalf of, the person mentioned in paragraph (a)*

The Explanatory Memorandum outlines however that whilst the person first named in the warrant must be a police officer, the Bill proposes to authorize the person named in the warrant to sign the warrant over to another person. The key aspects concerning the PFA emanating from the EM is that it states that this person may or may not be a police officer due to the ACC consisting of a number of contract or in-house investigators. The EM further explains that the executing officer (who may not be a police officer) may be called on to exercise powers normally given to police officers, and there will often be the need to carry a firearm. We understand that ACC employees who may be required to carry out this function would be sworn in a "special members" of the AFP.

Special members of the AFP are defined under Section 40E of the Australian Federal Police Act 1979 –

### ***Special members***

*(1) The Commissioner may, on such terms and conditions as he or she determines in writing, appoint a person as a special member of the Australian Federal Police to assist in the performance of its functions.*

*(2) A person appointed under subsection (1) has, during the continuance of his or her appointment:*

*(a) any powers and duties that are expressly conferred or imposed on special members under a provision of this Act or of any other Act; and*

*(b) such of the powers and duties conferred or imposed on members as are specified in his or her instrument of appointment.*

The PFA is concerned that contract investigators may be brought into the ACC for specific investigations, be sworn in as a Special Member of the AFP and therefore be eligible to execute search warrants, use reasonable force and carry a firearm in so doing. We argue that the community needs to be confident that such investigators, who are not members of the AFP or a state police force, have the requisite skills and experience to be given such authority. There appears to be nothing in the current legislation, the Bill or the EM that would give comfort on this issue.

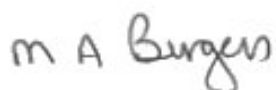
It is the PFA's view that the only persons' who should be responsible for executing a search warrant, be legislatively entitled to use reasonable force in the execution of that warrant and carry a firearm in such circumstances should be fully sworn police officers from the Australian Federal Police or the Police Force of a State or Northern Territory.

The PFA believes that prior to supporting the Bill before this Inquiry, the Committee should seek information from the ACC as to how many search warrants have been executed by 'special members' of the AFP as opposed to AFP or state or Northern Territory police and the rationale behind why such warrants were executed by special members as opposed to sworn police officers.

If this committee was not of a mind to investigate such circumstances then perhaps it would be appropriate for this issue to be referred to the Joint Committee on the Australian Crime Commission for such analysis to be undertaken.

I thank the Committee for the opportunity to make this submission.

Sincerely yours

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

Mark Burgess  
Chief Executive Officer