



AFPA

Australian Federal
Police Association

The Standing Committee on Justice and Community Safety - Inquiry in the form of an evaluation of current ACT Policing arrangements

Submission Prepared by:

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4 February 2020

The Committee Secretary
Standing Committee on Justice and Community Safety
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

By email: LACommitteeJCS@parliament.act.gov.au

Dear Committee Secretary,

SUBMISSION TO THE INQUIRY IN THE FORM OF AN EVALUATION OF CURRENT ACT POLICING ARRANGEMENTS

Background

The Australian Federal Police Association ('AFPA') welcomes the opportunity to make a submission to the Standing Committee on Justice and Community Safety ('the Committee') regarding its inquiry in the form of an evaluation of current ACT Policing arrangements.

We note that the inquiry plans to look at a range of factors relating to the administration of ACT Policing, particularly as ACT Policing is provided as a service contracted by way of an agreement that has been in effect since ACT self-government in 1989.

The AFPA represents the professional, industrial and welfare interests of 4000 Australian Federal Police ('AFP') and law enforcement employees across a range of agencies. As an autonomous sub-branch of the Police Federal of Australia ('PFA'), the AFPA is a registered Trade Union operating under the *Fair Work (Registered Organisations) Act 2009*.

Introduction

The AFPA welcomes the inquiry in the form of an evaluation of current ACT Policing arrangements and see this an opportunity to provide insight and direction towards the future of policing within the Australian Capital Territory (ACT).

The AFPA believes the current composition of a Policing Arrangement, Purchase Agreement and Ministerial Direction provides the ACT Government and community with a quality, transparent and accountable policing service, via the AFP.

The ACT Government and community greatly benefit from this relationship as the AFP provides a policing service to the ACT which is far greater than the money paid to the AFP by the ACT Government.

The ACT community benefits by having commonwealth assets that can be directed to a state/territory-based issue, which is unique in Australian law enforcement. The ACT community has access to world-class forensic capabilities, specialist response officers, cybercrime, counter-terrorism, and child exploitation investigators. These investigators have the capability to transition into the ACT Policing environment, bringing their expertise and experience with them and mentoring less experienced officers.

The ACT and Canberra, as a city, have a well-earned reputation of being one of the safest cities in Australia. The Productivity Commission's *Report on Government Services 2020*¹ figures show that the ACT population feels safe in their community and this should be attributed to the hard-working police officers and unsworn staff of ACT Policing. Examples from the *Report on Government Services 2020*² include:

- Perception of safety
 - Perception of safety at home alone, during the night (ACT: 93.4 / Aust Avg: 88.5)
 - Perception of safety when walking alone in your neighbourhood during the day (ACT: 94.4 / Aust Avg: 90.7)
 - Perception of safety when walking alone in your neighbourhood during the night (ACT: 57.8 / Aust Avg: 53.5)
 - Perception of safety on public transport during the day (ACT: 69.8 / Aust Avg: 67.2)
 - Perception of safety on public transport during the night (ACT: 39.6 / Aust Avg: 33.5)

Traditionally, ACT Policing has also performed strongly when compared with other police services across Australia in relation to public perception. Once again, referencing the Productivity Commissions *Report on Government Services 2020*³; during the 2018-2019 reporting period, the ACT, and as a by-product of the current policing arrangement, ACT Policing exceeded the national average on the following criteria:

- Satisfaction with services provided by police (ACT: 80.8 / Aust Average: 79.9)
- Totally satisfied of those who had contact with police in the previous 12 months (ACT: 84.3 / Aust Avg: 84.1)
- Totally dissatisfied with services provided by police (ACT: 3.5 / Aust Avg: 5.4)
- Totally agree with:
 - Police perform the job professionally (ACT: 87.3 / Aust Avg: 85.7)
 - Police treat people fairly and equally (ACT: 74.2 / Aust Avg: 72.1)
 - Police are honest (ACT: 75.8 / Aust Avg: 74.3)

Given these strong performances, the AFPA believes that ACT Policing is well-respected in the community and most people are satisfied or totally satisfied with the service provided by ACT Policing.

In relation to the current mechanisms and policing of the ACT, there is an ongoing arrangement between the Minister for Justice of the Commonwealth and the ACT Minister for Police and Emergency Services for the provision of policing services to the ACT.

Under the *Australian Federal Police Act 1979 (Cth) (AFP Act)*, the Commonwealth Minister responsible for the AFP and the ACT Minister responsible for policing on behalf of the Territory can enter into arrangements for the provision of police services for the ACT (s 8(1A)) and for anything incidental or conducive to the provision of those services (s 8(1)(c) and (2B)).

¹ <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice/police-services>

² <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice/police-services>

³ <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice/police-services>

When an AFP member is performing those functions in the ACT, they have the powers and duties conferred or imposed on a constable or on an officer of police by or under any law of the Territory (including the common law) (s 9(1)(b)). Under the Human Rights Act 2004, a member is expected to act consistently with human rights when exercising a function under a Territory law (section 40). Any power or function conferred on a member by Territory law is to be read consistently with human rights law (*section 30*). Under the AFP Act, members remain officers of the Commonwealth, and the AFP Commissioner retains responsibility for the general administration, and control of the operations, of the AFP (*s 37*).

The legislative framework for the provision of police services by the Commonwealth in the ACT requires that responsibility for operational matters will rest with the AFP Commissioner and that responsibility for policy and other matters will rest with the Minister supported by the Justice and Community Safety Directorate (JaCS).

Recommendations

Policing Arrangement

The Policing Arrangement⁴ provides a police service to the ACT that regularly out-performs expectations determined by the Purchase Agreement and Ministerial Direction. The ACT community benefits from the expertise of the Australian Federal Police, through ACT Policing. This would not occur if the ACT was policed by another jurisdiction, or if the ACT Government introduced its own police service.

The Policing Arrangement is supported by a negotiated Purchase Agreement between the ACT Minister for Police and Emergency Services, the AFP Commissioner and the Chief Police Officer (CPO) for the ACT.

Options that the ACT Government and *the Committee* could consider is the formation of a new policing organisation to service the ACT or entering into an arrangement with a state police service, such as the New South Wales Police Force (NSWPF) to provide the same services provided by the AFP.

The AFPA believes that either model would not provide the quality of service that the ACT Government and community currently enjoys from the AFP.

The establishment of a new 'ACT Policing' by the ACT Government would be an extremely expensive outcome. The new police service would be required to start from scratch as the ACT Government only provides infrastructure, in the nature of police stations, to the current ACT Policing. Expenditure would have to include, but not limited to:

- New vehicle fleet consisting of:
 - General duties vehicles
 - Traffic operations vehicles
 - Special response vehicles
 - Unmarked vehicles
 - Water vessels
 - Covert vehicles
- An entirely new workforce consisting of:
 - General Duties officers
 - Detectives and experienced investigators
 - Specialised traffic officers, including collision investigators
 - Bomb Response officers
 - Intelligence officers
 - Water Police officers
 - Child Exploitation and Cybercrime officers
 - Forensic officers/experts
 - Training officers
 - Canine officers
 - Corporate workforce (Human Resources, Finance, etc)
- Recruit training facilities
- Canine training and holding yards
- Operations Centre (131444 and Triple Zero call centre)
- Forensic laboratories and capabilities
- Water Police infrastructure

⁴ http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Arrangement_FINAL_Signed_reduced.pdf

The AFPA believes that this would cost hundreds of millions of dollars to establish and would not have the expertise and experience currently provided by the AFP. It is questionable if officers who are AFP employees, currently attached to ACT Policing, would be prepared to leave the AFP and transition to a newly established 'ACT Policing'.

In relation to entering into an agreement with another police service, logistically and geographically, the only other police service that could be considered would be the NSWPF.

The AFPA believes that the NSWPF could deliver on the expertise currently provided by the AFP. Logistically, however, we feel that it can't provide the same dedicated service to the ACT that is currently provided by the AFP.

If NSWPF did undertake the role of servicing the ACT, then the ACT would become a Local Area Command (LAC) or possibly merged into the Monaro LAC. This means that resources and corporate direction would be largely determined from NSWPF headquarters in Sydney, NSW. There would also be questions regarding the deployment of specialised services such as, but not limited to, forensics and specialist response capabilities, such as bomb technicians and negotiators.

A current example of these resources is the NSWPF Crash Investigation Unit (CIU). If a serious or fatal traffic collision occurs in the Monaro LAC, the nearest CIU is based in Wollongong, NSW. They are required to drive from Wollongong to the crash site to investigate the incident. Would the NSWPF treat the ACT the same if they took over police services in the ACT?

An additional question that could be posed is; would the ACT community be satisfied in not having their own police service, and becoming another LAC of the NSWPF?

Another issue faced by NSWPF or a similar non-ACT agency in policing the ACT would be legislation and the enforcement of laws relating to cross-jurisdictional policing. The ACT is a territory bounded by New South Wales and while many laws are consistent, they are enacted from different bills and legislation which would be difficult to police with officers consistently having to wear different 'legislative hats' dependant on where the offence or crime occurred.

In reality, the AFP provides a wealth of expertise, experience and resource availability that is beneficial to the ACT Government and community that will be difficult to replicate.

The AFPA believes that the ongoing arrangement between the Minister for Justice of the Commonwealth and the ACT Minister for Police and Emergency Services for the provision of policing services to the ACT is the best model Policing Arrangement for the ACT Government and community.

Purchase Agreement

The Purchase Agreement details the outcomes, outputs, performance measures, targets and facilities to be provided, and the powers and obligations of the Minister for Police and Emergency Services and the CPO and associated administrative arrangements. The main outcomes of the Purchase Agreement are:

- *Reduce crime* – prevent and reduce crime and violence; enhance response to and investigate offences, and provide efficient support to the judicial process.

- *Public safety* – respond to calls for assistance; plans and manages major community events and public demonstrations; responds to emergencies and disasters; and improves and promotes road safety through education, innovation, and targeted enforcement.
- *Community and partner engagement* – increase community confidence in the police, supports early intervention and diversion; and works to enhance and strengthen resilience within the community.

The AFPA is supportive of the purchase agreement model as it provides a clear direction of the ACT Governments expectations for ACT Policing while providing accountability and transparency to the ACT community.

In relation to the *2017-2021 Purchase Agreement*⁵, the AFPA would recommend amendments in relation to some Performance Measures and Indicators of Effectiveness (IoE). These amendments are:

- Remove or modify the IoE relating to Road Safety and Traffic Management output; such as:
 - Percentage of persons who self-report to driving 10km per hour over the speed limit
 - Percentage of persons who self-report to driving while not wearing a seatbelt
 - Percentage of persons who self-report to driving while suspecting they are over the prescribed alcohol limit
 - Percentage of persons who self-report to driving when using a mobile phone

The AFPA believes that these IoE aren't effective and do not contribute to road safety while also provides 'empty' statistics to the government. The AFPA would support IoE's that have a clear impact and an accurate and measurable data analysis that contribute to road safety. Examples of such IoE's could be:

- Reduction in the number of Traffic Infringement Notices (TINs) issued for speeding offences (benchmark would be required on the previous year or average over the past five years)
- Reduction in the number of TINs issued for not wearing a seatbelt (benchmark would be required on the previous year or average over the past five years)
- Reduction in the number of people apprehended for driving while over the prescribed alcohol levels (benchmark would be required on the previous year or average over the past five years)
- Reduction in the number of TINs issued for driving when using a mobile phone (benchmark would be required on the previous year or average over the past five years)

As ACT Policing reports on TINs issued quarterly, specific and targeted community awareness campaigns and police enforcement operations could be developed to directly focus on the emerging issue.

- Remove or modify the performance measure relating to:
 - Number of referrals made to drug diversions programs (drug demand and reduction effort)

The introduction of the new cannabis legislation via the *Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018 (the bill)* will have a significant impact on the number of referrals made by ACT

⁵ http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/2017-2021_Purchase_Agreement_Signed.pdf

Policing to drug diversions programs. Under the previous Simple Cannabis Offence Notice (SCON) scheme, ACT Policing officers had the discretion to divert people into the health system via a drug diversion. With the introduction of *the bill*, this is no longer an option, as possession of cannabis under 50g is not prohibited and is no longer a police resolution or 'clear-up' statistic. The AFPA believes that most of ACT Policing's drug diversions for this performance measure would have been for people SCON'd for cannabis possession. For ACT Policing to now do a drug diversion would require the approval and permission of the person involved. A performance measure should not be 'passed or failed' based on a person accepting or declining an invitation to a drug diversion.

ACT Policing has traditionally performed very strongly against previous Purchase Agreement's and the AFPA believes that this performance will continue and the **AFPA supports the continuation of the Purchase Agreement model.**

Ministerial Direction

The Policing Arrangement allows for the Minister for Police and Emergency Services to provide general directions to ACT Policing through a Ministerial Direction. This Direction gives guidance on specific areas of focus relating to policy, priorities, and goals for the provision of police services, without issuing direction on operational matters. The specific areas of focus include:

- Transitioning to a new policing service model that sees ACT Policing evolving in line with population growth and community expectations by providing a proactive, community-focused policing service, centred on the disruption and prevention of crime.
- In support of the Government's overall efforts to reduce racism by 25 percent by 2025, increase early intervention and diversion strategies and continue to work with the Aboriginal and Torres Strait Islander community to identify ways to reduce the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system.
- Contribute to Canberra as a restorative city and continue to improve responses to vulnerable groups including Aboriginal and Torres Strait Islander people, young people, people experiencing mental health issues, people with a disability, culturally and linguistically diverse people and victims of crime.
- Strengthening the ACT's response to domestic and family violence in appropriate and culturally sensitive ways and by supporting the efforts of the Coordinator-General for Family Safety.
- Working proactively and innovatively with Government to reduce and prevent alcohol-fuelled violence, including enforcing liquor laws, maintaining a presence in night entertainment precincts and responding to alcohol-related violent incidents.
- Improving road safety, with emphasis on reducing road trauma experienced by vulnerable road users and combating anti-social and dangerous behaviours including speeding, driving while impaired or distracted.
- Disrupting serious and organised crime, including criminal gangs, drug trafficking and supply; and economic disruption to target the proceeds of crime, in addition to working with the Government to identify and implement legislative measures to target serious and organised crime.
- Drug harm minimisation by continuing to focus on diverting lower-level drug offenders from the criminal justice process in accordance with the National Drug Strategy and the Government's policy settings such as the ACT Drug Strategy Action Plan.
- Countering the threat of terrorism and violent extremism by continuing to strengthen the safety of the ACT's public places in line with national strategies and best practice, and developing a fixated threat capability to meet the Government's obligations under the October 2017 Council of Australian Governments agreement.

The AFPA does question one aspect of the current Ministerial Direction in relation to drug harm minimisation by continuing to focus on diverting lower-level drug offenders from the criminal justice process in accordance with the National Drug Strategy and the Government's policy setting such as the ACT Drug Strategy Action Plan.

With the introduction of the cannabis bill, ACT Policing is no longer able to divert lower-level cannabis offenders, as possession of under 50g of cannabis is now decriminalised. The vast majority of people previously diverted into the health system by ACT Policing would have been for lower-level cannabis possession. Under the new legislation, the only way for a person to be diverted into the health service by ACT Policing is if they agree. The AFPA believes that this direction requires clarification and amendments to reflect the recent legislative

The AFPA is supportive of the Ministerial Direction and believes it provides strategic direction to ACT Policing from the ACT Government without providing operation direction to ACT Policing. The Ministerial Direction also provides clear direction of the expectations of the Minister in delivering a quality and effective police service to the ACT community while ensuring a collaborative approach and partnership with the ACT Government.

Scrutiny of ACT Policing

The AFPA believes that the current mechanisms and scrutiny of AFP/ACT Policing and its workforce is at an appropriate level. The AFPA does not support the inclusion of ACT Policing and AFP officers as per the *Integrity Commission (ACT Policing) Amendment Bill 2018*.

Under the current scrutiny arrangements, ACT Policing members have three levels of scrutiny, being AFP Professional Standards (AFP PRS), Commonwealth Ombudsman, and the Australian Commission for Law Enforcement Integrity (ACLEI).

These mechanisms provide robust and independent processes that ensures accountability and transparency. Both the Ombudsman's Office and ACLEI are independent of AFP PRS. The Ombudsman's Office also regularly conducts audits of ACT Policing practices, such as the issuing of surveillance device warrants.

As per section 16.4 of the *2017-2021 Purchase Agreement*, every six months, AFP PRS provides a report that contains information in relation to complaints management, regarding the following matters:

- Complaints submitted by category
- Complaint trends/systemic issues
- Complaints submitted by source
- Status of complaints
- Finalised conduct issues by category
- Conduct issue trends.

As per section 16.5 of the *2017-2021 Purchase Agreement*, the information contained within the report will be released by the Police Minister, including complaints against AFP members along with the investigations of such complaints and any related action whether undertaken by the AFP PRS, ACLEI, and the Commonwealth Ombudsman.

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The AFPA believes that if the ACT Government wishes to seek further information in relation to the conduct and investigation of ACT Policing members, then the Purchase Agreement should be a mechanism to achieve this.

The AFP integrity framework has been recognised as the benchmark for Australian government agencies. AFP PRS provides ongoing advice and support to other agencies to strengthen their integrity framework. AFP PRS is staffed by experienced investigators and support staff, drawn from all areas of the AFP, including ACT Policing.

The AFP integrity framework also undergoes review by ACLEI and the Commonwealth Ombudsman. As a Commonwealth entity, the AFP, including ACT Policing, has a fraud control and anti-corruption plan. The AFP, including ACT Policing, is committed to managing fraud and corruption risks as part of its everyday business and as such complies with the ANAO *Fraud Control in Australian government entities, Better Practice Guide*.

In relation to ACLEI, the AFP, including ACT Policing presently forms part of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act). Section 3 of the LEIC Act states:

(a) to facilitate:

(i) the detection of corrupt conduct in law enforcement agencies and

(ii) the investigation of corruption issues that relate to law enforcement agencies and

(b) to enable criminal offences to be prosecuted, and civil penalty proceedings to be brought, following those investigations and

(c) to prevent corrupt conduct in law enforcement agencies, and

(d) to maintain and improve the integrity of staff members of law enforcement agencies.

Regulation 18 of the LEIC Act provides a mechanism for the relevant ACT Government Minister to be informed about ACLEI's activities. ACT Policing also regularly reports on integrity matters relating to ACT Policing personnel via reports to the Minister for Police and Emergency Services.

The AFPA believes that the introduction of the fourth layer of scrutiny is unnecessary as the three layers currently in place ensure corruption issues within the AFP and ACT Policing are identified and investigated appropriately.

Conclusion

The AFPA welcomes an invitation from the committee to appear at the public hearing and looks forward to expanding on the issues raised in this submission along with answering any questions proposed by the Committee.

Yours sincerely



Angela Smith

President

Australian Federal Police Association