



**Submission of the Australian Federal Police
Association**

**Inquiry into the *Crimes Legislation Amendment Bill*
2011 and the *Crimes (Offences against Police)*
*Amendment Bill 2012***

Standing Committee on Justice and Community Safety

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Introduction:

Madam Chair and members of the committee; On behalf of our members, the Australian Federal Police Association welcomes the opportunity to appear before you today and address the Bills at hand.

Since 1942, the Australian Federal Police Association (in various registered names) has continuously represented Federal Law Enforcement Officers. Our members have continuously and successfully provided policing in the Australian Capital Territory (ACT). Those members are part of our local community.

The AFPA and our membership, operate in an increasingly complex and dynamic law enforcement, national security and employment environment, not just in the ACT but throughout Australia and Internationally.

Broadly, the AFPA supports any initiative which attempts to deter violent assaults and other offences against Police in the course of their duties. We strongly support a bipartisan approach to ensure that both important legislative reforms occur in a timely fashion. Such legislation, as proposed, will bring the ACT more in line with other jurisdictions, which already have appropriate laws relating to offences against Police Officers.

The AFPA believes strongly that one central facet of our legal system is to dissuade potential offenders from offending by way of the punishment administered for a particular offence. The role of deterrence is twofold:

- 1) The greater the *perceived certainty* and severity of punishment, the less the crime will occur.
- 2) The greater the *actual certainty*, and severity of punishment, the less the crime will occur.

We believe that both proposed pieces of legislation go *some way* in achieving the two mentioned forms of deterrence.

The quantifiable risk to Police in the line of duty is a significant concern to the AFPA. While we are supportive of both Bills, we believe that neither Bill goes far enough in addressing the threat of assault which currently exists to our members. We strongly support the implementation of the

specific offence of *Assaulting a Police Officer* in the execution of his/her duties as an officer of the Crown. Alternatively, we encourage the Attorney General to amend the current policy position to enable AFP Police Officers to charge an offender for causing harm to public Official, under s.147 *Criminal Code Act (Cth)* 1995.

I will address each of the Bills independently below.

Background

Before I discuss these Bills I believe it is important to articulate the unique legal role and responsibility of every sworn Police officer in the Australian Federal Police.

Irrespective of rank, it is from the *Office of Constable* that each Police officer derives their authority and power. On appointment, each Police Officer swears an oath to the Crown to “*faithfully discharge the duties of the Office of Constable*”. Holding the *Office of Constable* means a Police officer must protect life and property and execute their duty independently, without fear or favour.

As the result of the sworn oath and warrant, the ‘*Office of Constable*’ confirms a Police Officer with the authority to arrest and control public order. These are not simply delegated powers as a result of employment. Those who hold the *Office of Constable* are servants of the Crown, not an employee.

That is, officers are not classified as employees when executing their powers under the Crown. Rather, each sworn constable is an independent officer of the Crown; they are not merely agents of the Police Force, Police Commissioner or Government. Each Police Officer has personal liability for their actions or inaction.

Specifically, Police Officers have authority under the Crown for the protection of life and property, the prevention and detection of crime, the maintenance of law and order and keeping of the peace. Police Officers cannot legally be instructed to arrest a person. It is a decision they must make independently, using their experience, knowledge and discretion to take the most appropriate course of action to fulfil their function as officers of the Crown. Our members are fully accountable and do not have protection afforded to them by their employer when executing this authority under the Crown.

Those holding the *Office of Constable* do so in full knowledge of the increasing dangers they face, and the responsibility and accountability they have, both on and off duty.

It is in this context that the AFPA is uniquely placed to make comment on these two proposed bills before the committee today.

Crimes Legislation Amendment Bill 2011

The AFPA supports the Government's move to ensure that an offender will no longer be able to rely upon the argument of self-defence when they have acted violently towards an officer of the Crown who has acted in good faith, in direct execution of their duties.

The AFPA has been concerned by the significant loop hole in the Territories legal system which may allow offenders to violently retaliate against Police Officers who are executing their lawful duties and acting in good faith during an arrest. It is an outrageous premise that an offender may circumvent a lawful arrest and assault a Police officer in the process. Such a loop-hole poses a significant threat to our members and also may serve to encourage offenders to utilise force during an otherwise lawful arrest.

Though the AFPA supports the closure of this loophole and strongly supports the government's legislation, the AFPA does not believe that this Bill goes far enough in addressing or deterring the threat of violent assault against officers of the Crown. The AFPA urges the government to reconsider the drafting and passage of legislation to acknowledge a specific crime of *Assaulting police officer of the Crown*.

Recommendation 1:

That the Committee support the *Crimes Legislation Amendment Bill 2011*

The Crimes (Offence against Police) Amendment Bill 2012

The AFPA welcomes the intent of this proposed amendment. The Bill creates an aggravated penalty for 15 serious offences against a Police Officer. Further, the Bill makes the penalties for these aggravated offences significantly higher than the current penalties for the basic assault offence.

The AFPA and its members are of the explicit opinion that the current charges and relevant penalties do not go far enough to dissuade members of the public from acting violent towards officers of the Crown. Police Officers have authority under the Crown for the protection of life and property, the prevention and detection of crime, the maintenance of law and order and importantly keeping the peace. Given their intrinsic role within society, it is justifiable that those officers should be afforded additional legislative protection, not because of their employment category, not because of their individual rights, but because each sworn constable is an independent officer of the Crown. Indeed, many jurisdictions, including the Commonwealth, acknowledge the exceptional, independent and distinctive *Office of Constable* and accordingly have a specific offence relating to the assault of a Police Officer in the respective criminal codes.

Officers of the Crown fulfil a crucial and often challenging community safety role. These officers perform their functions in some of the most demanding and distressing situations, frequently for little reward or gratitude. It should be incumbent upon the legislature and the Judiciary in dealing with offences of this nature, to show an appropriate measure of support for these officers of the Crown who undertake a difficult, dangerous and often thankless task. As referred to by Gleeson CJ in *R v Hamilton*, **the risks faced by Police officers are substantial and significantly greater than those experienced by the general public.**¹

The Bill addresses the very real risk of assault to AFPA members when they are off duty, where an assault occurs as a consequence of, or in retaliation for, actions undertaken by the officer in the execution of the Officer's duties. This Bill acts as a deterrent for revenge attacks and prevents offenders from attempting to circumvent the effect of the proposed legislation by waiting until the officer is not in uniform or is off-duty.

¹ CJ in *R v Hamilton* at 581

Recommendation 2:

That the Committee supports the *Crimes (offences against Police) Bill 2012* with any necessary amendments.

Or, in the alternative:

Recommend the adoption of a specific criminal offence of Assaulting a Police Officer

Or, in the alternative:

Recommend that the ACT Attorney General amend the current policy position to enable AFP Police Officers to charge an offender for causing harm to public Official, under s.147 Criminal Code Act (Cth) 1995

Conclusion

Both Bills attempt to address similar issues; and we thank the Government and Opposition for considering concerns raised by the AFPA on behalf of our members.

The AFPA is of the opinion that the ACT legislature must seriously consider the creation of a specific offence of *Assaulting a Police Officer of the Crown*. This would bring the ACT in line with a host of other jurisdictions within Australia and internationally.

While we foresee that the Bill proposed by the opposition may encroach upon section 22(1) of the *Human Rights Act 2004* way of reversing the burden of proof, we believe the Opposition's proposal should be supported by the Government with necessary amendments.

While the former proposed Bill (the Government's) addresses some concerns held by the AFPA and its members concerning assault during the course of the lawful execution of an officers duties, the Bill fails to address the very real risk of assault to AFPA members when they are off duty, where an assault occurs as a consequence of, or in retaliation for, actions undertaken by the officer in the execution of the officers duties. Neither Bill acts as a deterrent for attacks on Police purely due to their status as Officers of the Crown. We do, however, welcome the Government's concerted effort to remove the argument of self-defence to a perceived unlawful imprisonment where the victim is a Police officer acting in the course of his or her duty.

The most recent policy decision concerning the removal of access to the appropriate charge of assaulting a public official² has already caused significant demoralisation throughout the ACT Police Force. It should be remembered that our members often work in joint operations nationally and internationally. At the federal level, our members have the ability to charge offenders with 'Assaulting a Commonwealth Official' when engaged in policing operations. On advice of DPP, our members now do not have access to such a charge, when it involves an ACT offence.

For example: the recent affray at the 'Tent Embassy', where the Prime Minister and Opposition Leader were under physical threat of harm. An AFP Police Officer in the ACT who attended the scene, who may have been assaulted, may or may not have access or

² Up until recently AFP Police Officers have utilised the charge of *Causing Harm to a Public Official* being a law enforcement officer under 147 Criminal Code Act 1995

legal recourse under the offence of *Causing Harm to a Public Official* under s.147 Criminal Code Act 1995.

Finally, there is a workplace health and safety need for a specific offence of *Assaulting police officer of the Crown*. The risk is twofold: without a charge, police are placed in a difficult situation where an offender has little-to-no additional legal deterrent against assaulting an Officer. Further, though an individual may be a repeat offender and may possess a propensity for assaulting police, a crucial piece of operational safety intelligence (Where possible, police conduct criminal history checks and safety alerts prior to approaching offenders) is missing due to the removal the specific offence.

Although we note the perceived risk to individual rights and the social anxiety associated with any legislation which protects a specific class of victims, the AFPA believes that such rights and freedoms must be balanced against the community's interest in effective law enforcement and the community's expectation that officers of the Crown place themselves in often dangerous situations to maintain law and order. The members of the AFPA must be confident in the knowledge that there is an additional deterrent and punishment to ensure their own personal security when acting on the behalf of the Crown.

We thank the Committee for the invitation to attend this important inquiry.

Jon Hunt-Sharman
AFPA National President