STANDING COMMITTEE ON LEGAL AFFAIRS

Police Powers of Crowd Control

MAY 2007

Report 6
Committee Membership

Mr Bill Stefaniak MLA
Chair, 8 December 2004 – 19 September 2006

Mr Zed Seselja MLA
Chair (Appointed 19 September 2006, elected Chair 22 September 2006)

Ms Karin MacDonald MLA
Deputy Chair

Dr Deb Foskey MLA
Member

Secretariat

Ms Robina Jaffray
Secretary

Ms Lydia Chung
Administrative Assistant

Contact Information

Telephone 02 6205 0199
Facsimile 02 6205 0432
Email committees@parliament.act.gov.au
Website www.parliament.act.gov.au
Resolution of Appointment

On 7 December 2004 the Legislative Assembly for the Australian Capital Territory resolved to establish a general purpose standing committee, called the Standing Committee on Legal Affairs:

- to perform the duties of a scrutiny of bills and subordinate legislation committee and examine matters related to community and individual rights, consumer rights, courts, police and emergency services, corrections including a prison, governance and industrial relations, administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, consumer affairs and regulatory services.

Terms of Reference

The Committee will inquire into, and report on the following specific matters:

a) Current police powers under legislation;
b) Whether there have been instances of misuse of current powers;
c) The existence and/or desirability of special powers for the purpose of particular events;
d) Any other relevant matter.¹

¹ Legislative Assembly for the ACT, Minutes of Proceedings No 2, 7 December 2004
# Table of Contents

Committee Membership .................................................................................................................. i
Secretariat ......................................................................................................................................... i
Contact Information ...................................................................................................................... i
Resolution of Appointment ........................................................................................................ ii
Terms of Reference ......................................................................................................................... ii

**Recommendations** ..................................................................................................................... v

1 **Introduction** .......................................................................................................................... 1

2 **Public Order and the Scope of Public Order Law** .................................................................. 9

3 **Police Operations in the Act** .................................................................................................. 19

4 **Powers, Tactics and Weapons** ............................................................................................... 33

5 **Jurisdictional Arrangements** ................................................................................................. 51

6 **Accountability of Police** ....................................................................................................... 59

7 **Conclusions and Recommendations** .................................................................................. 65

   Commissioner's Order 3 ............................................................................................................. 66
   Deployment and use of TASERs .................................................................................................. 68
   Data collection ........................................................................................................................... 68
   The October 2004 incident and complaint process ..................................................................... 70

**Appendix A:** List of Submissions ............................................................................................... 73

**Appendix B:** Details of Hearings and Witnesses ......................................................................... 75

**Appendix C:** Correspondence Between the Committee and the Minister for Police and Emergency Services ......................................................................................................................... 77

**Appendix D:** Arrangement Between Minister for Justice and Customs of the Commonwealth and the ACT for the Provision of Police Services to the ACT, Purchase Agreement and Ministerial
DIRECTION [MINISTER FOR POLICE AND EMERGENCY SERVICES] .......................................................... 93

APPENDIX E: EXTRACT FROM NATIONAL GUIDELINES FOR INCIDENT MANAGEMENT, CONFLICT RESOLUTION AND USE OF FORCE 2004 [EXTRACT FROM REPORT OF NATIONAL POLICE RESEARCH UNIT] .......................... 121
RECOMMENDATIONS

RECOMMENDATION 1
7.5 The Committee recommends that the AFP establishes a position as a focal point for organisers of demonstrations and major protests, including industrial dispute demonstrations or environmental demonstrations, to co-ordinate and liaise with the organisers to ensure orderly and peaceful protests.

RECOMMENDATION 2
7.9 The Committee recommends that the AFP prepares a version of Commissioner's Order 3 for release to the public.

RECOMMENDATION 3
7.13 The Committee recommends that the AFP reports in detail on use of force in its annual report, including action taken on inappropriate instances of use of force.

RECOMMENDATION 4
7.16 The Committee recommends that TASERs are deployed by tactical response group members only and should not be generally deployed by ACT Policing as standard issue gear.

RECOMMENDATION 5
7.23 The Committee recommends that the ACT Government actively pursue the development of a national use of force database.

RECOMMENDATION 6
7.26 The Committee recommends that ACT Policing undertake a review of their data collection systems and methodology with a view to improving current data collection, reporting and accessibility.

RECOMMENDATION 7
7.29 The Committee recommends that the Minister request a review of the October 2004 complaint and the process followed to investigate the complaint, to determine why the complaint took more than two years to resolve.
1 INTRODUCTION

1.1 Early in the Sixth Assembly the Standing Committee on Legal Affairs self-referred an inquiry into police powers of crowd control, with the following terms of reference:

The Committee will inquire into, and report on the following specific matters:

a) Current police powers under legislation;
b) Whether there have been instances of misuse of current powers;
c) The existence and/or desirability of special powers for the purpose of particular events;
d) Any other relevant matter.2

1.2 The inquiry arose out of concern in relation to the use of capsicum spray at a demonstration held on environmental issues in October 2004 in Canberra. The committee considered that it should also investigate:

- the extent of police powers in relation to crowd control [public order] measures and the policies and procedures which underpin the actions of ACT police;
- whether there had been any instances of the misuse of police powers;
- procedures for investigating and reporting on instances of use of crowd control measures; and
- other related matters.

Scope of the inquiry

1.3 While term of reference a) referred specifically to police powers under legislation, the Committee’s inquiry was not limited to statutory powers, as evidenced by term of reference (d), formally adopted by the Committee soon after deciding to undertake the inquiry. The full terms of reference were set out in the letters inviting submissions.

1.4 Police powers emanate not only from statute, but also from the common law and police practices and procedures. The mechanisms by which police

---

2 Minutes of Proceedings, 10 March 2005, p 96. The Terms of Reference were supplemented by committee resolution on 31 March 2005 to include “any other relevant matter”.

maintain public order, including the use of such devices as TASERs and oleoresin capsicum [OC] spray, were of significant interest to the committee and a prime motivation for undertaking the inquiry.

1.5 The issues considered encompassed, as Civil Liberties Australia succinctly put it, "the ability of police to direct the movements of individuals, collections of individuals, or crowds in … relevant circumstances". Therefore, notwithstanding the inquiry title, the committee considered the issue from a broader perspective, given that 'the policing of public order situations does not always result in formal intervention such as arrest or prosecution'. The Committee notes that, in 'more than any other area of the criminal law, public order law delimits the function of the police in modern society, reinforcing the mission of the police as one of "order maintenance" rather than "law enforcement"'.

1.6 Bronitt and McSherry further note:

This emphasis on order maintenance and prevention of crime and disorder explains its relative invisibility in official statistics and reported decisions.

1.7 The Committee endorses the sentiments quoted above. There is a dearth of written material in the public domain in Australia generally on the exercise of police powers in crowd control situations. It is also difficult to precisely state the full extent of police powers, given the disparate origins and legal authority from which powers are derived.

1.8 Civil Liberties Australia (ACT) Inc highlighted the significance of the inquiry to the community generally:

The ability of people to move and associate freely lies at the heart of a society's democratic identity. In every society there is a tension between the desire of people to live free from intrusive intervention of
the state in ordering their lives, and the interest of the many to be free from the inconvenience the exercise of these rights might entail.7

The role of police in the maintenance of public order

1.9 Notwithstanding the extent of police powers, police must still act lawfully and in accordance with human rights as set out in the International Covenant on Civil and Political Rights [ICCPR], to which Australia is a signatory and which is reiterated in the ACT’s Human Rights Act [ACT] 2004.

1.10 For these reasons it is necessary to ensure that police:

- act within the law
- are accountable;
- recognise and respect human rights.

1.11 Police, in carrying out their core functions of keeping the peace and protecting life and property, have a very broad discretion in the way they act and in the exercise of their powers; the prioritisation of the various police roles can impact on the policing of political protests and affect the outcome of demonstrations.8 Activists Rights states:

Police enjoy a high level of public legitimacy and along with the military have a virtual monopoly on legitimate force combined with an array of weapons and tactics that provide the potential for coercion and repression.9

1.12 Police must also be accountable for their actions but the accountability issue is not straightforward in the ACT. The ACT has a contractual arrangement for community policing with the Australian Federal Police and this arrangement potentially confuses the lines of accountability. ACT policing arrangements are discussed further in Chapter Two.

1.13 The Committee recognises the difficult job undertaken by police and the special nature of their duties, particularly in crowd control situations,

---

7 Submission no 1, Civil Liberties Australia (ACT) Inc, p 1
where circumstances can vary widely and where there can be significant uncertainty as to how a specific situation might evolve.

1.14 The Committee notes the emphasis by police in all jurisdictions in Australia, on the maintenance of order and the prevention of disorder, often written into policy and operational guidelines. However, the Committee needed to reassure itself, the Assembly and the public that fundamental human rights, particularly those which relate to freedom of expression and association, are respected by ACT police in situations where they might be threatened. The Committee’s concern was aptly stated by the former NSW Attorney General when, in his Second Reading Speech on the Law Enforcement (Powers and Responsibilities) Bill 2002, he said:

This Parliament, as representatives of the community, and the Courts have over time given police certain powers required to fulfil their role in law enforcement effectively. In return for these powers, however, police are required to exercise them responsibly, particularly where these powers affect the civil liberties of members of the community whom police serve.\(^\text{10}\)

1.15 This report therefore looks at the law governing public order in the ACT and the practices, guidelines and procedures adopted by police in the course of their maintenance of public order.

**Inquiry process**

1.16 A total of 9 submissions was received\(^\text{11}\) and public hearings were held on 15 and 23 September 2005\(^\text{12}\). Additional information was also provided during the course of the hearings into annual and financial reports for the financial year 2004-2005 and 2005-2006. The Committee also visited Tasmania in July 2005, to talk with representatives of Tasmanian organisations, including the police and the Tasmanian Police Association. Details of these hearings and visits are shown at Appendix B.

\(^{10}\) The Hon R Debus, Attorney General [NSW], Hansard, 17 September 2002, Second Reading Speech

\(^{11}\) Appendix A

\(^{12}\) Appendix B
The Minister's submission

1.17 The Minister for Police and Emergency Services' submission confined itself to the laws applicable to arrest and did not deal with the wide variety of other situations which can arise or the non-arrest options available to police. The Committee considered the submission's silence on situations other than effecting an arrest to be an unusual approach, given that many crowd control measures other than the powers of arrest are available to police. In fact, other measures will usually be used in preference to or prior to resorting to an arrest situation, so that order is maintained or to de-escalate violence in such public order situations as demonstrations, a primary focus of the committee's inquiry.

1.18 According to a subsequent letter from the Minister for Police, the submission was written confining the response to powers under legislation. The response went on to note that:

Use of force by police in other relevant circumstances generally occurs consistent with common law and departmental guidelines rather than statute law.

1.19 Following receipt of this letter, the Committee wrote again to the Minister for Police on 6 December 2005, putting a number of specific questions to the Minister for response. The letter specifically stated that the Committee's inquiry was not confined to powers under legislation, but included 'any other relevant matter'. The Minister responded to the letter on 31 January 2006, reiterating many of the responses given earlier and providing very little additional substantive information to what were legitimate committee questions. In particular, the response to question 5 appears to deliberately misinterpret the Committee's request. Further, the original letter sent to the Minister for Police and Emergency Services inviting a submission contained the terms of reference, including term of

---

13 Correspondence from Minister for Police and Emergency Services, 31 January 2006
14 Correspondence from Minister for Police and Emergency Services, 31 January 2006
reference (d), "any other relevant matter". Clearly, non-statutory powers were a relevant matter for the Committee’s consideration.\(^\text{15}\)

1.20 The Committee suggests that the submission from the then Minister for Police was unhelpful. The response to the committee’s invitation seemed to deliberately misunderstand the focus of the committee’s inquiry. The Committee reminds the Executive that the Government’s own guidelines on participation in Assembly inquiries require "full and accurate information to the legislature". The Minister’s original submission and subsequent correspondence did not fulfil this requirement.

1.21 The Committee emphasises that it was very clear from the commencement of the inquiry that the inquiry focussed on strategies to manage potentially conflict laden situations and was not solely confined to ‘powers of arrest under legislation’ as the Minister’s submission implied. If the Minister or his Departmental staff were in any doubt about the focus of the inquiry and the issues under consideration, then the Committee through the secretary is able to be contacted at any stage of the inquiry and prior to the finalisation of any submission to clarify any ambiguity or uncertainty. The failure to provide information following a specific request from a Legislative Assembly committee is a serious matter which could lead to sanction in the Assembly.

1.22 The Committee was able to obtain the information it required through its own research but draws to the attention of the Minister for Police and officers of the Department of Justice and Community Safety the Government’s guidelines for dealing with Assembly committees, published by the Chief Minister’s Department. That document states:

The duty of the public servant is to assist ministers to fulfil their accountability obligations by providing full and accurate information to the legislature about the factual and technical background to policies and their implementation.\(^\text{16}\)

\(^{15}\) See Appendix C, which contains all relevant correspondence

\(^{16}\) *Handbook for ACT Government Officials on Participation in Assembly and other Inquiries*, Chief Minister’s Department, June 2004, p 4
1.23 The Committee will continue to maintain an interest in the matters the subject of this report, not least the timely provision of appropriate information to the Committee by the Executive.
2 PUBLIC ORDER AND THE SCOPE OF PUBLIC ORDER LAW

2.1 Upholding and enforcing the law is only one objective of policing; others include the maintenance of a calm society and the preservation of life.\textsuperscript{17} When these objectives come into conflict, police must exercise their discretion as to which objective assumes priority. In relation to the significance of maintenance of public order Bronitt and McSherry state:

More than any other area of the criminal law, public order law delimits the function of the police in modern society. Public order laws reinforce the mission of the police as one of "order maintenance" rather than "law enforcement."\textsuperscript{18}

2.2 Public order encompasses a wide range of situations. It is a sensitive area, with a potentially high political profile and with 'newsworthy' situations often arising. Police actions in such situations are subject to considerable scrutiny. While there is a commonly held perception that police do not have enough powers to do their jobs\textsuperscript{19}, Bronitt and McSherry argue that the reality is that police "possess a surplus of powers, both common law and statutory, to respond to public disorder\textsuperscript{20}. Their views are shared by the NSW Director of Public Prosecutions, who argues that police already have adequate powers to perform their duties.\textsuperscript{21}

2.3 While governments control such matters as budgets and create the legal environment in which police operate, it is the police themselves who primarily determine how they will operate and go about their various duties.\textsuperscript{22} Police have a 'significant degree of moral and legal authority'; the

\begin{itemize}
  \item Miller S, Blackler J and Alexandra A, Police Ethics, 2006, p 93
  \item Bronitt S & McSherry B, Principles of Criminal Law, 2nd Ed, Lawbook Co, 2005, p 725
  \item Bronitt S & McSherry B, Principles of Criminal Law, 2nd Ed, Lawbook Co, 2005, p 709
  \item Cowdery N, Getting Justice Wrong, p 150
  \item http://www.activistsrights.org.au/role_of_police.asp
\end{itemize}
powers which come with that authority are largely discretionary. Further, the Committee notes that most police forces around the country operate under internally generated guidelines, such as the AFP’s Commissioner’s Order 3, which sets out operational guidelines for the use of force for AFP officers.

2.4 The definition and extent of police powers generally is imprecise:

Under the common law, there is no exhaustive definition of the legal powers and obligations of the police. The courts have observed that the police, as well as being under a duty to detect crime and apprehend offenders, are also under a duty to keep the peace, prevent crime and to protect life and property.

2.5 However, as noted above, police possess significant powers to respond to public disorder, with the law imposing few formal constraints on operational police decision making, especially in public order situations.

2.6 The scope of public order law is also an issue. Public order law is not confined to public places:

The common law powers and offences dealing with public order are not confined to public places, but may be applied to disorder that occurs on private property. In an effort to limit the intrusive exercise of police powers, statutory powers and offences are sometimes restricted to "public places", such as the police power to request individuals to "move on" and public indecency and offensive conduct crimes.

2.7 Moreover, public order law is wide-ranging:

Public order law is ...highly diversified. Crimes range from relatively minor offences such as drunkenness and offensive language, to some of the most serious crimes against the State such as unlawful assembly and riot.

---

23 Miller S, Blackler J and Alexandra A, Police Ethics, 2006, p 93
2.8 There is considerable authority for the proposition that the maintenance of public order ‘is more fundamental than upholding the law’\(^{28}\). Many of the writings on this issue refer to instances where the actions of police at demonstrations clearly are aimed at preserving the peace and not at making arrests. One of the most effective examples of the exercise of discretion by police in Melbourne occurred during the waterfront disputes. Several hundred police were confronted by a crowd of over 2000 waterside workers and supporters. While the police were criticised for not moving in and disassembling illegally erected barricades, senior police defended their actions of withdrawing and negotiating with union leaders to allow the blockade to remain until they met again the following day:

The deal between the police and the union was denounced by the Chairman of Patrick, Chris Corrigan, who said that the police had a statutory obligation to remove trespassers obstructing those legally trying to conduct business. Senior police, on the other hand, claimed that their handling of the situation had been a success, and that they had employed a plan designed to avoid physical violence and confrontation. Assistant Commissioner Alan Roberts said that police had the power to arrest protestors on trespass laws, but were choosing not to exercise that power.\(^{29}\)

2.9 However, it should be noted that the Tasmanian Supreme Court decision in \textit{R v Commissioner for Police (Tasmania) ex parte North Broken Hill Pty Ltd}\(^{30}\) held that police could not ignore the commission of an offence in their presence, that while the response of police to any given situation must be left to their discretion, they cannot allow a desire to avoid violence to deflect them from enforcing the law.\(^{31}\) The extent to which this decision is authoritative is questionable; it appears that police generally exercise their discretion to maintain public order at the expense of making arrests for


\(^{30}\) [1992] 61 A Crim R 390

\(^{31}\) [1992] 61 A Crim R 390 at 390
minor offences which may be inflammatory in a crowd control situation. However, the Committee notes that policing objectives require police to take a more pragmatic approach to a given situation and make a judgement about appropriate action; such a judgement may result in actions which possibly conflict with the view of the court in the case cited above.

2.10 It seems that police recognise that, in public order situations, they need to maintain a degree of discretion and circumspection in their actions, that what they do and how they exercise their authority in public can impact on the situation.

2.11 Further, the potential for an infringement of human rights by the exercise of police powers in public order situations is high. The exercise of certain powers 'may have serious implications for the exercise of fundamental human rights, including the right to privacy, as well as civil and political rights, such as freedom of expression, assembly and association'.

2.12 The Activists Rights website states:

   The policing of political protests is one of the most political and controversial aspects of the police role. The approach that police take to a particular protest or protest movement is likely to have a profound impact on the way the activists and the cause they represent are publicly perceived as well as the practical outcomes of the protest and the welfare of individuals involved.

2.13 The Committee notes that, in practice, police will often assist at marches or demonstrations, particularly with traffic management. Police may also disregard minor infringements of the law, depending on the situation, in

---

32 In *R v Commissioner for Police (ex parte NBH)* the court failed to award a writ of mandamus as the inaction of police was due to a misconception about their powers and responsibilities and not a deliberate refusal; ie the police thought they had a discretion as to whether they intervened or not.


34 A site sponsored by the Fitzroy Legal Service Inc, the Reichstein Foundation and the Victoria Law Foundation

the interests of keeping a situation under control or minimising the possibility of conflict.

The legal framework

Statute law

2.14 The statutory powers of the AFP in relation to crowd control in the ACT are to be found in the following legislation36:

- Public Order (Protection of Persons and Property) Act 1971 [Cwlth]37
- Crimes Act 1900
- Criminal Code 2002
- Drugs of Dependence Act 1989
- Enclosed Lands Protection Act 1943
- Firearms Act 1996
- Intoxicated People (Care and Protection) Act 1994
- Litter Act 2004
- Liquor Act 1975
- Road Transport (General) Act 1999
- Road Transport (Safety and Traffic Management) Act 1999
- Trespass on Territory Lands Act 1932
- Major Events Security Act 2000

2.15 It should be noted that the laws of the ACT must be read in the context of the ACT’s Human Rights Act 2004. In particular, the following sections are relevant:

- Section 13, guaranteeing the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT;
- Section 15, guaranteeing the rights of freedom of assembly and freedom of association; and

36 Submission no 6, Minister for Police and Emergency Services
37 The legislation referred to is ACT legislation unless identified otherwise
Section 16, guaranteeing the right to freedom of expression, including the ‘freedom to seek, receive and impart information and ideas of all kind, regardless of borders, whether orally, in writing or in print, by way of art, or in any other way chosen by him or her’.

2.16 The Victorian Charter of Human Rights and Responsibilities Act 2006 has similar provisions for peaceful assembly and freedom of association\(^3\) and freedom of expression\(^4\). There is no right of peaceful assembly and association in other Australian jurisdictions, where ’the existence and extent of these rights has to be inferred from restrictive rules; one must look to see what you cannot do, and then assume that you have a right to do what is not negated’\(^5\).

2.17 The legislative framework governing policing in the ACT comprises both Australian Government and ACT legislation, with police powers extending to:

- the protection of life and property;
- the preservation of peace and good order;
- the detection and prosecution of offences against the common law and statutes; and
- matters that may be incidental to the performance of law enforcement generally.\(^6\)

2.18 The Crime Prevention Powers Act 1998 provides police with move on powers, enabling a police officer to require a person to leave an area if the officer has reasonable grounds to believe the person may be about to engage in violent behaviour.[the powers are specifically directed to ‘violent behaviour’.] However, the powers do not apply in the following circumstances:

(5) This section does not apply in relation to a person who, whether in the company of other people or not, is—
(a) picketing a place of employment; or
(b) demonstrating or protesting about a particular issue; or

---

\(^3\) s16
\(^4\) s15
\(^5\) R M Hope, The Right of Peaceful Assembly, Council for Civil Liberties, Sept 2003, p 3
\(^6\) ACT Policing Annual Report 2004-2005, p 7
(c) speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person’s view about a particular issue.

2.19 The Major Events Security Act 2000 gives wide powers to police and ‘authorised persons’ to search a person and personal property and to ban a person from bringing a prohibited item into an event or even to refuse entry to a person. In the opinion of the Human Rights Office, these rights need to be read down to accord with the provisions of the Human Rights Act:

This would require these powers to be read down so that they are exercised for the purpose of security at those events and not for extraneous purposes. The power to ask for a person’s name or address merely because s/he is attending an event, in the absence of any suspicion that the person is engaged in illegal conduct or has breached a condition of entry to the event is an infringement of privacy which cannot be justified under section 28. It should be restricted as suggested above, to where there is reasonable cause.42

Common law

2.20 Police powers largely emanate from the common law. Originally, the British government passed the Riot Act in 1715, making it a felony if a group of more than 12 persons refused to disperse more than an hour after magistrates had told them to do so, ie "read the Riot Act". Once the Riot Act had been read, the magistrates could disperse the crowd forcibly and invoke their powers of arrest.

Breach of the peace

2.21 At common law where police believe that there is a breach of the peace or that a breach of the peace is imminent, they may restrain, detain or forcibly remove from the area anyone whom they reasonably believe is committing, or is about to commit, a breach of the peace.43

_____________________________________________________________________

42 Submission no 8, p 2
43 Kevin Foley, Minister for Police, SA, correspondence dated 22 January 2006
peace includes assault, creating public alarm or excitement or obstructing a police officer doing his or her duty.

2.22 Under the common law, the steps taken to prevent a breach of the peace must be necessary and reasonable:

The list of measures available to prevent a breach of the peace is not closed...within this broad and open-ended framework, the only limit upon the further development of preventive measures is the ingenuity and imagination of the police and the judicial acceptance that the steps taken are “reasonable” in the circumstances.44

2.23 The belief that a potential breach of the peace is about to occur must be reasonable in the circumstances:

...a mere statement by a police constable that he [or she] anticipated a breach of the peace is not enough to justify his [or her] taking action to prevent it; the facts must be such that he [or she] could reasonably anticipate not a remote, but a real, possibility of a breach of the peace.45

2.24 As noted above, the law has imposed few formal constraints on operational police decision-making, especially in public order situations, ie in the execution of their duties, police possess a wide discretion.46 Moreover, these situations are largely governed by such subordinate rules as 'Commissioner's Orders in the AFP, or other guidelines in other states.

2.25 Attachment A to the submission from the Minister for Police and Emergency Services sets out in detail the relevant sections of the legislation.47 As noted above, policing of public order situations does not always result in the formal intervention of arrest and detention, but varies across a range of activities which may comprise questioning or negotiating with a person or persons, requiring a person to leave an area or conducting a search. The Minister's submission failed to canvass any of these other options.

44 Simon Bronitt and George Williams, "Political Freedom as an Outlaw: Republican T and Political Protest" (1986) 18(2), Adelaide Law Review, 289 at 322
45 Forbutt v Blake, [1981] 51 FLR 465 at 469
47 Submission no 6
2.26 The Committee emphasises that the AFP and ACT Policing has been most helpful in responding to committee requests for information. However, the Committee considers that some senior police management are unnecessarily cautious about the information which is released into the public domain. The Committee acknowledges that there will often be situations where public release of information is inappropriate and not in the interests of justice. For these reasons, the Committee considers that ACT Policing should approach the issue of publication with a policy of release unless there are good reasons for keeping a matter out of the public domain.
3 POLICE OPERATIONS IN THE ACT

3.1 While the ACT Government has responsibility for law and order within the Territory\(^{48}\), the Government has no power to make laws with respect to the provision of police services by the Australian Federal Police [AFP] in relation to the Territory\(^{49}\). Instead, they are provided pursuant to s 8 of the *Australian Federal Police Act 1979*, which provides *inter alia*:

(1) The functions of the Australian Federal Police are:
(a) subject to subsection (1A), the provision of police services in relation to the Australian Capital Territory;

3.2 The arrangements are well described in the report of the Joint Study into ACT Policing:

The ACT represents the smallest policing jurisdiction in Australia with the lowest number of police and police per capita in Australia. The characteristics of a national capital distinguish it from other capital cities and the policing arrangements in the ACT necessarily cater for those differences at both operational and managerial levels. Consequently, policing in the ACT is concurrently provided by the AFP to two governments in one geographical location – as a budget funded agency for the Commonwealth Government and under a legislated/cost recovery arrangement for the ACT Government. The ACT Government makes annual budget appropriations (as expenditure on behalf of the Territory) to meet the costs of ACT Policing.\(^{50}\)

3.3 Police operations in the ACT are contracted from the AFP by the ACT and are provided by ACT Policing, the community policing arm. The arrangement is governed by the following documents\(^{51}\):

\(^{48}\) *ACT Self-Government Act 1988*, s22, s37
\(^{49}\) s 23 sets out matters excluded from power to make laws and includes "the provision by the Australian Federal Police of police services in relation to the Territory"
\(^{50}\) *Joint Study into ACT Policing*, KPMG, June 2005, p 1
the "Arrangement between the Minister for Justice and Customs of the Commonwealth and the ACT for the Provision of Police Services to the ACT"; and
an annual Purchase Agreement between the ACT Minister for Police and Emergency Services, the Commissioner, Australian Federal Police, and the Chief Police Officer for the ACT for the provision of Policing Services to the ACT.

3.4 The Minister for Justice and Customs on behalf of the Commonwealth enters into the contract with the ACT to provide policing services. Further, notwithstanding s 23 of the Self Government Act, AFP officers, when performing functions in the ACT, have the powers and duties conferred or imposed on officers under any law, including the common law, of the Territory, in addition to any other powers and duties.52

3.5 ACT Policing is headed by the Chief Police Officer of the ACT, supported by two Deputy Chief Police Officers and a Director of Corporate Services. ACT Policing comprises approximately 25% of the sworn officers in the AFP53. Costs to the Territory comprise funding for 829 FTE, comprising 734 FTE and 95 FTE (enabling).54 Presumably these figures reflect sworn officers and civilian employees respectively, although it is not made clear in the Purchase Agreement.

3.6 ACT Policing reports on an annual basis to the Minister for Police in the ACT, although the AFP's annual report to the Australian Government also contains a brief mention about ACT Policing. However, it is not possible to be fully informed about ACT Policing without regard to the AFP's report to the Australian parliament, given that there are many corporate or service related matters which are dealt with in the latter report.

52 Arrangement between Minister for Justice and Customs of the Commonwealth and the ACT for the Provision of Police Services to the ACT, p 2
53 AFP Annual Report 2005-2006, p xii
The contractual arrangements

3.7 The ACT Police Minister announced the conclusion of a new arrangement and purchase agreement for the provision of community policing services to the ACT in June 2006.\(^5\)

**ACT Policing Arrangement**

3.8 The Arrangement sets out the legislative background to policing arrangements in the ACT and formally provides for the following:

- The purpose of the Arrangement [cl 2] and the objectives of both parties [cl 3]
- The provision of police services, including:
- The requirement that the ACT pay for services provided [para 4.2]
- Acknowledgement that some police services within the ACT will be provided for the commonwealth and for which the ACT is not required to pay [para 4.3];
- ensuring that resources required by the Commonwealth within the ACT will not be altered in any way which might materially affect the police services purchased by the ACT Government, without prior consultation and agreement [para 4.4]
- remittance of revenues to the ACT from the enforcement of ACT law [para 4.5];
- the provision of community policing infrastructure and facilities to the AFP by the ACT [para 4.6];
- the appointment of and other matters related to the Chief Police Officer [para 5]
- Directions as to policy, priorities and goals in relation to the provision of police services by the Police Minister [para 6]
- A complaints mechanism and for information to be provided to a 'nominated agency' [para 7 and 8]
- The Chief Police Officer to report annually to the Police Minister [para 8.3];

---

Audit by the Commonwealth Auditor General and for members of the AFP to have their terms and conditions of employment set by the Commonwealth [paras 9 and 11];
Legal advice pursuant to ACT legal matters to be sought from the ACT DPP and Government Solicitor [para 10];
Sundry machinery provisions.

The Purchase Agreement

3.9 The Purchase Agreement sets out:

- The scope of the goods and services to be purchased from the AFP [para 6]
- Billing and payment arrangements [paras 10 & 11]
- Powers and obligations of each party, including:
  - That the CPO is responsible to the Minister for Police for the achievement of outcomes and the delivery of outputs [para 12];
  - The ability to make short term variations to targets and priorities provided that consultation takes place [para 13];
  - The duration of the agreement [para 16];
- Reporting requirements [para 17]
- Dispute resolution mechanisms [paras 19-22];
- The development of a strategic plan [para 23] and annual report [para 25].

3.10 Schedule 1 to the Purchase Agreement sets out the overall outcomes required and the specific outputs as well as performance measures.

3.11 The four priority areas and their respective budget allocations are:
- crime and safety management - $81 206 000;
- traffic law enforcement and road safety - $6 560 000;
- prosecution and judicial support - $6 034 000; and
- crime prevention - $4 111 000.56

3.12 The ACT funds the Full Time Equivalent [FTE] of 829 AFP employees engaged in the provision of community policing services to the ACT for

the financial year 2006-2007. Under the Arrangement, the ACT is also responsible for providing appropriate Community Policing infrastructure and facilities to the AFP. The ACT Government and the AFP are jointly responsible for the development of a plan to apportion individual responsibilities for the maintenance of the structures and facilities and the provision of fittings during the term of the Arrangement.

3.13 The Purchase Agreement also sets out:
- The policing outcome and all associated outputs to be provided;
- Performance measures for the outputs; and
- Financial and resource reporting.

3.14 These outputs are measured by such indicators as level of crime, fear of crime, police responsiveness, public confidence in the police, road safety, supporting the judicial process and crime prevention. The performance criteria for which hard data contributes to the performance measurement are level of crime, police responsiveness, road safety, supporting the judicial process and most aspects of crime prevention. The levels of public confidence and fear of crime are based on survey data, sourced from the National Survey of Community Satisfaction with Policing [NSCSP].

3.15 Failure to obtain agreement is sufficient grounds for the issue of a notice to discontinue the Arrangement in accordance with clause 13.3, which requires two years’ notice to be given for the termination of the agreement.

3.16 The Agreement makes provision for a Chief Police Officer for the ACT ‘who shall, subject to the Authority of the Commissioner, be responsible to the Police Minister in the ACT for the achievement of the outcomes set out

57 Schedule 2, Purchase Agreement, p 12, 
58 Arrangement between the Minister for Justice and Customs of the Commonwealth and the ACT for the provision of police services to the ACT, para 4.6
59 Purchase Agreement between the ACT Minister for Police and Emergency Services, Commissioner of the Australian Federal Police and the Chief Police Officer for the ACT, 2006-2007, para 7
60 A self-reporting survey conducted by Roy Morgan Research under the auspices of the Australasian Centre for Policing Research
in the Purchase Agreement and the general management and control of AFP personnel and resources deployed for the purposes that agreement. The Chief Police Officer meets regularly with the Minister for Police and delivers an annual report to the Minister for tabling in the ACT Legislative Assembly, separate from the AFP annual report tabled in the Commonwealth Parliament.

The Ministerial Direction

3.17 The Arrangement also provides for the Police Minister to give general directions in writing as to policy, priorities and goals in relation to the provision of police services by the AFP under this Arrangement and the Purchase Agreement. In July 2006, the Minister for Police made such a Ministerial Direction, outlining the Government’s priorities and expectations for the AFP and the Chief Police Officer.

3.18 Under the Ministerial Direction, the AFP is required to provide community policing services to the ACT and to give special emphasis to the following broad operational issues during the financial year 2006-2007:

- Increase the capability of ACT Policing to respond to incidents, particularly those pertaining to Tier Two response time measures for Priorities One, Two, Three, and Four as defined by the Purchase Agreement;
- Increase the visibility of police in the community;
- Implement measures aimed at improving road safety within the Territory;
- Implement measures to deliver a Child Sex Offender Registration Team capability; and

---

61 An Arrangement between The Minister for Justice and Customs of the Commonwealth and The Australian Capital Territory For The Provision of Police Services to the Australian Capital Territory, para 5.1

62 An Arrangement between The Minister for Justice and Customs of the Commonwealth and The Australian Capital Territory For The Provision of Police Services to the Australian Capital Territory, para 6.1


64 These are: Crime and Safety Management, Traffic Law Enforcement and Road Safety, Prosecution and Judicial Support and Crime Prevention [Schedule 1 of the Purchase Agreement for the year ending 30 June 2007]
Implement measures to support ACT Government Property Crime Reduction Strategy 2004-07.\textsuperscript{65}

The Joint Study into ACT Policing

3.19 On 17 May 2004 the then Minister for Police and Emergency Services, Mr Bill Wood, MLA and the Commissioner of the AFP, Mr Mick Keelty, announced a joint study by KPMG AND John Valentin and Associates to map the future police needs of the ACT. This study informed the new police agreement entered into earlier this year and discussed above. The study also made some interesting observations on data analysis, specifically:

Detailed activity based analysis was limited by the unavailability of activity data, particularly data which could assist with the tracking of actual effort against budgeted expenditure.\textsuperscript{66}

3.20 The report from the Joint Study was finalised in June 2005 and made available publically in July 2006. The report covered eight specific terms of reference:

- Governance arrangements
- Police resourcing
- Financial reporting
- Infrastructure and asset management
- Commonwealth activity
- Organisational structure
- Enabling services
- Information management.\textsuperscript{67}

3.21 The study "comprised a broad and comprehensive review of the current Policing Arrangement and Purchase Agreements" and made a large number of recommendations, largely supporting the current contractual and governance arrangements, but with some refinements and

\textsuperscript{65} Ministerial Direction, \url{http://www.jcs.act.gov.au/eLibrary/act_community_policing.html}
\textsuperscript{66} ACT Government and AFP, \textit{Joint Study into ACT Policing: Policing for the Future}, 2005, p 153
\textsuperscript{67} \textit{Joint Study into ACT Policing: Policing for the Future}, KPMG, June 2005, p 1
identification of priority issues. The Committee does not intend to consider all the issues raised in the report, but is very interested in the consideration of information management issues, particularly the recommendations around the PROMIS data system.

The PROMIS data system

3.22 Policing services in the AFP are supported by PROMIS – the Police Real-time Online Management Information System, which is also used in the Northern Territory and the Australian Crime Commission. PROMIS is described as "the central repository of all information needed to support the policing operations of the AFP"\(^\text{68}\), specifically providing support for:

- Investigation and strategic planning;
- Recording and managing the actions undertaken during the course of an investigation;
- Recording and managing the information gathered and processed during the course of an investigation;
- Management and coordination of operational activity within and across investigations
- Creation and tracking of files
- Recording and receipting of audio tapes, diaries, notebooks, and Correspondence management system.\(^\text{69}\)

3.23 ACT Policing’s use of PROMIS includes:

- ACT Policing Task allocation
- Incident reporting
- Apprehensions
- Warrants
- Firearms/weapons licensing
- Cell management
- Traffic accidents
- DPP briefs and rosters

---

\(^\text{68}\) Joint Study into ACT Policing: Policing for the Future, KPMG, June 2005, p 149

\(^\text{69}\) ACT Government and AFP, Joint Study into ACT Policing: Policing for the Future, 2005, pp 149-150
Computer aided dispatch [CAD] Interface
Magistrates court extraction
Stolen motor vehicles
Lost/found/stolen property.70

3.24 The Joint Study report notes that there is no systemic access to AFP data by ACT justice agencies and victims of crime services – for example, the time taken to respond to requests from the ACT can vary from one week to six months.71 The report notes:

…the ability to better access or exchange certain PROMIS data is considered to have the potential to significantly enhance the ACT Government’s ability to integrate and manage justice related information.72

3.25 This possible conflict between the interests of ACT agencies, such as JACS, and the AFP’s interest in ensuring the security of the system presents a real problem for the management and accountability of ACT police operations. The KPMG report noted that "ACT Government agencies, such as the Department of Justice and Community Safety and Victims of Crime Services, had requirements for data captured by AFP data systems for analysis and policy planning purposes".73 To this end, the report considered the requirements and limitations of the PROMIS system, concluding that:

…a more robust system of interaction which encourages early identification of mandatory data requirements, and involves open dialogue between ACT Government and ACT Policing regarding the associated functionality, costs, priorities and timeframes, will assist the parties to better meet their data requirements from that system.74

70 ACT Government and AFP, Joint Study into ACT Policing: Policing for the Future, 2005, p 150
71 Joint Study into ACT Policing: Policing for the Future, KPMG, June 2005, p 151
72 Joint Study into ACT Policing: Policing for the Future, KPMG, June 2005, p 151
73 Joint Study into ACT Policing: Policing for the Future, KPMG, June 2005, p 8
74 Joint Study into ACT Policing: Policing for the Future, KPMG, June 2005, p 8
3.26 So far as information management and the PROMIS system were concerned, the report recommended that:

- ACT Policing is included in the ACT Government’s ongoing program to develop a systematic approach for accessing data required for the administration of justice in the ACT.
- ACT Government and ACT Policing establish processes for identifying, communicating and prioritising ACT Government information requirements and ongoing changes to these requirements.
- ACT Policing initiatives aimed at strengthening data validation and integrity are continued and supported.75

3.27 Given the range of functions performed by PROMIS and the use of PROMIS across the AFP as a whole, there are stringent requirements for maintaining the security and privacy of the information base. These requirements mean that requests by the ACT for data of a kind that will inform the requirements of the ACT for policing capability are constrained and very much at the discretion of the AFP. The Committee is also unaware of the degree to which JACS and ACT Government requirements generally are accommodated by the AFP’s database systems.

**Use of force data**

3.28 The Australasian Centre for Policing Research [ACPR] was established in 1983 by way of an Intergovernmental Agreement between Police Ministers at that time with a mandate to coordinate, stimulate, sponsor and, where necessary, undertake research on behalf of policing agencies.76 The Centre is funded by the member agencies, ie the Commonwealth, the State and Territory police agencies and New Zealand. The Centre undertakes a wide range of research, becoming increasingly involved in policy development and assisting with the implementation of key initiatives. It liaises closely with other national common police services: the National Institute of Forensic Science, the National Crime Statistics Unit, the Australian Institute of Police Management and CrimTrac.

---

75 Joint Study into ACT Policing: Policing for the Future, KPMG, June 2005, p 12
3.29 The ACPR has published two documents relating to national minimum guidelines for incident management, conflict resolution and use of force, the first in 1998 and an updated document in 2004. In the earlier report the recognition of the value of a national use of force database is discussed and the need for the 'establishment of a reliable, efficient reporting system' is also referred to. Reference is also made to the report of Task Force Victor, a Victorian Department of Justice review of use of firearms, which also addressed the need for a national use of force database, an 'important source of management, training and operational information'.

3.30 The report notes that a database is operational and functioning well in Victoria. It is monitored by the Department of Justice/Victoria Police Working Party on Use of Force, which oversights enhancements to the system. The ACPR report notes:

It is understood that the Victoria Police would share their system with other jurisdictions and in this way reduce development costs and implementation timetables, and provide a compatible database across the nation. It is understood that the software is sufficiently flexible to meet special jurisdictional needs as reflected by an expansion of the system, with the inclusion of high speed pursuit data, following the initial implementation.77

3.31 The Committee experienced difficulty in obtaining information on the use of force in the ACT, although the Victorian jurisdiction was able to provide detailed data on the use of force. Despite a number of reports advocating the establishment of a national use of force database78, no such database exists to date.

3.32 The Victorian police use a database along the lines of that recommended. It is monitored by a Department of Justice/Victoria Police Working Party on the Use of Force, which oversights possible enhancements to the database. The Committee was provided with very useful statistical data on the

instances of use of force, the kinds of force used and the circumstances of the use of force. The Report from the National Police Research Institute [NPRU and now the ACPR] suggests that Victoria would be prepared to share their system with other jurisdictions, thereby enabling a compatible database nationwide. To date there seems to have been little progress on this proposal.

3.33 The 2004 report of the ACPR contains detailed National Use of Force Reporting Guidelines, which sets out criteria for the following categories:

- purpose of the collection
- definition
- scope of collection
- specific information to be collected, including date, time, location and duration of incident; persons present, force used by members,
- force type
- firearms details
- details of persons other than members
- force used against members

3.34 Detailed data definitions are set out in the guidelines at Appendix E.

Committee comment

3.35 The Committee is concerned that the AFP is not easily able to produce adequate and timely data on use of force incidents. While data is entered into the PROMIS database, it appears that extraction of the data to gain an accurate understanding of incidents involving the use of force is either not easily technically achievable or is not easily accessible by ACT government officials and agencies. For example, in response to a Committee request for a breakdown on the types of incidents in which OC spray was deployed, the Committee was advised that it was not possible to obtain this without a physical search of the files. Data obtained from other jurisdictions,

---

80 Correspondence from Minister for Police & Emergency Services, 31 January 2006
particularly Victoria, was able to be provided efficiently and contained detailed information about incidents.

3.36 The Committee considers that the KPMG report does not go far enough in terms of recommendations in relation to data capture and information management. Access to reliable and timely data in relation to crime rates, clear up rates and conviction rates is essential if the ACT is to accurately assess its policing needs and the performance of ACT Policing, independent of the AFP. Accurate information for the purposes of performance measurement and accountability is also essential if the ACT is to be in a position to ensure that the AFP is accountable for the financial outlays on policing services in the ACT.

3.37 Further, data is a fundamental tool of policy analysis and development. If data is either not captured, or is inaccessible, either for reasons of limitations within the system or for security reasons, then it is not possible to assess performance accurately and it is difficult to identify for example, trends in crime or to assess the appropriateness or effectiveness of the use of force.
4 POWERS, TACTICS AND WEAPONS

4.1 In carrying out their duties, including those of maintaining public order, police have an array of tactics, powers and weapons at their disposal. These include:

- non physical tactics such as negotiation and persuasion;
- weapons such as batons, TASERs, OC spray and pistols/revolvers;
- statutory powers such as move-on powers and powers of arrest, which may or may not involve the use of weapons.

National Use of Force Guidelines

4.2 The Australasian Centre for Policing Research notes the following:

To realise the goal of a safer and more secure community, police organisations must function effectively in the operational policing environment. Underlying success in this dynamic environment is the principle of operational safety. Maintaining operational safety involves the effective application of a variety of skills relevant to all aspects of operational policing. Most critically, it is necessary to optimise skills in incident management, conflict resolution, and use of force.81

4.3 The guidelines, initially developed in 1998 and revised in 2004, underpin individual jurisdictional use of force guidelines. The Australian Police Ministers’ Council [APMC] endorsed the 1998 guidelines, which ’provided a common direction for progress in operational safety for police Australia wide’.82

4.4 A revision of the guidelines was requested by the Senior Officers Group of the APMC in September 2003. Following a lengthy consultation process, revised national guidelines were developed and adopted. These guidelines had a more strategic focus in order to allow ’individual police

---

81 ACPR, National guidelines for incident management, conflict resolution and use of force:2004, p 1
82 ACPR, National guidelines for incident management, conflict resolution and use of force:2004, p 1
organisations scope to implement innovative, individual solutions’. The guidelines are at Appendix E.

**Commissioner’s Order 3**

4.5 In the ACT, use of force guidelines exist as Commissioner’s Order 3, *AFP Commissioner’s Order on the Use of Force (CO3)*. Commissioner’s Order 3 provides guidelines for the use of force by AFP officers in the execution of their duty and as such is the authority for the use of force by ACT Policing. As the Minister’s submission notes:

Commissioner’s Order 3 gives effect to the policy of the Australian Federal Police (AFP) for the use of reasonable force and its implementation through the establishment and maintenance of appropriate competency standards, the accreditation of trainers, the qualification and re-qualification of AFP employees in the use of force, appropriate reporting mechanisms and management structures for training and monitoring use of force in the AFP. The purpose of Commissioner’s Order 3 is to ensure the AFP operates to de-escalate potential conflict situations within the use of force continuum. The AFP stresses the use of minimum force and maintains the preference at all times to resolve incidents without force. The AFP also is concerned to ensure the safe carriage and handling of firearms and other weapons so as not to endanger the handler, other AFP employees and the public.83

4.6 The Minister provided the Committee with a copy of Commissioner’s Order 3, [CO3] the AFP Commissioner’s Order on the Use of Force on a confidential basis. However, the Committee considers that it is in the public interest to discuss some of the content of that Order and goes on to make recommendations about publication of the document. For these reasons the Committee has reproduced limited extracts from the document or discussed some of the material contained within that document.

---

83 Submission no 6, p 6 and p 1 of Commission’s Order 3
4.7 The CO3 notes "the use of reasonable force underpins all AFP conflict management strategies and the AFP's use of force model"84. The use of reasonable force is defined as the "minimum force reasonably necessary in the circumstances of any particular case"[emphasis added]. In particular, the document states:

The principles of negotiation and conflict de-escalation are always emphasised as alternatives to the use of physical force as the safety of AFP employees and members of the public is of paramount importance. The use of lethal force is an option of last resort, only to be used when reasonably necessary in order to protect life. Excessive force is force beyond that reasonably necessary in the circumstances of any particular case including:

- any force when none is needed;
- more force than is needed;
- any force or level of force continuing after the necessity for it has ended;
- knowingly wrongful use(s) of force; and
- well-intentioned mistakes that result in undesired use(s) of force.

4.8 The CO3 emphasises the importance of non-violent options such as negotiation and conflict de-escalation as alternatives to the use of physical force.

4.9 The CO3 also sets out the basis on which equipment and munitions are issued to AFP employees, ie for their "personal protection and for the protection of others who are faced with an immediate threat of the application of physical violence"85.

4.10 Most importantly, the CO3 requires officers to submit an AFP Use of Force Report, setting out the details of the force used and the circumstances in which the force was applied. The situations where such a report is required include:

- the discharge of firearms;
- the use of batons, chemical agents, handcuffs on another person;

---

84 AFP, Commissioner's Order 3, p 2
85 Commission's Order 3, p 2
the use of a police dog or horse in the application of force;
forced entry to a building, vehicle, vessel or other secured areas to search, seize or arrest; or
use of a firearm, chemical agent or a baton on any animal.86

Powers of arrest

4.11 AFP police officers have powers of arrest without warrant by virtue of s 212 of the Crimes Act 1900:

1) A police officer may, without warrant, arrest a person for an offence if the police officer suspects on reasonable grounds that—
   (a) the person has committed or is committing the offence; and
   (b) proceedings by summons against the person would not achieve 1 or more of the following purposes:
      (i) ensuring the appearance of the person before a court in respect of the offence;
      (ii) preventing a repetition or continuation of the offence or the commission of another offence;
      (iii) preventing the concealment, loss or destruction of evidence relating to the offence;
      (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence
      (v) preventing the fabrication of evidence in respect of the offence;
      (vi) preserving the safety or welfare of the person.

4.12 Under this section, police officers also have powers of arrest in domestic violence situations and persons suspected of having escaped lawful custody.

4.13 Use of force in making an arrest is set out in s 221 of the Act, which states:

1) A person shall not, in the course of arresting another person for an offence, use more force, or subject the other person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the other person after the arrest.

2) Without limiting the operation of subsection (1), a police officer shall not, in the course of arresting a person for an offence do anything that is likely to cause the death of, or grievous bodily harm to, the person, unless—

86 Commissioner’s Order 3, p 3
(a) the officer believes on reasonable grounds that it is necessary to do so to protect life or to prevent serious injury to the officer or another person; and
(b) if the person is attempting to escape arrest by fleeing—the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other way.

4.14 The Minister’s submission sets out powers of arrest under statute as follows:

ACT legislation provides a general power of arrest without warrant to police officer’s [sic] and civilians where the police officer has reasonable grounds to suspect (as of 27 September 2001) that the other person has committed or is committing an offence or the civilian has reasonable grounds to believe that the other person is committing or has just committed an offence. 87

4.15 The submission also sets out police policy on use of force:

Both common law and statute allow the use of force, where necessary, to effect an arrest. However, the governing factors are that the use of force must be necessary and that only enough force may be used to effect the arrest. If more force than is necessary is used to effect the arrest then the arrest may well be unlawful.

Although a member is entitled to use a reasonable amount of force when effecting an arrest, the duty owed to the suspect is in all other respects the standard duty of care owed to any other person, namely to exercise such care and skill as is reasonable in all the circumstances. [Marshall v Osmond [1983] 2 All ER 225] 88
**Move-on powers**

4.16 The *Public Order (Protection of Persons and Property) Act 1971* [Cwth] and the *Crime Prevention Powers Act 1998* [ACT] govern public order offences or situations where public order may be a concern.

4.17 The Commonwealth Act creates the following offences:

- Where persons taking part in an assembly conduct themselves in a manner which gives rise to a reasonable apprehension of violence to persons or unlawful damage to property [s 6];
- Where actual bodily harm to a person or damage to a property is caused by a person engaged in an assembly [s 7];
- Unreasonable obstruction, where a person is taking part in an assembly [s 9];
- The carrying and discharge or other use of a weapon or missile [s 10 and s 13F];
- Other offences such as trespass [s 11] and failure to depart [s 12]

4.18 The Commonwealth Act gives to police the following powers in relation to persons taking part in an assembly:

- Dispersal of certain assemblies [s 8]
- The power to require information [s 13C]
- The power to search a person [s 13D]

4.19 Under s 4 of the *Crime Prevention Powers Act 1998* [ACT] the police have 'move-on' powers, which enables police to require a person to leave the immediate area if the police officer believes "that a person in a public place has engaged or is likely to engage, in violent conduct in that place". The direction may be subject to conditions, eg not to return until a certain period of time has elapsed.

4.20 The Government’s submission sets out the statute powers of arrest as follows:
ACT legislation provides a general power of arrest without warrant to police officer’s [sic] ... where the police officer has reasonable grounds to suspect (as of 27 September 2001) that the other person has committed or is committing an offence.90

4.21 Arrest might be accompanied by the use of force 'reasonably required to effect an arrest'91, including the use of oleoresin capsicum [OC] spray, batons, TASERs or, as a last resort, a weapon such as a handgun.

4.22 The use of force to effect an arrest must be necessary and reasonable in the circumstances:

Both common law and statute allow the use of force, where necessary, to effect an arrest. However, the governing factors are that the use of force must be necessary and that only enough force may be used to effect the arrest. If more force than is necessary is used to effect the arrest then the arrest may well be unlawful.

Although a member is entitled to use a reasonable amount of force when effecting an arrest, the duty owed to the suspect is in all other respects the standard duty of care owed to any other person, namely to exercise such care and skill as is reasonable in all the circumstances.92

4.23 In practice, police have to make a judgement as to what is reasonable and necessary in the circumstances in public order situations.

4.24 A heavy handed attitude by police can have adverse consequences during any protest. However, some jurisdictions, such as Tasmania Police, take a strongly conciliatory approach, which places significant emphasis on keeping the peace, by co-operating with the organisers of demonstrations and public protests. In furtherance of this objective the Tasmania Police actively participates in the organisation of protests and has a dedicated

89 Section 212(1), ACT Crimes Act 1900
90 'Offence means an offence against a law of the Territory.'
91 Submission no 6, Minister for Police and Emergency Services, p 2
92 Submission no 6, Minister for Police and Emergency Services, p 3
senior officer in each of their three geographical areas, who is the primary point of contact for anyone organising demonstrations or protests.93

**Weapons**

4.25 The various forces in the different states have different approaches when it comes to deployment of items forming the operational kit of police officers.

4.26 The most commonly used weapons are:
- Batons
- Oleoresin capsicum [OC] spray
- TASERs
- Pistols

4.27 This report will discuss oleoresin capsicum spray [OC spray] particularly and TASERs to a limited extent. The use of batons and pistols specifically is not considered.

**Oleoresin capsicum spray**

4.28 OC spray is used by police as a substitute for a weapon, ie a less than lethal force option, in confrontational circumstances involving people or animals. Oleoresin capsicum (OC) is an extract of pepper plants of the genus Capsicum. It is the principal active ingredient in OC spray.

4.29 OC extract consists of a mix of fat soluble phenols known as capsicinoids, capsaicin and dihydrocapsaicin. Capsaicinoid content of extracts used in pepper sprays varies widely. Depending on the brand, an OC spray may contain water, alcohols, or organic solvents as liquid carriers; and nitrogen, carbon dioxide, or halogenated hydrocarbons as propellants to discharge the canister contents.94

---

93 Private discussions, 20 July 2005
94 Research Note 19, 2001-2002, ‘Capsicum Spray – the Record to Date’, Ian Ireland, Law and Bills Digest group, Parliamentary Library
4.30 There are restrictions on the import of OC spray into Australia; essentially, only the AFP, a state police force or a correctional facility is allowed to import OC spray.95

4.31 The claimed benefits of having OC spray available to law enforcement and correctional personnel are:

- fewer and/or less serious injuries to citizens and police officers;
- deterrence of violent behaviour by citizens during incidents, and
- fewer complaints of assault or use of excessive force by law enforcement and correctional personnel.96

4.32 When used against a person, OC spray can have the following damaging impacts:

- skin reactions, including tingling, intense burning pain, swelling, redness and occasionally blistering;
- respiratory responses such as burning of the throat, wheezing, dry cough, sneezing, shortness of breath, gagging, gasping, inability to breathe or speak and, more rarely, cyanosis, apnea and respiratory arrest;
- acute hypertension if inhaled, which in turn can contribute to the risk of stroke or heart attack;
- eye symptoms such as redness, swelling, severe burning, pain, stinging, conjunctival inflammation, lacrimation, blepharospasm and involuntary or reflex closing of the eyelids.97

4.33 One claimed advantage of OC spray is that “it readily dissipates, making decontamination a relatively simple task” A report recently released in Queensland98 states that:

---

95 Customs (Prohibited Imports) Regulations 1956 as amended by Customs (Prohibited Imports) Amendment Regulations 2000 (No 1)
96 Research Note 19, 2001-2002, 'Capsicum Spray – the Record to Date', Ian Ireland, Law and Bills Digest group, Parliamentary Library
97 Research Note 19, 2001-2002, 'Capsicum Spray – the Record to Date', Ian Ireland, Law and Bills Digest group, Parliamentary Library
98 Trial of Capsicum Spray in Queensland: Evaluation Report, Criminal Justice Commission and the Queensland Police Service [joint authors]
[t]his effect is acute for several minutes and remains debilitating for up to an hour, after which [time] people recover from all but minor burning sensation on areas exposed to OC99

4.34 However, most commentators seem to agree that the effects range in severity, with the effect on people suffering from a mental disorder or severely affected by alcohol possibly being diminished.100 When used on dogs, the spray typically causes aggressive dogs to lose interest in their intended victim and retreat from the scene, although trained attack dogs may be resistant to the impact of the spray.101

4.35 AFP officers are issued with OC spray as part of their standard issue kit when on operational duties or when exercising police powers.102 Standard operational kit includes police issue handgun, baton, OC spray, handcuffs, spare ammunition, gloves and a personal radio.103 This differs from the situation in Tasmania, where the Committee was advised by the Tasmania Police that batons, weapons or OC spray are not carried by officers on certain duties, especially when on duty at demonstrations, but they are carried on patrol or attending at violent incidents, such as domestic violence situations.104

4.36 In addition to CO3, the AFP produces a specific guide for officers on the use of OC spray, ACT Policing: Practical Guide: Oleoresin Capsicum [OC] Spray. The guide reinforces the responsibilities of officers when using or considering the use of OC spray and the processes to be followed relating to the initial issue or re-issue of OC Spray following discharge, loss, theft, damage or expiration. The document sets out in detail the processes to be followed prior to, during and subsequent to the use of OC spray.

**TASERs**

---

99 Trial of Capsicum Spray in Queensland: Evaluation Report, Criminal Justice Commission and the Queensland Police Service [joint authors]
100 Research Note 19, 2001-2002, Ian Ireland, Parliamentary Library
101 Trial of Capsicum Spray in Queensland: Evaluation Report, op cit, p 2
102 Correspondence from the Minister, 31 January 2006
103 Correspondence from the Minister, 31 January 2006
104 Private discussions with Asst Commissioner Scott Tilyard, Tasmanian Police, 4 August 2005.
4.37 A TASER is another option available to police. TASERs fire darts, which have barbs on the ends designed to attach to clothing or skin. The Victorian police use an M-26 air TASER, which fires a barb attached to fine wires and which administers an electric shock to the recipient. The shock is continuous for 5 seconds and causes "intense, excruciting, overwhelming pain." The weapons can be deployed from a distance of up to seven metres and can be reused quickly.

4.38 In police forces in other jurisdictions, TASERs tend to be used only by the Special Operations Groups, such as those in Victoria and Tasmania. As at May 2004, the Victorian SOG had used TASERs on three separate occasions, with what is assessed as "incredible success." Following the 2003 trial, the Executive Management Group of the Victorian police described them as an effective tool in the effecting of an arrest with the minimum amount of force.

4.39 The ACT has trialled and adopted for general use the X-26 TASER, a fourth generation model. This is a newer model than the M-26 TASER used in the Victorian trial, delivering a continuous stream of electrical impulse as opposed to the five-second burst delivered by the M-26 model. It is also smaller than the M-26, fitting more easily onto the utility belt. The effect of the X-26 TASER lasts only as long as the trigger is being operated and a targeted person's muscles return to a normal state as soon as it is released. This model allows police to use the weapon for very short periods, ie 1-2 seconds as opposed to the 5 second continuous blast from the M-26 model.

4.40 In Victoria, to prevent misuse of the weapon, every TASER "contains a 'black box' which records the date of use and how many pulses have been discharged, thus holding an officer to account." Similarly, in the ACT, TASERs record similar information, date and time of discharge and duration of pulse.

105 Media Release, Law Institute of Victoria, 12 November 2004
Concerns about the safety of TASERs

4.41 While the Victorian Police Journal reaffirms the claim that research shows that there is no limit to the number of times a person can be safely "TASERed"\textsuperscript{109}, organisations such as Amnesty International are less sanguine. A report by Amnesty International in March 2006 called for the suspension of the use of TASERs following a study into TASER use in the United States, where the number of deaths which are directly attributable to TASERs has now passed 150 since 2001. The report expressed concern over the following:

- the significant year-on-year increase in TASER-related deaths;
- the lack of any independent and rigorous study into the health effects of the electro-shock devices;
- the fact that despite these safety concerns, TASERs continue to be used in the US as a routine force tool rather than as a weapon of last resort; and
- continued reports of excessive use of TASERs, in some cases amounting to torture or other cruel, inhuman or degrading treatment.\textsuperscript{110}

4.42 It should be noted that, 'while in most cases deaths have continued to be attributed to factors other than the TASER, such as "excited delirium" associated with drug intoxication or violent struggle, in 23 cases coroners have listed the use of the TASER as a cause or a contributory factor in death'.\textsuperscript{111}

4.43 Amnesty's concern stems from research showing that most who died were unarmed men who did not appear to pose a threat of death or serious injury at the time that they were shot with a TASER. Amnesty is also of the view that studies conducted in the use of TASERs do not meet the organisation's criteria for an independent. Impartial and comprehensive study. They state:

The studies have been limited in scope and methodology and have relied mostly on data provided by one of the manufacturers of the weapons –

\textsuperscript{109} TASER Guns, Victorian Police Association Journal, May 2004, p 33
\textsuperscript{110} http://news.amnesty.org/mavp/news.nsf/print/ENGAMR510392006
\textsuperscript{111} http://news.amnesty.org/mavp/news.nsf/print/ENGAMR510392006
TASER International – and police departments themselves. None of the studies has included an analysis of the deaths listed in Amnesty International’s reports on TASER use in the USA.\textsuperscript{112}

4.44 Amnesty is concerned that TASERs are being used as a ‘routine force tool’, rather than as a weapon of last resort by law enforcement agencies in the US.\textsuperscript{113}

Report on the TASER trial

4.45 The trial of the X26 TASER was approved by the AFP’s Operational Safety Committee in October 2004, with the AFP commencing the trial in December of that year for an initial period of 6 months, extended to December 2005 and then to March 2006, while the evaluation report was being finalised. The Minister for Police provided to the Committee a copy of the evaluation report on the TASER X26 trial.

4.46 The report states that as at 13 February 2006, the TASER had been deployed, ie taken on duty by an officer but not necessarily used, on more than 400 occasions. Of these 400 occasions, TASERs had been used on 7 occasions, in accordance with the requirements set out in Commissioner’s Order 3. The occasions on which the TASERs were used are discussed individually in the report.

4.47 Commissioner’s Order 3 sets out when a TASER can be ‘used’, use not being limited to discharging the weapon but comprising drawing or aiming of the weapon. There have been seven occasions TASERs have been used according to the guidelines, broken down as follows:

- drawn on one occasion;
- drawn and aimed on three occasions;
- discharged in the stun gun mode once; and
- probes discharged on two occasions.

4.48 The evaluation report states that there were no injuries to members of the public, the police or the subjects. The Use of Force report for each event

\textsuperscript{112} http://news.amnesty.org/mavp/news.nsf/print/ENGAMR510392006
\textsuperscript{113} http://news.amnesty.org/mavp/news.nsf/print/ENGAMR510392006
was reviewed for the purposes of the evaluation. It was concluded that the TASER was appropriately deployed on each occasion.

4.49 The conclusions set out in the report are:

- The TASER was a valuable addition to the 'less than lethal' options available to police.
- It was successful in resolving incidents, which would otherwise have resulted in injury to police, members of the public or the person against whom the TASER was used.
- There were advantages in using the TASER over other less than lethal force options:
  - For example, OC spray is difficult to confine to an individual, ie there is a higher probability that someone close to the subject will also be affected;
  - TASERs are less likely to result in injury to subjects than if police batons are used.
- There have been no complaints about the use of the TASER and no reports of injury from the persons against whom the TASER was used.

4.50 The trial evaluation resulted in a recommendation that the TASER be adopted permanently as a less than lethal use of force option for Specialist Response Security, Tactical Response [SRSTR] members and that the TASER be deployed more widely across the AFP.

Submission comment

4.51 Civil Liberties Australia (ACT) Inc, [CLA ACT] regarded the extent of move-on powers and the ability of the police and other government agents to control a person’s movements as going to the heart of the balance between individual rights and public order objectives. CLA ACT argued that current ACT laws 'governing the ability of citizens to move and associate freely must provide for a balance between the person’s civil and political rights and the good order of the state'.

4.52 Civil Liberties Australia also emphasised the significance of the Human Rights Act in this context:

Section 28 of the Human Rights Act is also important in the context of this inquiry. It provides that “Human Rights may be subject only to reasonable limits set by Territory laws that can be demonstrably
justified in a free and democratic society.” The freedoms mentioned above are not absolute, so the legitimacy or otherwise of any future move-on powers will invariable [sic] turn on whether they are ‘demonstrably justified.’ The test applied by the High Court as to the extent of constitutionally implied rights is useful in this context. The Court accepted in Lange v Australian Broadcasting Corporation (1997) 189 CLR 520 that for a restriction on these freedoms to be valid it must be “directed to a legitimate end” and “reasonably appropriate and adapted” to meet that end.114

4.53 CLA[ACT] suggested that police had ample statutory provisions to arrest persons who abuse their right to protest or engage in other illegal behaviour.115

4.54 ACTCOSS stated that:

Police should be mindful of the purpose of the crowd when dealing with any negative behaviour. In particular, a riot response is not appropriate at the first sign of trouble, and excessive police force may make matters worse, as well as increase distrust between the police and disenfranchised communities, creating further problems in the future.116

4.55 ACTCOSS suggested the following initiatives:

that the response to any negative group behaviour be aimed at minimising harm to participants and police. They suggest a review of relevant Codes of Conduct, particularly in the light of the passage of the human rights legislation, to ensure that they “remain respectful and cognisant of basic human rights and freedoms”;

in order to address and alleviate conditions which might lead to police intervention, the adoption of a preventive approach to dealing with antisocial group behaviours, possibly working with event organisers and venue managers. 117

---

114 Submission no 2, Civil Liberties Australia, pp 3-4
115 Submission no 2, Civil Liberties Australia, p 4
116 Submission no 4, ACTCOSS, p 4
117 Submission no 4, ACTCOSS, p 5
ACTCOSS does not consider that increasing police powers is a sufficient response to any perceived problems, but that the social context of any event needs to be considered.118

The Victims of Crime Assistance League ACT Inc [VOCAL] argued for sufficient police powers to ensure that police are able to control potentially criminal activities:

Police should have ample powers to deal with any large group of people who may be engaging in criminal behaviour. It is the view of VOCAL that if senior police in the AFP believe that the existing legislation is not sufficient for them to be able to fulfil their responsibilities to the ACT community that they should be granted the necessary powers to act in emergencies.119

VOCAL strongly supported the granting to police of the powers in the Crime Prevention Powers Act 1998.

The Human Rights Office draws attention to the human rights legislation now in force in the Territory:

While these rights are subject to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society (section 28) they go further than the pre-existing law in upholding the rights of people to demonstrate in support of their beliefs. They may also limit the interpretation of ACT police powers to search or to move people on.120

The ACT Human Rights Office noted that, in the context of the incident where OC spray was used at a public rally on environmental issues in October 2004, 'under the HRA, it would be impermissible to disperse a public rally unless there was a threat of violence and that any use of an agent such as OS [sic] spray outside this circumstance would be likely to breach the Act as being disproportionate'121.

---

118 Submission no 4, ACTCOSS, p 6
119 Submission no 9, VOCAL, p 2
120 Submission no 8, Human Rights Office, p 1
121 Submission no 8, Human Rights Office, p 2
4.61 The issue of proportionality of response was highlighted by the HRO, ie that any response to a situation, either pursuant to move on powers, the Major Events Security Act 2000, or the Emergencies Act 2004, needed to be a proportionate response. For example:

The Emergencies Act 2004 permits the police to arrest a person who is refusing to evacuate their home in the case of a bushfire. This applies even when there is no reason to believe that death or serious injury would result from the failure to move. The Human Rights Act gives the individual respect for his/her autonomy and the right to a home. While there is a duty in this situation on the police to save lives there in order to satisfy the proportionality test in section 28 of the HRA it is arguable that these powers should be restricted by reference to a level of risk of harm.122

4.62 In commenting on an incident of the use of OC spray at a peaceful demonstration discussed later in the report, the Environmental Defender’s Office ACT [EDO] stated that:

19. It is our understanding that OC spray was originally introduced by Australian police forces as an alternative to the use of lethal force with firearms in situations which involve a risk to the life of police officers. The circumstances in play at the vast majority of political demonstrations could hardly warrant the use of OC spray

20. On that basis we submit that the use of OC spray in the context of policing public gatherings would amount to excessive and unnecessary use of force…123

4.63 EDO ACT further stated:

We make a number of recommendations at point 61 where we talk about proportionality and say that these are fairly self-evident propositions; that the amount of force that is used should be proportionate to the threat posed to the police; and that they should begin at the lowest levels of force possible. And they will be in a position to predict what is going to

122 Submission no 8, Human Rights Office, p 2
123 Submission no 7, Environmental Defender’s Office ACT, pp 5-6
happen because usually there is some communication between people and the police force prior to events happening; so it is possible.\textsuperscript{124}

4.64 The Hon Justice Staples suggested that the law of the ACT should provide as follows:

Notwithstanding any other law it shall be lawful for one or more persons to go to, to be in, and to assemble in any public place and to remain in a position of his or her or their choice in that place in every case where the purpose of such person or persons has been made to appear to be to publicise or to promote or to resist or to agitate upon the merits of an industrial claim or policy or a political claim or policy but it shall not be lawful for any such person or persons then and there, in connection with that purpose or arising from the same to do any act of his or her or their initiative which breaches the peace, injures property, or does harm to another other than under unlawful provocation.\textsuperscript{125}

4.65 In response to the Committee’s request the Ombudsman advised that he had received few complaints in relation to police involvement in crowd control and that consequently he was unable to identify any systemic issues.\textsuperscript{126}

\textsuperscript{124} Transcript of Evidence, 15 September 2005, p 18
\textsuperscript{125} Submission no 1, Hon Justice Staples, p 1
\textsuperscript{126} Submission no 5, ACT Ombudsman, p 2
5 JURISDICTIONAL ARRANGEMENTS

5.1 In order to assess AFP arrangements with other jurisdictions, in December 2005 the Committee wrote to the Ministers for Police in each state except Tasmania, asking them the following questions:

- What gear is standard issue for police on operational duties?
- Is standard issue gear the same for all operational duties or does it vary according to the type of operational duty?
- Do police have as part of their standard issue gear, OC spray or TASERs?
- On average, how many instances of OC spray use have occurred each year since police were issued with OC spray?
- Is it possible to break down the kinds of circumstances?
- Are they ever used eg to effect an arrest or at demonstrations?
- What procedures are in place for reporting on incidents of OC spray or TASER use?

5.2 The committee visited Tasmania shortly after commencing the inquiry and had discussions with officers of the Tasmania Police. The information relating to Tasmania Police arrangements was drawn from those discussions.

AFP/ACT Policing

5.3 Standard issue for police in the AFP are police issue handgun [Glock], holster, baton OC spray, handcuffs, spare ammunition, gloves and a personal radio. The Minister advised that, in a public order context, if intelligence suggests that a situation is likely to be violent, police deployed in a public order role may do so without their standard issue firearms and they may also be issued with protective equipment.127

---

127 Correspondence, Minister for Police and Emergency Services, 31 January 2006, p 2
New South Wales

5.4 Standard issue for police in NSW is a pistol, handcuffs, baton and OC spray. TASERs do not constitute standard issue but are used by the Tactical Operations Unit in high risk sieges and hostage situations. In February 2006 the NSW Police’s Public Order and Riot Squad commenced a 6 month trial of TASERs in public disturbance situations.

5.5 OC spray is used in NSW ‘for the protection of human life, as a less than lethal option for controlling people where violent resistance or confrontation occurs [or is likely to occur]’\(^{128}\) eg:

- To effect the arrest of violent offenders
- To control violent people who may be intoxicated or suffering from mental illness and are non-compliant with police directions; and
- To control numerous people when an officer believes on reasonable ground [sic] that he or she is about to be overpowered, resulting in dangerous circumstances.\(^{129}\)

5.6 A computerised operational policing system [COPS] entry is required to document the use of OC spray and TASERs and the circumstances surrounding their usage.

Northern Territory

5.7 Operational members carry the following - Glock pistol, spare magazine, handcuffs, baton, OC spray. Special arrangements apply to bush vehicles, which may carry ballistic vests and a Remington shotgun.

5.8 OC spray was adopted for general use in the Territory in 2001, while TASERs are only available to police in the Territory Response Section. OC spray has been used between 100 and 147 times annually since its adoption. It is most commonly used in situations where a person becomes aggressive during an arrest.

\(^{128}\) Minister for Police [NSW], correspondence, 3 March 2006

\(^{129}\) Minister for Police [NSW], correspondence, 3 March 2006
5.9 The Northern Territory Police advised that as there are few demonstrations, it has not been widely used in that context but it should be noted that the NT Police do not say that it cannot be used in that situation. NT Police policy precludes the use of OC spray against passive protesters; it can only be used by police to:

- defend themselves or others if they fear physical injury to themselves or others and they cannot reasonably protect themselves or others with less force;
- subdue an offender if they believe on reasonable grounds that the offender poses a threat of physical injury and the arrest cannot be effected with less force;
- resolve an incident where a person is acting in a manner likely to seriously injure themselves and the incident cannot reasonably be resolved with less force; or
- deter attacking animals.

5.10 All use of force in the NT is reportable via a Use of Force report which is uploaded on the PROMIS database.

**Queensland**

5.11 Queensland police receive the same standard issue gear for operational duties as do NSW police. Specialist units have access to other equipment, such as TASERs.

5.12 In Queensland, police officers are required to formally report all deployments of OC spray and TASERs to a senior officer as soon as practicable. Further, when OC spray is used a report is required before the officer ceases duty on that shift on the Crime Reporting Information System for Police [CRISP].

**South Australia**

5.13 The nature of operational equipment is governed by General Orders issued by the Commissioner of Police. Typically uniformed members carry a service revolver, handcuffs, defensive spray and baton in addition to other
equipment\textsuperscript{130} and they are required to hold current operational certificates for such equipment. There are two types of spray available, 'streamer' spray and the standard unit; streamer spray is used in situations where the potential to inflict damage on innocent bystanders needs to be minimised, eg in public transport situations.

5.14 The use of TASERs is currently being evaluated by SAPOL; TASERs are only deployed in high risk situations and their use is restricted to STAR Group personnel exclusively.

5.15 The circumstances governing the use of OC spray are outlined in Police General Orders, made pursuant to s 11 of the Police Act 1998 [SA]. The relevant Order states:

\textbf{Use}

You may only use a defensive spray for:

\begin{itemize}
  \item your protection in self defence
  \item protection of other members of SAPOL
  \item protection of members of the public
  \item containing or preventing serious breaches of the peace
  \item protection from attacking or threatening dogs or other animals.
\end{itemize}

5.16 All incidents of use of TASERs, OC spray or batons are reported on a special form, which must be submitted prior to the completion of the shift in which the incident occurs. The Minister for Police notes that SAPOL advises that, while there has been a steady increase in the use of defensive spray by police the number of baton incidents has remained relatively constant. They argue that this outcome reflects the tactical options model, which espouses the minimal use of force.

\section*{Tasmania}

5.17 The Committee notes that Tasmania Police have developed from a reactive force to a proactive force so far as crowd control measures are concerned. The changed arrangements follow a series of major protests in the 1980s over issues such as the damming of the Franklin River. Tasmania Police

\textsuperscript{130} The Hon Kevin Foley MP, Minister for Police, 22 January 2006, p 3
place a great deal of emphasis on identifying and talking with key people early on in the organisation planning the protest or demonstration to:

- identify key participants;
- estimate numbers; and
- plan the event to some extent with the organisers.

5.18 In Tasmania, police are not permitted to carry capsicum [OC] spray, guns or TASERs to demonstrations. Only Special Operations group members, specially trained in their use, carry such weapons. The Committee was advised that SO have never used them in an actual demonstration.

5.19 If arrests are effected at a demonstration, then they are generally for summary offences. The power of arrest for breach of the peace enables a person to be removed from the scene, if necessary. The person is then able to be detained and released without charge. Police can also require people to leave a scene. While police have move-on powers, these cannot be used at demonstrations.\(^{131}\)

5.20 Further, there is within Tasmania Police an Inspector of Police in each of the four police districts with responsibility for liaison with protest groups. The practical outcome of this commitment to participating to a certain extent in the planning of the event means that it is a participative and cooperative process and not a confrontationist one.

5.21 Consequently there have been very few protests in recent years where any significant violence has occurred. Occasionally an arrest is made, but this is usually passive resistance. In some instances environmental protests become difficult where protesters might chain themselves to a piece of machinery or take up residence in a tall tree.

5.22 The Committee was advised that OC spray is used on a fairly regular basis to subdue violent people or animals, such as attack dogs, but that there were significant limitations on the use of the spray. A report is required to be submitted in every instance in which the spray is used and the incident is reviewed for appropriateness.

\(^{131}\) s27(6) of the Tasmanian Criminal Code
Victoria

5.23 While the standard gear issued to Victorian police is the same as for NSW and Queensland, ‘Operational Safety Equipment’ [OSE] for attendance at planned crowd control/sporting events is designated by the relevant Operations Commander, following a risk assessment.  However, only in exceptional cases are firearms and OC spray or foam carried at such events.

5.24 M-26 TASERs are available to members of the Victoria Special Operations Group and Critical Incident Response Teams, which attend sieges and other violent incidents. They are not standard issue but are deployed as appropriate.

5.25 Both OC spray and foam are prohibited weapons under the Victorian Control of Weapons Act 1990. Police personnel [and others] have had exemptions issued by the Governor in Council allowing the possession, carriage and use of such sprays/foams. OC spray has been used on relatively few occasions [three] over the last 10 years in traditional crowd control situations, ie industrial disputes and demonstrations.

5.26 Any instance of use is required to be reported on the Victorian Use of Force database and is assessed for correct use and compliance with policy.

Western Australia

5.27 Standard equipment issued to police includes a Glock pistol, spare magazine, OC spray, ASP baton and handcuffs. If members carry a pistol, they must also carry all use of force options, lethal and non-lethal. TASERs are carried only by those units authorised by the Deputy Commissioner (Operations).

5.28 Only the Senior Tactical Response Group (TRG) has the discretion to deploy chemical agents during riots or unruly demonstrations, and such deployment would be more likely to be CS gas than OC spray. Use of force

---

132 Minister for Police and Emergency Services [Vic], correspondence, 23 February 2006, p 1
133 Minister for Police and Emergency Services [Vic], correspondence, 23 February 2006, p 3
reports are required when any force involving OC spray, batons or firearms is used against a person.

Committee comment

5.29 It is clear that there is some consistency of approach throughout the different jurisdictions in Australia in relation to use of force and reporting of incidents. There is however, a difference in approach to what officers carry into different types of operational situation. The Tasmanian practice of negotiating from a very early stage with any organisers is a positive approach and one which could be adopted by ACT Policing.
6 ACCOUNTABILITY OF POLICE

Accountability mechanisms

6.1 Police are subject to a number of accountability mechanisms, particularly reporting requirements, such as annual reports and complaints processes. The contract with the AFP requires the police to report on an annual basis to the Minister for Police, separate from the AFP’s annual report to the Minister for Justice in the Australian Government.

6.2 The AFP as a whole is subject to audit by the Australian National Audit Office, and in 2004-2005 the ANAO audited the AFP’s financial statements and performance measures relating to the AFP’s community policing contract with the ACT Government.

6.3 ACT Policing is also subject to inquiry at budget estimates and annual reports hearings in the ACT Legislative Assembly. In addition, the Commonwealth and ACT Ombudsman is responsible for receipt of official complaints relating to AFP police. The Ombudsman also has the ability to undertake inquiries into matters of a systemic nature if necessary.

The policy imperative for an effective complaints process

6.4 An effective complaints process can underpin and reinforce public confidence in any organisation, and particularly the AFP. According to the Australian Law Reform Commission [ALRC]:

Complaints and disciplinary systems are vital in ensuring that law enforcement agencies perform according to high standards of integrity and accountability. They must also support the achievement of the specific objectives of effective and efficient law enforcement.134

6.5 The basis for complaints and disciplinary systems so far as they apply to the AFP is to "give support to the overall objectives of law enforcement

134 ALRC Report 82, Integrity: but not by trust alone: AFP & NCA complaints and disciplinary systems, 1996, Overview
agencies, namely that there is effective and efficient law enforcement and that law enforcement powers are exercised according to law. The ALRC states that, in particular:

Law enforcement agencies should be professional, effectively managed, vigilant against corruption and misconduct and publicly accountable. Powers should be exercised with respect for human rights and with regard to the appropriate balance between civil liberties and effective law enforcement. Complaints and discipline are integral parts of law enforcement accountability. They are as essential to the notion of ‘good’ policing as they are to preventing police malpractice and abuse of authority.

6.6 The Committee concurs with the comments made by the ALRC.

The legislation

6.7 The legislation under which complaints against police can be made and heard was the Complaints (Australian Federal Police) Act 1981, which was repealed by the Law Enforcement (AFP Professional Standards and Related Measures) Act 2006, which updated the complaints and professional standards regime within the AFP.

6.8 The ALRC listed the major objectives of the AFP’s complaints system as:

- ensuring public confidence in the agencies;
- being credible to the agencies and their officers;
- being accessible;
- promoting appropriate standards of conduct from officers;
- providing feedback to management;
- taking into account other agency priorities;
- being timely in process and outcome; and
- using resources efficiently.

---


136 ALRC quoting Mark Findlay, "The Ambiguity of Accountability: Deaths in Custody and the Regulation of Police Power", *Current Issues in Criminal Justice*

137 ALRC, Report 82, Overview
6.9 The Act provides a mechanism for people to raise concerns about instances of perceived misuse of police powers. In particular, the legislation provides for:

- the internal investigation of complaints;
- an external overseeing role by the Commonwealth Ombudsman;
- special investigations and inquiries directed by the Minister;
- Other matters.

Complaints in 2004-2005

6.10 Complaints about ACT Policing are oversighted by the ACT Ombudsman. The number of complaints has declined significantly over the last couple of years. Table 1 shows the numbers of complaints received and finalised over the last three years.

<table>
<thead>
<tr>
<th></th>
<th>No of complaints Received [ACT Policing]</th>
<th>No of complaints finalised [ACT Policing]</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003-2004</td>
<td>503</td>
<td>484</td>
</tr>
<tr>
<td>2004-2005</td>
<td>443</td>
<td>506</td>
</tr>
<tr>
<td>2005-2006</td>
<td>353</td>
<td>419</td>
</tr>
</tbody>
</table>

*Table 1: ACT Policing - complaints received and finalised by ACT Ombudsman*

6.11 Complaints against ACT Policing comprise 2/3 to ¾ of all complaints against the AFP [see Table 2, which is the total number of complaints against AFP officers]. However, the high proportion is understandable, given the high level of public contact that ACT Policing has with the community compared with other areas of the AFP.

<table>
<thead>
<tr>
<th></th>
<th>No of complaints Received - AFP</th>
<th>No of complaints finalised - AFP</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003-2004</td>
<td>712</td>
<td>664</td>
</tr>
<tr>
<td>2004-2005</td>
<td>696</td>
<td>751</td>
</tr>
<tr>
<td>2005-2006</td>
<td>801</td>
<td>723</td>
</tr>
</tbody>
</table>

*Table 2: AFP – Total complaints received and finalised by Commonwealth Ombudsman*
The October 2004 incident and subsequent complaints process

6.12 One of the prime motivations for the current inquiry was an incident which occurred on Saturday, 9 October 2004, in which two participants in a public rally being held in Canberra on that day, were both sprayed with capsicum spray by an officer of the AFP.

6.13 The submission from the Environmental Defender’s Office [EDO] ACT, in commenting on the incident, argued:

The use of OC spray in the circumstances amounted to an unwarranted and excessive use of force in a situation that was definitely not life threatening. It therefore amounted to excessive use of force. Neither [names deleted] were arrested, summoned or charged with any offence. There was no threat to the welfare of any AFP officer at the demonstration posed by the [names deleted]. In short, there was no need to use the OC spray.138

6.14 The EDO has maintained that the use of spray in that situation amounted to excessive use of force and also breaches of human rights, given that the protesters had to leave the scene to seek medical attention.139 As noted earlier, the submission from the ACT Human Rights Office also argued strongly that the use of OC spray where there was no threat of violence was likely to breach the Human Rights Act in that it could be considered to be a disproportionate response to a situation.

6.15 The incident was the subject of a complaint to the AFP and is being dealt with under the Complaints (Australian Federal Police) Act 1981. This means the complaint is the subject of an internal AFP investigation oversighted by the ACT Ombudsman.

6.16 The Committee sought and received advice from the Minister and the Ombudsman in mid September 2006 as to the current status of the investigation into the complaints raised by the two victims of the OC spraying incident. Essentially the advice was that the internal investigation

138 Submission no 7, EDO ACT, para 15
139 Submission no 7, EDO ACT, pp 15 and 22
had not been completed and no advice on the findings of the investigation was available. In response to the question "If the investigation has not been completed, why not? What are the reasons for the delay?" the Minister advised:

The investigation Report for this matter is currently being finalised and is yet to be adjudicated on. The matter was originally investigated by an Authorised Officer. During quality assurance processes, further avenues of enquiry were identified. These have been referred to AFP Professional Standards for follow-up and finalisation of the report.\(^{140}\)

6.17 The Ombudsman’s role in AFP complaint investigations is to oversight the investigation of the complaint carried out by the AFP. The Ombudsman’s Office notified the matter to AFP Professional Standards for their investigation in December 2004 and to date has not received an AFP PRS report to review.\(^{141}\).

6.18 The Committee was recently advised that the AFP internal investigation report had been finalised and was forwarded to the Commonwealth Ombudsman on 21 February 2007.\(^{142}\)

**Amended complaints process**

6.19 The Committee notes that the whole AFP complaints process has recently been the subject of a major review culminating in new Commonwealth legislation, a newly established but not yet operational Australian Commission for Law Enforcement Integrity and changed police complaints procedures. For this reason the Committee is not commenting generally on the complaints process. However, the Committee will continue to monitor police complaints issues, particularly during the annual report inquiry process.

---

140 Correspondence, Minister for Police to Committee, 8 September 2006, p 2
141 Correspondence, Ombudsman to Committee, received 11 September 2006
142 Correspondence, Chief Police Officer to Committee, 11 May 2007 and email of 14 May 2007
7 CONCLUSIONS AND RECOMMENDATIONS

7.1 Police have a range of options at their disposal to assist with crowd control situations, whether they be demonstrations, sporting events or unruly persons making trouble in a social context. The committee recognises that crowd control situations are potentially delicate and a heavy handed attitude by police can have adverse consequences for such situations. There are also significant human rights considerations which must be respected. Given the potential for media coverage of and comment on the actions of police and for the need for police to be aware of and sensitive to the legal rights of people in a democracy, it is incumbent on police to ensure that their conduct is exemplary; ie consistent with their own guidelines, with community expectations and within the law, while still maintaining public order and safety.

7.2 The Committee considers that, generally, ACT Policing exercises its crowd control powers responsibly and is responsive in its general approach to such situations. For example, since the conclusion of the formal evidence gathering stage of the inquiry the Committee has become aware that ACT police officers may attend public demonstrations with all accoutrements apart from their firearms, depending on the tactical situation at the time. The Committee commends this approach to crowd control situations. The Committee also has some general recommendations in relation to other aspects of police powers and operations arising out of the inquiry.

Facilitating community relations

7.3 The Committee acknowledges that ACT Policing has a strong emphasis on good community relations, particularly over the last few years. In this

143 Correspondence to the Committee, ACT Chief Police Officer, 11 May 2007
regard, the Committee was particularly impressed with the conciliatory approach adopted by Tasmania Police, in its consultation arrangements with demonstration organisers. This approach places a strong emphasis on keeping the peace. In the Committee’s opinion, the organisational arrangements put in place by Tasmania Police are an excellent mechanism for ensuring a co-operative and mutually beneficial approach to the organisation of public protests or demonstrations.

7.4 The Committee notes that, based on advice from the AFP, there is no central contact point for demonstrations. The committee considers that one option for the AFP, which will both facilitate and foster community relations and make it simpler for the public to work with the AFP on arrangements for demonstrations, is to have a single contact point within ACT Policing for such public events.

RECOMMENDATION 1

7.5 The Committee recommends that the AFP establishes a position as a focal point for organisers of demonstrations and major protests, including industrial dispute demonstrations or environmental demonstrations, to co-ordinate and liaise with the organisers to ensure orderly and peaceful protests.

Commissioner’s Order 3

7.6 As noted in Chapter 4, the Committee was provided with a copy of Commissioner’s Order 3. This document is the formal authority underpinning the use of force by AFP personnel.

7.7 The Committee has considered the document and also looked at similar guidelines produced by other jurisdictions around Australia. The Committee considers that a more open approach to policing and, in particular, making the public aware of the very strict parameters which apply to the use of force by a police officer would be beneficial. The Committee is of the opinion that there is much in the document which does not require ongoing confidentiality – the document mostly sets out the policy guidelines which govern the use of force by police. Such a document must, of necessity, be the subject of consideration on many
occasions, eg when arrested persons come before the courts and use of force by police is at issue. On this basis the Committee considers that the AFP should consider making available a public version of Commissioner’s Order 3, at least on its website.

7.8 The Committee is of the view that the preparation of a public version, far from being problematic, will go some way towards reassuring the public and reinforcing public confidence in the ability of AFP officers to deal appropriately with members of the public in potentially conflict laden situations.

RECOMMENDATION 2

7.9 The Committee recommends that the AFP prepares a version of Commissioner’s Order 3 for release to the public.

7.10 The Committee notes the guidelines issued by the AFP governing the use of force and the specific guidelines relating to the use of OC spray. The use of OC spray is one option for police and is a less than lethal force option. As noted by one researcher, the use of this spray will be most problematic when persons are engaged in political demonstrations or are already in police or correctional custody.144

7.11 The Committee makes no recommendations about the use of OC spray specifically. The AFP guidelines appear to be consistent with guidelines in operation nationally.

7.12 There is, however, an issue about whether officers act within the guidelines when force is used. The requirement to report each use of force incident immediately for assessment is an appropriate one for accountability, training and management purposes. Without access to appropriate data and use of force incident reports, it is not possible for the Committee or anyone else to determine whether use of force within the AFP is consistent with the guidelines.

144 Research Note 19, Dept of the Parliamentary Library, 2001-2002
RECOMMENDATION 3

7.13 The Committee recommends that the AFP reports in detail on use of force in its annual report, including action taken on inappropriate instances of use of force.

Deployment and use of TASERs

7.14 The Committee notes the recommendations of the recent evaluation report into the use of TASERs in the AFP. While the Committee recognises the positive result of the trial of these weapons, the Committee is not necessarily of the view that such weapons should become standard issue for officers. In no state are TASERs standard issue; they are generally only issued to tactical or special operations groups.

7.15 The recommendation that the TASER be deployed more widely throughout the AFP needs to be considered carefully. While the AFP sees clear advantages in deploying TASERs over OC spray, the weapon is still controversial and in no other jurisdiction is it deployed by other than tactical response group members or their equivalents. The Committee considers that police have sufficient weaponry and powers available to them to deal with day to day situations and that standard operational gear should contain the minimum weapons necessary to ensure the safety of police and the public. Where police have intelligence which suggests that there may be potential for violence then those situations must be assessed on a case by case basis. The officer in charge of an operation would then determine which weapons are to be deployed in any given situation.

RECOMMENDATION 4

7.16 The Committee recommends that TASERs are deployed by tactical response group members only and should not be generally deployed by ACT Policing as standard issue gear.

Data collection

7.17 For the reasons stated above, it is important that police monitor instances of use and the continuing appropriateness of guidelines to ensure that the use of less than lethal force options such as OC spray is confined to
instances where it is used in place of more lethal options. Conversely, it is of paramount importance that such weapons and tactics are not resorted to before less invasive options of negotiation, physical restraint and move-on powers.

7.18 The Committee notes the EDO suggestion for a moratorium on the use of capsicum spray in crowd control situations, arguing that there were risks associated with the violation of human rights by the use of such chemical weaponry. The Committee considers that such a proposal may not be a practical option, that there is not sufficient data or instances of misuse to justify the removal of a less than lethal force option.

7.19 While the Committee recognises that the contract between the AFP and the ACT is largely based on costings and outcomes, the manner in which those outcomes are achieved is of obvious concern. The Committee would expect that the Minister and, in turn, the Legislative Assembly, would be kept abreast of any major operational change that substantially altered the manner in which the required outcomes are achieved.

7.20 Again, more data than is currently available would be useful. For example, more information on TASER deployment and actual use, together with data on more lethal weapons and their deployment and use would be a useful comparison. It might also be useful to know whether instances of discharging of police pistols has reduced or stayed the same over the period less than lethal forces options have been available. If police are to use the justification that less then lethal force weapons should be available and preferred because they reduce the requirement for the use of lethal force option, then it is necessary to be able to demonstrate that this is in fact the case with appropriate data.

7.21 Better data collection and accessibility is fundamental to a strategic approach to performance assessment and development of best practice. The Committee considers that ACT Policing cannot demonstrate sufficient capacity to utilise effectively any data currently collected nor is it clear what data is collected, particularly in relation to use of force.

145 Transcript of Proceedings, 15 September 2005, p 19
7.22 The Committee considers that a national use of force database, an initiative which has been under consideration for some time now, should be actively pursued in order that the use of force within each of the jurisdictions is able to be assessed annually and over time and across jurisdictions.

RECOMMENDATION 5

7.23 The Committee recommends that the ACT Government actively pursue the development of a national use of force database.

Performance indicators

7.24 One matter which does concern the Committee relates to extent which the performance indicators in ACT Policing’s annual report relate to public perception of police performance as opposed to reporting on hard data such as crime clearance rates and use of force. The Committee considers that the AFP should place more emphasis on reporting on actual facts and figures. Data on such factors as police characteristics, crime clearance rates and length of time taken to finalise an incident, types of incident and location of incidents are some examples of useful information.

7.25 The Committee considers that data on the demographic profile of ACT police officers might also be useful, particularly when it comes time to renegotiating the contractual arrangements. Data on police recruitment, training, average time served by an ACT police officer and retention rates would be constructive.

RECOMMENDATION 6

7.26 The Committee recommends that ACT Policing undertake a review of their data collection systems and methodology with a view to improving current data collection, reporting and accessibility.

The October 2004 incident and complaint process

7.27 The Committee notes the time taken to resolve the complaint arising from the deployment of OC spray at a peaceful demonstration in October 2004. Given that “justice delayed is justice denied” the Committee considers that the length of time taken to resolve this complaint is unacceptable. To take
more than two years to resolve what should have been a relatively straightforward complaint procedure is very concerning and does not reflect positively on the AFP's complaints resolution processes.

7.28 An effective complaints process is essential for any organisation, not only to address specific instances of inappropriate action on the part of officers, but also to ensure that similar situations can be avoided in future. Further, an effective complaints process is an essential element of an agency’s performance assessment and improvement process.

RECOMMENDATION 7

7.29 The Committee recommends that the Minister request a review of the October complaint and the process followed to investigate the October 2004 complaint, to determine why the complaint took more than two years to resolve.

Zed Seselja MLA
Chair

[15 May 2007]
APPENDIX A: List of Submissions

<table>
<thead>
<tr>
<th>Sub No</th>
<th>Author</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The Hon Justice Staples</td>
</tr>
<tr>
<td>2</td>
<td>Civil Liberties Australia</td>
</tr>
<tr>
<td>3</td>
<td>Premala Kaminee Walsh</td>
</tr>
<tr>
<td>4</td>
<td>ACTCOSS</td>
</tr>
<tr>
<td>5</td>
<td>ACT Ombudsman</td>
</tr>
<tr>
<td>6</td>
<td>Minister for Police and Emergency Services</td>
</tr>
<tr>
<td>7</td>
<td>Environmental Defender's Office ACT</td>
</tr>
<tr>
<td>8</td>
<td>ACT Human Rights Office</td>
</tr>
<tr>
<td>9</td>
<td>Victims of Crime Assistance League</td>
</tr>
</tbody>
</table>
APPENDIX B: Details of Hearings and Witnesses

15 September 2005

Civil Liberties Australia [ACT]
Mr Bill Rowlings, President
Dr Kristine Klugman
Mr Anthony Williamson

Environmental Defender's Office [ACT]
Dr James Prest

Victims of Crime Assistance League
Mr Simon Jackson

23 September 2005

Mr John Hargreaves, Minister for Police and Emergency Services

ACT Policing
Ms Audrey Fagan, ACT Chief Police Officer
Mr Michael Gordon
Mr Brian MacDonald
Mr Matthew Varley
APPENDIX C: Correspondence between the Committee and the Minister for Police and Emergency Services

C.1 Submission request letter, dated 18 April 2005

C.2 Letter from Committee Chair to Minister, dated 6 December 2005

C.3 Response to 6 December letter, dated 31 January 2006

C.4 Response to supplementary questions to Minister for Police and Emergency Services [Annual Reports hearings November 2005] dated 12 December 2005
C.1 Submission request letter, dated 18 April 2005

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON LEGAL AFFAIRS
Bill Stefaniak MLA (Chair), Karin MacDonald MLA (Deputy Chair), Deb Foskey MLA

Mr John Hargreaves MLA
Minister for Police and Emergency Services
Legislative Assembly for the ACT
GPO Box 1020
Canberra ACT 2601

Dear Mr Hargreaves

Inquiry into Police Powers of Crowd Control

I am writing to invite you and the Department of Justice and Community Safety to make a submission to the inquiry into police powers of crowd control, adopted by the Legal Affairs Committee on 24 February 2005.

The terms of reference are to inquire into and report on:

e) Current police powers under legislation;
f) Whether there have been instances of misuse of current powers;
g) The existence and/or desirability of special powers for the purpose of particular events;
h) Any other relevant matter.

Guidelines for submissions can be found on the Assembly's website. Electronic submission is preferred and these should be in Word 2000 or rtf format. I would appreciate receiving your submission by 2 May 2005. It is anticipated that public hearings will be held during June and possibly July.

All correspondence should be sent to:

The Secretary
Standing Committee on Legal Affairs
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601
Fax: (02) 6205 0432. E-mail: committees@act.gov.au.
For further information please contact Robina Jaffray on (02) 6205 0199. I look forward to hearing from you on this matter.

Yours sincerely

Mr Bill Stefaniak MLA
Chair
18 April 2005
C.2 Letter from Committee Chair to Minister, dated 6 December 2005

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON LEGAL AFFAIRS
Bill Stefaniak MLA [Chair], Karin MacDonald MLA [Deputy Chair], Deb Foskey MLA

Mr John Hargreaves MLA
Minister for Police and Emergency Services
Legislative Assembly for the ACT
GPO Box 1020
Canberra ACT  2601

Dear Mr Hargreaves

Inquiry into police powers of crowd control

Following on from the recent public hearings into police powers, the Legal Affairs Committee has some further questions. These are set out in the attachment to this letter.

A response by cob, Tuesday, 13 December 2005 would be appreciated. If you have any queries in relation to this letter please contact the committee secretary, Ms Robina Jaffray, on [02] 6205 0199. I look forward to hearing from you.

Yours sincerely

Bill Stefaniak MLA
Chair
06 December 2005
Attachment

1) What gear is standard issue for police on operational duties?
   a) Is standard issue gear the same for all operational duties or does it vary according to the type of operational duty?

2) On page 41 of the transcript of 23 September, Chief Police Officer Fagan advised that in 2003-2004 OC spray was used 83 times and in 2004-05 it was used 94 times. The committee would like a breakdown of these figures, including an indication of the kinds of incidents in which OC spray was deployed and the number of people on which the spray was used.

3) On the second page of your submission, you refer to the nature of intervention which may be made by police officers and state that this includes "to arrest using degrees of coercion and force reasonably required to effect the arrest". Is the use of coercion and force used only to effect an arrest?
   a) If not, the Committee would appreciate some examples of the types of situation where coercion and force might be used other than to effect an arrest.

4) The Committee's inquiry is not limited to police powers under legislation; the inquiry is also interested in the mechanisms by which police maintain public order, including such mechanisms as the use of tasers and OC spray. Are these options ever used other than to effect an arrest? If so, when have they been used and in what circumstances?

5) The submission and the Commissioner's Order 3 appear to differ on this question – CO 3 talks about the use of force "in the circumstances of any particular case" [p2]. However, your submission was limited to discussing force in the context of arrest and not generally. Given that many crowd control situations are not necessarily going to result in arrests and one of the contexts for the inquiry was the use of the spray in such situations, could you explain why your submission focussed on arrest situations?

6) The document, *ACT Policing: Practical Guide: Oleoresin Capsicum (OC) Spray*, describes what considerations have to be taken into account prior to the discharge of the spray and also what actions an officer must take prior to discharge of the spray where an officer might consider that they need to discharge OC spray on more than one person. Such actions include the giving of a verbal warning. Are verbal warnings given in situations where there may be only one person at risk of being sprayed? If not, why is this the case?

2 December 2005
C.3 Response to 6 December letter, dated 31 January 2006

The Committee asked the Minister for Police and Emergency Services, Mr John Hargreaves – In relation to the Inquiry Into Police Powers of Crowd Control:

1) What gear is standard issue for police on operational duties?
   a) Is standard issue gear the same for all operational duties or does it vary according to the type of operational duty?

2) On page 41 of the transcript of 23 September Chief Police Officer Fagan advised that in 2003-2004 OC spray was used 83 times and in 2004-05 it was used 94 times. The committee would like a breakdown of these figures including an indication of the kinds of incidents in which OC spray was deployed and the number of people on which the spray was used.

3) On the second page of your submission you refer to the nature of intervention which may be made by police officers and state that this includes to arrest using degrees of coercion and force reasonably required to effect the arrest. Is the use of coercion and force used only to effect an arrest?
   a) If not, the Committee would appreciate some examples of the types of situation where coercion and force might be used other than to effect an arrest.

4) The Committee's inquiry is not limited to police powers under legislation; the inquiry is also interested in the mechanisms by which police maintain public order, including such mechanisms as the use of lasers and OC spray. Are these options ever used other than to effect an arrest? If so, when have they been used and in what circumstances?
5) The submission and the Commissioner's Order 3 appear to differ on this question - CO 3 talks about the use of force "in the circumstances of any particular case". However, your submission was limited to discussing force in the context of arrest and not generally. Given that many crowd control situations are not necessarily going to result in arrests and one of the contexts for the inquiry was the use of the spray in such situations, could you explain why your submission focussed on arrest situations?

6) The document, ACT Policing: Practical Guide: Oleoresin Capsicum (OC) Spray, describes what considerations have to be taken into account prior to the discharge of the spray and also what actions an officer must take prior to discharge of the spray where an officer might consider that they need to discharge OC spray on more than one person. Such actions include the giving of a verbal warning. Are verbal warnings given in situations where there may be only one person at risk of being sprayed? If not, why is this the case?

The answer to the Committee's questions are as follows:

1. Police wear standard accoutrements when they are exercising police powers. These standard accoutrements are police issue handgun, holster, baton, OC spray, handcuffs, spare ammunition for the handgun, gloves and a personal radio.

   Special teams may have additional equipment – for example members of the Tactical Response Team (TRT) will have additional equipment specific to the task they are carrying out at that particular time.

   In a public order context, if intelligence suggests that a situation is likely to be violent, police deployed in a public order role may do so without their standard issue firearms. They may also be issued additional protective equipment. This equipment may include extra handcuffs, shield, helmet, coveralls, leg protectors and other protective clothing. Decisions concerning issue of such equipment would be made by the police commander on a case by case basis, and would also depend upon the training received by the members involved.

2. It would be too resource intensive to detail the specific cases in which Oleoresin Capsicum (OC) has been used against another person.

3. Police will use negotiation, warning, verbalisation and coercion as required to reasonably carry out their duties. This includes when effecting an arrest. This may include reasonable force, defined in Commissioners Orders 3 as the minimum force reasonably necessary in the circumstances of any particular case.

   An example would be police intervening to stop a breach of the peace happening. Police may decide to physically remove a person's from an environment if they reasonably believe that a breach of the peace is about to occur or is occurring. When the person is removed from the location, and the
breach of the peace has ceased, police will cease using force to remove or restrain that person.

4. Commissioners’ Order 3 mandates the use of chemical agents and electrical incapacitants. Effecting the arrest of a suspect is only one of four reasons to use chemical agents or electrical incapacitants against another person (see below).

Commissioner’s Order on the Use of Force (Commissioner’s Order 3) states the following in relation to chemical agents and electrical incapacitants:

Para 6.1.1

An AFP employee or special member may only use chemical agents against another person where he or she believes on reasonable grounds that their use is reasonably necessary in order to:

a) defend him or herself, or others from physical injury in circumstances where protection cannot be afforded less forcefully;

b) arrest a suspect whom he or she suspects, on reasonable grounds, poses a threat of physical violence and the arrest cannot be affected less forcefully;

c) resolve an incident where a person is acting in a manner likely to seriously injure him or herself and the incident cannot reasonably be resolved less forcefully; or

d) to deter attacking animals.

And also,

Para 7.1.1

An AFP employee or special member deployed with the AFP’s Specialist Response & Security Team may only use an electrical incapacitant against another person where he or she believes on reasonable grounds that their use is reasonably necessary in order to:

a) defend him or herself, or others from physical injury in circumstances where protection cannot be afforded less forcefully;

b) arrest a suspect whom he or she believes, on reasonable grounds, poses a threat of physical violence and the arrest cannot be affected less forcefully;

c) resolve an incident where a person is acting in a manner likely to seriously injure him or herself and the incident cannot reasonably be resolved less forcefully; or

d) to deter attacking animals.
A Use of Force Report is completed each time such devices are used against another person. It would be too resource intensive to collate the specific reasons why an officer has deployed these devices at any particular incident.

5. Terms of Reference One of the *Inquiry into Police Powers of Crowd Control* related to current police powers under legislation. Use of force by police in other relevant circumstances generally occurs consistent with common law and departmental guidelines rather than statute law.

6. In accordance with section 6 of Commissioners Order 3, the principles of negotiation and conflict de-escalation are always emphasised as alternatives to the use of physical force as the safety of AFP employees and members of the public is of paramount importance.

Police may choose not to specifically warn a person that the officer is about to use chemical agents, if the officer deems it inappropriate or if to do so would place the safety of AFP employees and members of the public at risk.

It is requested that this document is treated 'in confidence' and is not released to a third party or the public without seeking further approval by the document owner.

Approved for circulation to the Standing Committee on Legal Affairs

By the Minister for Police and Emergency Services, John Hargreaves MLA

Date: \(\text{31/1/02}\)
C.4    Response to supplementary questions to Minister for Police and Emergency Services [Annual Reports hearings November 2005] dated 12 December 2005

Mr Zed Seselja - Asked in relation to the ACT Policing Annual Report:

Joint Study into ACT Policing

1) The introduction to the report refers to the Joint Study into ACT Policing. The study makes a number of implicit and explicit recommendations.
   a) Is there a publicly available document that clearly sets out the ACT Government's and/or AFP's response to these recommendations?
   b) If not why not?

Meeting targets

2) Page 5 notes the AFP did not achieve 12 of its 37 measures for the 2005-2006 Interim Purchase Agreement:
   a) Are there any repercussions for the AFP not meeting these measures? If not, why not?

Rejected Sexual Assault Referrals

3) On page 34 it states that there were 267 rejected sexual assault referrals in 05-06:
   a) Why would a referral be rejected?

Norfolk Island

4) Page 37 mentions ACT Policing's involvement in the arrest of a person for the murder of Janelle Patton:
   a) Why was ACT Policing involved?
   b) Did the ACT pay for any of the staff travel, legal or other costs involved in this operation? And if yes, how much?

Planning Team

5) Page 39 mentions ACT Policing's 'Planning Team' preparation for visits by dignitaries including the Queen:
   a) Is this not an Australian Government responsibility?
   b) Were any ACT Government funds used for this purpose?
   c) If yes, how much?

Approved for circulation to the Member

Simon Corbell MLA
Attorney General

Date: 12-12-06
AWAs
6) On page 99 it states that no AWAs were entered into in 2005-2006. Is it the policy of the AFP not to engage in AWAs, or is the AFP considering or intending to introduce them?

Police Consultative Board
7) On page 101 it states the AFP has a Police Consultative Board:
   a) What recommendations have they provided to the Minister?
   b) How many and which recommendations have been accepted and acted upon?
   c) What was the outcome of the Board’s consideration of the interaction between police and the private security industry?

Preventative Detention
8) Are you aware of, or have you taken part in, any discussions or negotiations between ACT Policing and officers of the Commonwealth AFP, regarding whether the AFP can or will use its preventative detention powers under commonwealth legislation, in preference to using preventative detention powers under ACT legislation, if a person were to be detained in the ACT?
   a) What were the outcomes of those discussions?
   b) What were the job titles of the people who took part in those discussions?

Communications capability
9) It was reported in the Canberra Times that the special operations and regular AFP units could not communicate directly with each other in the recent siege involving Mr David “DJ” McLaughlin. Is this correct?
   a) Do you consider that this is a problem?
   b) What, if anything has been done to rectify this problem?

10) Can ACT Policing’s mobile communications transceivers communicate directly with all other ACT emergency services?
    a) If not, which services require an interlocutor service?

11) Can ACT Policing’s mobile communications transceivers communicate directly with NSW emergency services?

Drug operations
12) Page 36 refers to the Stonefest operation, and amount of drugs etc seized:
    a) What strategies did the AFP use to detect the drugs?

13) A recent NSW Ombudsman’s review (titled: ‘Review of the Police Powers (Drug Detection Dogs) Act 2001’) found that:
    “Our review found that despite the best efforts of police officers, the use of drug detection dogs has proven to be an ineffective tool for detecting drug dealers. These findings have led us to question whether the Drug Dogs Act will ever provide a fair, efficacious and cost effective tool to target the drug supply.”
    a) Do you agree with the findings of the NSW Ombudsman?
b) Do you think the NSW Ombudsman's findings are applicable to ACT Policing's operations?

c) If not, can you please provide the reasoning and data on which you base your opinion?

14) How much money (total expenditure, including, but not limited to, staff and equipment costs) did ACT Policing spend on drug detection operations using dogs?

a) How many people were a) charged and b) convicted as a result of these operations?

b) What exact charges (if any) were laid, and what convictions were obtained as a result of these operations?

AFP Capital Upgrades

1) Page 77 shows that $634 000 was spent on capital upgrades for the AFP in 2005-06. The original figure was $200 000.

a) What was this funding for?

b) Why was it revised from $200 000 to $688 000?

c) Was it included in the payment made to the AFP under the purchasing agreement? And if not why not?

Mr Corbell - The answer to the Member's question is as follows:

Joint Study into ACT Policing

1a) No.

1b) The Joint Study was jointly produced by the ACT Government and the Australian Federal Police. The views of both parties are represented within the body of the document.

Meeting targets

2a) There are no penalty provisions in the Agreement if performance measures are not met by ACT Policing. However, the government closely monitors the measures with the Chief Police Officer regularly reporting to the Minister for Police and Emergency Services on meeting targets. An injection of extra police from this year's budget is expected to see an overall improvement in targets, particularly in meeting police priority response times.

Rejected Sexual Assault Referrals

3a) It should be noted that the referrals listed on page 34 refer to 287 of the total 475 sexual assault related matters received by a police officer outposted to the Office of Children, Youth and Family Services.

The most common reasons for a referral to be rejected are:

i) The matter has been reported to the Office of Children, Youth and Family Services with a request for no police involvement;

ii) Interstate matters referred to the relevant jurisdiction;

iii) No criminal offence is disclosed;

iv) Lack of information to substantiate any offence; and

v) Complainant does not wish to proceed with the matter.
The Member may wish to refer to page 134 of the ACT Policing Annual Report, which indicates 344 sexual offences reported to police and 269 offences cleared in 2005-2006.

Norfolk Island

4a) Policing on Norfolk Island is provided by the AFP in accordance with an arrangement between the Commonwealth and the Norfolk Island Administration. A small team of investigators from ACT Policing was asked to assist in this investigation because at the time ACT Policing had the requisite expertise and experience to undertake a murder enquiry. This investigation was undertaken in accordance with agreed funding arrangements between the ACT and the Commonwealth.

4b) No.

Planning Team

5a) All States and Territories have some responsibilities in relation to the protection within their jurisdiction of visiting Internationally Protected Persons. The ACT Policing Planning Team is responsible for the development of Operational Orders for the conduct of visits to the ACT by visiting dignitaries, responses to demonstrations by Issue Motivated Groups and the conduct of a range of major regional public events.

5b) No. This activity was undertaken in accordance with agreed funding arrangements between the ACT and the Commonwealth.

5c) See the response to question 5b above.

AWAs

6) The Australian Federal Police Certified Agreement 2003 - 2006, Part 6, Clause 22, allows for employees to enter into an Australian Workplace Agreement (AWA). There were no requests received from employees within ACT Policing to enter into an AWA in 2005-2006.

Police Consultative Board

7a) The Police Consultative Board is a broadly based community consultative body established by the ACT Government. The Board can provide input to government policy formation in capacities such as a policy review or reference group. The Police Consultative Board makes findings that it publishes in the reports it issues. The Board has conducted seminars on the community’s first contact with police, the interaction of police and mental health and the interaction of police and private security. The reports of each are publicly available on its website at http://www.ics.act.gov.au/pcb/index.htm.

7b) Not applicable – see the response to question 7a above.

7c) The Board conducted a seminar involving all major stakeholders on 6 June 2006. The seminar’s primary outcomes were:
   • The Chief Police Officer, Audrey Fagan, committed ACT Policing to host an information seminar for the private security industry on police’s response protocols and how they prioritise incoming calls.
   • The Office of Fair Trading (OFT) will set up a meeting of senior managers in the private security industry and senior police with a view to a permanent
forum being established at this level for the exchange of information. OFT may base this on an existing security group which convenes which meets annually but whose frequency of meetings can increase.

- It was noted that competency requirements and criminal history checks as prerequisites for entering the industry were being reviewed at the national level.
- The security industry in the ACT will convene an information and training forum on two key practice issues which emerged at the seminar on private security officers' legal rights, capacities and obligations around:
  1. the detaining and restraining of people, especially in life-threatening situations; and
  2. the extent and boundaries of authority in a geographical and physical sense in emergency situations such as traffic and/or incidents moving between private and public spaces.

The promotion of CrimeStoppers to private security staff will be explored with an emphasis on the program's universality to all citizens when witnessing a crime occurring to a third party victim. Care will be taken that CrimeStoppers not be seen as an exclusive opportunity nor obligation for private security staff.

Preventative Detention

I am advised that ACT Policing has had discussions with other AFP portfolios about this issue.

8a) Any decision to exercise powers under Commonwealth law, in the context of an investigation with Commonwealth considerations, is an operational matter for the AFP to determine.

8b) Discussions have taken place at senior levels and at the operational level. It would not be appropriate to divulge details of individual officers involved in these matters.

Communications capability

9) The report in the Canberra Times on 25 September 2006 concerning police communications was not correct.

10) No. However, communications centres for each emergency service can communicate directly.

11) ACT Policing members can communicate directly with NSW Police.

Drug operations

12a) ACT Policing utilised normal policing methodologies in undertaking these investigations, including the collection and assessment of intelligence, and the attainment and execution of search warrants.

13a-c) The Police Powers (Drug Detection Dogs) Act 2001 (NSW) was repealed and replaced by provisions within the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW). While the AFP does utilise drug detection dogs as one part of an overall strategy aimed at reducing the incidence of illicit drug distribution, the ACT has opted not to specify in legislation the operational parameters for their use by the AFP. This difference makes any comparison between the ACT and NSW
situations inappropriate.

14a-b) This information is not readily available and it would be too resource intensive to manually extract these details from AFP systems.

AFP Capital Upgrades

1a) Original $200 000 funding was for capital upgrades to ACT Policing facilities.

1b) The break-up of the $688 000 amount is as follows:

- $200 000: Replacement of PABX system in the Winchester Police Centre (total cost was $254 000 with the balance being met by the AFP);
- $250 000: In partnership with the Department of Justice and Community Safety, ACT Policing undertook the essential upgrade of the Closed Circuit Television System in the City Station Watch House; and
- $238 000: In partnership with the Department of Justice and Community Safety, ACT Policing undertook the essential upgrade to security fencing at the Belconnen Exhibit facility.

1c) The purchase agreement sets out the services to be provided to the ACT Community by the AFP and the associated cost. This does not include capital upgrades to ACT Policing facilities that are addressed through consultation with the Department of Justice and Community Safety and, if necessary, the ACT Government budget process.
APPENDIX D: Arrangement between Minister for Justice and Customs of the Commonwealth and the ACT for the provision of police services to the ACT, Purchase Agreement and Ministerial Direction [Minister for Police and Emergency Services]
An Arrangement between
The Minister for Justice and Customs of the
Commonwealth
And
The Australian Capital Territory
For
The Provision of Police Services to the
Australian Capital Territory
AN ARRANGEMENT BETWEEN THE MINISTER FOR JUSTICE AND CUSTOMS OF THE COMMONWEALTH AND THE AUSTRALIAN CAPITAL TERRITORY FOR THE PROVISION OF POLICE SERVICES TO THE AUSTRALIAN CAPITAL TERRITORY

Background

Subsection 37(a) of the Australian Capital Territory Self-Government Act 1988 provides that the ACT Executive has the responsibility of governing the Territory with respect to matters of law and order. Under subsection 23(1)(c) the ACT Legislative Assembly, however, has no power to make laws with respect to the provision by the AFP of police services in the ACT. As such there is no police act or similar legislation in the ACT with the Australian Federal Police (AFP) being responsible for providing policing services to the ACT under Section 8 of the Australian Federal Police Act 1979.

In effect, these two pieces of legislation mean that the ACT is policed by the AFP and under the provisions of the Australian Federal Police Act 1979 at Subsection 8(1A), the Minister for Justice and Customs and the Australian Capital Territory may enter arrangements for the police services in relation to the Australian Capital Territory that are in respect of Territory functions as defined by section 3 of the Australian Capital Territory Self Government (Consequential Provisions) Act 1988 (hereinafter called ‘police services’).

Paragraph 9(1)(b) of the Australian Federal Police Act 1979 provides that in addition to any other powers and duties, a member of the Australian Federal Police has, when performing functions in the Australian Capital Territory, the powers and duties conferred or imposed on a constable or on an officer of police by or under any law (including the common law) of the Territory.

The Commonwealth Minister for Justice and Customs and the Australian Capital Territory have agreed to enter arrangements for the provision of police services in respect of Territory functions in accordance with the terms and conditions set out in the Arrangement.

IT IS AGREED by the parties to this Arrangement as follows:

1. Definitions

1.1 In this Arrangement unless the contrary intention appears:

“ACT” means the Australian Capital Territory;

“ACT Policing” means the Australian Federal Police business unit responsible for the provision of policing services to the ACT.

“AFP” means the Australian Federal Police;

“AFP Act” means the Australian Federal Police Act 1979;

“Chief Police Officer” means the AFP employee appointed by the Commissioner, as provided for in this Arrangement, to be the Chief Police Officer for the ACT;

“Commissioner” means the Commissioner of the Australian Federal Police referred to in section 6 of the AFP Act;

“Commonwealth Minister” means the Commonwealth Minister of State appointed to administer the AFP Act;

“Commonwealth Place of Interest” means a facility or location that is directly involved in the conduct of Commonwealth Government business or is otherwise in the interests of the Commonwealth to protect;

“Police Minister” means the Minister of the ACT Executive who is responsible for police matters;

“Police Services” means community policing services provided for under this
Arrangement which include, but are not necessarily limited to, the preservation of peace and good order, the prevention and detection of crime and the protection of persons from injury or death, and the protection of property from damage, whether arising from criminal acts or otherwise;

“Purchase Agreement” means the annual agreement provided for under this Arrangement between the Police Minister, the Commissioner, and the Chief Police Officer setting out details of goods and services purchased by the ACT from the AFP, the agreed price for those services payable by the ACT to the AFP and the reporting by the AFP on performance.

2. Purpose and Overriding Commitment
2.1 The purpose of this Arrangement is to establish the enabling framework for the provision by the AFP of policing services to the ACT.
2.2 The Commonwealth is committed to the provision, within the context of this Arrangement and the Purchase Agreement, of a high quality community policing service to the ACT.

3. Objectives of the Arrangement
3.1 Both parties seek from this Arrangement:
• Appropriate policing – the arrangement provides an agreed level of policing services for the ACT community;
• Service quality – the arrangement promotes and sustains the high quality of service provision;
• Value for money – the arrangement encourages efficient and effective service provision at an optimum cost with an emphasis on continuous improvement; and
• Capacity to deliver – the arrangement provides for sufficient resources to deliver the services to agreed priorities and levels.

4. Provision of Police Services to the ACT
4.1 The Commonwealth and the ACT Government agree that the AFP will provide Police services to the ACT Government in accordance with the Purchase Agreement, as varied from time to time by arrangement between the Police Minister and the Chief Police Officer.
4.2 The ACT shall pay the AFP for the provision of police services pursuant to this Arrangement the amounts specified in the Purchase Agreement.
4.3 The parties acknowledge that the AFP is also required, within the ACT, to provide police services to the Commonwealth which are not subject to this Arrangement and for which the ACT is not required to pay. This exclusion extends to cover the costs of enforcing Commonwealth Law and protecting Commonwealth interests by AFP personnel employed within the ACT Policing business unit. Costs excluded from the arrangement will include those associated with the protection of foreign dignitaries, foreign missions, and Commonwealth places of interest. The basis for allocating costs against the Commonwealth and ACT Governments will be articulated in the Purchase Agreement.
4.4 The allocation of resources for the police services required by the Commonwealth within the ACT will not be altered in any way which might materially affect the police services purchased by the ACT Government, without prior consultation and agreement. Failure to obtain agreement will be sufficient grounds for the issue of a notice to discontinue this Arrangement in accordance with clause 13.3.
4.5 Revenues received by the AFP in the course of enforcement of ACT legislation under this Arrangement will be remitted to the ACT.
4.6 The ACT Government will be responsible for the provision of appropriate Community Policing infrastructure and facilities to the AFP. The ACT Government and the AFP will jointly develop a plan to apportion individual responsibilities for the maintenance of structures and facilities and the provision of fittings during the term of this Arrangement.

5. Chief Police Officer for the ACT
5.1 There shall be a Chief Police Officer for the ACT who shall, subject to the Authority of the Commissioner, be responsible to the Police Minister for the achievement of the outcomes set out in the Purchase Agreement and the general management and control of AFP personnel and resources deployed for the purposes of that agreement.
5.2 The Chief Police Officer shall be appointed by the Commissioner with the approval of the Police Minister.
5.3 If the Police Minister advises the Commissioner in writing that the Chief Police Officer no longer enjoys the confidence of the ACT Executive, and of the reasons for that lack of confidence, the Commissioner shall as soon as practicable replace the Chief Police Officer.
5.4 The Chief Police Officer will have membership of the ACT Government Chief Executive Officer forum and will receive timely advice on ACT budget instructions and processes.

6. Police Minister’s Power to Give Directions
6.1 The Police Minister may give to the Chief Police Officer general directions in writing as to policy, priorities and goals in relation to the provision of police services by the AFP under this Arrangement and the Purchase Agreement.
6.2 The Chief Police Officer shall comply with any written directions received from the Police Minister under clause 6.1 unless a contrary written direction has been received from the Commonwealth Minister pursuant to the AFP Act.
6.3 Any written directions from the Police Minister will be appended to the Purchasing Agreement in a form that enables them to be published in the ACT Policing Annual Report.
6.4 Except in case of emergency, the Commonwealth Minister shall not issue to the Commissioner a Direction pursuant to the AFP Act which affects the provision by the AFP of police services to the ACT unless the Commonwealth Minister has first consulted the Police Minister about the nature and purpose of that direction. Where in an emergency a Direction is given without prior consultation with the Police Minister, the Commonwealth Minister will consult the Police Minister about the Direction as soon as possible thereafter.
6.5 If a Direction by the Commonwealth Minister to the Commissioner has the effect of increasing the cost of police services provided to the ACT, then the costs attributable to the Direction will be borne by the Commonwealth by adjusting the price paid by the ACT in accordance with the price variation provisions of the Purchase Agreement.

7. Nominated Agency within ACT
7.1 Without inhibiting the independent reporting and advisory capacity of the Chief Police Officer as prescribed in clauses 5.1 and 8.1, the Police Minister may request the AFP to provide information to a nominated agency within the ACT. The nominated agency shall provide support to the Police Minister in the performance of his or her ministerial functions on policing.

8. Provision of Information to the Nominated Agency
8.1 The Chief Police Officer shall provide to the nominated agency such
information, reports and recommendations in relation to the provision of 
services to the ACT under this Arrangement as the Police Minister may from 
time to time require. The Chief Police Officer shall exercise discretion over the 
release of information to the nominated agency to ensure that relevant 
information may be lawfully reported with due regard to privacy and operational 
policing considerations.

8.2 Consistent with the AFP values of integrity and accountability and without 
limiting the generality of clause 8.1, the nominated agency may, subject to any 
applicable secrecy laws, request and receive information from the Chief Police 
Officer, on behalf of the Police Minister, regarding:
(a) complaints against AFP employees providing services under 
this Arrangement, including the investigation of such complaints and any 
related action whether undertaken by the AFP, the Commonwealth 
Ombudsman or otherwise;
(b) AFP Professional Standards (PRS) enquiries relating to AFP employees 
providing services under this Agreement; and
(c) the deployment, operational status and movement of AFP employees 
engaged in providing police services under this Arrangement.

8.3 The Chief Police Officer shall report annually to the Police Minister at a time 
nominated by the Police Minister on the provision of police services pursuant to 
this Arrangement for the proceeding year. The annual report will describe the 
outcomes achieved during the period reported on and shall include details of 
the resources utilised, the levels of crime reported and such other matters as 
may be specified by the Police Minister.

9. Audit
9.1 The Chief Police Officer will provide after the end of each financial year and by 
date nominated by the Police Minister, a financial statement for that financial 
year accompanied by a report of the Commonwealth Auditor-General or some 
other auditor nominated by the Chief Police Officer and approved by the Police 
Minister stating:
(a) the correctness of the report made of performance under the purchase 
Agreement; and
(b) any other matters which the Auditor-General, or otherwise approved 
auditor, considers should be reported to the Police Minister.

9.2 The Police Minister is also entitled to have specific financial and performance 
audits conducted by the Commonwealth Auditor-General, or other agreed 
auditor, the cost of which shall be borne by the ACT.

10. Legal Advice
10.1 If legal advice and appearance about matters covered by the laws of the ACT 
(including the common law) is required by the AFP in relation to the provision of 
police services pursuant to this Arrangement, the Chief Police Officer shall 
seek such advice or appearance from the ACT Director of Public Prosecutions, 
the ACT Government Solicitor’s Office or other legal sources, whichever is 
appropriate in the circumstances.

11. Terms and Conditions of Employment
11.1 The Commonwealth is responsible for determining the terms and conditions of 
employment of AFP employees involved in the provision of police services to 
the ACT pursuant to this Arrangement.
11.2 If the Commissioner proposes to vary the terms and conditions of employment 
of AFP personnel in a way which might affect the manner and cost of providing 
police services to the ACT, the Commissioner shall, before altering those terms
and conditions, consult with and advise the Police Minister of the likely implications of the proposed alterations.

12. Dispute Resolution
12.1 The mechanism for resolving disputes arising from this Arrangement will be as follows:
(a) in the first instance the Territory and AFP contact officers listed at clause 12.2 will use their best endeavours to settle the dispute; and
(b) if after 30 days the dispute is unresolved or the Contact Officers lack the authority to do so, the matter will be referred to the officers listed in clause 12.3 as the Responsible Officers.
12.2 For the purposes of this Arrangement the Contact Officers will be:
For the AFP, Director, Corporate Services on advice from the AFP, Chief Operating Officer; and
For the Territory, Director, Justice, Planning and Programs, Policy and Regulatory Division, Department of Justice and Community Safety.
12.3 For the purposes of the Arrangement the Responsible Officers will be:
For the AFP, Chief Police Officer in consultation with the AFP, Chief Operating Officer; and
For the Territory, Chief Executive Officer, Department of Justice and Community Safety.
12.4 Any dispute or matter of concern to either party arising from this Arrangement that cannot be resolved by the officers nominated at clause 12.2 or 13.3 shall be referred for consultation between resolution by the Commonwealth Minister and the Police Minister.
12.5 Contact Officers for the purpose of the annual Purchase Agreement are to be nominated in each Purchase Agreement.

13. Duration of this Arrangement
13.1 This Arrangement shall commence on a date agreed to by the parties and shall remain in force for five years.
13.2 Two years prior to its expiry, the parties shall commence negotiations about the terms and conditions of a renewal of the Arrangement.
13.3 If either party decides this Arrangement shall not be continued or renewed, it shall give at least 2 years notice in writing to that effect.
13.4 In the event that a replacement Arrangement is not signed at expiry of the preceding Arrangement, the parties may agree to extend the terms and conditions of the current Arrangement.

14. Purchase Agreement
14.1 A Purchase Agreement pursuant to this Arrangement shall be renegotiated annually prior to the commencement of the next financial year, which begins on 1 July.
14.2 In the event that the parties have not signed a Purchase Agreement by 30 June in any year, the parties may agree to the terms and conditions of an interim Purchase Agreement.
IN WITNESS WHEREOF this Arrangement has been respectively signed for and on behalf of the parties:

SIGNED by Senator the Hon Chris Ellison, Minister for Justice and Customs on behalf of the Australian Government

(date of signing)

SIGNED by Simon Corbell MLA, Minister for Police and Emergency Services on behalf of the ACT Government

(date of signing)
2006–2007 PURCHASE AGREEMENT BETWEEN
THE ACT MINISTER FOR POLICE AND EMERGENCY SERVICES,
THE COMMISSIONER, AUSTRALIAN FEDERAL POLICE,
AND THE CHIEF POLICE OFFICER FOR THE ACT
FOR THE PROVISION OF POLICING SERVICES TO
THE AUSTRALIAN CAPITAL TERRITORY

Purpose
1. In accordance with the Australian Federal Police Act 1979 (the Act), the
Australian Federal Police (AFP) provides community policing services to the
Australian Capital Territory (ACT). The Act also allows for the Commonwealth and
ACT Governments to enter an arrangement for the provision of those policing
services.

2. On 14 June 2006, the Commonwealth Minister for Justice and Customs and the
ACT Minister for Police and Emergency Services entered an arrangement which
established the enabling framework for the provision by the AFP of policing services
to the ACT. The Arrangement for the Provision of Police Services to the ACT (the
Arrangement) requires the ACT Minister for Police and Emergency Services (the
ACT Minister), the Commissioner and the Chief Police Officer to enter a Purchase
Agreement (the Agreement) for those services. The Agreement is required to set out
the details of the goods and services to be purchased by the ACT from the AFP, the
agreed price for those services and AFP reporting on performance.

3. This Agreement will be read in conjunction with the Arrangement of 14 June
2006.

Parties
4. This Agreement is between the ACT Minister, the Commissioner of the AFP
and the Chief Police Officer for the ACT.

Definitions
5. Unless stated otherwise, definitions in the Agreement are the same as in the
Arrangement.

Scope
6. The output classes covered by this Agreement include all the goods and
services to be purchased by the ACT from the AFP through the direct police budget
appropriation. This Agreement does not cover activities funded by revenue outside
the direct police appropriation.

7. The ACT’s purchaser interests covered by this Agreement include:
(a) the policing outcome and all associated outputs to be provided, listing
final goods and services;
(b) performance measures for the outputs, together with targets where
appropriate; and
(c) financial and resource reporting.

8. Agreed variations to this Agreement shall be supported by correspondence
which will be appended to the Agreement.

9. The policing outcome and associated outputs to be provided, performance measures and definitions are contained within Schedule 1 to this Agreement.

Billing and Payment Arrangement

10. The AFP will follow the general principles of Commonwealth Cost Recovery Guidelines where appropriate in the provision of policing services to the ACT Government.¹

11. Payments to the AFP will be on a pro-rata monthly basis against the police appropriation.

Powers and Obligations

12. In accordance with the Arrangement, the Chief Police Officer for the ACT, subject to the authority of the Commissioner of the AFP, will be responsible to the ACT Minister for the achievement of the policing outcome and delivery of outputs set out in the Purchase Agreement and the general management and control of AFP personnel and resources deployed for the purposes of the Arrangement.

13. Short-term variations to targets and priorities set by this Agreement may be determined by the Minister, including at the request of the Chief Police Officer, following consultation and with reasonable notice.

14. Such variations will be appended to this Agreement and should be within budget limits unless otherwise agreed.

15. The Chief Police Officer will provide services in support of ACT ministerial information requirements which are compliant with ACT Government standards.

Duration of Agreement

16. The Agreement shall apply for the period 1 July 2006 to 30 June 2007 in accordance with clause 14.1 of the Arrangement.

¹Australian Government Cost Recovery Guidelines, Department of Finance and Administration Circular 2005/09

Reporting

17. The Chief Police Officer shall report to the ACT Minister within one (1) calendar month at the end of each quarter, unless otherwise agreed by parties, on those matters prescribed in Schedules 1, 2 and 3 in this Agreement. The reports will be provided in a format agreed by the parties, covering performance, finance and resources.

18. In addition, the AFP will fund, to a maximum limit of $10,000, a survey of crime victims in the ACT, and use the results to develop benchmarks for establishing performance measures that relate to responding to victims of crime, and those performance measures will be documented in Agreements from July 2007 onwards. The AFP’s commitment to fund a survey of crime victims in the ACT refers to this
Dispute Resolution

19. The mechanism for resolving disputes arising from this Agreement will be as follows:
(a) in the first instance the Territory and AFP contact officers listed will use their best endeavours to settle the dispute; and
(b) if after 30 days the dispute is unresolved or the Contact Officers lack the authority to do so, the matter will be referred to the officers listed as the Responsible Officers.

20. For the purposes of this Agreement the Contact Officers will be:
(a) for the AFP, Director, Corporate Services on advice from the AFP, Chief Operating Officer; and
(b) for the Territory, Director, Justice, Planning and Programs, Policy and Regulatory Division, Department of Justice and Community Safety.

21. For the purposes of the Agreement the Responsible Officers will be:
(a) for the AFP, Chief Police Officer in consultation with the AFP, Chief Operating Officer; and
(b) for the Territory, Chief Executive Officer, Department of Justice and Community Safety.

22. Any dispute or matter of concern to either party arising from this Arrangement that cannot be resolved by the officers nominated at clause 20 or 21 shall be referred for consultation between resolution by the Commonwealth Minister and the Police Minister.
Strategic Plan

23. A three-year strategic plan will be developed by the parties during the term of this Agreement to outline policing priorities and directions and to reflect the measures necessary to achieve that guidance.

Enabling Services Re-Basing Exercise

24. The ACT Government and the AFP commit to a joint re-basing exercise to quantify the costs of AFP enabling services to the ACT in support of community policing. Both parties will consult to determine the re-basing exercise schedule and funding arrangements.

Annual Report

25. The Chief Police Officer shall also report annually to the ACT Minister, at a time nominated by the ACT Minister, on the provision of police services pursuant to the Purchase Agreement.

Simon Corbell MLA
Minister for Police and Emergency Services

Mick Keelty APM
Commissioner
Australian Federal Police

Audrey Fagan APM
Chief Police Officer for the ACT

(date) 11/7/2006  (date) 11/7/2006  (date) 11/7/2006
Schedule 1
PURCHASE AGREEMENT
For the year ended 30 June 2007
PERFORMANCE REPORTING

OUTCOME

In partnership with the community, create a safer and more secure Australian Capital Territory through the provision of quality police services.

This will be achieved through four main areas of activity: Crime and Safety Management; Traffic Law Enforcement and Road Safety; Prosecution and Judicial Support; and Crime Prevention.

OUTCOMES

CRIME AND SAFETY MANAGEMENT

- Incident Response and Policing Support for the Community
- Crime Detection and Investigation

ACT Policing will provide a safer and more secure Australian Capital Territory so that members of the community can go about their daily lives without undue fear of crime.

This will be achieved by:

(i) providing efficient and effective police response to calls for assistance received from members of the community;
(ii) conducting investigations to detect offenders and bring them to justice;
(iii) maintaining a proactive presence in the community, driven by the analysis of police intelligence data; and

Output Price: $51,206,000

TRAFFIC LAW ENFORCEMENT AND ROAD SAFETY

ACT Policing will enforce traffic laws and promote safer behaviour on ACT roads with the objectives of reducing the number of crash fatalities and injuries to members of the community.

Output Price: $6,560,000

PROSECUTION & JUDICIAL SUPPORT

ACT Policing will maximise the number of successful prosecutions in Court by providing support to the Director of Public Prosecutions and the Courts.

Output Price: $6,034,000

CRIME PREVENTION

ACT Policing will seek to prevent crime by targeting the causes of crime, educating members of the community about property and personal safety, and by pursuing inter-agency partnerships that assist in achieving this objective.

Output Price: $4,111,000

Total Price = $97,911,000
The above four main outputs will be achieved through the provision of police resources – including personnel, as defined and explained in Schedule 2 of this Agreement.

The attribution of prices to outputs is indicative of resource prioritisation by outputs and may vary throughout the year according to the operational assessment of the Chief Police Officer. Changes to the total price must be agreed by both parties.

## PERFORMANCE MEASURES

<table>
<thead>
<tr>
<th>Issue of Community Interest</th>
<th>Measures</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Level of Crime</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Number of offences against the person reported or becoming known per 100,000 population.a</td>
<td>820 or less&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>2.</td>
<td>Number of offences against property reported or becoming known per 100,000 population.a</td>
<td>9300 or less&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>3.</td>
<td>Percentage of offences against the person cleared.</td>
<td>55% or more&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>4.</td>
<td>Percentage of offences against property cleared.</td>
<td>10% or more&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>5.</td>
<td>Number of ambulance attendances at heroin related overdoses reported by the ACT Ambulance Service (drug supply indicator).a</td>
<td>144 or less</td>
</tr>
<tr>
<td><strong>Fear of Crime</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Percentage of persons who are concerned about being the victim of physical assault – excluding sexual assault.&lt;sup&gt;c&lt;/sup&gt;</td>
<td>National Average or less</td>
</tr>
<tr>
<td>7.</td>
<td>Percentage of persons who are concerned about being the victim of sexual assault.&lt;sup&gt;c&lt;/sup&gt;</td>
<td>National Average or less</td>
</tr>
<tr>
<td>8.</td>
<td>Percentage of persons who are concerned about being the victim of housebreaking.&lt;sup&gt;c&lt;/sup&gt;</td>
<td>National Average or less</td>
</tr>
<tr>
<td>9.</td>
<td>Percentage of persons who are concerned about being the victim of motor vehicle theft.&lt;sup&gt;c&lt;/sup&gt;</td>
<td>National Average or less</td>
</tr>
<tr>
<td>10.</td>
<td>Percentage of persons who feel safe at home alone during the day.&lt;sup&gt;c&lt;/sup&gt;</td>
<td>National Average or more</td>
</tr>
<tr>
<td>11.</td>
<td>Percentage of persons who feel safe at home alone after dark.&lt;sup&gt;c&lt;/sup&gt;</td>
<td>National Average or more</td>
</tr>
<tr>
<td>Issue of Community Interest</td>
<td>Measures</td>
<td>Target</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----------</td>
<td>--------</td>
</tr>
</tbody>
</table>
| **Police Responsiveness**   | 12. Response times for Priority One:  
  - Within 8 minutes;  
  - Within 12 minutes. | 60% or more  
 90% or more |
|                             | 13. Response times for Priority Two:  
  - Within 20 minutes;  
  - Within 30 minutes. | 60% or more  
 95% or more |
|                             | 14. Response times for Priority Three:  
  - Within 2 hours;  
  - Within 3 hours. | 60% or more  
 95% or more |
|                             | 15. Response times for Priority Four:  
  - Within 24 hours. | 95% or more |
|                             | 16. Percentage of 000 calls answered on first or second presentation:  
  - On first presentation;  
  - On second presentation. | 90% or more  
 98% or more |
<p>| <strong>Public Confidence in Police</strong> | 17. Percentage of persons satisfied or very satisfied with police services. | National Average or more |
|                             | 18. Percentage of persons who agree or strongly agree that police perform their job professionally. | National Average or more |
|                             | 19. Percentage of persons who agree or strongly agree that police treat people fairly and equally. | National Average or more |
|                             | 20. Number of substantiated complaint issues against police. | 25 or less |
|                             | 21. Number of substantiated complaint issues relating to persons injured in custody. | 0 |
| <strong>Road Safety</strong>             | 22. Number of road crashes per 100,000 population. | 3430 or less |
|                             | 23. Number of road crashes resulting in death per 100,000 population. | 4.6 or less |
|                             | 24. Number of road crashes resulting in injury per 100,000 population. | 250 or less |
|                             | 25. Percentage of persons who self-report to driving 10km or more over the speed limit. | National Average or less |</p>
<table>
<thead>
<tr>
<th>Issue of Community Interest</th>
<th>Measures</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>26. Percentage of persons who self-report to driving while not wearing a seatbelt.⁵</td>
<td>National Average or less</td>
</tr>
<tr>
<td></td>
<td>27. Percentage of persons who self-report to driving while suspecting they are over the 0.08 alcohol limit.⁶</td>
<td>National Average or less</td>
</tr>
<tr>
<td>Supporting the Judicial Process</td>
<td>28. Percentage of briefs delivered to the DPP within the designated timeframe.</td>
<td>75% or more</td>
</tr>
<tr>
<td></td>
<td>29. Percentage of cases finalised by offence proved in court.⁷,⁸</td>
<td>80% or more</td>
</tr>
<tr>
<td></td>
<td>30. Percentage of cases finalised by a not-guilty verdict or otherwise withdrawn.⁹</td>
<td>18% or less</td>
</tr>
<tr>
<td></td>
<td>31. Percentage of cases otherwise resolved.⁹,¹⁰</td>
<td>5% or less</td>
</tr>
<tr>
<td>Crime Prevention</td>
<td>32. Percentage of persons satisfied or very satisfied with police support for community programs.⁶</td>
<td>National Average or more</td>
</tr>
<tr>
<td></td>
<td>33. Number of juveniles referred to diversionary programs.⁴</td>
<td>50 or more</td>
</tr>
<tr>
<td></td>
<td>34. Percentage of juveniles diverted who have not re-offended in the reporting period.⁴</td>
<td>80% or more</td>
</tr>
<tr>
<td></td>
<td>35. Number of persons referred to community support agencies.</td>
<td>2000 or more</td>
</tr>
<tr>
<td></td>
<td>36. Number of referrals to drug diversion programs (drug demand reduction effort).</td>
<td>40 or more</td>
</tr>
</tbody>
</table>
a. These measures encompass the jurisdiction of a great many public and private institutions and individuals who contribute to the overall results and standings. Success in these targets is not the sole domain or responsibility of ACT Policing.

b. The development of these targets is based on a three year average.

c. These measures are sourced from the National Survey of Community Satisfaction with Policing (NSCSP), a self-reporting survey conducted by Roy Morgan Research under the auspices of the Australasian Centre for Policing Research.

d. Includes only complaint issues relating to ACT Policing members of the Australian Federal Police.

e. These measures are based on the concept of a 'case' where a person may be brought before the court on multiple charges. The charges are, for the purposes of this measure, grouped under the apprehension identification number which is automatically generated by the PROMIS Case Management System.

f. This measure records successful prosecutions as being those where any of the charges under one apprehension identification number has been proven before the court.

g. This measure records cases where none of the charges under one apprehension identification number have been proven before the Court.

h. This measure records cases which resulted in a court appearance where a magistrate or judge has made a determination which is not related to a finding of guilty or not guilty. This currently refers to mental health orders used by a court.

i. The term "otherwise resolved" includes cases referred to the Mental Health Tribunal, referrals by the Court before a matter is determined and Traffic Infringement Notices paid prior to the Court date but after an informant is sworn.
### Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offence</td>
<td>A breach of the criminal law.</td>
</tr>
<tr>
<td>Offences against the person</td>
<td>Offences against the person include homicide and related offences, assaults, sexually based offences, kidnap and other person offences.</td>
</tr>
<tr>
<td>Offences against property</td>
<td>Offences against property include robbery, blackmail, extortion, burglary, fraud, motor vehicle thefts, other theft offences, property damage and environmental offences.</td>
</tr>
<tr>
<td>Offence cleared</td>
<td>Offences cleared by arrest, summons, Voluntary Agreement to Attend Court (VATAC), charge before court, diversionary conference, caution or otherwise resolved.</td>
</tr>
<tr>
<td>Heroin Overdoses</td>
<td>The Ambulance Service provides this measure. It is the practice of police not to attend at drug overdoses so that others at the scene will not be deterred from seeking help for fear of a police presence. The use of heroin itself is illegal and there is a well-documented correlation between heroin use and levels of property crime and robbery. The overdose measure is one of the more reliable measures for indicating the supply and purity of available heroin and hence the effectiveness of police interventions.</td>
</tr>
<tr>
<td>Comparability of Survey of Community Satisfaction with Policing results</td>
<td>Data reported in the 2000–2001 financial year was compiled by the Australian Bureau of Statistics and published in the Population Survey Monitor. These data were collected through face-to-face interviews with respondents through a sample of approximately 220 people in each quarter of the financial year. This was discontinued and replaced by the Survey of Community Satisfaction with Policing (NSCSP) coordinated by the Australasian Centre for Policing Research, and is conducted on an ongoing basis throughout the year using telephone interviews. The NSCSP, previously conducted by AC Nielsen, will be conducted by Roy Morgan Research from 1 July 2006. While the content of the survey remains similar over time, there is some potential for variations in results based solely on the difference in the survey methodologies and survey providers.</td>
</tr>
<tr>
<td>Coverage of Survey of Community Satisfaction with Policing</td>
<td>New South Wales withdrew from the NSCSP between July and October 2005. National survey results for the 2005–06 financial year will not be strictly comparable to other years.</td>
</tr>
</tbody>
</table>

| Prioritised response model    | The model used by the Computer Aided Dispatch system to prioritise incidents for dispatch of patrols.                                                                                                        |
| Priority 1                    | Life threatening or time critical situations.                                                                                                                                                             |
| Priority 2                    | Situations where the information provided indicates that time is important, but not critical.                                                                                                               |
| Priority 3                    | Situations where there is no immediate danger to safety or property, but where police attendance is needed without undue delay.                                                                           |
| Priority 4                    | Situations requiring police attendance where time is not critical and includes circumstances where a time is agreed with a complainant.                                                                  |

| Percentage of 000 calls answered on first and second presentation. | It is the policy of TELSTRA to re-present 000 calls to another line after 9 rings in order to maximise the response rate. This is a national standard endorsed by Emergency Service Organisations across Australia. |
The measurement of response to 000 calls is based on average operating capacity and the target for this measure does not include abnormal instances created by one major event where operating capacity is overloaded due to multiple reporting of the same incident.

| Complaint issues | Issues associated with a complaint made in accordance with the *Complaints (Australian Federal Police) Act* (1991). The Ombudsman reports complaints based on the actual number of issues linked to a complaint rather than the number of persons making complaints. |
| Injury | An injury sustained by any person as a result of a collision, which necessitates treatment by a medical practitioner. |
| DPP | Director of Public Prosecutions. |
| Hearing brief of evidence | A collation of all relevant evidentiary material relating to a prosecution to be forwarded to the DPP. It is accepted that for the Judicial Process Measures (Numbers 28, 29, 30, 31) the efficiency of other agencies such as the DPP as well as the capacity of victims and witnesses to present their evidence may also affect judicial process outcomes. |
Schedule 2
PURCHASE AGREEMENT
For the year ended 30 June 2007
RESOURCE REPORTING

FTE Number

The ACT Government has agreed to fund the Full Time Equivalent (FTE) of 829 AFP employees engaged in the provision of community policing services to the ACT for financial year 2006-07. This number is a budgeted figure only, acknowledging that actual staffing levels will vary at any given time. This budgeted figure is used in this Agreement for information only and not as a performance measure.

Staff Movement Reporting

In accordance with subclause 8.2 (c) of the Arrangement, the Chief Police Officer will report quarterly to the Police Minister on the deployment, operational status and movement of AFP employees. Reporting will include:

- Definitions;
- Designation of staff as per operational and non-operational staff;
- Aggregated number of staff transfers into ACT Policing; and
- Aggregated staff transfers out of ACT Policing;

The Chief Police Officer will give timely advice to the Minister on any senior AFP personnel movements or changes (from Superintendent rank (or equivalent) upwards).

---

1 FTE number (operational and non-operational personnel) includes enabling FTEs (such as forensics, IT personnel) and is the level to which a unit may be staffed. Actual FTE numbers do not represent individuals but represent the aggregate sum of the percentage of time spent on ACT Government Service Delivery by individuals employed within the ACT Policing business unit and AFP Enabling areas.
2 The budgeted FTE number does not include provision for AFP 2006 – 2009 Collective Agreement impacts.
3 The budgeted FTE number is an annualized figure with actual FTE varying at any time in line with operational requirements. For example, the AFP may deploy additional resources to support ACT Policing in high workload periods such as Christmas/New Year period. Any increase in staffing may then be offset by reductions during low workload periods (winter) in order to remain within annual budgeted levels.
The Chief Police Officer will provide the following report on a quarterly basis in accordance with clause 17 of this Agreement:

### Australian Federal Police
### ACT Community Policing
### Financial Performance
### For the period ending 30 June 2007

<table>
<thead>
<tr>
<th>Employee Expenses</th>
<th>Current Budget 2006-07</th>
<th>Expenditure YTD</th>
<th>Pro-rata Expenditure Rate Based On Phased Budgets</th>
<th>Full Year Estimate</th>
<th>Over/Under ()</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Salaries (incl HCA)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Composite Salaries</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for Recreation Leave</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for Long Service Leave</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Superannuation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Overtime &amp; Penalties</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers' Compensation - Core</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Salary Related Expenses</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Administrative Expenses                |                        |                 |                                                  |                     |               |
| Communications Expenses                |                        |                 |                                                  |                     |               |
| Computer Expenses                      |                        |                 |                                                  |                     |               |
| Consultants/Contractors                |                        |                 |                                                  |                     |               |
| General Expenses                       |                        |                 |                                                  |                     |               |
| Insurance                              |                        |                 |                                                  |                     |               |
| Motor Vehicle Expenses                 |                        |                 |                                                  |                     |               |
| Office Expenses                        |                        |                 |                                                  |                     |               |
| Other Operational Costs                |                        |                 |                                                  |                     |               |
| Security                               |                        |                 |                                                  |                     |               |
| Staff Expenses                         |                        |                 |                                                  |                     |               |
| Training                               |                        |                 |                                                  |                     |               |
| Travel Expenses                        |                        |                 |                                                  |                     |               |
| Total Administrative Expenses          |                        |                 |                                                  |                     |               |

| Property Operating Expenses            |                        |                 |                                                  |                     |               |
| Property Items Discretionary           |                        |                 |                                                  |                     |               |
| Total Property Operating Expenses      |                        |                 |                                                  |                     |               |

| Non-Discretionary                      |                        |                 |                                                  |                     |               |
| Property Operating Expenses            |                        |                 |                                                  |                     |               |
| Termination Payments                   |                        |                 |                                                  |                     |               |
| Compensation & Legal                  |                        |                 |                                                  |                     |               |
| Depreciation                           |                        |                 |                                                  |                     |               |
| Total Non-Discretionary Expenses       |                        |                 |                                                  |                     |               |

| Enabling Expenses                      |                        |                 |                                                  |                     |               |
| Health & Safety                        |                        |                 |                                                  |                     |               |
| People Strategies                      |                        |                 |                                                  |                     |               |
| Financial Services                     |                        |                 |                                                  |                     |               |
| Learning & Development                 |                        |                 |                                                  |                     |               |
| Policy & Commercial                    |                        |                 |                                                  |                     |               |
| Forensic Services                      |                        |                 |                                                  |                     |               |
| Professional Standards                 |                        |                 |                                                  |                     |               |
| Technical Operations (MFC)             |                        |                 |                                                  |                     |               |
| Total Enabling Expenses                 |                        |                 |                                                  |                     |               |

| Total                                  |                        |                 |                                                  |                     |               |

The report will be accompanied by commentary where consolidated node variations exceed 5% of pro-rata phased budgets.
Note 1 to Schedule 3

COST ATTRIBUTION METHODOLOGY

The AFP provides Community Policing services to the ACT Government on a cost recovery basis. Costs are calculated against defined outputs to be met by the AFP's ACT Policing business unit and some specialised elements from the wider AFP (Enabling). ACT Policing business unit costs are apportioned between the ACT and Commonwealth Governments on the basis of direct and indirect cost attribution. Costs associated with AFP operational and corporate support (Enabling) are determined using Commonwealth Government Cost Recovery Guidelines where appropriate.

AFP COST ATTRIBUTION DIAGRAM

The annual ACT Policing activity survey, which is used as an input into the Activity Matrix will be conducted at a time agreed to by the Police Minister and the Chief Police Officer. Any additional surveys or alternative methods of activity recording will be conducted where agreed to by both parties. Any changes to the Activity Matrix will be applied to the Financial Management Information System (FMIS) as soon as practical. No retrospective changes to the Activity Matrix will be made without the agreement of both parties.
Note 1 to Schedule 3 (continued)

ACT FUNDING CONSIDERATIONS

The following components are part of the ACT considerations for ACT Policing costs to the Territory in 2006-07:

- ACT Budgeted Full-Time Equivalents (FTE) of 829 FTE (734 FTE plus 95 FTE (enabling)) = $97,911,000 (Schedule 1 of this Agreement refers).
- Annual ACT Policing budget determined by annual budget outcomes with costings for any additional police calculated on level of police officer's experience and skill to perform task. The budgeted figure includes enabling services and incorporates the equalisation contribution for Police provided in the ACT GST pool.  

---

5 The equalisation contribution replaces the Special Fiscal Needs (SFN) allowance provided by the Commonwealth in recognition of the ACT not having control over the terms and conditions of employment of AFP employees.
# Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity Survey</td>
<td>An annual statistical analysis of ACT Policing activities undertaken over a seven day period to capture and define the more routine tasks performed by ACT Policing which are not readily identified by direct cost-attribute. These tasks are subsequently attributed to either Commonwealth or ACT Outputs delivered by ACT Policing.</td>
</tr>
<tr>
<td>Activity Matrix</td>
<td>A table of values derived from a budget weighted average of activity survey data used to allocate indirect costs against ACT Policing Outputs at a cost centre level.</td>
</tr>
<tr>
<td>Enabling</td>
<td>Services purchased from the wider AFP such as Information Technology or Forensic Services not within the managerial responsibility of the Chief Police Officer.</td>
</tr>
<tr>
<td>FMIS</td>
<td>Financial Management Information System or otherwise known as Accounting System.</td>
</tr>
</tbody>
</table>
Ministerial Direction

Minister for Police and Emergency Services
Simon Corbell, MLA

This Direction is issued under section 6 of the Policing Arrangement between the Commonwealth and ACT Governments and outlines the Government’s priorities and expectations for the AFP and the Chief Police Officer. This Direction is to be read in conjunction with the 2006-2007 Purchase Agreement between the ACT Minister for Police and Emergency Services, the AFP Commissioner and the Chief Police Officer for the ACT.

The role of the Australian Federal Police

In accordance with the Australian Federal Police Act 1979 (the Act), the Australian Federal Police (AFP) provides community policing services to the Australian Capital Territory (ACT). In accordance with the Act the Commonwealth and ACT Governments entered into an arrangement for the provision of policing services in June 2006. This arrangement details the goods and services to be purchased by the ACT from the AFP and the agreed price for those services. This arrangement is supported by annual Purchase Agreements which outline the range of deliverables and Key Performance Indicators (KPI). Consistent with this agreement I expect ACT Policing to pay due attention to all elements of the Purchase Agreement.

Special Areas of Focus

In performing its functions and recognising the additional resources provided in the 2005/06, 2006/07 budgets that will apply to the out years, the Government expects the AFP to give special emphasis to the following broad operational issues during financial year 2006-2007:

- increase the capability of ACT Policing to respond to incidents, particularly those pertaining to Tier Two response time measures for Priorities One, Two, Three, and Four as defined by the Purchase Agreement;

- increase the visibility of Police in the community;

- implement measures aimed at improving road safety within the Territory;

- implement measures to deliver a Child Sex Offender Registration Team capability; and

- implement measures to support ACT Government Property Crime Reduction Strategy 2004-07;
Reporting

The Government expects the AFP to report quarterly to the Minister for Police and Emergency Services on progress against special areas of focus.

[Signature]
Simon Corbell, MLA
Minister for Police and Emergency Services

July 2006
APPENDIX E: Extract from National guidelines for incident management, conflict resolution and use of force: 2004

[Extract from Report of National Police Research Unit]

---

NATIONAL USE OF FORCE REPORTING GUIDELINES 2002

1. PURPOSE OF THE COLLECTION - POLICE USE OF FORCE INFORMATION

The aim of recording nationally comparable information at jurisdictional level is to allow for the adoption of a strategic approach to the identification of national trends and models of best practice on use of force while enabling agencies to:

- identify training needs for operational safety purposes;
- monitor the effectiveness of operational training, tactics, procedures and equipment to ensure appropriate behaviour; and
- monitor use of force trends in the best interests of the public and operational police.

2. DEFINITION - POLICE USE OF FORCE

A general definition of the types of incidents for which comparable information should be recorded is:

Force means any action exerted upon another person with the view to obliging a specific response by the application of physical action. In particular, there are three types of incidents that are included, namely:

- use of force by police officers;
- use of force against police officers; and
- use of force in other situations.

3. SCOPE OF COLLECTION - POLICE USE OF FORCE

Information complying with the national standards should be collected for the following types of incidents:

**Use of force by police officers** - including any situation where in response to, but not in anticipation of, an actual or perceived immediate physical threat, officers:

- use or draw a firearm;
- use a baton;
- use a chemical spray (including capsicum spray);
- use any weapon, instrument or implement (including vehicles);
- use any hold, blow, punch, kick, block and restraint or similar operational defensive tactic;
• use handcuffs or similar restraint (except in the case of prisoner transport); and
• use a police dog or horse to directly apply force.

**Use of force against police officers** - includes any situation where police officers are:

• physically assaulted whether or not an injury results from that assault (this includes the use of a chemical spray or animal against a member);
• threatened with immediate physical assault by another; and
• injured while attempting to subdue, contain or control another.

**Use of force in other situations** - includes where police officers, with lawful authority or otherwise:

• force entry to a building, vehicle, vessel or other secured area to search, seize or arrest;
• forcibly remove a person’s clothing in order to conduct a ‘full search’;
• forcibly obtain a person’s fingerprints; and
• forcibly obtain a person’s body samples.

4. **SPECIFIC INFORMATION TO BE COLLECTED FOR EACH USE OF FORCE INCIDENT**

The particular data items that are desirable to be accessible on a national basis are:

4.1. Incident details
• date incident occurred;
• time incident occurred;
• total duration (minutes);
• incident type (see s. 5.1); and
• location type (see s. 5.2).

4.2. Persons present
• no. of police present; and
• no. of offenders/subjects present.

4.3. Supervisor’s role
• present/not present/physically involved.

4.4. Force used by members (including attempt)
• force type (see s. 5.3);
• use of force outcome (see s. 5.4);
• injury inflicted (see s. 5.6);
• severity of injury (see s. 5.7);
• source of weapon (see s. 5.8); and
• resolved by negotiation/communication only.

4.5. Firearm
• type (see s. 5.4); and
• number of shots discharged (if fired).

4.6. Person(s), other than member(s), against whom force was used or exerted (including attempt)
• age;
• sex;
• person type (see s. 5.9); and
• behavioural factors (see s. 5.10).

4.7. Force used against members (including attempt)
• force type (see s. 5.3);
• use of force outcome (see s. 5.5);
• injury inflicted (see s. 5.6);
• severity of injury (see s. 5.7); and
• source of weapon (see s. 5.8).

5. DATA DEFINITIONS
Wherever possible, data items should be collected using either the following definitions or other nationally identified data codes such as those developed by the Australian Bureau of Statistics.

5.1. Incident type (specify one only)
• street arrest or check
• vehicle intercept or resulting from a pursuit
• domestic dispute
• siege
• brawl – premises
• brawl – other
• industrial dispute/demonstration
• sporting event
• community event
• alarm
• search – forced entry
• search – peaceable
• prevent self harm or suicide
• defence of another
• destroy animal
• deter animal
• full search
• fingerprinting
• body samples
• subdue prisoner
• subdue suspect/offender
• high risk apprehension
• other (please specify)

5.2. Location type (specify one only)
• residential
• licensed premises
• police premises (e.g., van, car, watchhouse or any section of a station 
or establishment etc) (please specify)
• other type of premises (please specify)
• open space/street/car park
• other (please specify)

5.3. Force type
• club (e.g., cricket, baseball bat/club/baton/stick etc)
• chemical spray (OC or CS spray)
• firearm
• glass (glass/bottle)
• knife (e.g., knife/machete/dagger/sword/bayonet etc)
• physical contact
• spitting or use of body fluid
• rock (rock/stone/brick)
• syringe (hypodermic syringe/needle)
• tool (e.g., axe/shovel/hammer/screwdriver/spanner/crowbar etc)
• restraint device (handcuffs/leg restraints/body belt)
• dog
• horse
• unknown
• other (please specify)

5.4. Firearm type
• handgun
• rifle
• shotgun
• imitation firearm
• other (please specify)
5.5. Use of force outcome
- decamped
- subject overpowered
- police overpowered
- subject overpowered
- subject complied with police directions
- resolved or other

5.6. Injury inflicted
- not applicable or nil
- emotional trauma
- swelling/sprain
- abrasions/bruising
- lacerations – minor
- lacerations – severe (e.g., stab wound)
- fracture
- internal injuries
- bullet wound
- concussion
- chemical spray effects

5.7. Severity of injury
- not applicable
- no visible injuries
- minor (no treatment or self treatment)
- serious or major (requires hospital admission)
- fatal

5.8. Source of weapon
- not applicable
- carried
- found at scene
- police issue
- other (please specify)

5.9. Person type
- offender/subject
- witness/bystander
- police officer
- other

5.10. Behavioural factors (one or more)
- not applicable
• drug affected
• alcohol affected
• irrational/unstable
• intellectually disabled
• known mental history
• apparent mental disorder
• violent behaviour
• abusive/violent language
• prior history of violence
• other (please specify)

6. VEHICLE PURSUITS

• Vehicle pursuits are a key issue for policing, however they need not be included as part of these standards for the collection of information on use of force. However, the use of vehicles as instruments to directly apply force, either by or against police, should be recorded under these guidelines (e.g., where a vehicle is used by a subject to drive at or attempt to run down an officer).