

**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.

14.1 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.

SIGNED by Senator the Hon Chris Ellison
Minister for Justice and Customs
on behalf of the Australian Government
(date of signing)..... 23rd APRIL 2006

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(date of signing).....14 June 2006.....