



An arrangement between
the Minister for Home Affairs, Justice, Privacy
and Freedom of Information of the
Commonwealth

and

the Australian Capital Territory

for

the provision of police services to the
Australian Capital Territory

2011–2016

**AN ARRANGEMENT BETWEEN THE MINISTER FOR HOME AFFAIRS,
JUSTICE, PRIVACY AND FREEDOM OF INFORMATION OF THE
COMMONWEALTH AND THE AUSTRALIAN CAPITAL TERRITORY FOR
THE PROVISION OF POLICE SERVICES TO THE
AUSTRALIAN CAPITAL TERRITORY**

Background

In the ACT the rule of law is maintained by a justice system composed of independent but interoperable component parts. As part of compliance with the statutory framework of the ACT public sector participants in the justice system, including ACT Policing, are expected to promote and protect human rights when exercising a function under an ACT law.

Subsection 37(a) of the *Australian Capital Territory Self Government Act 1988* provides that the ACT Executive has the responsibility of governing the ACT 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*.

Under subsection 8(1)(a) of the *Australian Federal Police Act 1979*, the Minister for Home Affairs, Justice, Privacy and Freedom of Information and the ACT have agreed to enter into arrangements for the provision of police services in relation to the ACT that are in respect of ACT functions as defined by section 3 of the *Australian Capital Territory Self Government (Consequential Provisions) Act 1988* (hereinafter referred to as '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 ACT, 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 ACT.

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 Executive" means the ACT Executive established pursuant to section 36 of the *Australian Capital Territory Self Government Act 1988* (Cth);

"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, the Purchase Agreement and the AFP Act 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 Police Services for the ACT community;
- **Service quality** — the Arrangement promotes and sustains the high quality of service provision;
- **Workforce** — the Arrangement promotes the provision of stable and effective Police Services for the ACT community as well as the building and retention of corporate knowledge within ACT Policing;
- **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 in accordance with the Purchase Agreement, as varied from time to time by agreement 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 ACT Policing. 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 15.3.
- 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 Money received by ACT Policing in the course of performing Police Services, for which there is no identifiable owner, will be transferred to the ACT in accordance with the AFP's obligations under the *Financial Management and Accountability Act 1997* (Cth).
- 4.7 The ACT Government will be responsible for the provision of appropriate infrastructure and facilities for the provision of Police Services by the AFP. The ACT Government and the AFP will, by way of a joint committee, 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 the AFP Personnel and resources deployed for the purposes of that agreement.
- 5.2 The Commissioner shall appoint the Chief Police officer 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.

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 Purchase 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. Provision of information to a nominated agency

- 7.1 The Police Minister may request ACT Policing to provide information to a nominated agency of the ACT to support the Police Minister in the performance of his or her ministerial functions on policing. This information includes but is not limited to:

- (a) Complaints against AFP employees providing Police Services under this Arrangement, including the investigation of such complaints and any related action whether undertaken by the AFP, Australian Commission for Law Enforcement Integrity (ACLEI), the Commonwealth Ombudsman or otherwise;
- (b) AFP Professional Standards (PRS) enquiries relating to AFP employee engaged in providing Police Services under this Arrangement; and
- (c) The deployment, operational status and movement of AFP employees engaged in providing Police Services under this Arrangement.

- 7.2 At the time of nominating an agency to which information is to be provided, the Police Minister may indicate the manner in which the information is to be provided.
- 7.3 Subject to the authority of the Commissioner, the Chief Police Officer shall provide as much of the requested information as is permissible under Commonwealth and/or ACT law.
- 7.4 Nothing in clause 7.3 requires the Chief Police Officer to provide information that would compromise operational activity by the AFP, including ACT Policing.
- 7.5 The Chief Police Officer may impose conditions on the use of requested information if he or she considers it necessary for operational reasons.
- 7.6 Any information requested under clause 7.1 and provided by ACT Policing to the nominated agency must only be used for the purposes of the request.

8. Agreement making

- 8.1 ACT Policing may enter into agreements separate from this Arrangement with ACT Government agencies and non-government entities to deliver agreed services, as long as any agreement entered into is not inconsistent with this Arrangement, the Purchase Agreement or Ministerial Direction.

9. Annual Report

- 9.1 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 preceding 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.

10. Audit

- 10.1 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.

- 10.2 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.

11. Legal advice

- 11.1 Recognising that ACT Policing is a Commonwealth entity, ACT Policing will seek internal and Commonwealth sourced legal advice on matters falling within its purview as a Commonwealth entity, and matters regarding the internal governance of the AFP.
- 11.2 Legal advice in relation to the review of briefs of evidence and the prosecution of offences will be sourced from the ACT Director of Public Prosecutions.
- 11.3 Legal advice in relation to the interpretation of the laws of the ACT (including the common law) will be sourced from the ACT Government Solicitor's Office.

12. Policy matters

- 12.1 While this Arrangement is predominately for the provision of operational services to the ACT, ACT Policing will become involved in the development and implementation of ACT Government policy. When acting in this capacity ACT Policing shall act in the interests of ACT Policing in its capacity as a service provider for the ACT and within the whole of ACT Government policy framework and abide by ACT Government policy development procedures, including the requirements of the Cabinet handbook.
- 12.2 Where the Chief Police Officer holds membership of a national body or forum as the head of a law enforcement jurisdiction, the Chief Police Officer will represent the interests of ACT Policing in its capacity as a service provider for the ACT.
- 12.3 For the purposes of obtaining policy advice in relation to matters affecting the delivery of services to the ACT (including obligations under ACT legislation or representation at national and jurisdictional forums) ACT Policing will seek advice from the relevant Government agency.
- 12.4 Nothing in clause 11 or 12 shall affect the independence of the Chief Police Officer in relation to day-to-day operation of ACT Policing.

13. Terms and conditions of employment

- 13.1 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.
- 13.2 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.

14. Dispute resolution

- 14.1 The mechanism for resolving disputes arising from this Arrangement will be as follows:
 - (a) in the first instance the ACT and AFP contact officers listed at clause 14.2 will use their best endeavours to settle the dispute;
 - (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 14.3 as the Responsible Officers.

14.2 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 ACT, Executive Director, Legislation and Policy Branch, Justice and Community Safety Directorate.

14.3 For the purposes of the Arrangement the Responsible Officers will be:

(a) For the AFP, Chief Police Officer in consultation with the AFP, Chief Operating Officer; and

(B) For the ACT, Director-General, Justice and Community Safety Directorate.

14.4 Any dispute or matter of concern to either party arising from this Arrangement that cannot be resolved by the officers nominated at clause 14.2 or 14.3 shall be referred for consultation between resolution by the Commonwealth Minister and the Police Minister.

14.5 Contact Officers for the purpose of the annual Purchase Agreement are to be nominated in each Purchase Agreement.

15. Duration of this Arrangement

15.1 This Arrangement shall commence on a date agreed to by the parties and shall remain in force for five years.

15.2 Two years prior to its expiry, the parties shall commence negotiations about the terms and conditions of a renewal of the Arrangement.

15.3 If either party decides this Arrangement shall not be continued or renewed, it shall give at least two years notice in writing to that effect.

15.4 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.

16. Purchase Agreement

16.1 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.

16.2 The annual Purchase Agreement will set outcomes to be achieved, key performance indicators (KPI) and costs for providing the

16.3 If a KPI in a Purchase Agreement is not consistently met over the period of a purchase agreement, the Police Minister may direct that a review panel be convened as soon as possible to consider performance against the KPI and make recommendations to the Police Minister for remedial action.

16.4 A review panel under clause 16.3 will consist of at least one member appointed by the Chief Police Officer, one member appointed by the Director-General of the Justice and Community Safety Directorate and an independent person agreed by the Chief Police Officer and the Director-General.

SIGNED by the Hon. Brendan O'Connor MP,
Minister for Home Affairs, Justice, Privacy
and Freedom of Information on behalf
of the Commonwealth of Australia

)
)
)
)

)
)
)
)
)

10