PARLIMENTARY JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

AUSTRALIAN FEDERAL POLICE

Question No. 2

The Committee asked the following question in writing after the 8 August 2012 hearing:

Apart from criminal remedies, what other remedies, if any, are available to the AFP? Should further remedies be made available? If so, what are they and why should they be made available?

The answer to the Committee's question is as follows:

Significant reforms to the AFP's professional standards occurred in 2006 following a 2003 review by Justice William Fisher. This was not in response to broad or significant criticisms of AFP but was commissioned to ensure the AFP had 'current best practice' in terms of Integrity systems. The 'Fisher model' and Part V of the *Australian Federal Police Act 1979 (Cth)* (The AFP Act) prescribes managerial remedial measures to improve conduct wherever this can be effective. Part V of the AFP Act is unique in the Commonwealth in providing a number of alternative remedies to criminal prosecution when misconduct occurs and places the emphasis on improving work conduct in appointees rather than apportioning punishment.

Judge Fisher noted that punitive measures have proved to be ineffective in achieving integrity outcomes for policing organisations. In his report he stated that:

> *"The important thing about all adverse conduct is first that it should be recognised. Secondly, that recognition should be communicated to the person or persons whose conduct is under review. And, thirdly, and possibly least important, is that something should be done about it by way of disapproval or punishment. Generally speaking, the processes of discovery, recognition and explanation are more important than consequential punitive measures. It is always more important to understand what is happening than simply to impose penalties".*

There is a closely monitored balance between ensuring less serious behaviour is dealt with in the workplace through professional leadership and consistent guidance and the need for more serious misconduct to be managed by experienced investigators or, in the case of corruption, externally. Where the conduct is of a less serious nature (Category 1 and 2), Part V Section 40TH of the AFP Act focuses on swift line management intervention and includes conciliation.

In line with the Fisher Model, remedies for misconduct under Part V are designed to be remedial up until the point when the misconduct warrants a decision to terminate an Appointees employment.

The remedies available to AFP appointees who have category three (serious misconduct) matters established are outlined in Part V Section 40TC, 40TD & 40TE of the AFP Act and include the following actions:

Sec 40TC Training and development action – this includes coaching or mentoring the Appointee, undertaking training or development activities, or increased supervision.

Sec 40TD Remedial action - this includes action to improve the Appointee's behaviour, structured changes to their employment or recording of adverse findings against them. Such remedies can take the form of counselling, issuing a reprimand or formal warning, change of shifts, roles or transfer.

Sec 40TE Termination – The Commissioner can exercise his powers under section 28 of the AFP Act and terminate the Appointee's employment with the AFP. Where the Commissioner considers the Appointee's misconduct amounts to corruption, serious abuse of power, serious dereliction of duty or other seriously reprehensible act, then the Commissioner may, in addition to terminating their employment, issue a declaration of serious misconduct under section 40K of the AFP Act.

Part VA provides for the loss of certain superannuation rights and benefits. Applications for superannuation orders can be made where an Appointee is convicted of a corruption offence and sentenced to a term of imprisonment of more than 12 months.

Conduct History – Whilst action against Appointees are designed to be remedial, the conduct history of Appointees may be considered when a decision maker is deciding on the suitability of appointees for postings, both overseas and into remote locations where the integrity risk may be higher. The conduct history of Appointees is also considered when determining promotions and the issuing of certain awards and medals. Whilst other laws impact on decisions to promote appointees, it remains open to a decision make to not promote an appointee based on their conduct history.

Character Standards – Sec 24 of the AFP Act, allows the Commissioner to determine whether to engage new appointees based on a number of criterion including Character suitability. Applicants who seek to be reappointed to the AFP after having left, or ex-state police applicants may not be accepted for engagement due to having a history of misconduct whilst serving previously.

Reduction in Pay – Part 65 of the AFP Enterprise Agreement (2012-2016), states the Commissioner may reduce an Appointee in classification to any increment point in any salary band as a result of an established category three conduct issue or a corruption issue.