



ACT
Government



AFP
AUSTRALIAN FEDERAL POLICE

An ongoing arrangement between

the Minister for Justice of the Commonwealth

and

the ACT Minister for Police
and Emergency Services

for the

provision of policing services to the ACT

Commencing June 2017

Definitions

In this Arrangement unless the contrary intention appears:

"ACT" means the Australian Capital Territory.

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

"ACT Policing" means the business unit with the AFP responsible for delivering policing services to the ACT.

"AFP" means the Australian Federal Police.

"AFP Act" means the *Australian Federal Police Act 1979* (Cth).

"Agreement" means an agreement or agreements entered under this Arrangement including agreements to govern service delivery, financial, enabling services, facilities, and infrastructure.

"Chief Police Officer" means the AFP employee appointed by the Commissioner under clause 5.1 of 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" means the Australian Commonwealth Government.

"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 business or is otherwise in the interests of the Commonwealth to protect.

"Director-General" is the member of the public service responsible for leadership of the administrative unit responsible for policing matters and answerable to the Minister for Police and to the head of service under the *Public Sector Management Act 1994*.

"The Directorate" is the administrative unit responsible for providing advice to the Police Minister on policing matters in accordance with the Administrative Arrangements made by the Chief Minister under the *Australian Capital Territory (Self-government) Act 1988* and the *Public Sector Management Act 1994*.

"Police Minister" means the Minister of the ACT Executive who is responsible for police matters.

"Policing services" means community policing services provided under this Arrangement, an agreement and the AFP Act which include, but are not 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.

Statutory Framework

The legislative framework which governs the provision of police services in the Australian Capital Territory (ACT) gives rise to a distribution of responsibilities between the Australian Federal Police (AFP) and the Territory, represented by the Minister for Police and Emergency Services (Minister) and supported by the Justice and Community Safety Directorate (Directorate).

Section 22(1) of the *Australian Capital Territory (Self Government) Act 1988* (Cth) (Self-Government Act) provides that the Legislative Assembly has a plenary power to make laws for the peace, order and good government of the Territory. Section 23(1)(c) excludes from that grant, a power to make laws with respect to the provision of police services in relation to the Territory by the AFP.

Section 37(a) of the Self-Government Act provides that the ACT Executive has the responsibility of governing the Territory with respect to matters of law and order for the ACT. Section 43 provides that the Chief Minister may allocate responsibility for administering matters relating to those powers to a Minister. The *Public Sector Management Act 1994* (ACT) mirrors this framework, providing that the Chief Minister may establish administrative units (section 13) and must establish the administrative units within the ACT Public Service that are responsible for the matters allocated to each Minister (section 14).

Under the Administrative Arrangements the Chief Minister has allocated responsibility for policing to the Minister and has established the Directorate as the administrative unit with responsibility for advising and supporting the Minister in relation to those matters.

Under the *Australian Federal Police Act 1979* (Cth) (AFP Act), the Commonwealth Minister responsible for the AFP and the Territory Minister responsible for policing on behalf of the Territory, can enter into arrangements for the provision of police services for the ACT (s 8(1A)) and for the doing of anything incidental or conducive to the provision of those services (s 8(2B)). Having entered into an arrangement and subject to its terms, the functions of AFP members extend to the provision of police services in relation to the ACT (s 8(1)(a)) and anything incidental or conducive to the provision of those services (s 8(1)(c)). When a member is performing those functions in the ACT they have the powers and duties conferred or imposed on a constable or on an officer of police by or under any law of the Territory (including the common law) (s 9(1)(b)). Under the *Human Rights Act 2004*, a member is expected to act consistently with human rights when exercising a function under a Territory law (section 40) and any power or function conferred on a member by a Territory law is to be read consistently with human rights as far as possible consistent with the purpose of that law (section 30).

Under the AFP Act, members remain officers of the Commonwealth and the AFP Commissioner retains responsibility for the general administration, and control of the operations, of the AFP (s 37).

The legislative framework for the provision of police services by the Commonwealth in the ACT requires that responsibility for operational matters will rest with the AFP Commissioner and that responsibility for policy and other matters will rest with the Minister supported by the Directorate.

**AN ARRANGEMENT BETWEEN THE MINISTER FOR JUSTICE OF THE COMMONWEALTH AND
THE ACT MINISTER FOR POLICE FOR THE PROVISION OF POLICING SERVICES TO THE
AUSTRALIAN CAPITAL TERRITORY**

1. Purpose and overriding commitment

- 1.1. The purpose of this Arrangement is to establish the enabling framework for the provision of policing services to the ACT by the AFP.
- 1.2. The Commonwealth is committed to providing a high quality community policing service for the ACT Government, within the context of this Arrangement and subsequent agreements between the AFP and ACT Government.

The parties agree as follows:

2. Purchase of policing services to the ACT

- 2.1. The ACT Government will purchase policing services from the AFP in accordance with written agreements between the Police Minister, AFP Commissioner and the Chief Police Officer.
- 2.2. The AFP will also provide indirect or 'enabling' services integral to the delivery of policing services to the ACT, including, but not limited to, specialist operations, technology and innovation, workforce development, people, safety and security, Chief Financial Officer and Chief Counsel.
- 2.3. The cost of enabling services will be determined through an enabling cost model agreement between the AFP and the ACT Government and reviewed every four years.
- 2.4. The ACT Government will provide appropriate facilities and associated infrastructure for the AFP to deliver policing services under this Arrangement.
- 2.5. Funding for the AFP to provide policing services to the ACT will be included in the payments on behalf of the Territory for the Directorate to oversee on behalf of the ACT Government, as part of the ACT Government budget processes.
- 2.6. Requests for funding in addition to the appropriation in clause 2.5 for ACT Policing will be considered in accordance with the ACT Government budget processes.

3. Commonwealth obligations to the ACT

- 3.1. The AFP is also required, within the ACT, to provide policing services to the Commonwealth which are not subject to this Arrangement and for which the ACT Government 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 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 agreed between the ACT Government and the AFP.

- 3.2. The allocation of resources for policing services provided to the Commonwealth within the ACT will not be altered in any way which might materially affect the policing services purchased by the ACT Government, without prior consultation and agreement with the Minister for Police. Failure to obtain agreement will be sufficient grounds for the issue of a notice to terminate this Arrangement.
- 3.3. Except in the case of an emergency, the Commonwealth Minister must not issue to the Commissioner a direction under the AFP Act which affects the provision of policing services to the ACT by the AFP, unless the Commonwealth Minister has first consulted the Police Minister about the nature and purpose of that direction and received agreement for that direction to be given. If a direction is given in an emergency without prior consultation with the Police Minister, the Commonwealth Minister will consult the Police Minister about the Direction as soon as possible thereafter and seek agreement for that Direction.
- 3.4. If a direction by the Commonwealth Minister to the Commissioner has the effect of increasing the cost of policing 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 Government.
- 3.5. The Commonwealth is responsible for determining the terms and conditions of employment of AFP employees involved in the provision of policing services to the ACT under this Arrangement.

4. Monies received by ACT Policing

- 4.1. Revenues received by the AFP in the course of enforcement of ACT legislation under this Arrangement will be remitted to the ACT Government.
- 4.2. Money received by ACT Policing in the course of performing policing services, for which there is no identifiable owner, will be transferred to the ACT Government in accordance with the AFP's obligations under the *Public Governance, Performance and Accountability Act 2013* (Cth) and other relevant legislation.

5. Chief Police Officer for the ACT

- 5.1. The Commissioner must appoint a Chief Police Officer for the ACT with the approval of the Police Minister.
- 5.2. The Chief Police Officer, subject to the authority of the Commissioner, is responsible to the Police Minister for the achievement of outcomes agreed between the AFP and ACT Government.
- 5.3. The Chief Police Officer, subject to the authority of the Commissioner, has operational independence over the business of ACT Policing and is responsible for the general management and control of AFP appointees and resources deployed for the purpose of achieving the outcomes agreed between the AFP and ACT Government.
- 5.4. If the Police Minister advises the Commissioner, in writing, that the Chief Police Officer no longer has the confidence of the ACT Government, and there are satisfactory grounds for the lack of confidence, the Commissioner must as soon as practicable replace the Chief Police Officer.

- 5.5. The Commissioner and the Police Minister may agree upon procedures to govern acting arrangements at any time the CPO is absent from duty or for any other reason unable to perform the functions of the CPO.

6. ACT Government Ministerial Support

- 6.1. Although this Arrangement is predominantly for the provision of operational policing services to the ACT, the Chief Police Officer will provide the ACT Government advice on policy matters related to ACT law or justice reform which would impact the delivery of ACT policing services.
- 6.2. The Chief Police Officer will provide updates and advice on operational matters directly to the Police Minister.
- 6.3. The Chief Police Officer will provide information to the Director-General on policing policy and funding matters to support the Police Minister in the performance of the ministerial functions for policing.
- 6.4. This advice from the Chief Police Officer will supplement broader policy advice being provided by the Directorate to ACT Government Ministers which will represent a broader range of interests and considerations.
- 6.5. The Chief Police Officer and Director-General will work collaboratively to support ACT Government Ministers in the performance of their Ministerial functions.
- 6.6. The Chief Police Officer will provide information to the Director-General on relevant operational policing matters that impact the broader ACT Government.
- 6.7. The Director-General will facilitate direct advice from the Chief Police Officer to Ministers, other than the Police Minister, and other Director-Generals.
- 6.8. The Chief Police Officer will support the development and implementation of ACT Government policy and legislation related to policing. When acting in this capacity the Chief Police Officer must act in the interests of the ACT Government and within the ACT Government policy and legislation framework.

7. Police Minister's power to give directions

- 7.1. The Police Minister may give the Chief Police Officer, in writing, general directions in relation to policy, priorities and goals for policing services to the ACT under this Arrangement and subsequent agreements.
- 7.2. The Chief Police Officer must comply with any written directions received from the Police Minister under clause 7.1, unless a contrary written direction has been received from the Commonwealth Minister under the AFP Act.
- 7.3. Any written directions from the Police Minister will be published in a form that enables them to be reproduced in the ACT Policing Annual Report.

8. National forums

- 8.1. If 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 Government.
- 8.2. The Chief Police Officer will seek advice from the relevant ACT Government agency to obtain 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).
- 8.3. Nothing in clauses 8.1 or 8.2 affects the independence of the Chief Police Officer in relation to the day-to-day operation of ACT Policing.

9. Legal advice

- 9.1. Recognising that ACT Policing is a Commonwealth entity, ACT Policing will seek internal and Commonwealth sourced legal advice on matters falling within its scope as a Commonwealth entity, and matters regarding the internal governance of the AFP.
- 9.2. 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.
- 9.3. Legal advice in relation to the interpretation of laws of the ACT (including the common law) will be sourced from the ACT Government Solicitor in accordance with procedures agreed between the ACT Government Solicitor and ACT Policing.
- 9.4. ACT Policing will request legal advice and representation in accordance with agreed procedures between the AFP, ACT Policing, the ACT Director of Public Prosecutions and the ACT Government Solicitor. Procedures may be agreed through letters of exchange between relevant parties or enabling areas

10. Audits

- 10.1. The Chief Police Officer will provide a financial statement for that financial year accompanied with a report by the Commonwealth Auditor-General or other auditor nominated by the Chief Police Officer and approved by the Police Minister at the time stated in the *Annual Report Directions* stating:
 - the correctness of the report and;
 - 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 other financial and performance audits conducted by the Commonwealth Auditor-General, or other agreed auditor, the cost of which will be borne by the ACT Government.

11. Dispute resolution

11.1. The AFP and ACT Government will establish mechanisms for resolving disputes arising from this Arrangement and subsequent agreements. Any dispute or matter of concern to either party arising from this Arrangement that cannot be resolved through the mechanisms agreed between the AFP and ACT Government, must be referred to the Commonwealth Minister and the Police Minister for resolution.

12. Duration of this Arrangement

12.1. This Arrangement commences on the date agreed by the parties.

12.2. If either party wish to vary the terms of this Arrangement, that party must, in writing, notify the other party to that effect, and the parties must meet within 60 days to commence renegotiating the terms of the Arrangement.

12.3. If either party wish to terminate this Arrangement, that party must, in writing, give at least two years notice to that effect to the other party.


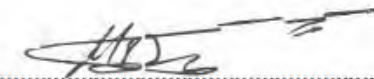
IN WITNESS WHEREOF this Arrangement has been respectively signed for and on behalf of the parties:

SIGNED by the Hon. Michael Keenan MP,
Minister for Justice on behalf of the Commonwealth of
Australia

(date of signing) 15.6.17

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

(date of signing) 15/6/17

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