

PROFESSIONAL REGISTRATION FOR AUSTRALIA'S POLICE

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Introduction

In 2007 and 2008 Australia has seen major moves by many professions, trades and other occupations towards national registration of members, assisted in many cases by the Federal Government.

In the first instance, the Howard Government began the process through the Council of Australian Governments (COAG) of national registration of Australian's health professions spanning nine professions in all, including medical practitioners, dentists and nurses. That initiative is continuing under the Rudd Government and in providing national registration schemes will cover professional registration, vetting of foreign entrants, accreditation of education and training, and codes of ethic and conduct, and thus a greater degree of consumer protection.

COAG in July 2008 announced new plans for a national trade licensing system for occupational trades that will allow people to find work across State boundaries without the need to meet different requirements. This scheme will cover construction workers, bus and truck drivers, air conditioning and refrigeration mechanics, maritime employees, property agents and conveyancers as priorities. Carpenters, electricians, plumbers, glaziers, tillers and joiners are also proposed for special uniform licenses.

These initiatives by government are part of a broader national reform framework aimed at making the Australian economy a single entity which is as competitive, efficient and effective as possible.

Closer to the world of policing, security professionals in Australia have embarked on plans for national certification of security industry professionals through a project supported by the Australian Government's Attorney-General's Department. They have set up a Security Professionals Task Force to pursue this and expect to report to the security community, which includes intelligence officers, investigators and security executives, in May 2009. Their objective is

'to make the security profession a recognized, respected profession that benefits society, security professionals, associations and other stakeholders by enhancing standards and competencies within an appropriate ethical and registration framework.'¹

¹ Outcome of the 2008 Security Professionals' Congress.

What this series of moves indicates is that in Australia, in the 21st Century, most professions are striving for national professional identity and recognition.

The Policing Profession

For nearly two decades police associations and unions across Australia, through the Police Federation of Australia and New Zealand and more lately its successor the Police Federation of Australia (PFA), have supported the following strategy for the professional development of policing -

1. The development of National Common Core Competencies;
2. The development of a National Core Training Curriculum based on national competencies;
3. The alignment of all police training courses and qualifications, allowing for police inter-jurisdictional recognition;
4. The recognition by education institutions of common police qualifications allowing for accreditation and transfer across Australasia;
5. The regulation and validation of police training by the police industry itself through the Australasian Police Professional Standards Council (APPSC);
6. An Australian lateral and cross-jurisdiction entry system;
7. A Professional Police Registration Board;
8. A Professional Police 'Certificate to Practice'.

The PFA has argued that police enlistment standards should be based on Australasian standards, determined from time to time by the APPSC which is recognised by the PFA and the New Zealand Police Association (NZPA) as both are members.

A primary goal of the PFA is the pursuit of enhanced police professionalism through education and training in a strategy embracing professional practice standards for basic training, complemented by ongoing professional development through the higher education (university) sector.

As both the PFA and NZPA support inter-jurisdictional mobility within the Australasian Police Industry involving police who are recruited from Police forces throughout Australia & New Zealand, we believe that such a process will assist mobility.

Why a Police Registration Scheme?

In support of our argument for police professional registration, the PFA believes that police are a central element of a democratic society. Indeed, a democratic society requires a police force that is subject to the rule of law, can intervene in the life of citizens only under limited and carefully controlled circumstances, and is publicly accountable.

Peel's Principles of Policing tabled in a Bill in the British Parliament in 1829 expressed the idea that police are not merely tools of government but rather are the people's police, an idea which underpins the theory of constabulary independence. This is reaffirmed when it is readily accepted that police in democratic societies should not be subject to interference and direction by the executive government.

Uniquely, police are empowered to legally use force, to engage in summary punishment, to use covert surveillance, to stop, search and arrest citizens, and to deprive citizens of their liberty in accordance with the law and judicial processes.

Given the potential for abuse of such powers, police face numerous external and internal controls. Externally, controls range from Court scrutiny of police behaviour and processes, to parliamentary law-making and ongoing oversight, executive government control and policy-setting, and various police oversight bodies, commissions of inquiry, auditors and ombudsmen. Internally, police systems and integrity controls also operate, together with selection, training, defined procedures, policy guidelines, and supervision arrangements.

The office of constable confers a particular and unique discretion on the police officer in the use of his or her powers. This discretion is what distinguishes police from other public employees and makes their exercise of authority unique. The basis for the principle of individual discretion lies with *Enever v R (1906)* 3 CLR 969 which established:

... that a constable, whether his powers were established at common law or by statute, holds the office of constable and his powers are exercised personally and not as a matter of delegation. He bears an original authority and responsibility.

Discretion is a central and important feature of every decision made by a police officer to charge a person. Police must consider issues such as fairness, justice, accountability, consistency and wider community interests and expectations when deciding whether or not to prefer a charge. By virtue of their office all police officers are expected to be accountable for such decisions. The decisions should not display arbitrary and inexplicable differences in the way that different people are treated. Upon making a decision the officer must then ensure both consistency and compliance with statutes and prosecutorial policies.

Entities such as Commissions of Inquiry, Crime Commissions, Ombudsmen, Coroners, Directors of Public Prosecutions, and Police Internal Affairs Units are mandated to test the discretion of an officer when complaints regarding the officer's conduct are raised.

For all of the above reasons, the exercise by police of their powers is a unique expression of the authority of the State and is appropriately conferred on an officer who is professional, highly trained, accountable, and subject to the oath of office and code of conduct that governs the use of the discretion given by the office of constable.

The unique authority afforded police officers is sound reason for governments in the western world limiting police powers to sworn police officers.

However, in recent times in Australia the PFA has had to argue repeatedly against legislation proposing the extension of police-type powers to other government agencies and their personnel. It is vital that governments and parliaments resist any shortcuts that involve extending police powers to other officials, and avoid covering any deficiency in police numerical strength by giving others police powers.

This issue was considered at a January 2007 hearing of the Australian Senate Legal and Constitutional Affairs Committee's Inquiry into the Crimes Legislation Amendment (National Investigation Powers and Witness Protection) Bill 2006. At that hearing the Secretary General of the Law Council of Australia, in response to questions from the Committee about the PFA's submission to the Inquiry in respect to granting search warrant powers to non sworn police personnel of the Australian Crime Commission (ACC), said –

“Our submission actually objects to granting persons powers that are ordinarily reserved to police officers. We do so in the context of a proposal to extend the grant of powers to civilian members of the ACC.... The justification provided seems to be that there is turnover in the police staff working for the ACC, which is apparently difficult to manage, so this is the proposed solution. We do not think that is a sufficiently good enough argument to warrant the arrangement.”

Restricting such powers to sworn police officers in the professional police service is ultimately for the protection of the public. Ensuring national standards in policing, and ensuring that that all sworn officers meet those national standards, gives governments and the community certainty that the policing service across Australia is consistent and acts in the community's best interest. Through a system of national police professional registration, the public can be assured that every police officer who exercises police powers has met the national standard.

A National Registration Scheme v's State Based Schemes:

Whether Australia should have eight state-based registration arrangements, or a single national police registration scheme is a live issue. The following section in this paper on the health workforce example explains the difficulties

that sector has experienced in harmonizing state and territory based registration schemes.

Whilst in policing we have eight (8) independent police forces, with the AFP also having responsibility for the ACT, only one (1) has so far moved to implement a registration scheme. It is the view of the PFA that waiting for another seven schemes to be developed and then ensuring that they are all harmonized could take many years if ever to be achieved.

The Health Workforce Example:

At its April 2007 meeting, the Council of Australian Governments (COAG) announced that it had agreed on arrangements for a new national system for the registration of health professionals and the accreditation of their training and education programs for implementation by July 2008.

The new scheme, COAG concluded, would deliver many benefits to the Australian community including health consumers. National standards in each profession would mean stronger safety guarantees for the community. Patients would know that wherever the health professional is from, they are registered against the same, high-quality national professional standards.

COAG agreed that the new scheme should support workforce responsiveness, flexibility, sustainability and innovation. National registration, they said, would also mean that doctors, nurses and other health professionals would be able to practise across State and Territory borders without having to re-register. This, it was suggested, would improve workforce mobility, allowing health practitioners to move easily to a new State, to serve elsewhere in times of emergency, or to provide locum services at various locations.

The new system will initially cover nine health professions: medical practitioners, nurses and midwives, pharmacists, physiotherapists, psychologists, osteopaths, chiropractors, optometrists and dentists (including dental hygienists, dental prosthetists and dental therapists).

Key features of the new arrangements include a continuing role for Health Ministers, a single, consolidated scheme, and a new national professional board for each of the nine professions. Each profession will develop standards for its profession for approval by Health Ministers. Individual registration and accreditation decisions will remain the responsibility of the professions.

Community representatives will play a key role in the new scheme and Health Ministers will be assisted by an independent Advisory Council which will provide transparent policy advice to Ministers. COAG has also agreed to further consider the membership of the Advisory Council.

The package of COAG health professional registration reform measures is largely supported by the Australian Medical Association (AMA) (Australia's

peak doctors' Association) in their pre-election publication *Key Health Issues for the 2007 Federal Election* released on 6 September 2007 where they raise the issue of National Registration and Accreditation. They point to the long-term problems associated with attempts to harmonise standards across States and Territories to allow portability of registration across borders with a minimum of red tape.

The AMA indicates that the last attempt to achieve portability of medical registration in 2003/04 failed because not all the States and Territories could agree on harmonising legislation.

In relation to the COAG outcomes, the AMA has concerns about the Government having too much control over the profession, therefore they want to ensure that education and training is accredited by a medical council that is independent of Government.

The medical and broader health sector experience should be a lesson for us. Policing, like nursing for example, is a practice-based activity and would be amenable to the approach to registration used for the nursing profession.

The case for national police registration:

The PFA believes that we will not get consensus to form eight police registration boards based on jurisdictional boundaries, with harmonised standards and legislation. We argue that the only way effective police registration will be achieved for the benefit of all police officers and their communities is through the establishment of a National Board.

Policing is ideally placed to make the move directly to a national scheme, without having to first establish state and territory registration schemes. The National Police Registration Board we propose would have input from governments, but be independent of government. Applying Peel's Principles as the cornerstone of the profession, such a board must have community representation through available community leaders.

Many would question why we would seek registration when we only have eight (8) potential employers of police in Australia even though we have approximately 50,000 police.

While there might be an argument for such a scheme in the United States where there are in excess of 18,000 police forces, the argument goes that in Australia the bureaucracy and cost involved in registration would outweigh any advantages gained.

Historically in Australia professional registration in many professions has been state-based. With the exception of Victoria Police, which has commenced negotiating a professional registration scheme for that state through an

industrial instrument, no other state has made formal moves towards registration of police.

The PFA believes that to wait for all jurisdictions to establish registration schemes in their own time, and then try to make them compatible and national, could take many years, if ever, to be achieved. However, moving directly to a national police registration scheme would mean that the wider community is assured that all sworn officers across Australia met and maintained the set minimum standards.

The PFA believes that police are one of the fundamental pillars of a free and safe democracy. Policing is a physically and morally dangerous occupation in which practitioners deal constantly with complex, and often ambiguous problems. Policing requires high levels of judgment, discretion, dispute resolution, problem solving, and physical and moral courage. Police exercise *original*, not delegated, authority and have considerable autonomous discretion. In other words, policing is an intellectually challenging and quintessentially professional task, yet it is not accorded the public recognition and status of a profession.

Police officer mobility between state and territory police forces, the Australian Federal Police and the Australian Crime Commission, is now such that a national police registration scheme is essential.

In the PFA's view a national registration scheme should be designed to:

- improve the status of the police profession;
- facilitate inter-jurisdictional mobility;
- protect the police professional domain; and
- provide and maintain, on the community's behalf, proper standards of policing practice, police ethics, a police code of conduct and professional membership.

Key functions of a National Police Registration Scheme:

In June 2007 the Police Federation of Australia (PFA) publicly released a document, *Law and Order in Australia: Policies for the Future*. In that document, formally presented to all federal political parties in the lead up to the 2007 Australian Federal Election, the PFA called on all parties to advance policing as a profession in Australia by committing to the development of a National Police Registration Scheme.

Both major parties including the newly elected Rudd Labor Government supported the concept of a national police registration scheme. In its commitment the Government has agreed to enter into negotiations with state and territory governments and police unions with a view to achieving this outcome.

The key functions of that Registration Scheme we argued, would be to–

- develop education and training standards and accredit educational and training institutions;
- maintain a register of those institutions and their programs that meet the standard;
- establish a National Code of Police Ethics;
- establish a National Police Code of Conduct;
- be responsible for coordinating the police body of knowledge;
- be responsible for defining the core business of policing; and
- maintain a register of all Australian Police Officers who meet the requisite standards.

To achieve such an outcome will require the goodwill of all stakeholders. This is too important an issue for Australia's police officers and their communities to be left to politicians and police commissioners to determine. While police commissioners are part of the profession and are themselves constables of police, they are principally police employers. They are members of the profession, not its owners as is the case in any other profession. There is also established precedent that police commissioners are subordinate to elected governments and are directly accountable to Ministers.

Therefore, rather than leaving this matter to police commissioners, it is vital that the PFA, as the body elected to represent Australia's 50,000 police officers, takes command of this important issue and devises a scheme, in consultation with other stakeholders, that suits the needs of its members.