



Police Federation
of Australia

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SUBMISSION TO THE

SENATE STANDING COMMITTEE ON EMPLOYMENT, WORKPLACE RELATIONS & EDUCATION

“BUILDING & CONSTRUCTION INDUSTRY INQUIRY”

I make this submission on behalf of the Police Federation of Australia (PFA) representing 47,000 Australian Police Officers. The PFA does not condone criminality of any type from either employees or employers.

We understand that there has been criticism of police action in the past on building & construction sites and at general industrial disputes. Likewise, we understand, police have been criticized for their action, or alleged inaction at general protests.

Police Discretion:

Police officers swear an oath of office to uphold the law, and at the same time have discretion in their actions. In respect to criticisms of police not taking action at industrial disputes, police need to weigh up what repercussions might arise from the actions they take. They are concerned and have responsibility for the safety of others in the dispute as well as other officers and themselves. For that reason on many occasions police do not take formal action resulting in the arrest of an offender, although it is obvious that some people expect them to take such action regardless of the outcome to others safety. One could only begin to imagine if at every industrial dispute or protest police attempted to arrest every person who in their view had committed a minor offence, what the

outcome would be and the dangers that might create for other members of the public and police.

In a legal advising regarding the lawful discretion of police at the site of an industrial dispute, it stated –

“The powers of arrest possessed by a constable at common law or by statute must be exercised bona fide.

When arresting a person a Constable should ensure he or she makes plain to the person being arrested that he is under arrest and gives a reason for arrest, unless there are prevailing circumstances.

An arrest will not be within power unless it is affected in good faith and for the purposes contemplated by the statute or common law. The purpose of the act done must be to vindicate and give affect to the law.

It follows therefore that there is a mental element to arrest which requires the Constable to be acting in furtherance of his or her duties to enforce the Crimes Act or some other legislation, or take action under common law for a breach of the peace or imminent breach of the peace.

After arrest a Constable decides, in the exercise of his or her discretion, as to whether to charge a person with an offence, summons a person or release that person. If the Constable had formed a view that a breach of an Act was taking place or about to occur or a breach of the peace or imminent breach of the peace was about to occur or that person was in danger and had to be removed for his or her safety, proof of such circumstances could be expected to suffice in defending the action.

However, should the Constable not have formed his own view about the reason for arrest but have relied upon the advice or direction of a Senior Officer, his actions may not be so easily defensible. Each arrest is an individual and separate act and the Constable or Constables affecting the arrest will need to justify their actions, with respect to legal right, should an action be commenced for wrongful arrest.

Even in cases where there is no arrest but a ‘detention for the purpose of removal to a safe place’, the actual circumstances of

the case, including the presence of actual or impending danger and the Constable's mental state, will be highly relevant to a question of whether there has been an arrest and whether such an arrest has been wrongful"

In industrial disputes police are not there representing either party to the dispute; their main function is to prevent a 'breach of the peace'. Historically police may have been seen as an agent of the employer or the government, but they are clearly not either.

Resource implications of industrial disputes:

Police also need to weigh up the resource implications when called upon to 'police' an industrial dispute. In respect to many of the criticisms that have been leveled at police in the past for alleged inaction, police have made conscious decisions about the number of officers deployed based on the competing interests of the 'whole' community. Is it fair on the rest of the community that they be deprived of policing services due to a dispute potentially over the commercial interests of a particular company or a group of employees?

An example of this was seen in Sussex England in 1995 when animal rights protestors attempted to prevent livestock exports to Europe via lorry and ferry. Large numbers of protesters saw over 1,100 police deployed to facilitate loading by acting as escorts for the trucks for a 10 day period. As the protester numbers declined to about 100 – 150, over 300 police were still used.

Ultimately a much reduced police presence was maintained due to a budget blowout caused by overtime costs, increasing crime rates from areas where police had been transferred and neglected routine obligations such as police training. If export operations could not be achieved with the reduced police presence, trucks would be turned back on police instructions whenever a breach of the peace was foreseeable.

Despite a legal challenge from the ferry company, the Court of Appeal found that the Chief Constable acted reasonably given the finite manpower and fiscal resources. In striking a balance between the right for protection of its lawful economic activity, the right of the remainder of Sussex to protection from crime and the right of animal protesters to protest peacefully, the Chief Constable had acted within the principle of proportionality in making the best use of available resources.

ABCC:

In respect to the formation of the Australian Building & Construction Commissioner (ABCC) the PFA has concerns that coercive powers attached to such a body might be used in what could be considered a normal industrial dispute. We understand that many of the powers attached to this body are far greater than the powers bestowed on police in the normal course of their duty. We also understand that this function will be at the direction of the respective Minister. We are also advised that police officers may be seconded & attached to this body. If they are, directions given by a Minister would need to be carefully considered so as to avoid any debate that such an arrangement runs contrary to the notion of the separation of powers.

Why has the government sought to bestow such powers on one body in one industry and not generally on the police of this country who are responsible for looking after the safety of our whole community? What training will officers from the ABCC be given, under what integrity regime will they operate and what is the process for an allegation of abuse of their powers? All of these issues are integral to an accountable police force.

We also question what function the ABCC might fulfill when police are called to a dispute. Is there some expectation that the ABCC would be a watchdog over the police role at that dispute? Is there an expectation that would attempt to direct police at such an incident? Who would be in control of the scene?

Police Training:

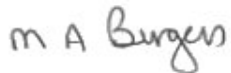
Over the past few years the PFA has conducted lectures at the Australian Institute of Police Management (AIPM) at Manly on the issue of policing industrial disputes. We were asked to undertake these lectures due to the lack of training in this area at the jurisdictional level. To expect police to understand their powers under this Act without appropriate training is inappropriate. If this Act is proclaimed it should be the responsibility of the Federal Government to provide training & education programs for local front line police officers who may be called upon to enforce legislation under the Act. A strict protocol for the interaction and operations of police & ABCC staff at building/construction sites and industrial disputes would be a necessity.

As part of our lecture at the AIPM it became obvious to many senior police who attended, that it was changes to the Workplace Relations Act that was causing a greater workload on police. The fact that the Australian Industrial Relations Commission no longer had powers to conciliate & if necessary arbitrate to impose a resolution in matters, meant that employers & employees were pitted

against one another in disputes with the end result being police called to intervene. Numerous examples were given at those lectures by police who worked in locations where lengthy protracted industrial disputes destroyed the whole social fabric of the community & it was left to the local police to try to get the community back together when these disputes were finally settled or alternate work arrangements were put in place resulting in job losses and members of the community being pitted against one another.

It would seem appropriate to the PFA that prior to introducing this act that changes be made to the Workplace Relations Act restoring the AIRC powers to compel a conciliation process which might take some of the burden away from police who are continually being called to police such disputes.

The PFA would welcome the opportunity to appear before the Inquiry if invited.

A handwritten signature in black ink that reads "m A Burgess". The signature is written in a cursive, slightly slanted style.

Mark Burgess
Chief Executive Officer
12 December 2003