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The Key to Policy Advice and Implementation

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Introduction

Good morning. It is a pleasure to be able to share with this distinguished gathering of public service professionals a law enforcement perspective on the need for effective links between policy advice and policy implementation.

It would have once seemed odd to invite a senior police officer to talk about those links. Traditionally, policy for police equated strictly to law and implementation was simply enforcement.

Legislation was a matter for Government to formulate, taking into account political interests and legal advice from the Attorney-General's Department.

This approach fitted safely within the doctrine of the separation of powers between police and the executive under the Westminster system, in which the conduct of police operations is

independent of political direction.

That independence is also supported by the common law concept of the independent Office of Constable.

In its most conservative interpretation, concepts of the separation of powers and Office of Constable were held by some to mean that police were only accountable to the judicial process and not to government.

This interpretation fails to recognise community accountability through government that police share with all public sector agencies entrusted with large budgets in service to the community.

The way the separation of powers is enshrined in the AFP Act respects both interests.

It respects independence of operational decision-making by giving the Commissioner responsibility for general administration and control of AFP operations.

It also respects the Government's responsibility to the community by enabling the Minister to give written directions to the Commissioner in relation to the general performance and broad policy directions that relate to AFP functions.

Ministerial Directions are generally issued every four to five years. They communicate to the Commissioner areas of law enforcement the Government sees as AFP priorities.

Among them are criminal activities such as drugs, inter-agency relationships that includes information sharing and the development of capabilities in defined areas.

This framework has proved capable of incorporating an increasing AFP role in the development of policy advice to Government.

Several recent developments in public administration and the AFP's operational environment have led to the AFP becoming a substantial contributor to the process of policy development.

Given the nature of policing in which performance is measured in terms of operational outcomes, the quality of advice provided to those who determine policy is paramount.

In a volatile and fast-changing global environment in which flexibility, agility and rapid response are key operational requirements, the AFP can no longer afford to remain a reactive agency.

Fresh demands including national security and counter terrorism have necessitated the allocation of resources to sophisticated strategic planning, encompassing annual environmental scans and scenario processes.

That has engendered in senior management a preparedness to accept rapid changes in the environment and the need to anticipate unforeseen challenges.

The result is that the AFP is not in a state of shock if something on the scale of Bali should occur again, or indeed if it is required for overseas peace-keeping operations at short notice.

September 11 and more particularly last October's bombings in Bali that killed 202 people, including 88 Australians, have so dramatically changed the security environment that the AFP is required to play a more expansive operational role than ever before.

With additional responsibilities for counter terrorism, national security and transnational crime the AFP is often ahead of the policy agenda.

Our role began to change around the time of the East Timor crisis in 1997-98 when the AFP, as the Federal Government's principle law enforcement agency, was co-opted onto the National Security Committee of Cabinet.

Since then a series of events such as people smuggling and unauthorised boat arrivals has seen the AFP invited to join a range of policy groups.

This can only enhance our role in other committees such as the National Counter Terrorism Committee and Counter Terrorism Operational Response Group.

And later I will show you how it fits with other policy groups on matters like money laundering, sexual servitude and high tech crime.

We were also involved in the decision to move the Australian Protective Service (APS) away from the Attorney-General's Department to become an operating division within the AFP.

It followed the review of Australia's counter terrorism arrangements after September 11 and ran contrary to a previous decision made 18 years earlier to separate the APS from the AFP.

It is an illustration of the Government's right to formulate policy in line with circumstance, to the point of re-defining the AFP's role in securing the nation.

The same has happened in the United States where key decisions surrounding security and law enforcement are made in consultation with relevant agencies.

Visiting FBI director Robert Mueller last year confirmed that law enforcement and intelligence are at the cutting edge in devising policy and its implementation.

Perhaps, not surprisingly, CIA director George Tenet meets every morning with President Bush and his closest advisers on national security.

After that meeting the FBI is called in to discuss law enforcement issues likely to arise from this earlier CIA briefing.

It is a prime example of the whole-of government approach the Bush administration has adopted to legitimise law enforcement's wider role.

In Australia, I am pleased to say, the AFP has been increasingly co-opted onto working groups as a means of devising better policy in difficult times.

For instance AFP input into Measures to Combat Serious and Organised Crime legislation has extended our ability to run controlled operations across a range of criminal activities beyond drug interdiction.

This Commonwealth controlled regime allows the AFP to legally participate in what are essentially areas of undercover criminality including money laundering and people smuggling.

Given circumstances in which the world has declared war on terror, proactive measures to remove the ability of major crime groups and terrorist cells to prosper marks a significant law enforcement breakthrough.

The Cybercrime Act is another example in which the AFP was able to bring operational experience to the table in helping to formulate policy.

Key components of the Act allow for the AFP to disrupt computer hackers, minimise identity fraud, identify cyberstalkers and prevent denial of service type attacks committed via the Internet.

In the drug arena the AFP's determination to benchmark itself against world's best practice has demonstrated the need to measure results.

Figures show that between 1997-2000 the AFP outperformed its North American, European and world counterparts in a comparison of drug seizure rates based on kilograms per million head of population.

As an operational agency, benchmarking demonstrates to Government and the community that the dollars invested bring about the required policy results expected by Government.

Before that, AFP performance was not separated and the importation and exportation of drugs was included in collective efforts of the Australian Customs Service as well as State and Territory Police.

By singling out benchmarked figures that reflect proportionate agency participation in critical drug seizures, we have shown the AFP was a major player in each of the three major drug groups.

A comparison of drug seizure rates between 1995 and 2000 confirms that Australia generally outperformed North America and the European Union.

For example Australia outstripped the rest of the world in terms of heroin seizures and amphetamines in the whole of the period between 1995 and 2000 by a considerable margin.

The AFP Drug Harm Index, developed to provide a single measure that encapsulates the potential value to the Australian community of AFP/Customs seizures, bears out the progress being made in this sector.

It represents the dollar value of harm to the community if the drugs had reached the streets. In 1995-96 the value of social harm avoided due to AFP drug seizures was estimated at \$79.4 million.

As you can see drug seizures made in 2001- 2002 puts the harm avoidance measure at \$801.6 million which equates to an increase of more than 1,000 per cent.

It then becomes clear how benchmarking developed on key performance indicators provides a tangible measure on the value of new programs which feeds into new policy decisions.

This in turn demonstrates harm and supply reduction strategies working in concert.

Let me turn now to the AFP's input in formulating the *Proceeds of Crime Act 2002* (POCA 02). It is another important measure that bolsters law enforcement efforts in coming to grips with transnational crime.

Coming into effect on 1 January this year, the proceeds legislation introduced a civil forfeiture regime that strengthens the Commonwealth's ability to confiscate the proceeds of crime.

What gives it real teeth is that, provided a court is satisfied on the balance of probability test that a serious offence has been committed, it is then entitled to demand civil forfeiture.

The court finding does not constitute a conviction, nor do criminal consequences need to arise from its decision. Rather than the imposition of criminal sanction the focus is on unlawful

enrichment in civil proceedings.

In a practical sense this has revolutionised how Federal Agents approach traditional criminal investigations.

The first application of the civil regime occurred within three weeks of the new legislation coming into force. On 21 January a Queensland court issued a restraining order based on suspicion that the suspect had committed a serious offence as defined in the *Proceeds of Crime Act 2002*. The matter related to a GST fraud that exceeded \$1 million.

There have since been various other cases using both the asset directed and person directed civil restraining order provisions. For example:

- asset directed restraint of \$396,000 in Australian currency seized by European authorities from a foreign national who transited Australia. The cash tested positive to narcotic traces;
- asset directed restraint of \$189,000 arising from structured transactions under the Financial Transaction Reports Act;
- a person directed restraint of real estate valued at \$700,000 on suspicion of it being bought with money derived from a foreign indictable offence. This property was previously unable to be dealt with under the 1987 legislation as the offender was in custody in the USA; and
- another person directed restraint of a house, a false name bank account and a share trading account with a combined value \$594,000. The person is suspected of operating the false name account which came to light from a suspect transaction report.

It is worth recalling that since the legislation was promulgated the AFP has restrained in excess of \$12 million using both the civil and criminal regimes in the new Act.

Earlier I talked about counter terrorism. This Act also makes special provision for the confiscation of property used in, or intended to be used in or derived from, terrorist offences now of critical interest to the AFP.

After September 11 and Bali the AFP, like other western law enforcement agencies, was faced with a fresh challenge.

Until then Australia's counter terrorism strategy was typically designed for the type of attacks that were common in the 1970s; isolated incidents with defined political objectives that manifested themselves in bomb threats, siege situations and aircraft hijackings.

In fact the AFP came into existence in 1979 as the result of a one-off terrorist incident when there was a bomb attack at the Hilton Hotel in Sydney.

September 11 and the bombings in Bali demanded a paradigm shift when Australia was faced with random acts of potentially high-level violence.

Unlike any terrorist situation preceding September 11, there appeared little likelihood of political demands being made let alone an opportunity to negotiate with any individual.

For these reasons the Prime Minister hosted a Leaders' Summit in

April 2002 at which State Premiers and Chief Ministers were invited to discuss the problem.

The upshot was the formulation of a National Counter Terrorism Plan (NCTP) to outline responsibilities, establish a chain of command and provide mechanisms to manage acts of terrorisms in Australia.

Strategy included developing a system to determine:

- various levels of alert;
- revised legislation taking into account the transnational nature of the tenor threat;
- increased border control measures; and
- assigning fresh responsibilities to Commonwealth, State and Territory agencies.

As a consequence the new-look AFP with its extended responsibilities is part of a 'virtuous cycle' that links policy and funding with operational outcomes.

The virtuous cycle works on an assumption that Government will continue to make resources available provided such investment provides an acceptable outcome and a strong measure of accountability.

In essence the virtuous cycle depends on the AFP being able to provide the value of its operational experience to Government as a feedback loop for solid policy development.

As I outlined at the start in relation to East Timor, this cycle must

continue to expand.

Over the past decade the AFP has developed an International Officer Network that acts as a two way flow of intelligence vital to its success in combating transnational crime.

Because of it we currently have 44 officers deployed in 24 offices in 22 countries. Government appreciation of the network can be gauged by the fact it recently allocated a further \$47 million to expand the AFP's presence in the Asia Pacific.

By the end of 2003 the network will have 56 Federal Agents stationed at 31 offices in 26 countries, most recently in Brazil, the United Arab Emirates and South Africa.

Continuing to invest in the international network which compounds the AFP's ability to gather accurate intelligence from a variety of sources looks likely to hold us in good stead in policy development.

Which proves that law enforcement has come a long way since 1997 and that the policy decisions being made and implemented are proving effective.

You, as policy professionals, would readily identify sound strategic planning and increased staff accountability as factors that have helped all agencies improve operational outcomes.

I trust that the examples the AFP has given will underscore this fact.

The abiding interests of good government and effective public administration rests on ideas, which in themselves are central in deciding how agencies go about achieving goals.

It is a clear signal that professionally competent public servants are capable of serving different purposes set by governments, reinforcing the principle of a professionally neutral, non politicised public service.

In the words of Dr Peter Shergold, Secretary of the Department of the Prime Minister and Cabinet, “bureaucracy in Australia gets a bum rap”.

The word ‘bureaucratic’, he says, has become a synonym for inflexible, unresponsive and interfering.

However, in a recent address to the Australian Public Service Commission titled *‘Two Cheers for the Bureaucracy’*, Dr Shergold confirmed the transformation of the Australian Public Service over the last generation, with increased emphasis on results and value for money in service provision.

“Democracy requires an institutional structure which can foster and protect the decisions which citizens make at the ballot box,” Dr Shergold said.

He went on to say: “Responsible and representative government requires more than a loyal Parliamentary Opposition, and independent judiciary and a vigorous and unfettered media. It also requires a professional public service.”

In that context the AFP, by sharing contemporary knowledge with Australia's allies, including Indonesia in the case of the outstandingly successful Operational Alliance, has established a network of trust that holds us in good stead to tackle international terrorism.

In its effort to fight international crime and win the AFP's place at any future policy table is assured.