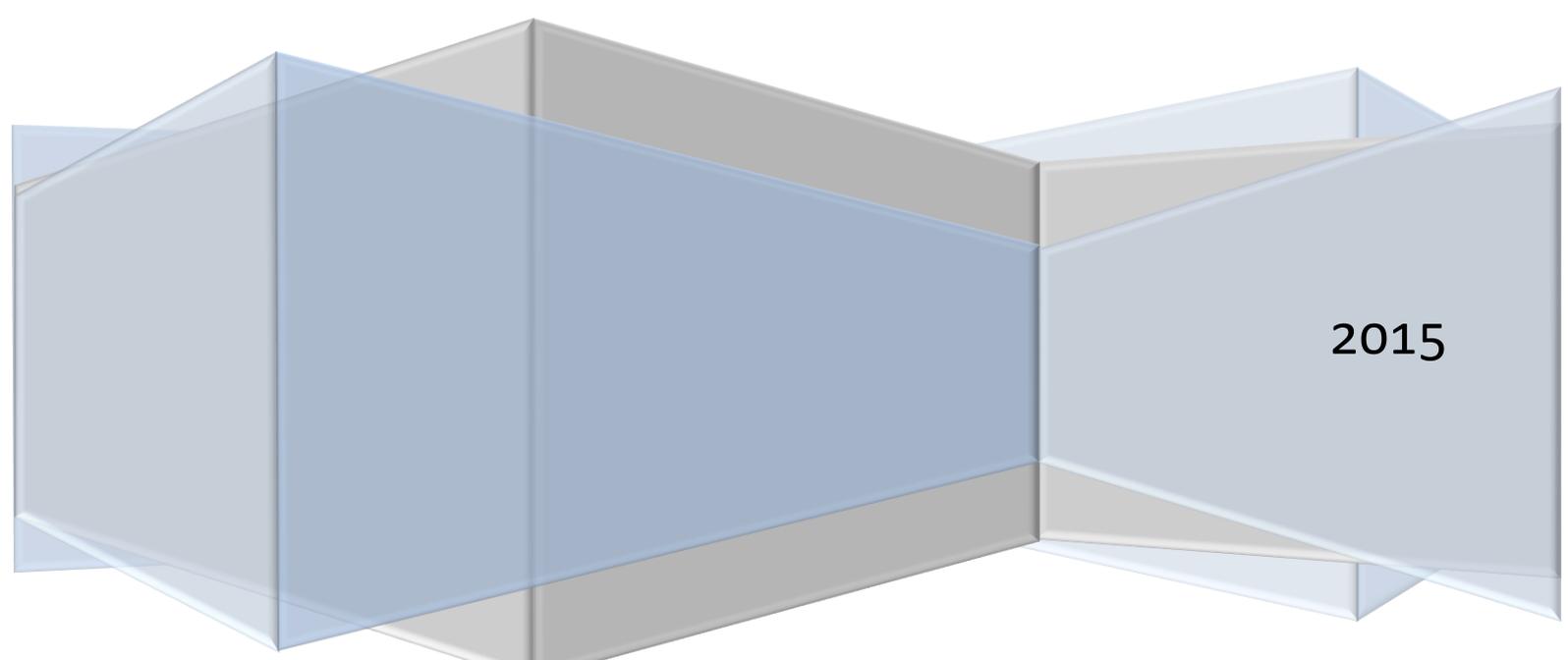


mpaassociates

West Belconnen / Parkwood Development

**Cross Border/Single Community Policing
Options - Advice**

Mick Palmer



2015

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Executive Summary

A new major residential development, known as the West Belconnen/Parkwood Development (WBD), is planned to be constructed in the area of the Australian Capital Territory (ACT) to the north-west of Belconnen and adjoining border areas of New South Wales (NSW), over the next 20 or so years.

Residential construction at WBD is anticipated to start in 2016, and will commence at the southern end of the designated development area, on the northern edge of suburban Belconnen in the ACT. It will gradually extend northwards towards Yass and into NSW over the following 10-20 years.

The planned WBD community will eventually comprise some 11,500 dwellings of which some 5000 will be in NSW, and will house a population of about 30,000 of whom about 14,000 will reside in NSW.

A principal concern of the developers, and the Australian Capital Territory (ACT) Government and Yass Valley Council, relates to the provision of policing services to the planned new cross border community.

It is understood that the joint vision of the ACT Government and the Yass Valley Council is to create a borderless community within and across the WBD site inside which residents will enjoy an equitable and seamless level of service delivery regardless of where, within the WBD, they may reside.

The cross border location of the WBD, however, creates inter-jurisdictional policing challenges which will need to be effectively addressed, if the vision of seamless service delivery to the community is to be realised.

Essentially, border policing arrangements across Australia reflect those in place in other countries. Whilst arrangements in border communities obviously vary between locations due to the differing problems and community structures being addressed, the vast majority are locally based, rely on the goodwill of the participating police organisations, and involve each of the police agencies swearing in members of other relevant bordering police agencies as special members of their own organisations.

Australia's Federal structure, comprising six States and two Territories, has inevitably created a range of challenges for governments which have, essentially, been fashioned by the "States Rights" emphasis that was given to Australia's Commonwealth Constitution, in 2001. Under the Constitution the Commonwealth is restricted to the exercise of "specific powers," as contained

in the Constitution, with all the remaining “residual powers” resting with the States.

As a consequence, governments, the business community, the public service-delivery sector and the general community have, over the intervening years, experienced frustrations and difficulties, in the exercise and conduct of various areas of ordinary business, where a transaction or an event has crossed a State or Territory border or occurred in more than one jurisdiction.

The issues surrounding policing of border communities and the pursuit of crime and criminals that cross State/Territory borders; police operational practice and the operation of the criminal law, are examples of the difficulties and challenges that the simple fact of a Federal structure can cause in the law enforcement environment.

Without specific mutual agreement or legislation, the powers which police may exercise have no authority beyond the border of their respective jurisdiction and the laws (including crimes and other offences and court processes) of a State or Territory have, in most cases, no application beyond the boundaries of the jurisdiction in which they were enacted. As an example, while the AFP is empowered with federal jurisdiction, its members may only exercise those federal powers in regard to Commonwealth legislation and Commonwealth offences. AFP members attached to the Australian Capital Territory may only exercise ACT law within the boundaries of the ACT.

This review assessed the prominent border communities of Albury/Wodonga on the NSW/Victoria border and of Tweed Heads/Coolangatta on the border of NSW and Queensland, as well as assessing the remote area policing arrangement, known as the NPY Lands Cross Border Justice Project which operates on the borders of South Australia, Western Australia and the Northern Territory.

Discussions were held with operational and senior police in relevant centres and opinions sought as to the strengths and weaknesses of current cross border arrangements and the best options for consideration.

In regard to urban cross border, or border adjacent communities, no one spoken to suggested that prevailing arrangements are as effective or seamless as they could be and most identified quite serious limitations and barriers that frequently operated against the interests of the local community and the achievement of effective and desired policing outcomes.

This situation clearly assumes greater importance where a State/Territory border runs through a single community as will be the case with the planned West Belconnen/Parkwood (WBD) development.

The Special Members Model

As mentioned, the most common cross border policing approach used in Australia, as in most other countries, is the “special member” model. This model does not require any legislative amendment, allows the control of “special member” status to rest with the Commissioner of the home police service offering the special membership status, is budget friendly, and retains the jurisdictional integrity of each of the jurisdictions concerned.

The special member model, however, does not remove the barriers to seamless policing mentioned above, including particularly the need to extradite offenders from one jurisdiction to another, no matter how “local” the crime is in reality. Nor does it remove the difficulties involved with a range of issues including cross border police pursuits and traffic apprehensions – including alcohol and drug testing of drivers; the problems with the enforcement of bail conditions across borders; a range of child welfare and domestic violence issues, and the need for Extra –Territorial warrants for the return of stolen property to its rightful owner, where the property is recovered in the other jurisdiction.

Additionally, in almost all of the significant urban border locations in Australia, there are two distinct townships, often separated by some physical distance, which have different names, and are clearly identified – and recognised -- as being in one jurisdiction or another. This will not be the case in the WBD.

In terms of seeking to ensure the delivery of a consistent and uniform level of police service to the WBD community, the usual ‘special member’ arrangements do not, offer as suitable for adoption.

The other options identified and considered worthy of consideration for the WBD were the NPY Lands Cross Border Justice Project model and the creation of a “single jurisdiction” Buffer Zone, which would allow the laws and powers of one jurisdiction to operate unfettered across the entire WBD, regardless of where, or within which jurisdiction within the WBD, any offence occurred.

The NPY Lands Cross Border Justice Model

The NPY Lands cross border arrangements have been agreed under the Cross Border Justice Act/s (the Act) to apply to designated lands in South Australia,

Western Australia and the Northern Territory. Under the Act, which is mirrored in each of the three jurisdictions, police and other law enforcers may, within specified circumstances, exercise their powers no matter which jurisdiction they are in, within the designated area of NPY Lands. The legislation applies to anyone who is suspected or found to have committed an offence within the cross border region and either lived in the area when the offence was committed or at the time of arrest. Within the designated lands, extradition is not required and a person apprehended for an offence may be taken to a court in the State or Territory in which he/she was apprehended, regardless of where, within the designated lands, the offence allegedly occurred.

Essentially, under the Act, the laws of the three jurisdictions have not been changed and the legal rights of either a suspect or a victim are determined in accordance with the laws of the State or Territory in which the offence was allegedly committed.

The NPY Lands model has a proven record of success in the three jurisdictions concerned, although it must be remembered that all communities are small and remote and largely indigenous.

Creation of a Buffer Zone

Although the preferred model, there are currently no cross border 'single jurisdiction' Buffer Zone arrangements in operation in Australia. It is, however, the model most strongly supported by police and the model which clearly offers the most seamless and effective policing and justice outcomes to a border community such as the WBD.

A 'buffer zone,' would need to be created by legislation enacted in the jurisdictions concerned, and would operate to allow the entire designated border community area to be policed under the laws and practices of a single jurisdiction.

Under this model, the legislation should, inter alia, provide that:

- extradition would not be necessary if the offence was committed and the offender was apprehended, within the designated border area;
- a suspect could be taken to the nearest court and the magistrate would have jurisdiction to hear the matter, regardless of the precise location inside the designated border area, at which the offence was alleged to have been committed; and,
- Bail and other court order provisions would be enforceable throughout the zone.

The creation of such a zone would, of course, require agreement between the relevant jurisdictions and legislative amendment sufficient to allow the laws of one jurisdiction to solely apply in the other jurisdiction/s to the extent of the boundary of the agreed zone.

The size of the intended community of 30,000 residents, (in NSW terms for example the 14,000 strong community will be significantly larger than the current Yass population of some 7,000), is also a factor in considering and determining the most relevant policing arrangements.

In view of the time line for the planned development of the WBD; the fact that two thirds of the community will be established in the ACT and one third in NSW, and that the development will commence in the ACT and spread over a period of some years into NSW, it appears logical that any agreed “buffer zone” apply ACT law rather than NSW law and that the AFP have responsibility for the provision of police services for the entire development. This arrangement, of course, would require a cost sharing agreement to be reached between the relevant governments.

The recommended buffer zone approach does not envisage any transfer of land from one jurisdiction to another but rather, simply the extension of ACT laws into NSW to the north/north western extremities of the West Belconnen development and an agreement that only ACT law – for policing and law enforcement purposes - will apply within those boundaries.

While the forecast development period allows substantial time to consider and settle border policing arrangements, it will be important to base these considerations on a firm understanding of the expressed intention to create a “single harmonious” West Belconnen community which has a life style and level of services which operate irrespective of jurisdictional boundaries.

As a consequence, it is recommended:

- **That a ‘Buffer Zone’ model be adopted as the preferred model of policing for the West Belconnen/Parkwood Development (WBD),**
- **Having regard to the planned timeline for development, that ACT law, rather than NSW law, be applied, with the AFP being given legislative authority and responsibility for the provision of police services across and within the entire WBD development area.**

Due to the lead time available it is suggested that early discussions occur to consider the fundamental question of which cross border policing model will offer the best level of policing service to the new community.

An early agreement, before residential construction commences, as to the cross border policing model which will be adopted for the entire West Belconnen/Parkwood development as a whole, would be highly preferable, even if, for cost efficiency or other reasons, it is not implemented immediately.

Unquestionably, if agreement can be reached, the provision of effective and seamless policing and, potentially, other emergency services such as ambulance and fire service to the WBD will be best achieved through the creation of a single "Buffer Zone." The adoption of this model would also remove many if not all of the identified impediments to effective law enforcement and protection of the community evident under special member and joint patrol arrangements.

Additionally, the size, forecast timing and joint jurisdictional nature of the development provides a genuine opportunity to create a new and innovative approach to cross border policing which will reflect the future rather than the past and facilitate the delivery of genuine, seamless, cross border policing operations which are likely to become a best practice model for inter-jurisdictional policing, not only within Australia but, also, internationally.

The three identified options, the "Special Member", the NPY Lands Cross Border Justice and the "Buffer Zone" models, are explained in detail in this report.

I trust the above assessment and advice proves useful in the further development of the West Belconnen/Parkwood Project and the achievement of the aim of developing a single harmonious community.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M.J. Palmer', with a large, stylized initial 'M'.

M.J. (Mick) Palmer

Introduction and Methodology

I have been asked to provide advice as to the cross border policing arrangements which would provide the best and most effective service to the residents of a new community, named as the West Belconnen/ Parkwood Development, planned to be developed in the area of the Australian Capital Territory (ACT) to the north-west of Belconnen and adjoining border areas of New South Wales (NSW), over the next 20 or so years.

In considering and preparing this advice I have spoken to and sought the advice of a number of senior police, including particularly, NSW Commissioner Andrew Scipioni, ACT Chief Police Officer Rudi Lammers, and NSW Police Local Area Commander Rod Smith. I also held discussions with operational police and former police, serving or with experience in cross border policing areas, from a number of Australian jurisdictions and researched both Australian and international border policing practices.

I met personally with senior and operational police stationed in the Coolangatta/ Tweed Heads (Qld/NSW) and the Albury/Wodonga (NSW/Vic) police regions.

Due to my previous experience with the Northern Territory and Federal Police I have a reasonable working knowledge of border policing arrangements in the Northern Territory and across its borders with Queensland, South Australia and Western Australia and between the ACT and NSW.

I am also aware of meetings and briefings that have been held with ACT Deputy Chief Police Officer, Commander Bruce Hill and other AFP and NSW police representatives over the past four years. I have reviewed the minutes of these meetings and they reflect my understanding of current policing arrangements and approaches in the NSW/ACT border area. I have also read the Cross Border Report prepared by Elton Consulting and am conversant with the approaches suggested in that report.

All police with whom I met and spoke, provided me with every possible assistance and cooperation and were prepared to speak openly, frankly and constructively about the strengths and weaknesses of current border policing arrangements and the options for improvement.

An additional body of direct relevance, of course, is the ACT/NSW Cross Border Emergency Management and Disaster Response Committee, established in

2014 which, I would expect, will be included in discussions that may arise as a consequence of this paper.

Essentially, border policing arrangements across Australia reflect those in place in other countries. Whilst arrangements in border communities obviously vary between locations due to the differing problems and community structures being addressed, the vast majority are locally based, rely on the goodwill of the participating police organisations, and involve each of the police agencies swearing in members of other relevant bordering police agencies as special members of their own organisations.

Background:

Australia's Federal structure, comprising six States and two Territories, has inevitably created a range of challenges for governments over the 114 plus years of Australia's Federation. Due to the "States Rights" emphasis that was given to Australia's original Constitution, the Commonwealth is restricted to the exercise of "specific powers," as contained in the Constitution, with all the remaining "residual powers" resting with the States.

As a consequence, governments, the business community, the public service-delivery sector and the general community have all, over the intervening years, on occasions experienced frustrations and difficulties, in the exercise and conduct of various areas of ordinary business, where a transaction or an event has crossed a State or Territory border or occurred in more than one jurisdiction.

Due to the fact that the Federal Government may only exercise specific powers (i.e. those permitted by the express or clearly implied provisions of the Constitution – including enacting laws), many of the law-making powers and authorities rest with the States or Territories. These powers include most of the general criminal law offences including homicide and other personal violence crimes (including domestic and family violence), burglary and other property theft, traffic and public disorder offences.

Only where a State law is inconsistent with a duly enacted Commonwealth law may the Commonwealth law take precedence and, potentially, over-ride or strike down the State provision.

Otherwise, unless the Commonwealth can identify a 'head of power' under the Constitution to which a proposed law or power can be attached, the Commonwealth law or power will be held to be ultra vires – or invalid.

The High Court has increasingly interpreted the Commonwealth Constitution in a liberal, or interpretive, rather than a literal, "plain meaning", way, in order to address and respond to the constantly changing nature of the world in which we live, travel and practise commerce. In doing so the High Court has essentially, striven, so far as the law allows, to take into account the contemporary consequences of a literal interpretation when considering the intent of a legislative provision.

This practice has served to widen the 'Commonwealth power' over the years,' however, many areas of law and practice remain matters for the States – and

to a slightly lesser extent, the Territories. Over the years the limitations and divisions created by State – rather than national – laws have, not infrequently, created hurdles or barriers to the practice of seamless trade and commerce and to the achievement of uniform standards of behaviour or the consistent practise and application of the law across the country.

Policing operational practise and the criminal law are two areas within which these limitations have created not only frustration but also hurdles to effective, uniform and equitable policing and enforcement of the law. Police powers and authorities and the jurisdiction of the criminal law, and of a State or Territory Court to exercise authority, are predominantly provided by the legislation of the State or Territory in which they operate.

Without specific arrangement and mutual agreement, the powers which police may exercise have no authority beyond the border of their respective jurisdiction and the laws (including crimes and other offences and court processes) of a State or Territory have, in most cases, no application beyond the boundaries of the jurisdiction in which they were enacted. While the AFP is empowered with federal jurisdiction, its members may only exercise those federal powers in regard to Commonwealth legislation and Commonwealth offences. AFP members attached to the Australian Capital Territory may only exercise ACT law within the boundaries of the ACT.

The policing of border communities and the pursuit of crime and criminals, that cross State/Territory borders, are classic examples of the difficulties and challenges that the simple fact of a Federal structure can cause. These difficulties have increased exponentially as Australia has grown in population and prosperity, business and trade has become more national and international, and more communities and townships have been developed in areas adjoining a State or Territory border.

Prominent examples of border communities include the twin cities of Coolangatta and Tweed Heads on the Queensland/NSW border where the State boundary essentially runs partly down the centre of Griffith Street, the main shopping street of Coolangatta; Albury/Wodonga, where the Victorian town of Wodonga tends to operate as a ‘feeder’ centre for the larger township of Albury, and Canberra/Queanbeyan, where, similarly, the NSW township of Queanbeyan is a smaller city supplying significant workforce and other support for the much larger Canberra, the National Capital City.

There are also many smaller examples of adjoining townships, particularly along the NSW/Victorian Murray River border area, where there is daily work, leisure and family related movement across the border, despite the physical separation of the Murray River.

However, in the vast majority of cases, these townships are physically, distinctly separate communities with frequently one township being significantly larger than its border neighbour. Along the Murray River, with the exception of Wodonga, the larger townships are overwhelmingly on the Victorian side of the border.

In remote and rural Australia, cross border policing arrangements exist to facilitate the effective protection and policing of small, generally largely-indigenous, communities in very remote areas where the nearest next settlement is in another State or Territory. The best example is the Cross Border Justice Project which operates under Cross Border Justice Act provisions across the borders of Western Australia, South Australia and the Northern Territory in the region known as Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) lands.

Even though, in all of the above examples, the cities, townships or communities, have separate names and identities, the problems associated with cross border law enforcement, protection and service in all border communities are well known and the importance of continuing to improve cross border policing and related services is well understood.

In regard to urban cross border, or border adjacent communities, no one spoken to suggested that prevailing arrangements were as effective or seamless as they could be and most identified quite serious limitations and barriers that frequently operated against the interests of the local community and the achievement of effective and desired policing outcomes.

This situation clearly assumes greater importance where a State/Territory border runs through a single community as will be the case with the planned West Belconnen/Parkwood (WBD) development.

The difficulties, inequities and loop-holes that were expressed by police spoken to during this assessment, and which are well known to and understood by police, court officials, emergency responders and, all too frequently, by the perpetrators of border region crime, include:

- The management and control of Cross border police pursuits.
- Extradition requirements – recognised by almost all police interviewed, as the biggest hurdle to effective policing in border communities. Under most current border policing arrangements a person who commits a crime in one jurisdiction but who is apprehended – although only a street or a suburb away – in another State or Territory, must be subject to a formal extradition process before he/she can be brought before a court in the jurisdiction in which the crime was committed. If the crime is not serious enough to warrant an extradition proceeding, the offender may escape justice altogether unless he/she returns voluntarily to the jurisdiction in which the crime was committed.
- The need for Extra-Territorial Warrants in many circumstances – including the simple return of stolen property to an owner where the property is recovered over the border.
- Monitoring Bail behaviour and policing any breaches of bail conditions, where the bailed person resides in the other jurisdiction from the one in which the offence was committed.
- Child welfare, including abuse, neglect and custody cases, where offences are committed in a different jurisdiction to the one in which the suspect or the victim normally resides- or is located – or where the suspect and victim ordinarily reside in different jurisdictions.
- The exercise of police powers – including arrest, investigative and interviewing powers, the requirement to take a suspect before a court and the provision of police bail.
- Death or serious injury where the death or injury occurs in one jurisdiction and the cause of death or the consequent hospital treatment occurs in another.
- Border hopping by recidivists and domestic violence order (DVO) offenders to escape penalty.
- Cross agency cooperation between police, fire, ambulance, courts, coroners, hospital, child welfare and similar agencies where the case being handled involves cross border transfers or other issues.
- Operational safety and discipline of police officers operating within another jurisdiction and, in some cases, under different laws and or requirements or with different equipment and standing operational procedures.

In an on-going effort to improve current arrangements, the Australian and New Zealand Police Advisory Agency (ANZPAA), which provides advice to the forum of Australian and New Zealand Police Commissioners, has been reviewing border policing arrangements for about ten years. The Victoria Police initiated its own independent review in 2011 following NSW legislative amendments to their special member provisions. Under these amendments NSW Police replaced the term “Special Constable” with the term “Recognised Law Enforcement Officer” (RLEO). This has altered the criteria under which a member of another police service may be sworn (as an RLEO) to exercise special member type powers within NSW.

I was advised that neither ANZPAA nor the Victoria Police have yet released a final report on their reviews. When available for public consideration they may offer useful guidance.

The issue, however, has been under constant practise review and a variety of approaches have been adopted or considered by police to deal with the identified challenges and to improve the quality of service provided in border communities. They include:

- Mutual special member/special constable recognition across border regions which empower relevant police from one jurisdiction as sworn special members of the bordering jurisdiction to exercise the range of the second jurisdiction’s powers as stipulated in the instrument of appointment.
- The operation of joint patrols in bordering towns, where police patrol and investigative vehicles are crewed by members of both jurisdictions and operate as a single team, exercising the powers of the jurisdiction in which the offence occurs or the suspect or offender is located.
- The establishment of MOU’s or legislation to empower and facilitate joint operations or the exercise of powers across borders or within the boundaries of a designated region, such as the NPY Lands, Cross Border Justice Act example.

Case Studies and Comparisons - Options for consideration

NSW/ACT, NSW/Queensland and NSW/Victoria – Special Member - model.

- While some local variations exist, essentially the major border communities in all four jurisdictions, are policed under very similar arrangements.
- The legislation of each State allows for members of another jurisdiction to be sworn as a special member. The process varies slightly between jurisdictions but usually requires for a document, seeking appointment, to be completed and sworn by a member, for this application to be supported by a commissioned officer of the same police service as the applicant and then forwarded to the neighbouring Police Service for final approval by the Commissioner or a senior officer of the State or jurisdiction which will issue the 'Special member' authority.
- Members are selected for appointment where their duties may cause or require them to operate across a border and to exercise their powers in another jurisdiction. The vast majority of uniform patrol members stationed at a border station are usually sworn in and vested with "special member" powers as are selected detectives and other specialist members.
- The instruments of appointment generally authorise the member of the other jurisdiction to exercise all powers and authorities provided to a member of the same rank in the home Service, but may, depending on the circumstances of the appointment, restrict the range of powers and authorities, or the geographical area, in which such powers may be lawfully exercised. The authorities may also be limited in time and require periodic review and renewal.
- Selected special members are trained, generally jointly, by trainers from the relevant jurisdictions. Although, on advice, it is understood this training is usually quite short (generally only between 4-8 hours in total) and has a strong emphasis on vehicle pursuit driving, which is an issue of particular police and public concern, sensitivity and importance.
- The extent and nature of the differences between the legislative provisions of the various jurisdictions, including offence descriptions and the exercise of police powers and duties, make it difficult if not impractical to train members from another jurisdiction in the full range of matters they would need to know in order to be able to operate as

effectively as a home force member, if acting independently in another jurisdiction.

- Due to the variations in offence descriptions, and powers (to stop, examine search or seize, to detain or arrest, to carry or use firearms, Tasers or other weapons etc.) the member acting with special member status will ordinarily involve members of the home State as quickly as possible and, whenever possible, will only act as a witness rather than the investigator or lead officer.
- Some jurisdictions have MOU's, although these are generally local agreements. As an example, I understand one police service has an agreement with the AFP under which information and intelligence from each other's data bases can be shared, with access provided to AFP officers to state data from which intelligence assessments are conducted by the AFP on behalf, and for the benefit of the state police service.

Joint Patrols and Operations

- Generally joint patrolling initiatives are the result of a local agreement and tend to be 'specific-target' driven. Detectives may operate jointly in a single vehicle working on a particular investigation or uniform members may jointly patrol an area in anticipation or response to a specific event or incident.
- It is understood that joint patrols operate as required in most border communities but that arrangements are dependent upon resource availability, costs and competing operational priorities. In the majority of situations the members involved in joint patrol activities are members who have been sworn as "special members" of the other force or service.
- In NSW, as in other jurisdictions, (whilst not operating in a border policing location) tri-service stations have been constructed or opened which house police, ambulance and fire services and/or emergency management personnel. In Macquarie Fields in Western Sydney the tri service facility was built by the developers of a new housing project on a shared funding basis with, it is understood, the developer being given the old police station and land for future development as part of the development agreement.

- In the Northern Territory joint tri-service stations, housing police, fire and emergency service personnel, operate successfully in larger centres.
- A joint police facility in a border township, from which joint patrols would operate under an agreed single command structure, may assist in providing an enhanced quality of policing service in many situations, including the planned WBD.

The Cross Border Justice Model – NPY Lands initiative.

- The NPY Lands cross border arrangements have been agreed under the Cross Border Justice Act (the Act) to apply to designated lands in South Australia, Western Australia and the Northern Territory.
- Under the Act, which is mirrored in each of the three jurisdictions, police and other law enforcers may, within specified circumstances, exercise their powers no matter which jurisdiction they are in, within the designated area of NPY Lands.
- The legislation applies to anyone who is suspected or found to have committed an offence within the cross border region and either lived in the area when the offence was committed or at the time of arrest.
- Whilst the NPY Lands model was created based on the recommendations of Commissioner Ted Mullighan in his report on Children on APY Lands (delivered to the South Australian Government in 2008) as a direct response to the concerns of local council groups in remote, essentially indigenous communities, about child care and abuse, the model is suitable for consideration of adoption in mainstream, urban communities.
- Essentially, under the Act, the laws of the three jurisdictions have not been changed and the legal rights of either a suspect or a victim are determined in accordance with the laws of the State or Territory in which the offence was allegedly committed.
- Under the provisions, however, a person suspected to have committed an offence on NPY Lands can be taken to a police station across a State/Territory border within the NPY Lands area, to undertake a blood or drug test.
- Restrictions may then be placed upon the movements of a person on bail, who, subject to an Order, may need to be supervised across a

border– within the NPY Lands area – and be liable and subject to supervision within the other jurisdiction.

The Creation of a Buffer Zone

Outside of the NPY Lands model, (which offers many of the full buffer zone benefits) there are currently no cross border ‘single jurisdiction’ buffer zone arrangements in operation in Australia. It is, however, the model most strongly supported by police and the model which would, in my opinion clearly offer the most seamless and effective policing and justice outcomes to a border community.

- A ‘buffer zone,’ which would need to be created by legislation enacted in the jurisdictions concerned, would operate to allow the entire designated border community area to be policed under the laws and practices of a single jurisdiction.
- Under this model, the legislation should provide that:
 - extradition would not be necessary if the offence was committed and the offender was apprehended, within the designated border area;
 - a suspect could be taken to the nearest court and the magistrate would have jurisdiction, regardless of the precise location inside the designated border area, at which the offence was alleged to have been committed; and,
 - bail and other court order provisions would be enforceable throughout the zone.
 - The creation of such a zone would, of course, require agreement between the relevant jurisdictions and legislative amendment sufficient to allow the laws of one jurisdiction to solely apply in the other jurisdiction/s to the extent of the boundary of the agreed zone.
- Police interviewed suggested that, where possible, the buffer zone boundaries should mirror a local council or police regional boundary to minimise the potential for confusion. This may not be relevant in respect of the WBD.
 - The rural /remote area NPY type model is seen as offering excellent guidance as to the potential and benefits that a full buffer zone approach would deliver.

Summary and Conclusion:

As in many other parts of the world, the most common cross border policing approach used in Australia is the “special member” model. This model does not require any legislative amendment, allows the control of “special member” status to rest with the Commissioner of the home police service offering the special membership status, is budget friendly and retains the jurisdictional integrity of each of the jurisdictions concerned.

The special member model, however, does not remove the barriers to seamless policing mentioned above, including particularly the need to extradite offenders from one jurisdiction to another, no matter how “local” the crime was in reality. Nor does it remove the difficulties involved with a range of issues including cross border police pursuits and traffic apprehensions – including alcohol and drug testing of drivers; the problems with the enforcement of bail conditions across borders, a range of child welfare and domestic violence issues and the need for Extra –Territorial warrants for the return of stolen property to its rightful owner, where the property is recovered in the other jurisdiction.

Essentially, the ‘special member’ approach has been successful because of the ability of police to minimise the problems through innovative operational practices and personal inter-jurisdictional relationships.

These problems, as identified above, assume greater importance in a single community such as the proposed WBD, in which the jurisdictional boundary will be invisible to residents, who will have an expectation that they will receive the same level of service, from police and other emergency service providers, regardless of the jurisdiction in which they happen live within the new West Belconnen community.

In almost all of the significant urban border locations in Australia, there are two distinct townships, often separated by some physical distance, which have different names, and are clearly identified – and recognised -- as being in one jurisdiction or another. This will not be the case in The WBD.

In terms of seeking to ensure the delivery of a consistent and uniform level of police service to the West Belconnen community, the usual ‘special member’ arrangements do not, in my opinion, offer as suitable approach.

My understanding is that residential construction on the West Belconnen/Parkwood development is anticipated to commence in 2016, will

commence at the southern end of the designated development area, on the northern edge of suburban Belconnen in the ACT and will gradually extend northwards towards Yass and into NSW over the following 10-15 years.

It is also important to recognise that the planned WBD community will eventually comprise some 11,500 dwellings of which some 5000 will be in NSW, and will house a population of about 30,000 of whom about 14,000 will reside in NSW.

The forecast development period allows substantial time to consider and settle border policing arrangements but it will be important to base these considerations on a firm understanding of the expressed intention to create a “single harmonious” West Belconnen community which has a life style and level of services which operate irrespective of jurisdictional boundaries.

The size of the intended community of 30,000 residents, (in NSW terms for example the 11,000 strong community will be significantly larger than the current Yass population of some 7,000), is also a factor in considering and determining the most relevant policing arrangements

Ordinarily when new developments occur within a jurisdiction, police simply expand their operational responsibilities to include the new area. Historically, in these circumstances police have generally followed the problem in that they have frequently been asked to deliver an appropriate level of service to the new area and population, essentially with existing resources.

In many such situations, only when crime rates suffer an unacceptable increase or sufficient complaints are raised about police response and capacity, are significant additional resources considered and appropriated.

The reasons for this approach, which include financial and wider resourcing considerations, are understood, as law enforcement costs are high, but the consequence has frequently been that police are in the position of having to play catch-up when dealing with population growth or crime trends and are much more likely to be required to act reactively rather than pro-actively to the problems they face.

My strong advice is that the adoption of the traditional “special member” approach, or any approach which simply aims to expand resources over time in response to, rather than in anticipation of, increasing crime and disorder problems, would be counterproductive to the central aim of the West

Belconnen Development to deliver seamless and effective policing to residents and should not be considered as a suitable option.

Indeed, as I understand the situation, it is the joint vision of the Yass Valley Council and the ACT Government to create a borderless community which enjoys equity of services regardless of specific residential location.

If agreement can be reached, the provision of effective and seamless policing and other emergency services such as ambulance and fire service to the WBD will be best achieved through the creation of a single "Buffer Zone." The adoption of this model would also remove many if not all of the identified impediments to effective law enforcement and protection of the community evident under special member and joint patrol arrangements.

Additionally, the size, forecast timing and joint jurisdictional nature of the development provides a genuine opportunity to create a new and innovative approach to cross border policing which will reflect the future rather than the past and facilitate the delivery of genuine, seamless, cross border policing operations which are likely to become the best practice model for inter-jurisdictional policing, not only across Australia but internationally.

Recommendation:

- That a 'Buffer Zone' model be adopted as the preferred model of policing for the West Belconnen/Parkwood Development (WBD),
- That legislation be implemented and cost sharing arrangements agreed to:
 - legally authorise the entire WBD border community area to be policed under the laws and practices of a single jurisdiction, and to expressly provide, inter alia, that;
 - extradition not be necessary if the offence is committed and the offender apprehended, within the designated border area;
 - a suspect may be taken to the nearest court and that the magistrate of such court will have jurisdiction to hear the matter, regardless of the precise location inside the designated border area, at which the offence was alleged to have been committed; and,
 - bail and other court order provisions be enforceable throughout the zone;
- Having regard to the planned timeline for development, that ACT law, rather than NSW law, be applied, with the AFP being given legislative authority and responsibility for the provision of police services across and within the entire WBD development area.

Supportive information and background:

In view of the time line for the planned development of the WBD; the fact that two thirds of the community will be established in the ACT and one third in NSW and that the development will commence in the ACT and spread over a period of some years into NSW, it is logical that any agreed “buffer zone” apply ACT law rather than NSW law and that the AFP have responsibility for the provision of police services for the entire development. This arrangement, of course, would require a cost sharing agreement to be reached between the relevant governments.

The creation of a “buffer zone” as outlined above was identified by operational police as the most effective model in terms of the quality and seamlessness of service delivery, with police suggesting that, as far as possible, the buffer zone boundaries closely mirror local council or police regional boundary lines to minimise any potential for confusion.

Specific discussions were held with New South Wales Police Commissioner Andrew Scipioni, Australian Capital Territory, Chief Police Officer, Rudi Lammers and NSW Police Local Area Commander, Rod Smith and these discussions reinforced and confirmed my opinion that the buffer zone model offered was clearly the preferred option.

Whilst, obviously, no formal endorsement was sought from either Commissioner Scipioni or CPO Rudi Lammers during these discussions, both Officers identified significant deficiencies in the normal “special member” arrangements for the planned West Belconnen Development and were strongly supportive of the recommended “buffer zone” model as an arrangement which would facilitate the delivery of a seamless and effective policing service. All recognised and identified that it made solid practical sense, if appropriate cost sharing arrangements could be agreed, that ACT law be applied to the WBD and that the area be policed by the AFP.

In particular, Commissioner Scipioni, identified the problems that could arise for NSW Police due to the lack of access roads to the nearest NSW township of Yass and the presence of natural river and creek boundaries on the northern edges of the WBD. He anticipated that, if the traditional “special member” arrangements were adopted, NSW would need to police the development from Queanbeyan which would necessitate responding police having to cross into the ACT and drive through the city of Canberra to attend within the WBD.

The creation of a single buffer zone would, as mentioned, require agreement between the relevant jurisdictions (as has occurred in the NPY Lands under the Cross Border Justice Act) and the introduction of new legislation to allow the laws of one jurisdiction to solely apply in the other jurisdiction to the extent of the boundary of the agreed WBD zone.

In my opinion a contract style agreement, similar to the service agreement under which the AFP is responsible for the policing of the ACT, may offer as the best governance option. Such an agreement would, of course, require political agreement between the NSW, the ACT and Federal Governments and involve the identified legislative change.

Due to the lead time available it is suggested that early discussions occur to consider the fundamental question of which cross border policing model will offer the best level of policing service to the new community.

The recommended buffer zone approach does not envisage any transfer of land from one jurisdiction to another but rather, simply the extension of ACT laws into NSW to the north/north western extremities of the West Belconnen development and an agreement that only ACT law – for policing and law enforcement purposes - will apply within those boundaries.

Due to the way in which the WBD is to be developed there will be substantial lead time before any agreed model needs to be fully implemented, as all early residential construction and occupation is planned to occur within the ACT. As a consequence usual ACT policing arrangements could service the development in the early years of construction.

The question of which model is to be adopted for policing the entire WBD community, however, may be relevant to the development of infrastructure, such as police or multi-service stations and if agreed at any early date, could form a positive part of the project's residential marketing strategy. An early decision would also allow work on a policing strategy to commence whilst the development is still in the planning stage.

Such an early agreement, before residential construction commences, as to the cross border policing model which will be adopted for the entire West Belconnen/Parkwood development as a whole, would be highly preferable, even if, for cost efficiency or other reasons, it is not implemented immediately.

Whatever cross border policing arrangements are agreed for adoption, it may make good sense to construct a police or multi-service station within the new community. Due to the forecast population of 30,000 for the area, a police station may be identified as justified.

Decisions on location/s and structure of regional or district operational stations is a little difficult when considering initiatives which may not take effect for nearly ten years. Police related technology and patrolling tactics are constantly changing and improving and local police stations, as they are currently understood, may possibly become largely redundant within the next decade. While I am not personally confident that this will or should be the case, consideration of emerging patrolling and response tactics may need to occur before a final decision on building physical infrastructure is made.

If an NPY Lands Cross Border Justice Strategy style approach is to be adopted, the Cross Border Justice Act offers as a relevant and useful guide to the achievement of practical and demonstrably effective joint cross border policing arrangements.

Alternative Option:

If, for political, budgetary or other reasons, neither the recommended 'Buffer Zone' option nor the NPY Lands Cross Border Policing Strategy option are considered viable, the more traditional and usual 'Special member' approach will need to be applied.

Should this be the approach approved, I strongly recommend that the arrangements be agreed formally at Police Commissioner/Chief Police Office level, with the express approval of the relevant governments and that the arrangements be developed under the umbrella of a Cross Border Policing Strategy which addresses all of the problems and deficiencies that have been identified in other 'special member' models around the country and elsewhere.

As part of this process it would be appropriate to consider:

- The construction of a joint jurisdictional police/ or police emergency response facility within the WBD, to be staffed by officers from both NSW and AFP and operating as a single community service hub; or
- Authorising the relevant ACT based AFP officers as Recognised Law Enforcement Officers (RLEO's) under the NSW Police Act to exercise primary responsibility for policing the entire WBD area.

The first option presents as one deserving of serious consideration if the traditional 'special member' service delivery option is to be adopted, particularly having regard to the population size of the planned development. However, whilst the second option would allow for a more seamless and rapid response style policing to be delivered to the WBD it would necessitate AFP officers becoming completely conversant with the NSW criminal law and processes and agreement as to the cost recovery arrangements that would apply.

Any agreed strategy should be detailed in a co-signed document which expressly identifies the aims and purpose of the strategic alliance and the means by which the aims and purpose will be achieved and measured.

Any such agreed cross border policing strategy document, should, in my opinion, provide a clear framework for the joint policing arrangements which includes:

- Aim and Purpose – to provide consistent, effective and seamless policing services to the WBD community with the central purpose of creating a safe, secure and harmonious community environment.
- Investigations and Operations – settle operational, including joint patrolling, strategies which will facilitate a consistent visible policing presence and efficient response rates – agree continual review and assessment mechanisms with a view to continually enhancing the quality of police services – and develop agreed safety principles which maximise the safety of police from both jurisdictions.
- Communications, Information and Intelligence Sharing – commit to settling arrangements which ensure effective, accurate, reliable and contemporary communications and exchange of information and intelligence.
- Training – expand traditional ‘special member’ training, to adequately equip police to exercise full powers across the entire WBD area – including cross border instruction on arrest and custody requirements, interviewing techniques, drink and drug driving procedures, testing and the like.
- Emergency Planning and Preparation – settle arrangements which adequately prepare members to effectively respond to an emergency anywhere within the ‘special member’ area.
- OH & S – to the extent necessary, develop and agree a joint OH&S policy or plan which effectively accommodates a joint/cross border working environment and provides clarity and appropriate support and guidance to members.
- Review – Agree and develop a system of review which will periodically evaluate and measure the outcomes being achieved and the overall effectiveness of the Cross Border Strategy against its aims and purpose.