



# Australian Federal Police Act 1979

## Act No. 58 of 1979 as amended

This compilation was prepared on 1 July 2004  
taking into account amendments up to Act No. 64 of 2004

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# **An Act to establish the Australian Federal Police, and for related purposes**

## **Part I—Preliminary**

### **1 Short title** *[see Note 1]*

This Act may be cited as the *Australian Federal Police Act 1979*.

### **2 Commencement** *[see Note 1]*

- (1) Sections 1, 2, 4 and 6, Division 1 of Part IV and sections 28 and 70 shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

### **3 Repeal**

The *Commonwealth Police Act 1957* is repealed.

### **3A Overview of Act**

#### *Constitution of the Australian Federal Police*

- (1) Division 1 of Part II of this Act provides that the Australian Federal Police consists of a Commissioner of Police, one or more Deputy Commissioners of Police, AFP employees, special members and special protective service officers.

#### *Commissioner and Deputy Commissioners*

- (2) The Commissioner and Deputy Commissioners are appointed by the Governor-General. Division 1 of Part III sets out matters dealing with such appointments.

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*AFP employees*

- (3) The Commissioner may engage persons as AFP employees. Division 2 of Part III covers matters to do with the employment of AFP employees. For example, it deals with the remuneration and terms and conditions of employment of AFP employees, how AFP employees can resign or retire and how the Commissioner may terminate the employment of AFP employees.

*Members of the Australian Federal Police*

- (4) The Commissioner and any Deputy Commissioner are members of the Australian Federal Police. Under Division 2 of Part IV, the Commissioner may declare AFP employees to be members and certain members may be declared to be commissioned police officers. Under Division 1 of Part II, members provide police services and that Division also deals with powers of members.

*Special members of the Australian Federal Police*

- (5) Under Division 3 of Part IV, the Commissioner may appoint persons as special members to assist the Australian Federal Police in carrying out its functions.

*Protective service officers of the Australian Federal Police*

- (5A) Under Division 3A of Part IV, the Commissioner may declare AFP employees to be protective service officers. Divisions 3 and 4 of Part II deal with the powers of protective service officers.

*Special protective service officers of the Australian Federal Police*

- (5B) Under Division 3B of Part IV, the Commissioner may appoint persons as special protective service officers to assist in performing protective service functions.

*Commissioner's command powers*

- (6) The Commissioner has the general administration of, and the control of the operations of, the Australian Federal Police. Part IV is mainly about the Commissioner's command powers. For example, the Commissioner may determine the duties of AFP

employees and where those duties are to be performed. Other topics covered by that Part include secondment and drug testing.

*Other matters*

- (7) This Act also:
- (a) deals with the use of listening devices in relation to offences (see Division 2 of Part II); and
  - (aa) deals with the powers of protective service officers and certain other powers relating to protective service functions (see Divisions 3 and 4 of Part II); and
  - (b) deals with when AFP employees lose certain superannuation rights and benefits (see Part VA); and
  - (c) deals with other matters such as secrecy obligations, offences and certain administrative matters (all of which are contained in Part VI).

## **4 Interpretation**

- (1) In this Act, unless the contrary intention appears:

***adjustment payment*** means a payment made in accordance with a determination that is continued in force by item 8 of Part 1 of Schedule 3 to the *Australian Federal Police Legislation Amendment Act 2000* (including a payment made in accordance with such a determination as amended or varied in accordance with that item).

***AFP employee*** means a person engaged under section 24.

***Australian workplace agreement*** has the same meaning as in the *Workplace Relations Act 1996*.

***authority of a State or Territory*** means:

- (a) a body, whether incorporated or unincorporated, established for a public purpose by or under a law of that State or Territory, other than a body that, under the regulations, is not to be taken to be an authority of that State or Territory for the purposes of this Act; or
- (b) any other body declared by the regulations to be an authority of that State or Territory for the purposes of this Act, being:

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- (i) a body, whether incorporated or unincorporated, established by the Governor, or a Minister of the Crown, of that State or, in the case of the Northern Territory, a Minister; or
- (ii) an incorporated company in which that State or Territory, or a body corporate falling within paragraph (a) or subparagraph (i), has a controlling interest.

***authority of the Commonwealth*** means:

- (a) a body, whether incorporated or unincorporated, established for a public purpose by or under a law of the Commonwealth, other than a body that, under the regulations, is not to be taken to be an authority of the Commonwealth for the purposes of this Act; or
- (b) any other body declared by the regulations to be an authority of the Commonwealth for the purposes of this Act, being:
  - (i) a body, whether incorporated or unincorporated, established by the Governor-General or by a Minister; or
  - (ii) an incorporated company in which the Commonwealth or a body corporate falling within paragraph (a) or subparagraph (i) of this paragraph has a controlling interest.

***blood test*** means a test of a person's blood to determine the amount of alcohol (if any) in the person's blood.

***body sample*** means any of the following:

- (a) any human biological fluid;
- (b) any human biological tissue (whether alive or otherwise);
- (c) any human breath.

***breath test*** means a test of a person's breath to determine the amount of alcohol (if any) in the person's blood.

***certified agreement*** has the same meaning as in the *Workplace Relations Act 1996*.

***commissioned police officer*** means any member in respect of whom a declaration under section 40D is in force.

**Commissioner** means the Commissioner of Police referred to in section 6.

**Commissioner's Orders** means orders under section 38.

**Deputy Commissioner** means a Deputy Commissioner of Police referred to in section 6.

**duties** includes responsibilities.

**eligible employee** has the same meaning as in the *Superannuation Act 1976*.

**frisk search** means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

**member** means a member of the Australian Federal Police.

**member of the Australian Federal Police** means any of the following:

- (a) the Commissioner of Police;
- (b) a Deputy Commissioner of Police;
- (c) an AFP employee in respect of whom a declaration under section 40B is in force.

**ordinary search** means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
- (b) an examination of those items.

**overseas** means outside Australia and the Territories.

**pensioner** means:

- (a) a person to whom an invalidity pension within the meaning of the *Superannuation Act* is payable;
- (b) a person to whom a pension is payable under the *Superannuation Act 1922* and who has been retired on the ground of invalidity or of physical or mental incapacity to perform his or her duties; or

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- (c) a person to whom a pension referred to in paragraph (a) or (b) would be payable if payment had not been suspended.

**police services** includes services by way of the prevention of crime and the protection of persons from injury or death, and property from damage, whether arising from criminal acts or otherwise.

**powers** includes authorities, rights, privileges and immunities.

**prohibited drug** means:

- (a) a narcotic substance (within the meaning of the *Customs Act 1901*); or
- (b) any drug specified in a determination under section 4A.

**prohibited drug test** means a test of a body sample of a person to determine the presence (if any) of a prohibited drug in the sample.

**protective service functions** means the functions designated by the Minister under section 8A.

**protective service offence** means any of the following:

- (a) an offence in relation to a person, place or thing in respect of which the Australian Federal Police is performing protective service functions, being an offence under:
  - (i) section 24AB, 29, 46 (other than paragraph (b)), 47, 47A, 79, 89 or 89A of the *Crimes Act 1914*; or
  - (ii) the *Crimes (Internationally Protected Persons) Act 1976* or Part 2 of the *Crimes (Aviation) Act 1991*; or
  - (iii) the *Defence (Special Undertakings) Act 1952* (other than subsection 31(2)); or
  - (iv) the *Public Order (Protection of Persons and Property) Act 1971* (other than section 11); or
  - (v) the *Nuclear Non-Proliferation (Safeguards) Act 1987* (other than section 25A, 27 or 28A, subsection 29(2), 30(1), 40(1), 58(2) or 65(1) or section 66); or
  - (vi) section 91.1 of the *Criminal Code*;
- (b) an offence against section 6 of the *Crimes Act 1914*, or section 11.1 or 11.4 of the *Criminal Code*, that relates to an offence mentioned in paragraph (a);
- (c) an offence against Division 72 of the *Criminal Code* that relates to a person, place or thing in respect of which the

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Australian Federal Police is performing protective service functions;

- (d) an offence against Division 101 of the *Criminal Code* that relates to a person, place or thing in respect of which the Australian Federal Police is performing protective service functions;
- (e) an offence in relation to a person, place or thing in respect of which the Australian Federal Police is performing protective service functions, being an offence against section 131.1, 141.1, 142.1, 147.1, 148.1 or 149.1 of the *Criminal Code*.

**protective service officer** means an AFP employee in respect of whom a declaration under section 40EA is in force.

**resign** means resign from the Australian Federal Police.

**retire** means retire from the Australian Federal Police.

**senior executive AFP employee** means an AFP employee in respect of whom a declaration under section 25 is in force.

**serious misconduct** has the meaning given by section 40K.

**special member** means a person appointed under section 40E.

**special protective service officer** means a person appointed under section 40EC.

**State** includes the Northern Territory.

**Superannuation Act** means the *Superannuation Act 1976* or the *Superannuation Act 1990*.

- (2) A reference in this Act to an officer of police shall be read as including a reference to a police officer, or to any member of a police force, however described.

#### **4A Commissioner may specify prohibited drugs**

The Commissioner may, by written determination, specify drugs for the purposes of the definition of **prohibited drug** in section 4.

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**5 References in other laws**

- (1) In a law of the Commonwealth or of the Australian Capital Territory:
  - (a) a reference to a Commonwealth Police Officer shall be read as a reference to a member of the Australian Federal Police;
  - (b) a reference to the Commonwealth Police Force shall be read as a reference to the Australian Federal Police;
  - (c) a reference to the Police Force of that Territory shall be read as a reference to the Australian Federal Police;
  - (d) a reference to an officer of police of that Territory shall be read as a reference to a member of the Australian Federal Police; and
  - (e) a reference to the Commissioner of Police of that Territory, however described, shall be read as a reference to the Commissioner.
- (1A) Where a reference in a law of the Commonwealth that does not specify the Australian Capital Territory is, in effect, a reference to, or a reference that includes, that Territory, that reference shall, for the purposes of subsection (1), be taken to be a reference to that Territory.
- (2) If:
  - (a) a provision of a law is, by virtue of subsection (1), to be read as referring to a member of the Australian Federal Police holding a particular rank; and
  - (b) a declaration is in force under subsection (3) that a member is of that rank for the purposes of this paragraph;the provision of the law is to be read as referring to the member to whom the declaration applies.
- (3) The Commissioner may, by writing, declare that a member is of a particular rank for the purposes of paragraph (2)(b).

**5A Application and extension of Act and regulations**

- (1) This Act and the regulations apply throughout the whole of Australia and also outside Australia.
- (2) This Act and the regulations extend to the external Territories.



**5B Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part II—Constitution, functions and powers of the Australian Federal Police**

### **Division 1—Constitution, functions and laws conferring powers on members etc.**

#### **6 Constitution of the Australian Federal Police**

The Australian Federal Police consists of:

- (a) the Commissioner of Police; and
- (b) any Deputy Commissioner of Police; and
- (c) AFP employees; and
- (d) special members; and
- (e) special protective service officers.

#### **8 Functions**

- (1) The functions of the Australian Federal Police are:
  - (a) subject to subsection (1A), the provision of police services in relation to the Australian Capital Territory; and
  - (aa) the provision of police services in relation to the Jervis Bay Territory; and
  - (b) the provision of police services in relation to:
    - (i) laws of the Commonwealth;
    - (ii) property of the Commonwealth (including Commonwealth places) and property of authorities of the Commonwealth; and
    - (iii) the safeguarding of Commonwealth interests; and
  - (ba) the provision of services in accordance with arrangements entered into under subsection (1C) and doing anything else included in the arrangements that is incidental or conducive to the provision of the services; and
  - (bb) to perform the functions conferred by the *Witness Protection Act 1994*; and

- (bc) to perform the functions conferred by a law of a State or Territory that is a complementary witness protection law for the purposes of the *Witness Protection Act 1994*; and
  - (bd) to perform functions under the *Proceeds of Crime Act 2002*; and
  - (be) to perform such protective and custodial functions as the Minister directs by notice in writing in the *Gazette*, being functions that relate to a person, matter or thing with respect to which the Parliament has legislative power; and
  - (c) to do anything incidental or conducive to the performance of the foregoing functions.
- (1A) The Minister and the Australian Capital Territory may enter into arrangements for the provision of the police services in relation to the Australian Capital Territory that are in respect of Territory functions as defined by section 3 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, and, where the arrangements have been entered into, the provision of those services shall be in accordance with the arrangements.
- (1B) The Minister shall try to enter into the first such arrangement before 1 July 1990.
- (1C) The Minister and the Administrator of an External Territory may enter into arrangements for the provision of police services and regulatory services in relation to that Territory, and, where the arrangements have been entered into, the provision of those services shall be in accordance with the arrangements.
- (2) The provision of police services in relation to a Commonwealth place in a State, being services by way of the investigation of offences against the laws of that State having application in relation to that place by virtue of the *Commonwealth Places (Application of Laws) Act 1970*, shall be in accordance with arrangements made between the Commissioner and the Commissioner of Police (however designated) of that State.
- (2B) Arrangements for the provision of services under subsection (1A) or (1C) may include arrangements for the doing of anything incidental or conducive to the provision of the services.
- (3) In this section:
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*Commonwealth place* has the same meaning as in the  
*Commonwealth Places (Application of Laws) Act 1970*.

**8A Minister may direct which functions are protective service functions**

The Minister may, by notice published in the *Gazette*, direct that certain protective and custodial functions of the Australian Federal Police are protective service functions.

**9 Laws conferring powers on members**

- (1) In addition to any other powers and duties, a member has:
- (a) the powers and duties that are conferred or imposed by or under a law of the Commonwealth on:
    - (i) a constable; or
    - (ii) a constable of a particular rank, if a declaration under subsection (2A) is in force that the member is of that rank for the purposes of this subparagraph; and
  - (b) when performing functions in the Australian Capital Territory—the powers and duties conferred or imposed on a constable or on an officer of police by or under any law (including the common law) of the Territory; and
  - (ba) when performing functions in the Jervis Bay Territory—the powers and duties conferred or imposed on a constable or an officer of police by or under any law (including the common law) of the Territory; and
  - (bb) when performing functions in an External Territory—the powers and duties conferred or imposed on a constable or an officer of police by or under any law (including the common law) of the Territory; and
  - (c) in relation to the following:
    - (i) the laws of the Commonwealth;
    - (ii) matters in connection with property of the Commonwealth or of an authority of the Commonwealth;
    - (iii) matters arising on or in connection with land or premises owned or occupied by the Commonwealth or an authority of the Commonwealth;

- (iv) the safeguarding of Commonwealth interests; the powers and duties that are conferred or imposed, in the place in which the member is acting, on:
    - (v) a constable or an officer of police; or
    - (vi) a constable, or an officer of police, of a particular rank, if a declaration under subsection (2B) is in force that the member is of that rank for the purposes of this subparagraph.
- (2) Where any provisions of a law of a State apply in relation to offences against the laws of the Commonwealth or of a Territory, those provisions so apply as if:
  - (a) any reference in those provisions to a constable or to an officer of police included a reference to a member; and
  - (b) if a declaration is in force under subsection (2B) that a member is of a particular rank for the purposes of this paragraph—any reference in those provisions to an officer of police of that rank included a reference to the member.
- (2A) The Commissioner may, by writing, declare that a member is of a particular rank for the purposes of subparagraph (1)(a)(ii).
- (2B) The Commissioner may, by writing, declare that a member is of a particular rank (the **State law rank**) for the purposes of subparagraph (1)(c)(vi) or paragraph (2)(b) if:
  - (a) a declaration is in force under subsection (2A) that the member is of a particular rank (the **Commonwealth law rank**); and
  - (b) the Commissioner considers the State law rank is equivalent to the Commonwealth law rank.
- (2C) Unless it ceases to be in force sooner, a declaration under subsection (2B) ceases to be in force when the declaration under subsection (2A) ceases to be in force.
- (3) In paragraph (1)(a):

**constable** includes a member of the Police Force of a State or Territory.

Section 11

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**11 State and Territory writs and warrants**

Where a writ or warrant is issued under the law of a State or Territory in relation to an offence or other matter under a law of the Commonwealth or of a Territory, the writ or warrant may be executed by a member, notwithstanding that it is not addressed to a member and notwithstanding any requirement of the law of the State or Territory as to the person by whom it may be executed.

**12 Immunities from certain State and Territory laws**

The Commissioner, a Deputy Commissioner or an AFP employee is not required under, or by reason of, a law of a State or Territory:

- (a) to obtain or have a licence or permission for doing any act or thing in the exercise of his or her powers or the performance of his or her duties as the Commissioner, a Deputy Commissioner or an AFP employee; or
- (b) to register any vehicle, vessel, animal or article belonging to the Commonwealth.

**12A Immunity from State and Territory laws in relation to entry etc. of police dogs on premises etc.**

- (1) In this section:

**AFP dog** means a police dog or a protective service dog that is used by the Australian Federal Police.

**AFP dog handler** means a member or a protective service officer whose duties as a member or a protective service officer include the duties of an AFP dog handler.

**protective service dog** means a dog used or trained to assist protective service officers.

- (2) Where an AFP dog handler is entitled to enter, or to be on or in, particular premises or a particular place in the performance of the AFP dog handler's duties as a member or a protective service officer, the AFP dog handler is entitled, in entering, or being on or in, the premises or place, to be accompanied by an AFP dog under the control of the AFP dog handler.

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Section 12A

- (3) The Commonwealth, a member or a protective service officer is not subject to any penalty, liability or forfeiture by reason only of an AFP dog having entered, or having been on or in, particular premises or a particular place if:
- (a) the AFP dog is under the control of an AFP dog handler;
  - (b) the AFP dog handler is performing the AFP dog handler's duties as a member or protective service officer; and
  - (c) the AFP dog handler is entitled to enter, or to be on or in, the premises or place.
- (4) In any proceeding, a certificate in writing signed by the Commissioner certifying that:
- (a) a specified member or specified protective service officer is, or was at a specified time, an AFP dog handler within the meaning of this section; or
  - (b) a specified dog is, or was at a specified time, an AFP dog within the meaning of this section;
- is *prima facie* evidence of the fact or facts certified.

Section 12B

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**Division 2—Use of listening devices in relation to general offences**

**12B Definitions**

In this Division:

***class 1 general offence*** means a general offence that is an offence of any of the following kinds:

- (a) murder, or an offence of a kind equivalent to murder;
- (b) kidnapping, or an offence of a kind equivalent to kidnapping;
- (c) an offence constituted by:
  - (i) aiding, abetting, counselling or procuring the commission of; or
  - (ii) being in any way, whether by act or omission and whether directly or indirectly, knowingly concerned in, or party to, the commission of; or
  - (iii) conspiring to commit;an offence of a kind referred to in paragraph (a) or (b).

***class 2 general offence*** means a general offence that is an offence of any of the following kinds:

- (a) an offence against:
  - (i) section 137.2, 141.1, 142.1, 142.2, 145.4 or 145.5 of the *Criminal Code*; or
  - (ii) section 34, 37, 42, 43 or 44 of the *Crimes Act 1914*; or
  - (iii) section 13, 14, 15, 16 or 20 of the *Crimes (Offences against the Government) Act 1989* of the Australian Capital Territory;
- (b) an offence (other than a class 1 general offence or an offence of a kind referred to in paragraph (a)) punishable by imprisonment for life or for a period, or maximum period, of at least 7 years, where the particular conduct constituting the offence involved, involves, or would involve, as the case requires:
  - (i) loss of a person's life or serious risk of loss of a person's life; or



- (ii) serious personal injury or serious risk of serious personal injury; or
- (iii) serious damage to property in circumstances endangering the safety of a person; or
- (iv) trafficking in narcotic drugs;
- (c) an offence constituted by:
  - (i) aiding, abetting, counselling or procuring the commission of; or
  - (ii) being in any way, whether by act or omission and whether directly or indirectly, knowingly concerned in, or party to, the commission of; or
  - (iii) conspiring to commit;an offence of a kind referred to in paragraph (a) or (b).

***customs narcotics offence*** means an offence punishable as provided by section 235 of the *Customs Act 1901*.

***designated technical officer*** means a person declared under section 12E to be a designated technical officer.

***eligible Judge*** means a Judge in relation to whom a consent under subsection 12D(1), and a nomination under subsection 12D(2), are in force.

***general offence*** means:

- (a) an offence against a law of the Commonwealth that is not a customs narcotics offence; or
- (b) an offence against a law of the Australian Capital Territory.

***general offence inquiries*** means:

- (a) inquiries in relation to a general offence that has been committed or is reasonably suspected of having been committed; or
- (b) if there are circumstances reasonably giving rise to the suspicion that a general offence is likely to be committed—  
inquiries in relation to the likely commission of the offence.

***listening device*** means any instrument, device or equipment capable of being used, whether alone or in conjunction with any other instrument, device or equipment, to record or listen to spoken words.

## Section 12C

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***nominated AAT member*** means a member of the Administrative Appeals Tribunal in respect of whom a nomination is in force under section 12DA to issue warrants under section 12G for use of listening devices.

***official*** means:

- (a) a member; or
- (b) a designated technical officer.

***premises*** includes:

- (a) any structure, building, aircraft, ship or vehicle; and
- (b) any land (whether or not enclosed or built on); and
- (c) any part of premises (including premises of a kind referred to in paragraph (a) or (b)).

## 12C Application of Division

- (1) Nothing in this Division applies in relation to the use, in circumstances prescribed for the purposes of this subsection, of a listening device under a warrant issued under a law of a State or Territory, being a law prescribed for the purposes of this subsection.
- (2) Nothing in this Division, or in a warrant under this Division, applies in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception) Act 1979*, constitute the interception (whether or not in contravention of subsection 7(1) of that Act) of a communication passing over a telecommunications system within the meaning of that Act.

## 12D Judges eligible to issue warrants for use of listening devices

- (1) A Judge of a court created by the Parliament may, by writing, consent to be nominated by the Minister under subsection (2).
- (2) The Minister may, by writing, nominate a Judge in relation to whom a consent is in force under subsection (1) to be a Judge who may issue warrants under section 12G.

- (3) An eligible Judge has, in relation to the performance of a function or exercise of a power conferred on an eligible Judge by this Division, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

**12DA Nominated AAT members may issue warrants for use of listening devices**

- (1) The Minister may, by writing, nominate a person who holds one of the following appointments to the Administrative Appeals Tribunal to issue warrants under section 12G for use of listening devices:
- (a) Deputy President;
  - (b) full-time senior member;
  - (c) part-time senior member;
  - (d) member.
- (2) Despite subsection (1), the Minister must not nominate a person who holds an appointment as a senior member or a member of the Tribunal unless the person:
- (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory; and
  - (b) has been so enrolled for not less than 5 years.
- (3) A nomination ceases to have effect if:
- (a) the nominated AAT member ceases to hold an appointment of a kind set out in subsection (1); or
  - (b) the Minister, in writing, withdraws the nomination.
- (4) A nominated AAT member has, in performing a function or connected with, issuing a warrant, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

**12E Appointment of designated technical officers**

- (1) The Commissioner or a member appointed, in writing, by the Commissioner for the purposes of this subsection may, by writing, declare:

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- (a) an AFP employee who is not a member to be a designated technical officer; or
  - (b) a class of AFP employees who are not members to be designated technical officers.
- (2) A person who is a designated technical officer stops being a designated technical officer if the person stops being an AFP employee.

**12F Use of listening devices in relation to general offences**

- (1) It is unlawful for an official to use, for the purposes of general offence inquiries that are being made by members, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless:
  - (a) the official is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard; or
  - (b) the official listens to or records the words with the consent, express or implied, of a person who is permitted by paragraph (a) to listen to or record the words; or
  - (c) if the general offence concerned is a class 1 general offence or a class 2 general offence—the official does so in accordance with a warrant under section 12G and the provisions of this Division.
- (2) It is unlawful for a person acting by arrangement with an official to use, for the purposes of general offence inquiries that are being made by members, a listening device for the purpose of listening to or recording words while they are being spoken by a person unless the first-mentioned person is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard.
- (3) It is the duty of the Commissioner to take reasonable steps to ensure that subsections (1) and (2) are not contravened by officials.

- (4) Despite any law of a State or Territory:
- (a) an official does not act unlawfully merely because the official uses a listening device as mentioned in subsection (1) in circumstances to which paragraph (1)(a), (b) or (c) is applicable; and
  - (b) a person acting by arrangement with an official does not act unlawfully merely because the person uses a listening device as mentioned in subsection (2) in circumstances in which the use of the device is not declared to be unlawful by that subsection.

## **12G Warrants for use of listening devices**

### *Member may apply for a listening device warrant*

- (1) A member may apply to an eligible Judge or nominated AAT member for a warrant under this section authorising officials to use a listening device in relation to a particular person, particular premises or a particular item.

### *Issuing listening device warrants in relation to persons*

- (2) If:
- (a) the application is for a warrant authorising officials to use a listening device in relation to a particular person; and
  - (b) the Judge or nominated AAT member is satisfied, by information on oath:
    - (i) that the person has committed, or is suspected on reasonable grounds of having committed, or of being likely to commit, a class 1 general offence or a class 2 general offence; and
    - (ii) that information that would be likely to be obtained by the use by officials of a listening device to listen to or record words spoken by or to the person would be likely to assist members in, or in relation to, inquiries that are being made in relation to the commission, or likely commission, of the offence by the person; and

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- (iii) that, having regard to the matters mentioned in subsection (6), some or all of that information cannot appropriately be obtained by methods of a kind referred to in paragraph (6)(a); and
- (iv) if the offence is a class 2 general offence—that, having regard to the matters mentioned in subsection (7) and no other matters, such a warrant should be issued;

the Judge or nominated AAT member may issue a warrant authorising officials to use a listening device for the purpose of listening to or recording words spoken by, to, or in the presence of, the person.

- (3) The warrant may authorise:
  - (a) officials to enter any premises in which the person is, or is likely to be, for the purpose of installing, maintaining, testing, using or recovering a listening device or a part of a listening device; and
  - (b) the use of a listening device for the purpose of listening to or recording words spoken by, to, or in the presence of, the person anywhere in Australia.

*Issuing listening device warrants in relation to premises*

- (4) If:
  - (a) the application is for a warrant authorising officials to use a listening device in relation to particular premises (which may be premises anywhere in Australia); and
  - (b) the Judge or nominated AAT member is satisfied, by information on oath:
    - (i) that there are reasonable grounds for suspecting that the premises have been, or are likely to be, used in relation to the commission, or likely commission, of a class 1 general offence or a class 2 general offence; and
    - (ii) that information that would be likely to be obtained by the use by officials of a listening device to listen to or record words spoken by or to persons in the premises would be likely to assist members in, or in relation to, inquiries that are being made in relation to the use, or likely use, of the premises in relation to the commission, or likely commission, of the offence; and

- (iii) that, having regard to the matters mentioned in subsection (6), some or all of that information cannot appropriately be obtained by methods of a kind referred to in paragraph (6)(a); and
- (iv) if the offence is a class 2 general offence—that, having regard to the matters mentioned in subsection (7) and no other matters, such a warrant should be issued;

the Judge or nominated AAT member may issue a warrant authorising officials to use a listening device for the purpose of listening to or recording words spoken by or to any person while the person is in the premises.

- (5) The warrant may authorise officials to enter the premises for the purpose of installing, maintaining, testing, using or recovering a listening device or a part of a listening device.

*Issuing listening device warrants in relation to items*

(5A) If:

- (a) the application is for a warrant authorising officials to use a listening device in relation to a particular item (which may be located anywhere in Australia); and
- (b) the Judge or nominated AAT member is satisfied, by information on oath:
  - (i) that there are reasonable grounds for suspecting that the item has been, or is likely to be, used in relation to the commission, or likely commission, of a class 1 general offence or a class 2 general offence; and
  - (ii) that information that would be likely to be obtained by the use by officials of a listening device to listen to or record words spoken by or to persons in the vicinity of the item would be likely to assist members in, or in relation to, inquiries that are being made in relation to the use, or likely use, of the item in relation to the commission, or likely commission, of the offence; and
  - (iii) that, having regard to the matters mentioned in subsection (6), some or all of that information cannot appropriately be obtained by methods of a kind referred to in paragraph (6)(a); and

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- (iv) some or all of that information cannot appropriately be obtained using a listening device authorised by a warrant under subsection (2) or (4); and
- (v) if the offence is a class 2 general offence—that, having regard to the matters mentioned in subsection (7) and no other matters, such a warrant should be issued;

the Judge or nominated AAT member may issue a warrant authorising officials to use a listening device for the purpose of listening to or recording words spoken by or to any person while the person is in the vicinity of the item.

- (5B) The warrant may authorise officials to enter any premises in which the item is, or is likely to be, for the purpose of:
- (a) installing a listening device or a part of a listening device in or on the item; or
  - (b) maintaining, testing, using or recovering the device or a part of the device.

*Relevant matters to have regard to*

- (6) For the purposes of subparagraphs (2)(b)(iii), (4)(b)(iii) and (5A)(b)(iii), the matters to which a Judge or nominated AAT member is to have regard are as follows:
- (a) the extent to which methods of conducting inquiries in relation to the offence that do not involve the use by officials of a listening device have been used by, or are available to, members;
  - (b) how much information of a kind mentioned in subparagraph (2)(b)(ii), (4)(b)(ii) or (5A)(b)(ii), as the case may be, would be likely to be obtained by such methods;
  - (c) how much the use of such methods would be likely to prejudice inquiries in relation to the offence, whether because of a delay in obtaining some or all of that information or for any other reason.
- (7) For the purposes of subparagraphs (2)(b)(iv), (4)(b)(iv) and (5A)(b)(v), the matters to which a Judge or nominated AAT member is to have regard are as follows:
- (a) how much the privacy of any person would be likely to be interfered with by the use by officials of a listening device in relation to the person, premises or item concerned;



- (b) the gravity of the conduct constituting the offence;
- (c) to what extent information of a kind mentioned in subparagraph (2)(b)(ii), (4)(b)(ii) or (5A)(b)(ii), as the case may be, would be likely to assist in connection with inquiries in relation to the offence.

*Form of warrant*

- (8) A warrant under this section must be:
  - (a) signed by the Judge or nominated AAT member issuing the warrant; and
  - (b) in accordance with the appropriate prescribed form.

*Warrant may be subject to conditions etc.*

- (9) A warrant under this section may be expressed to be subject to conditions or restrictions specified in the warrant.

*Warrant authorising entry onto premises*

- (10) If a warrant under this section authorises officials to enter premises:
  - (a) the warrant must state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
  - (b) the warrant may specify that entry may be made without permission first being sought or demand first being made, and may authorise measures that the Judge or nominated AAT member is satisfied are necessary to effect the entry.

*When a warrant is in force*

- (11) A warrant under this section must specify a period (not exceeding 6 months) for which it is to remain in force.
- (12) Subsection (11) is not to be construed as preventing the issue of any further warrant.

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**12H Information to be given in support of application for warrant**

Information given to an eligible Judge or nominated AAT member for the purposes of subsection 12G(2), (4) or (5A):

- (a) may be given orally or otherwise; and
- (b) must include the facts and other grounds on which the applicant considers it necessary that the warrant should be issued.

**12J Exercise of powers under warrant**

- (1) The authority conferred by a warrant under section 12G is to be exercised only by the Commissioner or other members approved, for the purposes of the warrant or warrants under that section, by the Commissioner or a member appointed, in writing, by the Commissioner for the purposes of this subsection.
- (2) Despite subsection (1), a designated technical officer may provide technical assistance to a member who is exercising the authority conferred by the warrant.
- (3) A reference in subsection (2) to the provision of technical assistance includes a reference to the doing of any act in relation to installing, maintaining, testing, using or recovering a listening device, or a part of a listening device, in accordance with the warrant.

**12K Discontinuance of action before expiration of warrant**

If, before a warrant under section 12G expires, the Commissioner is satisfied that the grounds on which the warrant was issued no longer exist, the Commissioner must immediately:

- (a) take such steps as are necessary to ensure that action authorised by the warrant (other than the recovery of a listening device or a part of a listening device) is discontinued; and
- (b) revoke the warrant by signed instrument.

## **12L Application of certain provisions of Customs Act**

Sections 219F to 219K (inclusive) of the *Customs Act 1901* apply for the purposes of this Division as if:

- (aa) for the purposes of those provisions of that Act, a prescribed offence were a class 1 general offence or a class 2 general offence; and
- (a) references to a warrant under section 219B, or under Division 1A of Part XII, of that Act were instead references to a warrant under section 12G; and
- (b) reference to narcotics inquiries were instead references to general offence inquiries; and
- (c) references to a Judge were instead references to an eligible Judge; and
- (d) references to an instrument issued under section 219E of that Act were instead references to an instrument issued under section 12K; and
- (e) for the purposes of the provisions of subsections 219F(1), (2) and (3) (other than paragraph (2)(a)) of that Act, the Australian Federal Police were the only Commonwealth law enforcement agency within the meaning of that Act; and
- (f) any other necessary changes were made.

Section 14A

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## **Division 3—Powers and duties of protective service officers**

### **14A Powers of arrest**

A protective service officer may, without warrant, arrest a person for a protective service offence if the protective service officer believes on reasonable grounds that:

- (a) the person has just committed, or is committing, the offence; and
- (b) the arrest of the person is necessary for the purpose of:
  - (i) ensuring the appearance of the person before a court of competent jurisdiction for the offence; or
  - (ii) preventing the continuation of, or a repetition of, the offence or the commission of a further protective service offence; or
  - (iii) preventing the concealment, loss or destruction of evidence of, or relating to, the offence; or
  - (iv) preserving the safety or welfare of the person; and
- (c) proceedings by way of summons against the person for the offence would not achieve such a purpose.

### **14B Use of force in making arrest etc.**

- (1) A protective service officer must not, in arresting or attempting to arrest a person for an offence or in preventing a person who has been arrested for an offence from escaping, use more force, or subject the person to greater indignity, than is reasonable and necessary in order to make the arrest or prevent the escape of the person.
- (2) Without limiting the generality of subsection (1), a protective service officer must not, in arresting or attempting to arrest a person for an offence or in preventing a person who has been arrested for an offence from escaping, do an act likely to cause death or grievous bodily harm to the person unless the officer believes on reasonable grounds that the doing of the act is necessary to protect life or prevent serious injury to the officer or any other person.

#### **14C Arrested person to be informed of grounds of arrest**

- (1) A protective service officer who arrests a person for an offence must inform the person, at the time of the arrest, of the offence for which the person is arrested.
- (2) It is sufficient compliance with subsection (1) if the protective service officer informs the person of the substance of the offence, and it is not necessary to do so in language of a precise or technical nature.
- (3) Subsection (1) does not apply to the arrest by a protective service officer of a person for an offence if the person, by his or her own actions, makes it impracticable for the protective service officer to inform the person of the offence.
- (4) Where a protective service officer who arrests a person for an offence believes or has reasonable grounds for believing that the person is unable, by reason of inadequate knowledge of the English language or any physical or mental disability, to understand the substance of the offence for which the person is arrested, the protective service officer must, as soon as practicable, take all reasonable steps to ensure that the person is provided with an explanation of the substance of the offence that the person is able to understand.

#### **14D Search of arrested person**

- (1) A protective service officer may, upon lawfully arresting a person for an offence:
  - (a) conduct an ordinary search or a frisk search of the person;  
and
  - (b) search the clothing that the person is wearing and any vessel, vehicle or other property under the person's immediate control if the officer believes on reasonable grounds that it is necessary to do so;for the purpose of:
  - (c) ascertaining whether there is concealed on the person, in the clothing or in the property, a weapon or other thing capable of being used to inflict bodily injury or to assist the person to escape from custody; or

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- (d) preventing the concealment, loss or destruction of evidence of, or relating to, the offence.
- (2) If the protective service officer is not of the same sex as the arrested person, an ordinary search or a frisk search of the arrested person for the purposes of subsection (1) may be conducted by:
  - (a) if a protective service officer, a member or a special member of the same sex as the arrested person is reasonably available to conduct the search—that protective service officer, member or special member; or
  - (b) if paragraph (a) does not apply but a police officer or an officer of Customs (within the meaning of subsection 4(1) of the *Customs Act 1901*) who is of the same sex as the arrested person is reasonably available to conduct the search—that police officer or officer of Customs; or
  - (c) otherwise—any other person who is of the same sex as the arrested person and who is requested by the protective service officer to conduct the search.
- (3) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of a protective service officer, conducts a search under this section if the person acts in good faith and does not contravene subsection (4).
- (4) A protective service officer or other person who conducts a search under this section must not use more force, or subject an arrested person to greater indignity, than is reasonable and necessary in order to conduct the search.
- (5) A protective service officer or other person who lawfully conducts a search under this section may seize:
  - (a) any weapon or thing mentioned in paragraph (1)(a); or
  - (b) anything that the officer or other person has reasonable grounds to believe is a thing:
    - (i) with respect to which an offence has been committed; or
    - (ii) that will afford evidence of the commission of an offence; or
    - (iii) that was used, or intended to be used, for the purpose of committing an offence.

#### **14E How arrested person to be dealt with**

- (1) A protective service officer who arrests a person for an offence must ensure that the person is delivered into the custody of a police officer as soon as practicable to be dealt with according to law.
- (2) Where a weapon or other thing has been seized from the person under subsection 14D(5), the protective service officer must ensure that the weapon or other thing is delivered to the police officer into whose custody the person is delivered.
- (3) In this section:

*police officer* means:

- (a) a member or special member; or
- (b) a member, however described, of a police force of a State or Territory; or
- (c) a member, however described, of a police force of a foreign country.

#### **14F Release of arrested person**

Where:

- (a) a person has been arrested by a protective service officer for an offence; and
- (b) the person is in the custody of the protective service officer or another protective service officer; and
- (c) the protective service officer who has the custody of the person:
  - (i) ceases to have reasonable grounds for believing that the person committed, or was committing, an offence; or
  - (ii) ceases to have reasonable grounds for believing that the holding of the person in custody is necessary in order to achieve a purpose mentioned in paragraph 14A(b), and does not have reasonable grounds for believing that the holding of the person in custody is necessary in order to achieve any other purpose mentioned in that paragraph; or
  - (iii) ceases to have reasonable grounds for believing that proceedings by way of summons against the person for

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the offence would not achieve a purpose mentioned in paragraph 14A(b), and does not have reasonable grounds for believing that proceedings by way of summons against the person for the offence would not achieve any other purpose mentioned in that paragraph; the protective service officer must release the person from custody in respect of the offence as soon as practicable.

**14G Relationship of Division to other laws**

- (1) The power of arrest conferred by section 14A on protective service officers is in addition to, and not in derogation of, powers of arrest available to protective service officers under any other law of the Commonwealth or the law of a State or Territory.
- (2) Subject to subsection (3), where a protective service officer, in the course of his or her duties as a protective service officer, arrests a person for any offence (whether the arrest is made under section 14A, under any other law of the Commonwealth or under the law of a State or Territory), sections 14B to 14F apply in relation to the arrest despite any other law of the Commonwealth or the law of a State or Territory.
- (3) Subsection (2) has effect subject to sections 252 and 253 of the *Migration Act 1958*.
- (4) Subject to subsection (2), the powers conferred, and duties imposed, by this Division on protective service officers are in addition to, and not in derogation of, any other powers conferred, or duties imposed, by any other law of the Commonwealth or the law of a State or Territory, and this Division is not intended to exclude or limit the operation of any other law of the Commonwealth or the law of a State or Territory providing for such powers or duties in so far as it is capable of operating concurrently with this Division.
- (5) This Division, in so far as it protects the individual, is in addition to, and not in derogation of, any rights and freedoms of the individual, whether under the law of the Commonwealth or of a State or Territory, and this Division is not intended to exclude or limit the operation of any law of the Commonwealth or of a State



or Territory providing for those rights and freedoms in so far as it is capable of operating concurrently with this Division.

Section 14H

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**Division 4—Powers and duties of members, special members and protective service officers relating to protective service functions**

**14H Definitions**

In this Division:

*designated person* means:

- (a) a member or special member; or
- (b) a protective service officer.

*police officer* means:

- (a) a member or special member; or
- (b) a member, however described, of a police force of a State or Territory; or
- (c) a member, however described, of a police force of a foreign country.

*vehicle* includes any means of transport (and, without limitation, includes a vessel and an aircraft).

**14I Requirement to provide name etc.**

(1) If:

- (a) a designated person suspects on reasonable grounds that a person (the *suspect*) might have just committed, might be committing, or might be about to commit, a protective service offence; and
- (b) the suspect is in a place, or in the vicinity of a place, person or thing, in respect of which the Australian Federal Police is performing protective service functions;

the designated person may request the suspect to provide to the designated person:

- (c) the suspect's name; and
- (d) the suspect's residential address; and
- (e) the suspect's reason for being in the place, or in the vicinity of the place, person or thing, in respect of which the

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Australian Federal Police is performing protective service functions; and

(f) evidence of the suspect's identity.

(2) If a designated person:

(a) makes a request under subsection (1); and

(b) informs the suspect of the designated person's authority to make the request; and

(c) informs the suspect that it may be an offence not to comply with the request;

the suspect must not:

(d) fail to comply with the request; or

(e) give a name or address that is false in a material particular.

Penalty: 20 penalty units.

Note: A more serious offence of obstructing a Commonwealth public official may also apply (see section 149.1 of the *Criminal Code*).

(3) Subsection (2) does not apply if the suspect has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

## 14J Stopping and searching

*When this section applies*

(1) This section applies if a designated person suspects on reasonable grounds that:

(a) a person (the *suspect*):

(i) has a thing under the suspect's immediate control; or

(ii) is occupying a thing; or

(iii) has a thing in a vehicle operated or occupied by the suspect; or

(iv) has brought a thing onto premises at which the Australian Federal Police is performing protective service functions; and

(b) the thing is likely to cause, or is likely to be used by the suspect or another to cause:

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- (i) substantial damage to a place or a thing in respect of which the Australian Federal Police is performing protective service functions; or
  - (ii) death or serious harm to a person in respect of whom the Australian Federal Police is performing protective service functions;
- in circumstances that would be likely to involve the commission of a protective service offence.

*Designated person may stop and search suspect*

- (2) The designated person may:
- (a) stop and detain the suspect for the purpose of searching for the thing; and
  - (b) do any or all of the following for the purpose of searching for the thing:
    - (i) if the designated person is of the same sex as the suspect—conduct an ordinary search or a frisk search of the suspect;
    - (ii) search any thing under the suspect's immediate control;
    - (iii) search any vehicle operated or occupied by the suspect.

*Conditions relating to conduct of search of suspect*

- (3) If the designated person is not of the same sex as the suspect, an ordinary search or a frisk search of the suspect for the purpose of searching for the thing may be conducted by:
- (a) if another designated person of the same sex as the suspect is reasonably available to conduct the search—that designated person; or
  - (b) if paragraph (a) does not apply but a police officer or an officer of Customs (within the meaning of subsection 4(1) of the *Customs Act 1901*) who is of the same sex as the suspect is reasonably available to conduct the search—that police officer or officer of Customs; or
  - (c) otherwise—any other person:
    - (i) who is of the same sex as the suspect; and
    - (ii) who is requested by the designated person to conduct the search; and

- (iii) who consents to conduct the search.
- (4) If a designated person requests an officer of Customs or another person to conduct a search of a suspect, the designated person must explain to the officer of Customs or the other person:
  - (a) if the search requested is an ordinary search—the meaning of an ordinary search; and
  - (b) if the search requested is a frisk search—the meaning of a frisk search; and
  - (c) that the officer of Customs or the other person must not use more force, or subject a suspect to greater indignity, than is reasonable and necessary in order to conduct the search.
- (5) An action or proceeding, whether civil or criminal, does not lie against a person who conducts a search under paragraph (3)(b) or (c) if the person acts in good faith and does not contravene subsection (6).
- (6) A designated person or other person who conducts a search of a suspect under this section must not use more force, or subject a suspect to greater indignity, than is reasonable and necessary in order to conduct the search.
- (7) A suspect must not be detained under this section for longer than is reasonably necessary for a search to be conducted under this section.

*Designated person may search a thing*

- (8) If subparagraph (1)(a)(iv) applies, the designated person may, for the purpose of searching for the thing mentioned in that subparagraph, search a thing that the designated person suspects on reasonable grounds was brought by the suspect onto premises at which the Australian Federal Police is performing protective service functions.

*Other conditions relating to conduct of search of suspect or thing*

- (9) In searching a thing under subsection (2) or (8), the designated person may use such force as is reasonable and necessary in the circumstances, but must not damage the thing by forcing it, or a part of it, open unless:

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- (a) if the search is under subsection (2)—the suspect has been given a reasonable opportunity to open the thing or part of it; or
- (b) if the search is under subsection (8)—the person (if any) apparently in charge of the thing has been given a reasonable opportunity to open the thing or part of it; or
- (c) it is not possible to give that opportunity.

### **14K Seizure of things found**

*Designated person may seize a thing being searched for*

- (1) If, as a result of conducting a search under section 14J, a designated person, or a person who conducted the search under subsection 14J(3) on behalf of a designated person, finds the thing for which the designated person or person was searching, the designated person may seize the thing.

*Designated person may seize a dangerous thing*

- (2) If, as a result of conducting a search under section 14J, a designated person, or a person who conducted the search under subsection 14J(3) on behalf of a designated person, finds a weapon, or other thing, that the designated person suspects on reasonable grounds is likely to be used by the suspect or another to cause death or serious harm to a person:
  - (a) in respect of whom the Australian Federal Police is performing protective service functions; or
  - (b) who is in a place, or in the vicinity of a person, place or thing, in respect of which the Australian Federal Police is performing protective service functions;the designated person may seize the weapon or thing.

*Protective service officer must deliver thing seized to police officer*

- (3) If the designated person is a protective service officer, the designated person must ensure that the thing is delivered into the custody of a police officer as soon as practicable.

## **14L How seized things must be dealt with**

### *Seizure notice to be served*

- (1) A police officer who is for the time being responsible for a thing seized under section 14K must, within 7 days after the seizure day, serve a seizure notice on:
  - (a) the owner of the thing; or
  - (b) if the owner of the thing cannot be identified after reasonable inquiries—the person from whom the thing was seized.
- (2) Subsection (1) does not apply if:
  - (a) both:
    - (i) the owner of the thing cannot be identified after reasonable inquiries; and
    - (ii) the thing was not seized from a person; or
  - (b) it is not possible to serve the person required to be served under subsection (1).
- (3) A seizure notice must:
  - (a) identify the thing; and
  - (b) state the date on which the thing was seized; and
  - (c) state the ground or grounds on which the thing was seized; and
  - (d) state that, if the owner does not request the return of the thing within 90 days after the date of the notice, the thing is forfeited to the Commonwealth.

### *Return of thing seized*

- (4) The owner of a thing seized under section 14K may request the return of the thing.
- (5) A police officer who is for the time being responsible for a thing seized under section 14K must return the thing to its owner if:
  - (a) the owner requests the return of the thing; and
  - (b) in the case of a thing seized under subsection 14K(1)—the police officer does not suspect on reasonable grounds that, if the thing is returned to the owner, the thing is likely to cause, or is likely to be used by the owner or another to cause:

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- (i) substantial damage to a place or thing in respect of which the Australian Federal Police is performing protective service functions; or
  - (ii) death or serious harm to a person in respect of whom the Australian Federal Police is performing protective service functions;
- in circumstances that would be likely to involve the commission of a protective service offence; and
- (c) in the case of a thing seized under subsection 14K(2)—the police officer does not suspect on reasonable grounds that, if the thing is returned to the owner, the thing is likely to be used by the owner or another to cause death or serious harm to a person:
    - (i) in respect of whom the Australian Federal Police is performing protective service functions; or
    - (ii) who is in a place, or in the vicinity of a person, place or thing, in respect of which the Australian Federal Police is performing protective service functions.

*Forfeiture of thing seized*

- (6) A thing is forfeited to the Commonwealth if the owner of the thing does not request its return:
  - (a) before the end of the 90th day after the date of the seizure notice in relation to the thing; or
  - (b) if subsection (2) applied in relation to the thing so that a seizure notice was not served—before the end of the 90th day after the seizure day.

*Application to magistrate*

- (7) If:
  - (a) the owner of a thing requests the return of the thing:
    - (i) within 90 days after the date of the seizure notice in relation to the thing; or
    - (ii) if subsection (2) applied in relation to the thing so that a seizure notice was not served—within 90 days after the seizure day; and
  - (b) the thing has not been returned to the owner by the end of the 90th day;



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the police officer who is for the time being responsible for the thing must, before the end of the 95th day:

- (c) return the thing to the owner; or
- (d) apply to a magistrate for an order under section 14M.

*Seizure day*

(8) In this section:

*seizure day* means:

- (a) in relation to a thing seized by a designated person who is a protective service officer—the day on which the thing was delivered into the custody of a police officer under subsection 14K(3); or
- (b) in relation to a thing seized by a designated person who is a member or a special member—the day on which the thing was seized.

**14M Application to magistrate**

- (1) If subsection 14L(7) applies, the police officer may apply to a magistrate for an order in relation to the thing to which that subsection applies.
- (2) The magistrate must, in determining an application by a police officer under subsection (1), allow the owner of the thing to appear and be heard.
- (3) If the magistrate is satisfied that:
  - (a) in the case of a thing seized under subsection 14K(1)—there are reasonable grounds to suspect that, if the thing is returned to the owner, the thing is likely to cause, or is likely to be used by the owner or another to cause:
    - (i) substantial damage to a place or thing in respect of which the Australian Federal Police is performing protective service functions; or
    - (ii) death or serious harm to a person in respect of whom the Australian Federal Police is performing protective service functions;in circumstances that would be likely to involve the commission of a protective service offence; or

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- (b) in the case of a thing seized under subsection 14K(2)—there are reasonable grounds to suspect that, if the thing is returned to the owner, the thing is likely to be used by the owner or another to cause death or serious harm to a person:
    - (i) in respect of whom the Australian Federal Police is performing protective service functions; or
    - (ii) who is in a place, or in the vicinity of a person, place or thing, in respect of which the Australian Federal Police is performing protective service functions;
- the magistrate may make any of the following orders:
- (c) that the thing be retained by the police officer for the period specified in the order;
  - (d) that the thing is forfeited to the Commonwealth;
  - (e) that the thing is to be sold and the proceeds given to the owner;
  - (f) that the thing is to be otherwise sold or disposed of.
- (4) If the magistrate is not satisfied as mentioned in subsection (3), the magistrate must order that the thing be returned to the owner.

### 14N Relationship of Division to other laws

The powers conferred, and duties imposed, by this Division on protective service officers, members and special members are in addition to, and not in derogation of, any other powers conferred, or duties imposed, by any other law of the Commonwealth or the law of a State or Territory, and this Division is not intended to exclude or limit the operation of any other law of the Commonwealth or the law of a State or Territory in so far as it is capable of operating concurrently with this Division.

## **Part III—Commissioner, Deputy Commissioners and AFP employees etc.**

### **Division 1—Commissioner and Deputy Commissioners**

#### **17 Commissioner and Deputy Commissioners**

- (1) The Commissioner of Police and one or more Deputy Commissioners of Police shall be appointed by the Governor-General by Commission.
- (2) Subject to this Part, the Commissioner holds office for such period, not exceeding 7 years, as is specified in his or her instrument of appointment, but is eligible for re-appointment.
- (3) Subject to this Part, a Deputy Commissioner holds office for the period, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment.
- (3A) Where a person is re-appointed under this section for a term beginning immediately after the end of the person's last appointment, the person's service is to be taken to be continuous.
- (4) The Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.
- (4A) A Deputy Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Commissioner.
- (4B) For the purposes of subsection (4), the Governor-General may determine terms and conditions about superannuation in relation to a person appointed under this section (other than a person to whom Division 2 of Part VA applies), being terms and conditions having an effect equivalent to that of subsection 49(2) and applying where that person's appointment is terminated because of misbehaviour involving:
  - (a) corruption;

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- (b) an abuse by the person of the office of Commissioner or Deputy Commissioner, as the case may be; or
- (c) the perversion of the course of justice, or an attempt to pervert the course of justice.

### **18 Acting Commissioner and Deputy Commissioner during vacancy**

- (1) At any time when the office of Commissioner or an office of Deputy Commissioner is or is expected to be vacant (whether or not the office has previously been filled), the Minister may appoint a person to act as Commissioner or as a Deputy Commissioner, as the case may be, until the filling of the vacancy, but a person so appointed shall not continue so to act for more than 12 months.
- (2) While a person is acting as Commissioner or as a Deputy Commissioner under subsection (1), he or she has, and may exercise, all the powers (except a power to make a declaration under subsection 40D(4)), and shall perform all the functions and duties, of the Commissioner or of the Deputy Commissioner, as the case may be.
- (3) The Minister may:
  - (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and
  - (b) at any time terminate such an appointment.
- (4) The appointment of a person under this section ceases to have effect if he or she resigns the appointment by writing signed by him or her and delivered to the Minister.
- (5) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question by reason of any defect or irregularity in or in connection with his or her appointment or on the ground that the occasion for his or her so acting had not arisen or had ceased.

### **19 Absence etc. of Commissioner or Deputy Commissioner**

- (1) At any time when the Commissioner or a Deputy Commissioner is absent from duty or from Australia or is, for any other reason,

unable to perform the functions of the Commissioner or a Deputy Commissioner, as the case may be, the next most senior member who is available has, and may exercise, all the powers (except a power to make a declaration under subsection 40D(4)), and shall perform all the functions and duties, of the Commissioner or the Deputy Commissioner, as the case may be.

- (1A) The Minister may determine the remuneration and allowances of a person who exercises the powers, and performs the functions and duties, of the Commissioner under subsection (1).
- (1B) The Commissioner may determine the remuneration and allowances of a person who exercises the powers, and performs the functions and duties, of a Deputy Commissioner under subsection (1).
- (1C) A person is not entitled to be paid remuneration or allowances under this section for exercising the powers, and performing the functions and duties, of the Commissioner or a Deputy Commissioner for less than one week.
- (2) The exercise of the powers and the performance of the functions and duties of the Commissioner or of a Deputy Commissioner by a member under this section does not affect the exercise of any power or the performance of any function or duty by the Commissioner or by the Deputy Commissioner, as the case may be.
- (3) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his or her so acting had not arisen or had ceased.
- (4) For the purposes of subsection (1), the order of seniority of members is as determined by the Commissioner.
- (5) In this section, except so far as the contrary intention appears, a reference to the Commissioner or to a Deputy Commissioner shall be read as including a reference to an acting Commissioner or acting Deputy Commissioner, as the case may be, appointed under section 18.

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**20 Remuneration and allowances**

- (1) The Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration is in operation, he or she shall be paid such remuneration as is prescribed.
- (2) The Commissioner shall be paid such allowances as are prescribed.
- (2A) A Deputy Commissioner is to be paid such remuneration and allowances as the Commissioner determines in writing.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**21 Leave of absence**

- (1) The Commissioner has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (1A) The Minister may grant the Commissioner leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.
- (2) The Commissioner may grant leave of absence to a Deputy Commissioner on such terms and conditions as to remuneration or otherwise as the Commissioner determines.

**22 Termination of appointment**

- (1) The Governor-General may terminate the appointment of the Commissioner or a Deputy Commissioner by reason of misbehaviour or physical or mental incapacity.
- (2) If the Commissioner or a Deputy Commissioner:
  - (a) engages in paid employment outside the duties of his or her office without the approval of the Minister;
  - (b) is absent from duty, except on leave of absence under section 21, for 14 consecutive days, or for 28 days in any 12 months; or

(c) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;  
the Governor-General shall terminate his or her appointment.

## **Division 2—AFP employees**

### **Subdivision A—Engagement of AFP employees etc.**

#### **23 Employer powers etc. of Commissioner**

- (1) The Commissioner, on behalf of the Commonwealth, has all the rights, duties and powers of an employer in respect of AFP employees.
- (2) Without limiting subsection (1), the Commissioner has, in respect of AFP employees, the rights, duties and powers that are prescribed by the regulations.

#### **24 Engagement of AFP employees**

- (1) The Commissioner, on behalf of the Commonwealth, may, by writing, engage persons as employees.

*Engagement may be made subject to conditions*

- (2) The engagement of an AFP employee may be made subject to conditions notified to the employee, including conditions dealing with any of the following matters:
  - (a) probation;
  - (b) citizenship;
  - (c) formal qualifications;
  - (d) security and character clearances;
  - (e) health clearances;
  - (f) secrecy requirements.

- (3) Subsection (2) does not, by implication, limit the conditions that may be applied to the engagement of an AFP employee.

*Non-Australian citizen*

- (4) The Commissioner must not engage, as an AFP employee, a person who is not an Australian citizen, unless the Commissioner considers it appropriate to do so.



*This section has no application to overseas engagement*

- (5) This section does not apply to the engagement of persons overseas to perform duties overseas as employees.

Note: Section 69A deals with the engagement of such persons.

## **25 Senior executive AFP employees**

The Commissioner may, by writing, declare an AFP employee to be a senior executive AFP employee.

## **26 Continuous employment**

For the purposes of the *Long Service Leave (Commonwealth Employees) Act 1976* and any other law of the Commonwealth, if:

- (a) a person is engaged as an AFP employee under section 24 for a period; and
  - (b) the person completes that period of engagement (the *initial period*); and
  - (c) the person is re-engaged under that section for a further period starting immediately after the end of the initial period;
- the person's employment is taken to be continuous from the beginning of the initial period until the end of the re-engagement.

## **Subdivision B—Remuneration and other terms and conditions**

### **27 Remuneration and other conditions**

- (1) The Commissioner may from time to time determine in writing the remuneration and other terms and conditions of employment applying to an AFP employee, other than:
- (a) terms and conditions of employment that the Commissioner may determine under subsection 40H(2); or
  - (b) accommodation arrangements that are to apply to an AFP employee, and allowances an AFP employee is to be paid, while the employee is performing duties of the kind covered by paragraph 40H(3)(b).

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### *Application etc. of award or certified agreement*

- (2) A determination under subsection (1) may apply, adopt or incorporate, with or without modification, any of the provisions of an award or certified agreement, as in force at a particular time or as in force from time to time.

### *Award, certified agreement or Australian workplace agreement prevails over a determination under subsection (1)*

- (3) An award, a certified agreement or an Australian workplace agreement overrides any determination under subsection (1), to the extent of any inconsistency.

### *Interpretation*

- (4) For the purposes of this section, **award** has the same meaning as in the *Workplace Relations Act 1996*.

## **Subdivision C—Termination of employment**

### **28 Termination of employment by Commissioner**

The Commissioner may at any time, by notice in writing, terminate the employment of an AFP employee.

Note: The *Workplace Relations Act 1996* has rules that apply to termination of employment.

## **Subdivision D—Resignation and retirement**

### **30 Resignation**

- (1) An AFP employee may resign from the Australian Federal Police if, and only if:
- (a) he or she gives written notice to the Commissioner of his or her resignation and the notice specifies, in accordance with subsection (2), the day his or her resignation is to take effect; or
  - (b) his or her resignation is in accordance with regulations under paragraph 70(g) (about resigning for the purpose of becoming a candidate at certain elections).

*Limitation*

- (2) The day specified in a notice under paragraph (1)(a) must not:
  - (a) be earlier than 14 days, or such shorter period as the Commissioner allows; or
  - (b) be later than 4 months;after the day on which the notice is given to the Commissioner.

### **31 Retirement upon reaching minimum retiring age**

- (1) An AFP employee who has reached the minimum retiring age is entitled to retire at any time by notice in writing to the Commissioner.

*Minimum retiring age*

- (2) For the purposes of this section, the *minimum retiring age* is 55 years, or such higher or lower age as is prescribed by the regulations.

### **32 Retirement on invalidity grounds**

*Retirement of AFP employee by Commissioner*

- (1) If the Commissioner is satisfied that an AFP employee should be retired because of physical or mental incapacity, the Commissioner may retire the employee by notice in writing given to the employee.

*AFP employee consents to retirement*

- (2) Before the Commissioner retires an AFP employee under subsection (1), the employee may, by notice in writing given to the Commissioner, consent to the Commissioner retiring the employee under that subsection.

Note: To find out when an AFP employee's retirement takes effect in such a case, see section 33.

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*AFP employee not re-engaged because of invalidity*

- (3) If:
- (a) a person is engaged as an AFP employee under section 24 for a period; and
  - (b) the person completes that period of engagement (the *initial period*); and
  - (c) the person is not re-engaged under that section for a further period starting immediately after the end of the initial period; and
  - (d) the Commissioner certifies in writing that the person's physical or mental incapacity was the only reason why the person was not so re-engaged;
- the person is taken, for the purposes of the *Safety, Rehabilitation and Compensation Act 1988* and the *Superannuation Act*, to have been retired under this section on the day on which the initial period ended.

*AFP employee is an eligible employee under the Superannuation Act 1976*

- (4) In spite of this section, an AFP employee who:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
  - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- is not capable of being retired on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

*AFP employee is a member of the superannuation scheme under the Superannuation Act 1990*

- (5) In spite of this section, an AFP employee who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and

(b) is under 60 years of age;  
is not capable of being retired on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

### **33 Time when retirement on invalidity grounds takes effect**

#### *AFP employee consents to retirement*

- (1) If an AFP employee has consented to being retired under subsection 32(1), the employee's retirement takes effect on the day specified in the notice under that subsection. The day specified must not be before the day on which the notice is given to the employee.

#### *AFP employee does not consent to retirement*

- (2) If an AFP employee who is retired under subsection 32(1) has not consented to being retired under that subsection:
  - (a) the notice given to the employee under that subsection must inform the employee that the employee is entitled to apply, within the period, and in the manner, prescribed by the regulations, for review of the Commissioner's decision to retire the employee; and
  - (b) subject to the outcome of any such review, the employee's retirement takes effect on a day specified in the notice.
- (3) The day specified in the notice must not be before the end of the period mentioned in paragraph (2)(a).

#### *Regulations*

- (4) The regulations may make provision in relation to the review of decisions of the Commissioner to retire AFP employees under subsection 32(1), where the employees have not consented to being retired under that subsection, including:
  - (a) the period within which, and the manner in which, AFP employees may apply for review of such decisions; and
  - (b) the powers available to a person or body conducting such a review; and

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- (c) if the regulations make provision for a person or body conducting such a review to make recommendations to the Commissioner—the Commissioner giving effect to such recommendations by confirming or revoking such decisions.
- (5) Despite section 25D of the *Acts Interpretation Act 1901*, if regulations under subsection (4) make provision for a person or body conducting a review of decisions of a kind mentioned in that subsection to:
  - (a) give written reasons for any decision the person or body makes in relation to such a review; and
  - (b) give a copy of those reasons to the AFP employee concerned;the regulations may also make provision in relation to:
  - (c) the exclusion from that copy of any information of a medical or psychiatric nature that the person or body thinks may be prejudicial to the employee's physical or mental health or well-being; and
  - (d) the employee nominating a medical practitioner to receive that information.

**34 Voluntary retirement for the purposes of the Superannuation Act**

*Resignation*

- (1) If:
  - (a) an AFP employee resigns from the Australian Federal Police in accordance with section 30; and
  - (b) the resignation takes effect on or after the day on which he or she reaches 55 but before he or she reaches 60;he or she is taken, for the purposes of the Superannuation Act, to have retired voluntarily.

*Termination of employment*

- (2) If:
  - (a) an AFP employee's employment is terminated under section 28; and

(b) the termination takes effect on or after the day on which he or she reaches 55 but before he or she reaches 60;  
he or she is taken, for the purposes of the Superannuation Act, to have retired voluntarily.

*Period of employment ends*

(3) If:

- (a) a person is engaged as an AFP employee under section 24 for a period; and
  - (b) the person completes that period of engagement (the *initial period*); and
  - (c) the person is not re-engaged under that section for a further period starting immediately after the end of the initial period; and
  - (d) the initial period ends on or after the day on which he or she reaches 55 but before he or she reaches 60;
- he or she is taken, for the purposes of the Superannuation Act, to have retired voluntarily.

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**Division 3—Consultants and independent contractors**

**35 Commissioner may engage consultants or independent contractors**

The Commissioner may, under written agreements, engage persons as consultants, or independent contractors, to perform services.



## **Division 4—Undertakings and oaths or affirmations**

### **36 Undertakings and oaths or affirmations**

#### *Commissioner*

- (1) A person appointed as the Commissioner must, before commencing to perform his or her duties, make and subscribe, before a person authorised by the Minister, such oath or affirmation as is prescribed by the regulations.

#### *Deputy Commissioner*

- (2) A Deputy Commissioner appointed under section 17 must, immediately after his or her appointment:
  - (a) enter into an undertaking, in accordance with the form prescribed by the regulations, relating to the performance of his or her duties; and
  - (b) make and subscribe, before the Commissioner, such oath or affirmation as is prescribed by the regulations.

#### *Members*

- (3) A person declared to be a member under section 40B must, immediately after the declaration:
  - (a) enter into an undertaking, in accordance with the form prescribed by the regulations, relating to the performance of his or her duties; and
  - (b) make and subscribe, before the Commissioner or a person authorised by the Commissioner, such oath or affirmation as is prescribed by the regulations.

#### *Special members*

- (4) A person appointed under section 40E to assist in the performance of the functions of the Australian Federal Police must, immediately after his or her appointment:
  - (a) enter into an undertaking, in accordance with the form prescribed by the regulations, relating to the performance of his or her duties; and

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- (b) make and subscribe, before the Commissioner or a person authorised by the Commissioner, such oath or affirmation as is prescribed by the regulations.

*Protective service officers*

- (4A) A person declared to be a protective service officer under section 40EA must, immediately after the declaration:
  - (a) enter into an undertaking, in accordance with the form prescribed by the regulations, relating to the performance of his or her duties; and
  - (b) make and subscribe, before the Commissioner or a person authorised by the Commissioner, such oath or affirmation as is prescribed by the regulations.

*Special protective service officers*

- (4B) A person appointed under section 40EC to assist in performing the protective service functions of the Australian Federal Police must, immediately after his or her appointment:
  - (a) enter into an undertaking, in accordance with the form prescribed by the regulations, relating to the performance of his or her duties; and
  - (b) make and subscribe, before the Commissioner or a person authorised by the Commissioner, such oath or affirmation as is prescribed by the regulations.

*Interpretation*

- (5) For the purposes of subsections (1) and (2), **appoint** does not include re-appoint for a term that begins immediately after the end of the term of the last previous appointment.

## **Part IV—Commissioner's command powers etc.**

### **Division 1—Administration and control etc.**

#### **37 General administration and control**

- (1) Subject to this Act, the Commissioner has the general administration of, and the control of the operations of, the Australian Federal Police.

##### *Ministerial directions*

- (2) The Minister may, after obtaining and considering the advice of the Commissioner and of the Secretary, give written directions to the Commissioner with respect to the general policy to be pursued in relation to the performance of the functions of the Australian Federal Police.
- (3) In addition to his or her power to give directions under subsection (2), the Minister may give written directions (either specific or general) to the Commissioner in relation to the use of common services in accordance with an arrangement made under subsection (5).

##### *Commissioner must comply with directions*

- (4) The Commissioner must comply with all directions given under this section.

##### *Ministerial arrangements*

- (5) The Minister may, after obtaining and considering the advice of the Commissioner and of the Secretary, make an arrangement with the appropriate Minister of a State for the provision or development of common services and for the use of such common services by the Australian Federal Police and the Police Force of the State.

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### *Reports*

- (6) The Commissioner must give to the Minister such reports as the Minister requests relating to the administration and the performance of the functions of the Australian Federal Police.

### *Definitions*

- (7) In this section:

***common services*** includes services consisting of, or provided by means of:

- (a) computer systems; or
- (b) forensic science laboratories; or
- (c) research and planning systems; or
- (d) training institutions; or
- (e) anything of a like nature.

***Secretary*** means the Secretary to the Department.

## **38 Commissioner's Orders**

In the exercise of his or her powers under section 37, the Commissioner may, by writing, issue orders with respect to the general administration of, and the control of the operations of, the Australian Federal Police.

## **39 Compliance with Commissioner's Orders**

An AFP employee, a special member or a special protective service officer must comply with Commissioner's Orders.

Note: The regulations may make provision for the consequences of contravening this section: see paragraph 70(i).

## **40 Compliance with specific directions, instructions or orders**

An AFP employee, a special member or a special protective service officer must not:

- (a) disobey; or
- (b) fail to carry out;

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a lawful direction, instruction or order, whether written or oral, given to him or her by:

- (c) the Commissioner; or
- (d) a Deputy Commissioner; or
- (e) the AFP employee, the special member or the special protective service officer under whose control, direction or supervision he or she performs his or her duties.

Note: The regulations may make provision for the consequences of contravening this section: see paragraph 70(i).

#### **40A Self-incrimination**

- (1) If an AFP employee, a special member or a special protective service officer is required under section 39 or 40 to give information, answer a question or produce a document, he or she is not excused from giving the information, answering the question or producing the document on the ground that the information, the answer to the question or the production of the document might tend to incriminate him or her or make him or her liable to a penalty.
- (2) However, any information or answer so given or any document so produced is not admissible in evidence against the employee, special member or special protective service officer in any proceedings, other than proceedings for a disciplinary offence under the Australian Federal Police (Discipline) Regulations.
- (3) Subsection (2) does not apply to any information or answer so given, or any document so produced, that is relevant to conducting a test under section 40M or 40N (about testing for alcohol or prohibited drugs)

Note: Section 40Q deals with the admissibility of such information etc.

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**Division 2—Conferral of status of member and conferral of commissions**

**40B AFP employees who are members of the Australian Federal Police**

The Commissioner may, by writing, declare an AFP employee (other than a protective service officer) to be a member of the Australian Federal Police if the Commissioner is satisfied that the employee meets the requirements specified in a determination under section 40C.

Note 1: A person who is currently a protective service officer may be declared to be a member if the person ceases to be a protective service officer.

Note 2: This section does not prevent a protective service officer from being appointed as a special member.

**40C Determination of competency or qualification requirements**

The Commissioner may, by written determination, specify either or both of the following for the purposes of section 40B:

- (a) competency requirements;
- (b) qualification requirements.

**40D Commissioned police officers**

*Commission by Governor-General*

- (1) The Governor-General may, by commission, declare a member to be a commissioned police officer.
- (2) Before the Governor-General makes a declaration under subsection (1), the Minister must have received a recommendation from the Commissioner that the member be declared to be a commissioned police officer.
- (3) The Commissioner may make such a recommendation only if he or she is satisfied that the member is, in accordance with the regulations, competent and qualified to be a commissioned police officer.

*Commission by Commissioner or Deputy Commissioner*

- (4) If the Governor-General, in writing, authorises the Commissioner or a Deputy Commissioner to make declarations of the kind mentioned in subsection (1), the Commissioner or Deputy Commissioner may, by commission, declare a member to be a commissioned police officer.
- (5) The Commissioner or Deputy Commissioner may make a declaration under subsection (4) only if he or she is satisfied that the member is, in accordance with the regulations, competent and qualified to be a commissioned police officer.
- (6) The giving of an authorisation under subsection (4) does not limit the Governor-General's power under subsection (1).

## **Division 3—Special members**

### **40E Special members**

- (1) The Commissioner may, on such terms and conditions as he or she determines in writing, appoint a person as a special member of the Australian Federal Police to assist in the performance of its functions.
- (2) A person appointed under subsection (1) has, during the continuance of his or her appointment:
  - (a) any powers and duties that are expressly conferred or imposed on special members under a provision of this Act or of any other Act; and
  - (b) such of the powers and duties conferred or imposed on members as are specified in his or her instrument of appointment.



## **Division 3A—Conferral of status of protective service officer**

### **40EA AFP employees who are protective service officers**

The Commissioner may, by writing, declare an AFP employee (other than a member) to be a protective service officer of the Australian Federal Police if the Commissioner is satisfied that the employee meets the requirements specified in a determination under section 40EB.

Note 1: A person who is currently a member may be declared to be a protective service officer if the person ceases to be a member.

Note 2: This section does not prevent a member from being appointed as a special protective service officer.

### **40EB Determination of competency or qualification requirements**

The Commissioner may, by written determination, specify either or both of the following for the purposes of section 40EA:

- (a) competency requirements;
- (b) qualification requirements.

## **Division 3B—Special protective service officers**

### **40EC Special protective service officers**

The Commissioner may, on such terms and conditions as the Commissioner determines in writing, appoint a person as a special protective service officer of the Australian Federal Police to assist in performing the protective service functions of the Australian Federal Police.

### **40ED Powers and duties of special protective service officers**

A special protective service officer has:

- (a) any powers and duties that are expressly conferred or imposed on special protective service officers under a provision of this Act or any other Act; and
- (b) such of the powers and duties conferred or imposed on protective service officers as are specified in his or her instrument of appointment.

**Division 4—Secondment****40F Secondment of AFP employees to other police forces etc.**

- (1) The Commissioner may arrange for an AFP employee to be seconded for a specified period to:
- (a) the Police Force of a State or Territory or of a foreign country; or
  - (b) the Australian Public Service; or
  - (c) any other body or organisation (including an international body or organisation) whether within or outside Australia.

Note: Under subsection 27(1), the Commissioner may determine the terms and conditions of employment applying to an AFP employee seconded under this section.

*Termination of secondment*

- (2) The Commissioner may at any time terminate a secondment under subsection (1) after consultation with the Police Force, the Public Service Commissioner or the body or organisation, as the case may be.

*Minister may give guidelines for secondments outside Australia*

- (3) The Minister may give the Commissioner written guidelines on the secondment of AFP employees to the Police Force of a foreign country, or to any other body or organisation outside Australia.
- (4) The Minister must consult the Commissioner about the guidelines before giving them to the Commissioner.
- (5) If the Minister gives guidelines to the Commissioner, the Commissioner must not arrange for an AFP employee to be seconded to the Police Force of a foreign country, or to any other body or organisation outside Australia, except in accordance with the guidelines.

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**40G Effect of secondment on status as AFP employee etc.**

*Secondment has no effect on person's status*

- (1) The secondment under section 40F of a person who is an AFP employee does not affect:
  - (a) the person's status as an AFP employee; and
  - (b) if the person is a member—the person's status as a member; and
  - (c) the application of any provision of this Act in relation to the person during the period of the secondment.

*Discipline obligations etc. continue*

- (2) During a period of secondment of an AFP employee under section 40F, the employee remains subject to the same obligations and liabilities in relation to discipline as those to which the employee would, but for the secondment, have been subject as such an employee.

*Rights etc. arising from office or position to which person seconded*

- (3) Nothing in this section affects:
  - (a) any rights, powers or immunities that an AFP employee who is seconded under section 40F has by virtue of holding the office or position to which the employee has been seconded; or
  - (b) the extent to which the employee is subject to obligations or liabilities in relation to discipline by virtue of holding the office or position to which the employee has been seconded.

## **Division 5—Assignment and suspension of duties etc.**

### **40H Assignment of duties etc.**

- (1) The Commissioner may from time to time determine in writing the duties of an AFP employee, and the place or places at which the duties are to be performed.

*Determination of terms and conditions while AFP employee outside Australia*

- (2) The Commissioner may from time to time determine in writing the terms and conditions applying to an AFP employee while the employee is performing duties outside Australia.

*Duties to meet special operational needs*

- (3) If:
- (a) the Commissioner makes a determination under subsection (1); and
  - (b) the Commissioner specifies in the determination that the duties concerned are to meet the special operational needs of the Australian Federal Police;
- the Commissioner may determine in writing the accommodation arrangements that are to apply to the employee, or any allowances the employee is to be paid, while the employee is performing those duties.

### **40J Suspension from duties etc.**

The regulations may do either or both of the following:

- (a) provide for the suspension from duties of AFP employees, with or without remuneration;
- (b) provide that declarations under section 40B (about declaring AFP employees to be members) cease to be in force during a specified period.

Note: A declaration under section 40B could also be revoked etc. under subsection 33(3) of the *Acts Interpretation Act 1901*.

## **Division 6—Declarations of serious misconduct**

### **40K Termination of employment for serious misconduct**

- (1) If the Commissioner terminates the employment of an AFP employee under section 28 because the Commissioner believes, on reasonable grounds, that the employee's conduct or behaviour, or any part of it:
- (a) amounts to serious misconduct by the employee; and
  - (b) is having, or is likely to have, a damaging effect on:
    - (i) the professional self-respect or morale of some or all of the AFP employees; or
    - (ii) the reputation of the Australian Federal Police with the public, or with any section of the public, or with an Australian or overseas government or law enforcement agency;

the Commissioner may make a written declaration to that effect.

*Timing of declaration etc.*

- (2) Any declaration under subsection (1) must be made within 24 hours of the Commissioner's decision to terminate the employment of the AFP employee. The Commissioner must give a copy of the declaration to the AFP employee.

*Definition*

- (3) In this section:

***serious misconduct*** means:

- (a) corruption, a serious abuse of power, or a serious dereliction of duty; or
- (b) any other seriously reprehensible act or behaviour by an AFP employee, whether or not acting, or purporting to act, in the course of his or her duties as an AFP employee.

## **Division 7—Submission of financial statements**

### **40L Financial statements**

- (1) The Commissioner may give a person who is an AFP employee or a special member a written direction requiring the person to give the Commissioner a statement in accordance with subsection (2).

#### *Nature etc. of statement*

- (2) The statement must:
- (a) be made in a form and manner required by the Commissioner; and
  - (b) contain any information required by the Commissioner about the financial affairs of the person during a period, or each period, specified by the Commissioner; and
  - (c) be accompanied by any documents required by the Commissioner.

#### *Time limit for giving statement*

- (3) The person must give the statement to the Commissioner within 2 months after the end of the period to which the statement relates.

Note: The regulations may make provision for the consequences of contravening this section: see paragraph 70(i).

#### *Extension of time*

- (4) The Commissioner may grant an extension of time for giving the statement in special circumstances.

#### *Self-incrimination*

- (5) The person is not excused from giving the statement on the ground that the statement might tend to incriminate him or her or make him or her liable to a penalty.
- (6) However, any statement so given is not admissible in evidence against the person in any proceedings, other than proceedings for a disciplinary offence under the Australian Federal Police (Discipline) Regulations.

## **Division 8—Drug testing**

### **40M General testing of AFP employees or special members for alcohol and prohibited drugs**

- (1) A person authorised to do so under the regulations may give an AFP employee, or a special member, who is on duty a written direction requiring him or her:
- (a) to undergo a breath test; or
  - (b) to provide a body sample of a kind specified in the direction for a prohibited drug test;
- in accordance with the regulations.

*Providing blood sample if breath test indicates the presence of alcohol*

- (2) If:
- (a) an AFP employee or a special member, in accordance with a direction under subsection (1), undergoes a breath test; and
  - (b) the breath test indicates the presence of alcohol;
- he or she may provide a sample of his or her blood for the purpose of a blood test, in accordance with the regulations.

*Compliance with direction*

- (3) An AFP employee or a special member must comply with a direction given to him or her under this section.

**Note:** The regulations may make provision for the consequences of the employee or member not complying with such a direction. They may also make provision for the consequences of the employee or special member testing positive for alcohol or prohibited drugs. See paragraph 70(i).



**40N Testing of AFP employees or special members for alcohol and prohibited drugs after certain incidents**

*Person killed or seriously injured in an incident involving a motor vehicle or vessel or while in police custody*

(1) If:

- (a) a person is killed or seriously injured as a result of an incident involving a motor vehicle or vessel; or
- (b) an incident occurs in which a person is killed or seriously injured while in police custody;

a person authorised to do so in accordance with the regulations may give any AFP employee or special member directly involved in the incident while on duty a written direction requiring him or her:

- (c) to undergo a breath test; or
- (d) to provide a body sample of a kind specified in the direction for a prohibited drug test;

in accordance with the regulations.

Note: Such a direction may be given whether or not the employee or special member is still on duty: see subsection (3).

*Person killed or seriously injured by a firearm discharging or physical force*

(2) If an incident occurs in which a person is killed or seriously injured as a result of:

- (a) the discharge of a firearm; or
- (b) the application of physical force;

by a member or a special member while he or she is on duty, a person authorised to do so in accordance with the regulations may give the member or special member a written direction requiring him or her:

- (c) to undergo a breath test; or
- (d) to provide a body sample of a kind specified in the direction for a prohibited drug test;

in accordance with the regulations.

Note: Such a direction may be given whether or not the member or special member is still on duty: see subsection (3).

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*Direction to be given as soon as practicable after the incident*

- (3) A direction under subsection (1) or (2) must be given by an authorised person as soon as practicable after the incident concerned and may be given whether or not the AFP employee or special member is still on duty.

*Provision of blood or body sample while in hospital*

- (4) If an AFP employee or a special member involved in the incident attends or is admitted to a hospital for examination or treatment because of the incident, a person authorised to do so in accordance with the regulations may give the employee or special member a written direction requiring him or her:
- (a) to provide a sample of his or her blood for a blood test; or
  - (b) to provide a body sample of a kind specified in the direction for a prohibited drug test;
- in accordance with the regulations.

*Compliance with direction*

- (5) An AFP employee or a special member must comply with a direction given to him or her under this section.

Note: The regulations may make provision for the consequences of the employee or member not complying with such a direction. They may also make provision for the consequences of the employee or special member testing positive for alcohol or prohibited drugs. See paragraph 70(i).

**40P Regulations**

For the purposes of sections 40M and 40N, the regulations may make provision, not inconsistent with those sections, in relation to the following:

- (a) the authorisation of persons to give directions under those sections;
- (b) the authorisation of persons:
  - (i) to conduct breath tests, blood tests or prohibited drug tests for the purpose of those sections; and
  - (ii) to operate equipment for that purpose;

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- (c) the provision of samples of blood for the purpose of blood tests under those sections;
- (d) the provision of body samples for the purpose of prohibited drug tests under those sections;
- (e) the conduct of breath tests, blood tests or prohibited drug tests under those sections;
- (f) the devices used in conducting breath tests, blood tests or prohibited drug tests under those sections, including the calibration, inspection and testing of those devices;
- (g) in the case of blood tests and prohibited drug tests—the accreditation of persons to conduct analyses in connection with such tests;
- (h) the procedure for the handling and analysis of:
  - (i) samples of blood taken in connection with blood tests under those sections; or
  - (ii) body samples taken in connection with prohibited drug tests under those sections;
- (i) the giving of the test results in certificates or other documents and the evidentiary effect of such certificates or other documents;
- (j) the confidentiality of the test results.

**40Q Admissibility of test results etc. in legal proceedings**

The following:

- (a) a certificate or other document recording the results of a test conducted under section 40M or 40N in relation to an AFP employee or a special member;
- (b) any other information, answer to a question or document relevant to conducting such a test (including any information or answer given or document produced in compliance with section 40);

is not admissible in evidence against the employee or special member in any proceedings other than the following:

- (c) proceedings for a disciplinary offence under the Australian Federal Police (Discipline) Regulations;
- (d) proceedings in relation to a decision of the Commissioner to terminate the employment of the employee or to terminate the appointment of the special member;

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- (e) proceedings under the *Safety, Rehabilitation and Compensation Act 1988*;
- (f) proceedings in tort against the Commonwealth that are instituted by the employee or special member.

## **Part VA—Loss of certain superannuation rights and benefits**

### **Division 1—Introductory**

#### **41 Definitions**

In this part:

*abscond* has the meaning given in section 42A.

*appropriate court* means:

- (a) in relation to a person's conviction of an offence—the court of the State or Territory before which the person was convicted and, in addition, where that court is not the Supreme Court of the State or Territory, that Supreme Court; and
- (b) in relation to the charging, or proposed charging, of a person with an offence—the Supreme Court of the State or Territory in which the person has been, or is to be, charged with the offence.

*benefit* means any benefit payable under a superannuation scheme, including a lump sum payment and a pension.

*changeover day* means the day on which Schedule 1 to the *Australian Federal Police Legislation Amendment Act 1999* commences.

*commencing day* means the day on which this Part commences.

*Commonwealth organisation* means:

- (a) a body corporate incorporated for a public purpose (whether before, on or after the commencing day) by a law of the Commonwealth or of a Territory; or
- (b) a body corporate:
  - (i) incorporated (whether before, on or after the commencing day) under a law of the Commonwealth or a law in force in a State or Territory; and

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- (ii) in which the Commonwealth or a body corporate mentioned in paragraph (a) has the controlling interest; or
- (c) a body corporate, whether incorporated before, on or after the commencing day:
  - (i) that is a subsidiary of another body corporate mentioned in paragraph (a) or (b); and
  - (ii) in which that other body corporate has the controlling interest; or
- (d) an unincorporated authority or body (other than a prescribed authority or body) established for a public purpose (whether before, on or after the commencing day) by or under a law of the Commonwealth, of a Territory or of the Northern Territory; or
- (e) any other incorporated or unincorporated authority or body (however established), other than a prescribed authority or body, that is wholly or substantially financed, either directly or indirectly, by the Commonwealth, whether the authority or body was or is established before, on or after the commencing day.

***Complaints Act*** means the *Complaints (Australian Federal Police) Act 1981*.

***controlling interest***, in relation to a body corporate, means an interest that derives from ownership of at least 50% of the shares in the body corporate that confer voting rights.

***convicted*** has the meaning given in section 42C.

***corruption offence*** means an offence by a person who was an AFP employee or an old law member or staff member at the time when it was committed, being an offence:

- (a) whose commission involved an abuse by the person of his or her office as such a person;
- (b) that, having regard to the powers and duties of such a person, as the case may be, was committed for a purpose that involved corruption; or
- (c) that was committed for the purpose of perverting, or attempting to pervert, the course of justice.

**defendant**, in Division 3A, has the meaning given in section 49A.

**Disciplinary Tribunal** has the same meaning as in the Complaints Act.

**DPP** means the Director of Public Prosecutions.

**employee contributions**, in relation to a person, includes:

- (a) any amount paid or transferred into a fund, being an amount that is, under the person's superannuation scheme, to be taken to be employee contributions; and
- (b) any other amount paid or transferred into a fund under the person's superannuation scheme, being an amount:
  - (i) attributable to employer contributions paid by the person's previous employer under another superannuation scheme (not being a superannuation scheme within the meaning of this Act) applicable to the person's previous employment by that employer; and
  - (ii) payable to the person as an additional lump sum benefit on his or her resignation or retirement.

**encumbrance**, in relation to property, includes any interest, mortgage, charge, right, claim or demand in respect of the property.

**Federal Court** means the Federal Court of Australia.

**fund** includes the Consolidated Revenue Fund.

**interest**, in relation to property, means:

- (a) a legal or equitable estate or interest in the property; or
  - (b) a right, power or privilege in connection with the property;
- whether present or future and whether vested or contingent.

**member**, in relation to a superannuation scheme, includes a person who is eligible for a benefit (including a deferred benefit) under the scheme.

**offence** means:

- (a) a common law offence; or

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- (b) an offence against a law of the Commonwealth or of a State or Territory, being an offence punishable by imprisonment for life or for a term longer than 12 months.

**old law member or staff member** has the meaning given by section 41A.

**property** means real or personal property of every description, whether situated in Australia or anywhere else and whether tangible or intangible, and includes an interest in any such real or personal property.

**recovery order** means a superannuation order containing an order of the kind mentioned in subsection 46(4) or (4A).

**relevant disciplinary offence** means a disciplinary offence under the Australian Federal Police (Discipline) Regulations that is declared by those Regulations to be a relevant disciplinary offence.

**relevant period**, in relation to a restraining order, means the period starting on the day when the order was made and ending:

- (a) if an order or orders have been made under section 49Q—at the time, or on the occurrence of the event, specified in the order, or the last of the orders, so made; or
- (b) if paragraph (a) does not apply but an order or orders have been made under paragraph 49J(1)(a) or (b) in relation to the restraining order—at the end of 6 months after the day when the order, or the last of the orders, was so made, or such longer period (if any) as is specified in the order, or the last of the orders; or
- (c) in any other case—at the end of 6 months after the day on which the restraining order was made, or such longer period (if any) as is specified in the order.

**restraining order** means an order under section 49B.

**sentence** includes a suspended sentence, but does not include a sentence passed, or an order made, under subsection 20AB(1) of the *Crimes Act 1914*.



***superannuation authority*** means:

- (a) in relation to the superannuation scheme established by the *Superannuation Act 1976*:
  - (i) for those matters under that Act for which the Commonwealth Superannuation Board of Trustees No. 2 is responsible—that Board; and
  - (ii) for any other matters under that Act—the Commissioner for Superannuation; or
- (ab) in relation to the superannuation scheme established by deed under the *Superannuation Act 1990*—the Commonwealth Superannuation Board of Trustees No. 1; or
- (b) in any other case—the person (however described) responsible for the administration of the relevant superannuation scheme.

***superannuation order*** means an order under section 46, and includes such an order as varied under section 47A.

***superannuation scheme***, in relation to a person, means a superannuation scheme (other than a scheme established under a law of a State or Territory) under which employer contributions or benefits are paid or payable, or have at any time been paid, by the Commonwealth or a Commonwealth organisation to or in respect of the person, and includes any scheme or organisation under which such contributions are vested in the person.

#### **41A Old law members or staff members**

For the purposes of this Part, if at a particular time before the changeover day a person was a member or staff member (within the meaning of this Act as in force at that time), the person was an ***old law member or staff member*** at that time.

#### **42 Related offences**

For the purposes of this Act, 2 offences are related to each other if the elements of the offences are substantially the same acts or omissions.

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**42A Abscond**

For the purposes of this Part, other than subsection 46(2), a person is to be taken to abscond in connection with an offence if and only if:

- (a) the person is charged with the offence; and
- (b) a warrant for the arrest of the person is issued in relation to that information; and
- (c) one of the following happens:
  - (i) at the end of the period of 6 months starting on the day on which the warrant is issued:
    - (A) the person cannot be found; or
    - (B) the person is, for any other reason, not amenable to justice and, if the person is outside Australia, extradition proceedings are not on foot;
  - (ii) at the end of the period of 6 months starting on the day on which the warrant is issued:
    - (A) the person is not amenable to justice because he or she is outside Australia; and
    - (B) extradition proceedings are on foot; and those proceedings later end without an order for the person's extradition.

**42B Charge with offence**

A reference in this Part to a person being charged with an offence is a reference to an information being laid against the person for the offence, whether or not:

- (a) a summons has been issued requiring the attendance of the person to answer the information; or
- (b) a warrant for the arrest of the person has been issued.

**42C Conviction and quashing of conviction**

- (1) For the purposes of this Part, a person is to be taken to be convicted of an offence if:
    - (a) the person is convicted of the offence, whether summarily or on indictment; or
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- (b) the person absconds in connection with the offence.
- (2) For the purposes of this Part, a person is to be taken to have been convicted of an offence in a particular State or Territory if:
  - (a) where paragraph (1)(a) applies—the person was convicted of the offence in a court in that State or Territory; or
  - (b) where paragraph (1)(b) applies—the information relating to the offence was laid in that State or Territory.
- (3) For the purposes of this Part, where a person is to be taken to have been convicted of an offence in a particular State or Territory because of paragraph (2)(b), the person is to be taken to have been so convicted before the Supreme Court of that State or Territory.
- (4) For the purposes of this Part, a person's conviction of an offence is to be taken to be quashed:
  - (a) where paragraph (1)(a) applies—if the conviction is quashed or set aside; or
  - (b) where paragraph (1)(b) applies—if, after the person is brought before a court in respect of the offence, the person is discharged in respect of the offence or a conviction of the person for the offence is quashed or set aside.
- (5) A reference in this Part, in relation to a person's conviction of an offence, to the commission of the offence is, where paragraph (1)(b) applies, a reference to the alleged commission of the offence by the person.

#### **42D Property of a person**

- (1) For the purpose of making a restraining order against the property of a person, that property is to be taken to include property in which the person has a beneficial interest.
- (2) For the purpose of making a restraining order against the property of a person who is a defendant within the meaning of Division 3A, that property is to be taken to include:
  - (a) any property of the person that has been transferred by way of gift to another person within 2 years immediately before the day on which the restraining order is made or the day on which the person is charged with the relevant offence, whichever is the first to happen; or

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- (b) where property of the person has been transferred to another person within that period for a consideration whose value is less than the commercial value of the property when the transfer was made—an interest in the property equal to the proportion worked out using the formula:

$$\frac{VP - VC}{VP}$$

where:

***VP (value of the property)*** is the number of dollars in the commercial value of the property when the transfer was made.

***VC (value of consideration)*** is the number of dollars in the value of the consideration for the transfer when the transfer was made.

- (3) Property that is to be taken to be property of a person under subsection (1) is available to satisfy a recovery order made against the person, whether or not a restraining order has been made against the property.
- (4) Property that is to be taken to be property of a person under subsection (2) is available to satisfy a recovery order made against the person if, and only if, a restraining order has been made against the property.

**42E Dealing with property**

For the purposes of this Part, dealing with property of a person includes:

- (a) if a debt owing by the person is secured by an encumbrance on the property—incurring any further liability or increasing the amount of the debt by any means; and
- (b) removing the property from Australia; and
- (c) receiving or making a gift of the property.

**42F Effective control of property**

- (1) Property may be subject to the effective control of a person within the meaning of this Part, whether or not the person has an interest in the property.
- (2) Without limiting the generality of any other provision of this Part, in determining:
  - (a) whether or not property is subject to the effective control of a person; or
  - (b) whether or not there are reasonable grounds to believe that property is subject to the effective control of a person; regard may be had to:
    - (c) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property; and
    - (d) a trust that has a relationship to the property; and
    - (e) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind mentioned in paragraph (c) or trusts of the kind mentioned in paragraph (d), and other persons.

**42G Sufficient consideration**

A reference in this Part to transferring or acquiring property, or an interest in property, for sufficient consideration is a reference to transferring or acquiring the property or interest for a consideration that is sufficient and, having regard solely to commercial considerations, reflects the value of the property or the interest.

**42H Application of Part to convictions and offences**

- (1) This Part does not apply to a person's conviction of an offence if the conviction happened before the commencing day.
- (2) This Part applies to an offence committed, or believed to have been committed, at any time, whether before, on or after the commencing day.

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**42J Crown bound**

- (1) This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) Nothing in this Part renders the Crown liable to be prosecuted for an offence.

## **Division 2—Loss of superannuation: corruption offences**

### **43 Notice of charge etc.**

- (1) Where:
  - (a) either:
    - (i) a person who is or was an AFP employee is charged with an offence; or
    - (ii) a person who was an old law member or staff member at any time is charged with an offence; and
  - (b) the Commissioner considers that the offence is, or may be, a corruption offence;the Commissioner shall notify the Minister in writing of the charge.
- (2) A notice shall contain particulars of the charge and set out the reasons why the Commissioner considers that the offence is, or may be, a corruption offence.
- (3) Where the Commissioner notifies the Minister that a person has been charged with an offence, the Commissioner shall notify the Minister in writing if:
  - (a) the person is acquitted or convicted of the offence; or
  - (b) the charge is withdrawn or otherwise disposed of without the conviction of the person.

### **44 Authority to apply for superannuation order**

- Where:
- (a) either:
    - (i) a person who is or was an AFP employee is convicted of an offence; or
    - (ii) a person who was an old law member or staff member at any time is convicted of an offence; and
  - (b) the Minister is of the opinion that the offence is a corruption offence;

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the Minister shall, by notice in writing, authorise the DPP to apply to the appropriate court for a superannuation order in respect of the person.

**45 Application for superannuation order**

- (1) If the DPP is authorised to apply for a superannuation order in respect of a person who is taken to have been convicted of an offence because of paragraph 42C(1)(b), the DPP must make that application to the appropriate court.

(1A) If:

- (a) the DPP is authorised to apply for a superannuation order in respect of a person who is convicted of 1 or more offences; and
- (b) the person is sentenced to imprisonment for life in respect of the offence, or any of the offences, or:
  - (i) if there is only 1 offence—to imprisonment for a term longer than 12 months; or
  - (ii) if there are 2 or more offences—to imprisonment for a single term longer than 12 months, or to cumulative terms that together add up to longer than 12 months, in respect of all or any of them;

the DPP must make that application to the appropriate court.

- (2) The DPP must not make an application for a superannuation order otherwise than under this section.
- (3) The DPP must take reasonable steps to give written notice of an application to the person in respect of whom the superannuation order is sought.

**45A Application for superannuation order: evidence**

- (1) In determining an application for a superannuation order in respect of a person, the appropriate court may have regard to the transcript of any proceedings against the person for the offence to which the application relates and to the evidence given in any such proceedings.



- (2) In an application for a superannuation order, any finding of fact made by a court in any proceedings for the offence to which the application relates, is *prima facie* evidence of that fact and the finding may be proved by the production of documents, under the seal of the court, in which the finding appears.
- (3) In an application for a superannuation order in respect of a person, a certificate signed or sealed by the person's superannuation authority:
- (a) stating that employer contributions or benefits made or payable by the Commonwealth or a specified Commonwealth organisation in respect of the person are held in a specified fund under the relevant superannuation scheme; and
  - (b) stating the amount that equals the sum of those contributions or benefits as at the specified day plus the amount of interest on those contributions or benefits accrued under the scheme before that day;
- is *prima facie* evidence of the matters stated in the certificate.
- (4) In an application for a superannuation order in respect of the person, a certificate signed or sealed by the person's superannuation authority:
- (a) stating that benefits have been paid to the person under the relevant superannuation scheme; and
  - (b) stating the amount that equals the sum of the benefits so paid as at the specified day; and
  - (c) stating another amount that equals the part of the amount mentioned in paragraph (b) that is attributable to the sum of the employee contributions paid under the scheme by the person as at the specified day plus the amount of interest on those contributions accrued under the scheme before that day;
- is *prima facie* evidence of the matters stated in the certificate.
- (5) A document purporting to be sealed with the seal of a court is to be taken to have been lawfully sealed with the seal of that court unless the contrary is proved.

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- (6) A document purporting to be signed or sealed by a person's superannuation authority is to be taken to have been signed or duly sealed by that superannuation authority unless the contrary is proved.

**46 Superannuation orders**

- (1) Subject to subsection (2), where an application is made to an appropriate court for a superannuation order in respect of a person, the court shall, if satisfied that the offence to which the application relates is a corruption offence, by order, declare that:
  - (a) the person was convicted of a corruption offence; and
  - (b) this Part applies in relation to:
    - (i) the rights of, and benefits paid or payable to or in respect of, the person under any superannuation scheme; and
    - (ii) any entitlement of the person to receive an adjustment payment.
- (2) Where a person is, because of paragraph 42C(1)(b), to be taken to have been convicted of an offence, a court must not make a superannuation order in relation to the person unless the court is also satisfied, on the balance of probabilities, that the person has absconded and:
  - (a) the person has been committed for trial for the offence; or
  - (b) the court is satisfied, having regard to all the evidence before it, that a reasonable jury, properly instructed, could lawfully find the person guilty of the offence.
- (3) Where:
  - (a) employer contributions or benefits made or payable by the Commonwealth or a Commonwealth organisation in respect of the person under any superannuation scheme have been paid into, and are held in, a fund under the scheme; and
  - (b) the person would, but for subsection 47(1), become entitled, subject to and in accordance with the scheme, to the benefit, or to a benefit attributable to the employer contributions, as the case may be;

the court must:

- (c) work out, and specify in the superannuation order, the amount that it thinks reflects the value of the sum of those contributions or benefits as at the day on which the order is made, plus the interest on those contributions or benefits accrued under the scheme before that day; and
  - (d) include in the superannuation order an order that the amount so specified be paid to the Commonwealth or Commonwealth organisation, whichever the court considers appropriate.
- (4) Where any benefits have been paid to the person under any superannuation scheme (whether before, on or after the commencing day) the court must:
- (a) specify in the superannuation order the amount worked out using the formula:

$$AB - EC$$

where:

**AB** (*amount of benefits*) is the amount that the court thinks reflects the value of the sum of the benefits paid by the **Commonwealth** or Commonwealth organisation to the person under the scheme as at the day on which the order is made.

**EC** (*employee contributions*) is an amount that the court thinks is equal to the part of **AB** that is attributable to the sum of the employee contributions paid under the scheme by the person as at that day plus the interest on those contributions accrued under the scheme before that day; and

- (b) include in the superannuation order an order that the person pay the amount so specified to the Commonwealth or Commonwealth organisation, whichever the court considers appropriate.
- (4A) Where the person has received an adjustment payment, the court must:
- (a) work out, and specify in the superannuation order, the amount that it thinks reflects the value of the amount of the payment as at the day on which the order is made; and

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- (b) include in the superannuation order an order that the person pay the amount so specified to the Commonwealth.
- (5) For the purposes of subsection (4), the value of an amount of employer contributions or benefits, and of accrued interest, is their value worked out having regard to any decline in the purchasing power of money between the day on which the contributions or benefits were made or paid, or the interest accrued, as the case may be, and the day as at which their value must be worked out.
- (5A) For the purposes of subsection (4A), the value of an amount of an adjustment payment is its value worked out having regard to any decline in the purchasing power of money between the day on which the amount was paid and the day as at which its value must be worked out.
- (6) The DPP must give written notice of a superannuation order to the person's superannuation authority.

**46A When does a superannuation order take effect?**

- (1) A superannuation order made in relation to a person who has absconded takes effect on the day on which it is made.
- (2) A superannuation order made in relation to a person, other than a person who has absconded, does not take effect until:
  - (a) the end of the period (if any) allowed for appealing against the conviction or sentence under the relevant Commonwealth, State or Territory law; or
  - (b) if the person appeals against his or her conviction or sentence, or both—the appeal, and any proceedings resulting from it, are finally determined, withdrawn or otherwise disposed of.

**47 Effect of superannuation order**

- (1) Where a court makes a superannuation order in respect of a person:
  - (a) all rights of, and benefits payable to or in respect of, the person or a dependant of the person (being rights or benefits arising out of the person's membership of any superannuation scheme) cease, or cease to be payable, on the

- day on which the order takes effect and the person ceases to be a member of the scheme on that day; and
- (aa) any entitlement of the person to an adjustment payment ceases on that day and an adjustment payment is not payable to the person on or after that day; and
  - (b) any amount of the kind mentioned in subsection 46(3) that is vested in the person ceases to be so vested on that day; and
  - (c) the Commonwealth or a Commonwealth organisation is not liable to pay any employer contribution or benefit under the scheme in respect of the person on or after that day.
- (1A) An amount payable by a person to the Commonwealth or a Commonwealth organisation under a superannuation order is a debt due by the person to the Commonwealth or the Commonwealth organisation, as the case may be.
- (1B) An order under subsection 46(3), (4) or (4A) against a person may be enforced as if it were an order made in civil proceedings instituted by the Commonwealth or the relevant Commonwealth organisation against the person to recover a debt due by the person to the Commonwealth or the Commonwealth organisation, and the debt arising from the order is to be taken to be a judgment debt.
- (2) Despite the Superannuation Act, or any other Act or any agreement, where subsection (1) applies to a person who is an AFP employee, the person is entitled, on the day on which he or she ceases to be a member of the relevant superannuation scheme, to payment of an amount equal to the sum of the employee contributions paid under the scheme by the person (being contributions that are held in a fund under the scheme) plus the amount of interest on those contributions accrued under the scheme.
- (3) Despite the Superannuation Act, or any other Act or any agreement, where subsection (1) applies to a person:
- (a) who:
    - (i) was an AFP employee at the time the relevant corruption offence was committed but was not such an employee when charged with that offence; or
    - (ii) was an old law member or staff member at the time the relevant corruption offence was committed but was not

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such a member or an AFP employee when charged with that offence; and

- (b) who would, but for that subsection, have been entitled to payment of benefits under the relevant superannuation scheme on or after the day on which the superannuation order takes effect;

the person is entitled, on the day on which he or she ceases to be a member of the scheme, to payment of an amount worked out using the formula:

$$AC - AR$$

where:

**AC** is an amount equal to the sum of the employee contributions paid under the scheme by the person plus the amount of interest on those contributions accrued under the scheme; and

**AR** is an amount equal to that part of the sum of all amounts paid to the person by way of benefit before the day on which the superannuation order takes effect that is attributable to **AC**.

**47A Superannuation orders: variation**

- (1) If a superannuation order made in respect of a person:
  - (a) specifies an amount under subsection 46(3) or (4); and
  - (b) takes effect on a day that is later than the day on which the order is made;the DPP may, as soon as practicable after the order takes effect, apply to the court that made the order to vary the order by substituting for the specified amount an increased amount, having regard to any amount of employer contributions or benefits paid by the Commonwealth or a Commonwealth organisation in respect of the person during the prescribed period.
- (2) Where an application is made, the court must vary the superannuation order accordingly and, for the purposes of working out the increased amount to be specified in the superannuation order, as varied, subsections 46(3), (4) and (5) apply as if references in subsections 46(3) and (4) to the day on which the order is made were references to the day on which the variation is made.

- (3) In this section:

*prescribed period* means the period starting on the day on which the superannuation order is made and ending on the day on which the variation is made.

#### **47B Superannuation orders: revocation**

- (1) A superannuation order made in relation to a person is to be taken to have been revoked if:
- (a) the person's conviction is quashed; or
  - (b) the person's sentence is so reduced or otherwise changed that it would no longer support the making of an application for a superannuation order under subsection 45(1A); or
  - (c) where the person is taken to be convicted because of paragraph 42C(1)(b)—the person is brought before a court in respect of the offence concerned and, having been convicted of that offence, does not receive a sentence that would support the making of an application for a superannuation order under subsection 45(1A).
- (2) Where a superannuation order is taken to have been revoked, the DPP must give written notice of the fact to:
- (a) the person in respect of whom the order was made; and
  - (b) the person's superannuation authority.
- (3) Where:
- (a) a superannuation order is made in relation to a person who is taken to be convicted because of paragraph 42C(1)(b); and
  - (b) the superannuation order is to be taken to have been revoked;
- there is payable to the person an amount determined by the Minister for Finance, being an amount that the Minister considers to be a fair recompense to the person, having regard to:
- (c) any amount paid to the person under subsection 47(2) or (3); and
  - (d) any amount recovered from the person under a recovery order against the person; and
  - (e) any other financial loss sustained by the person as a result of the superannuation order; and

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- (f) any other matters that the Minister thinks are relevant in the circumstances of the case.



## **Division 3—Loss of superannuation: relevant disciplinary offences**

### **48 Appeals to Federal Court on questions of law and fact**

- (1) A person who was appointed, before the commencing day, as a member (within the meaning of this Act as in force at any time before that day) may appeal to the Federal Court, on questions of law, questions of fact, or questions of both, from a decision of the Disciplinary Tribunal:
  - (a) under section 67 of the Complaints Act:
    - (i) finding the member guilty of a relevant disciplinary offence; or
    - (ii) imposing a penalty of dismissal from the Australian Federal Police on the member in respect of such an offence; or
  - (b) under section 69 of the Complaints Act:
    - (i) dismissing an appeal against a finding by the Commissioner that the member is guilty of a relevant disciplinary offence; or
    - (ii) affirming a penalty of dismissal from the Australian Federal Police imposed on the member in respect of such an offence.
- (2) An appeal shall be started:
  - (a) within 28 days after the day on which a document setting out the terms of the decision of the Disciplinary Tribunal was given to the member, or within such further time as the Federal Court, whether before or after the end of that period, allows; and
  - (b) in such manner as is prescribed by rules of the court made under the *Federal Court of Australia Act 1976*.
- (3) The Federal Court has jurisdiction to hear and determine the appeal, and that jurisdiction shall be exercised by the Court constituted as a Full Court.

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- (4) The Federal Court may, in determining an appeal, make such order as it thinks appropriate and, in particular, may make an order confirming or setting aside the decision of the Disciplinary Tribunal or permitting the matter to be heard and determined again, either with or without the hearing of further evidence by the Tribunal, in accordance with any directions of the Court.

**49 Persons found guilty of relevant disciplinary offences**

- (1) This section applies if a person who is an AFP employee is found guilty of a relevant disciplinary offence and dismissed from the Australian Federal Police as a penalty for that offence and:
  - (a) the person does not appeal, in relation to the finding or penalty, to the Federal Court under the Complaints Act, or (where the person is entitled to do so) under section 48 of this Act; or
  - (b) the Federal Court dismisses such an appeal by the person.
- (2) Where this section applies to a person:
  - (a) all rights of, and benefits payable to or in respect of, the person or a dependant of the person (being rights or benefits arising out of the person's membership of any superannuation scheme) cease, or cease to be payable, on the day on which the person's dismissal takes effect and the person ceases to be a member of the scheme on that day; and
  - (aa) any entitlement of the person to an adjustment payment ceases on that day and an adjustment payment is not payable to the person on or after that day; and
  - (b) any amount of the kind mentioned in subsection (3) that is vested in the person ceases to be so vested on that day; and
  - (c) the Commonwealth or a Commonwealth organisation is not liable to pay any employer contributions or benefit under the scheme in respect of the person on or after that day; and
  - (d) despite the Superannuation Act, or any other Act or any agreement, the person is entitled, on that day, to payment of an amount equal to the sum of the employee contributions paid under the scheme by the person (being contributions that are held in a fund under the scheme) plus the amount of interest on those contributions accrued under the scheme.

(3) Where:

- (a) this section applies to a person; and
- (b) employer contributions or benefits made or payable by the Commonwealth or a Commonwealth organisation in respect of the person under any superannuation scheme have been paid into, and are held in, a fund under the scheme; and
- (c) the person would, but for this section, become entitled, subject to and in accordance with the scheme, to the benefit, or to a benefit attributable to the employer contributions, as the case may be;

an amount equal to the value of the sum of those contributions or benefits, as at the day on which the person ceases to be a member of the scheme under subsection (2), plus the interest on those contributions or benefits accrued under the scheme before that day, is payable to the Commonwealth or Commonwealth organisation, whichever is appropriate.

- (4) For the purposes of subsection (3), the value of an amount of employer contributions or benefits, and of accrued interest, is their value worked out having regard to any decline in the purchasing power of money between the day on which the contributions or benefits were made or paid, or the interest accrued, as the case may be, and the day as at which their value must be worked out.

## **Division 3A—Restraining orders**

### **49A Application for restraining order**

- (1) Where a person (in this Division called *the defendant*):
  - (a) has been convicted of an offence; or
  - (b) has been, or is about to be, charged with an offence;the DPP may apply to the appropriate court for a restraining order against specified property of the defendant or of another person, or both.
- (2) For the purposes of an application, the DPP may, on behalf of the Commonwealth, give the court such undertakings with respect to the payment of damages or costs, or both, as the court requires.

### **49B Making of restraining orders**

- (1) Subject to this Division, where an application is made for a restraining order against property and the appropriate court is satisfied that:
  - (a) the offence concerned is, or may be, a corruption offence; and
  - (b) if the defendant has been sentenced in respect of the offence—the sentence would support the making of an application for a superannuation order under subsection 45(1A); and
  - (c) the defendant is, or has been, a member of a superannuation scheme;the court may, by order, direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person except in the manner and circumstances (if any) specified in the order.
- (2) A restraining order must not be made against a person's property to any extent greater than is necessary to ensure the recovery of any amount payable, or reasonably likely to be payable, by the defendant under a recovery order.

- (3) Subsection (2) does not prevent the court from making a restraining order against a person's property, being property whose value is more than the amount payable, or reasonably likely to be payable, by the defendant under a recovery order if there is no other property of sufficient value in respect of which the court can make a restraining order.
- (4) A court may make a restraining order against property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in a manner that would defeat the operation of this Part.
- (5) Where the application is made in reliance on the proposed charging of the defendant with the offence concerned, the court must not make a restraining order unless satisfied that the defendant will be charged with the offence, or with a related corruption offence, within 48 hours.
- (6) A court may refuse to make a restraining order if the Commonwealth refuses or fails to give the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and operation of the order.

#### **49C Restraining order may be subject to conditions**

- (1) A restraining order against a person's property may be made subject to such conditions as the court thinks fit, for example, conditions providing for meeting, out of the property or a specified part of the property, all or any of the following:
  - (a) the person's reasonable living expenses (including the reasonable living expenses of any dependants of the person) and reasonable business expenses;
  - (b) the person's taxed legal expenses in defending a criminal charge;
  - (c) a specified debt incurred by the person in good faith (being a debt to which neither paragraph (a) or (b) applies).
- (2) The court must not make provision of a kind mentioned in subsection (1) unless satisfied that the person cannot meet the expense or debt concerned out of property that is not subject to a restraining order.

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**49D Affidavit of police officer needed in certain cases**

- (1) Where an application is made for a restraining order and the defendant has not been convicted of the offence concerned, the court must not make a restraining order unless:
  - (a) the application for the order is supported by an affidavit of a police officer stating that the officer believes the defendant committed the offence; and
  - (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for so believing.
- (2) Where an application for a restraining order is made against specified property of a person other than the defendant, the court must not make a restraining order against the property unless:
  - (a) the application is supported by an affidavit of a police officer stating that the officer believes that the property is subject to the effective control of the defendant; and
  - (b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for so believing.
- (3) An affidavit made by a police officer for the purpose of this section stating that the officer believes a particular matter must set out the grounds on which the officer holds that belief.
- (4) The court may, at any time before the final determination of an application for:
  - (a) a restraining order; or
  - (b) an extension of the period of effect of a restraining order;direct the DPP to give or publish notice of the application to a specified person or class of persons in the manner and within the time the court thinks appropriate.
- (5) In this section:

***police officer*** means a member of the Australian Federal Police or of the police force of a State or Territory.

#### **49E Notice of application for restraining order**

- (1) Subject to subsection (2), the DPP must give written notice of an application for a restraining order against property to:
  - (a) the owner of the property; and
  - (b) any other person the DPP has reason to believe may have an interest in the property.
- (2) Where notice of an application has not been given, the court must consider the application if the DPP asks it to do so but, subject to section 49EA, a restraining order made by virtue of this subsection ceases to have effect at the end of the period (not exceeding 14 days) specified by the court in the restraining order.

#### **49EA Extension of certain restraining orders**

- (1) Subject to subsection (2), the court may, on application made by the DPP before the end of the period mentioned in subsection 49E(2), extend the period of operation of a restraining order made in reliance on that subsection.
- (2) Subsections 49D(1), (2), (3) and (5) apply, with the necessary changes made, to the extension of the period of operation of a restraining order made in reliance on subsection 49E(2) in the same way as they apply to the making of a restraining order.
- (3) The DPP must give written notice of an application under subsection (1) for the extension of a restraining order to:
  - (a) the owner of the property against which the restraining order was made; and
  - (b) any other person who the DPP has reason to believe may have an interest in the property.

#### **49F Persons who may appear and adduce evidence**

- (1) Where:
  - (a) the DPP applies for a restraining order against property; and
  - (b) notice of the application is given under subsection 49E(1);any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

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- (2) Where the DPP applies for the extension of the period of effect of a restraining order made in respect of property, any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

**49G Witnesses not required to answer questions etc. in certain cases**

On the hearing of an application for a restraining order, a witness is not required to answer a question or to produce a document if the court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of a person for, an offence.

**49H Notice of restraining orders**

- (1) Subject to subsection (2), where a restraining order is made against a person's property, the DPP must give the person written notice of the order.
- (2) Where:
- (a) a court makes a restraining order; and
  - (b) the court is satisfied that it would be in the public interest to delay giving notice of the order to a person;
- the court may include in the restraining order an order that giving the person notice of the restraining order be delayed for the specified period and the DPP must give the person notice of the restraining order as soon as practicable after the end of the specified period.

**49J Ancillary orders**

- (1) Where an appropriate court makes a restraining order, it may, at the same time or at any later time, make any ancillary orders that it thinks appropriate, for example:
- (a) an order varying the property to which the restraining order relates;
  - (b) an order varying any condition to which the restraining order is subject; and



- (c) an order for the examination on oath before the court or the Registrar of the court of any person, including:
    - (i) the owner of property subject to the restraining order (in this paragraph called the *owner*); or
    - (ii) the defendant;about the affairs (including the nature and location of any property) of:
    - (iii) anyone else who is either the owner or the defendant, or both; and
    - (iv) if the person to be examined is either the owner or the defendant, or both—that person; and
  - (d) an order about carrying out any undertaking with respect to the payment of damages or costs given by the Commonwealth in connection with the making of the restraining order.
- (2) An ancillary order may be made on application by:
- (a) the DPP; or
  - (b) the owner of property subject to the restraining order; or
  - (c) with the leave of the court—any other person.
- (3) Where:
- (a) a defendant has been convicted of, or has been charged or is about to be charged with, an offence; and
  - (b) an appropriate court makes a restraining order against property in reliance on the conviction, charging or proposed charging; and
  - (c) a person, other than the defendant, who has an interest in the property applies to the court for a variation of the order to exclude the person's interest from the order;
- the court must grant the application if satisfied that the applicant's interest in the property is not subject to the effective control of the defendant.
- (4) Where a person is examined before a court or a registrar under an order under subsection (1), the person is not excused from answering a question when required to do so by the court or registrar, as the case may be, on the ground that the answer to the question might tend to incriminate the person or make the person liable to forfeiture or a penalty.
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- (5) Where a person is examined before a court or registrar under an order under subsection (1), the statement or disclosure made by the person in answer to a question put in the course of the examination, and any information, document or thing obtained as a direct or indirect result of the statement or disclosure, is not admissible against the person in any criminal proceedings except a proceeding for giving false testimony in the course of the examination.
- (6) For the purposes of subsection (5), proceedings on an application for a superannuation order or a restraining order are not criminal proceedings.
- (7) On the hearing of an application for an order under subsection (1), a witness is not required to answer a question or to produce a document if the court is satisfied that the answering of the question or the production of the document may prejudice the investigation of, or the prosecution of the person for, an offence.

**49K Charge on property subject to restraining order**

- (1) Where:
  - (a) a recovery order is made against a defendant; and
  - (b) a restraining order is, or has been, made against:
    - (i) property of the defendant; or
    - (ii) property of another person in relation to which an order is, or has been, made under subsection 53A(1);in reliance on the defendant's conviction of a particular offence or a related corruption offence or on the charging, or proposed charging, of the defendant with a particular offence or a related corruption offence;  
then, upon the making of the later of the orders, there is created, by force of this section, a charge on the property to secure the payment of the amount specified in the recovery order to the Commonwealth or the relevant Commonwealth organisation, as the case requires.
- (2) A charge on property of a person ceases to have effect:
  - (a) if the relevant recovery order ceases to have effect; or

- (b) upon payment to the Commonwealth, or the relevant Commonwealth organisation, of the amount specified in the order; or
  - (c) upon the person becoming a bankrupt; or
  - (d) upon the sale or other disposition of the property by the owner of the property with the consent of the court that made the recovery order; or
  - (e) upon the sale of the property to a purchaser in good faith for sufficient consideration who, at the time of the purchase, has no notice of the charge;
- whichever first occurs.
- (3) A charge on property:
- (a) is subject to every encumbrance on the property that came into existence before the charge and that would, but for this subsection, have priority over the charge; and
  - (b) has priority over all other encumbrances; and
  - (c) subject to subsection (2), is not affected by any change of ownership of the property.
- (4) Where:
- (a) a charge is created on property of a particular kind; and
  - (b) the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind;
- the DPP may cause the charge to be registered under the provisions of that law and, if the charge is so registered, a person who purchases, or otherwise acquires an interest in, the property after the registration is to be taken, for the purposes of paragraph (2)(e), to have notice of the charge at the time of the purchase or acquisition.

#### **49L Registration of restraining orders**

- (1) Where:
- (a) a restraining order applies to property of a particular kind; and

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- (b) the provisions of any law of the Commonwealth or of a State or Territory provide for the registration of title to, or charges over, property of that kind;  
the authority responsible for administering those provisions may, on application by the DPP, record on the register kept under those provisions particulars of the restraining order.
- (2) Where particulars of a restraining order are recorded under subsection (1), a person who later deals with the property is to be taken, for the purposes of section 49M, to have notice of the restraining order at the time of the dealing.

**49M Contravention of restraining orders**

- (1) A person who intentionally contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the restraining order is guilty of an offence punishable, upon conviction, by imprisonment for a period not exceeding 5 years.
- (2) Where:
  - (a) a restraining order is made against property; and
  - (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order; and
  - (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith;the DPP may apply to the court that made the restraining order for an order that the disposition or dealing be set aside.
- (3) Where the DPP makes an application under subsection (2) in relation to a disposition or dealing, the court may make an order:
  - (a) setting the disposition or dealing aside as from the day on which it took place; or
  - (b) setting the disposition or dealing aside as from the day of the order under this subsection and declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order under this subsection.

#### **49N Restraining orders: revocation**

Where a court has made a restraining order against a person's property, the court may, on application made by the person, revoke the order if:

- (a) where the order was made in reliance on the person's conviction of an offence or the charging, or proposed charging, of the person with an offence—the person gives security satisfactory to the court for the payment of any amount that may be specified in a recovery order against the person; or
- (b) the person gives undertakings satisfactory to the court concerning the person's property.

#### **49P When do restraining orders cease to have effect?**

- (1) A restraining order ceases to have effect if any of the following things happen:
  - (a) the defendant is acquitted of the offence, or the charge is withdrawn or otherwise disposed of without conviction and the defendant has not been charged with a related corruption offence before the acquittal, withdrawal or disposal;
  - (b) the defendant is convicted of the offence, but does not receive a sentence that would support the making of an application for a superannuation order under subsection 45(1A);
  - (c) the Minister refuses to authorise the DPP to apply for a superannuation order in respect of the defendant;
  - (d) the appropriate court refuses to make a recovery order against the defendant;
  - (e) such an order is made in respect of the defendant but is later satisfied or is taken to have been revoked;
  - (f) where the restraining order was made in reliance on the proposed charging of the person with an offence—the defendant is not charged with the offence or a related corruption offence before the end of the period of 48 hours after the order is made.

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- (2) Subject to this section, a restraining order ceases to have effect, if it has not already done so under subsection (1), at the end of the relevant period in relation to the order.
- (3) If, within the relevant period in relation to a restraining order, an application is made under section 49Q for an extension of the period of effect of the restraining order and the court refuses the application after the end of the relevant period, the restraining order ceases to have effect when the court refuses the application.
- (4) If, within the relevant period in relation to a restraining order, an application is made under section 49Q for an extension of the period of effect of the restraining order and the application is granted, the restraining order ceases to have effect at the time, or on the occurrence of the event, specified in an order made by the court under that section.

**49Q Extension of period of effect of restraining orders**

- (1) The DPP may, before the end of the relevant period in relation to a restraining order made in reliance on a person's conviction of an offence or the charging, or proposed charging, of a person with an offence, apply to the court that made the restraining order for an extension of the period of effect of the order.
- (2) Where, on an application for an extension of the period of effect of a restraining order, the court is satisfied:
  - (a) that a recovery order has been, or may still be, made against the person; and
  - (b) where the property concerned is the property of another person—an order under subsection 53A(1) has been, or may still be, made;the court may:
  - (c) by order, extend the period of effect of the restraining order; and
  - (d) make such other order or orders as it thinks appropriate in relation to the operation of the restraining order.
- (3) The DPP must give a person written notice of an application in relation to a restraining order in respect of the person's property.

**49R Notice of applications**

- (1) A person who applies under section 49J for an ancillary order in relation to a restraining order must give written notice of the application to each other person who is entitled under subsection 49J(2) to make an application under section 49J in relation to the restraining order.
- (2) A person who applies under section 49N for revocation of a restraining order must give written notice of the application to the DPP.

## **Division 4—Miscellaneous**

### **51 Person ceases to be an AFP employee: persons charged with corruption offences**

(1) Where:

- (a) a person is charged with an offence;
- (b) the person ceases, for any reason, to be an AFP employee on or after the day on which the person is charged (whether because the period of the person's engagement ends, by operation of law or because of anything done by the person or the Commissioner);

then, if the Commissioner believes on reasonable grounds that the offence is a corruption offence, the Commissioner shall notify the person's superannuation authority in writing that the person's rights and entitlements under the relevant superannuation scheme are suspended.

(2) The Commissioner shall cause a copy of a notice to be given to the person concerned.

(3) Where the Commissioner notifies a superannuation authority that the rights and entitlements of a person are suspended:

- (a) the person is entitled, on the day on which he or she ceases to be an AFP employee, to receive payment, if the person elects to do so, of an amount equal to the sum of the employee contributions paid under the scheme by the person (being contributions held in a fund under the scheme) plus the amount of interest on those contributions accrued under the scheme; and
- (b) the person is not entitled to exercise any other right, or to receive any other benefit, under the scheme, or to receive an adjustment payment, unless:
  - (i) the person is acquitted of the offence or the charge is withdrawn or otherwise disposed of without the conviction of the person;



- (ii) the person is convicted of the offence, but does not receive a sentence that would support the making of an application for a superannuation order under subsection 45(1A);
  - (iii) the Minister refuses to authorise the DPP to apply for a superannuation order in respect of the person;
  - (iv) the appropriate court refuses to make a superannuation order in respect of the person; or
  - (v) a superannuation order made in respect of the person is taken to have been revoked.
- (4) Where anything mentioned in paragraph (3)(b) happens, the Commissioner shall, as soon as practicable, notify the relevant superannuation authority accordingly.
- (5) To avoid doubt, for the purposes of paragraph (1)(b), a person does not cease to be an AFP employee in circumstances where the person completes a period of engagement under section 24 (the *initial period*) and is re-engaged under that section for a further period starting immediately after the end of the initial period.

## **52 Person ceases to be an AFP employee: persons charged with relevant disciplinary offences**

- (1) Subject to this section, but despite any other provision of this Act or the regulations, if:
- (a) proceedings are started against a person under the Australian Federal Police (Discipline) Regulations in respect of a breach of a relevant disciplinary offence; and
  - (b) the person would, but for this subsection, cease to be an AFP employee on a day (the *cessation day*) that is on or after the day on which those proceedings are started (whether because the period of the person's engagement ends, by operation of law or because of anything done by the person or the Commissioner);
- the person does not cease to be an AFP employee on the cessation day and the person is taken to have been suspended without pay on the cessation day.

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*No further employee contributions*

- (2) If subsection (1) applies in relation to a person, the person must not be required or permitted to pay employee contributions under any superannuation scheme of which he or she is a member on or after the cessation day.

*Proceedings finally determined*

- (3) If subsection (1) applies in relation to a person and:
- (a) the proceedings are finally determined in favour of the person, or are discontinued; or
  - (b) the person is, on the final determination of the proceedings, found guilty of a relevant disciplinary offence but is not dismissed from the Australian Federal Police;
- the person is, in spite of subsection (1), taken to have ceased to be an AFP employee on the cessation day.

*Interest entitlement*

- (4) If:
- (a) subsection (3) applies in respect of a person; and
  - (b) the person is entitled under a superannuation scheme to interest on contributions made under the scheme by or on behalf of the person, being interest accrued up to, but not on or after, the cessation day;
- the person is taken to have ceased to be an AFP employee, for the purposes of that entitlement only, on the day on which the relevant event mentioned in paragraph (3)(a) or (b) happened.

*Interpretation*

- (5) To avoid doubt, for the purposes of paragraph (1)(b), a person does not cease to be an AFP employee in circumstances where the person completes a period of engagement under section 24 (the **initial period**) and is re-engaged under that section for a further period starting immediately after the end of the initial period.

**53A Court may lift corporate veil etc.**

- (1) Where an appropriate court makes a recovery order against a person, it may, on application by the DPP, if it thinks that particular property is subject to the effective control of the person, make an order declaring that the whole, or a specified part, of that property is available to satisfy the recovery order.
- (2) Where a court declares that property is available to satisfy a recovery order:
  - (a) the recovery order may be enforced against the property as if the property were property of the person against whom the order is made; and
  - (b) a restraining order may be made in respect of the property as if the property were property of the person against whom the restructuring order is made.
- (3) Where the DPP applies for an order under subsection (1) that property is available to satisfy a recovery order against a person:
  - (a) the DPP must give written notice of the application to the person and to any other person who the DPP has reason to believe may have an interest in the property; and
  - (b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

**54 Amounts payable under section 46, 47, 47B, 49 or 51**

- (1) Where an amount is payable under an order made under subsection 46(3), or under subsection 49(3), in respect of employer contributions or benefits that are held in a fund (other than the Consolidated Revenue Fund), the amount is payable out of the fund by the person responsible for the administration of the fund.
- (2) Where an amount is payable under an order made under subsection 46(3), or under subsection 49(3), in respect of employer contributions or benefits that have been paid into the Consolidated Revenue Fund, the Minister for Finance is to make arrangements:
  - (a) for the payment of the amount out of the Consolidated Revenue Fund; or

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- (b) where it is not appropriate to make such a payment—for any other appropriate action to be taken;  
and the order, or the requirements of subsection 49(3), as the case may be, are to be taken to have been satisfied by the taking of any action that gives effect to the arrangements.
- (3) An amount payable to a person under subsection 47(2) or (3), 49(2) or 51(3) is payable:
  - (a) if the relevant superannuation scheme is established by an Act—by the Commonwealth; and
  - (b) in any other case—by the relevant superannuation authority out of the fund established under the relevant superannuation scheme.
- (4) Where an amount mentioned in subsection (3) is payable by the Commonwealth, the amount is payable out of the fund established under the relevant Act or, if an amount equal to the employer contributions of the person has been paid into the Consolidated Revenue Fund, out of the Consolidated Revenue Fund.
- (5) An amount payable to a person under section 47B is payable by the Commonwealth out of the Consolidated Revenue Fund.
- (6) The Consolidated Revenue Fund is appropriated to the extent necessary to pay any amount that is payable under this section out of that Fund.

**54A Multiple payments in respect of same employee contributions not allowed**

- (1) In spite of this Act and the Superannuation Benefits Act, where an amount has been paid to a person under subsection 47(2) or (3), 49(2) or 51(3) of this Act in respect of employee contributions and interest on those contributions, the person is not entitled to payment of another amount under any of those subsections, or under subsection 21(4) or (5) of the Superannuation Benefits Act.
- (2) In respect of this Act and the Superannuation Benefits Act, where an amount has been paid to a person under subsection 21(4) or (5) of the Superannuation Benefits Act in respect of employee contributions and interest on those contributions, the person is not entitled to payment of another amount under subsection 47(2) or

(3), 49(2) or 51(3) of this Act in respect of the same employee contributions and interest.

(3) In this section:

*Superannuation Benefits Act* means the *Crimes (Superannuation Benefits) Act 1989*.

## **55 Possible superannuation order not to be taken into account in sentencing**

A court shall not, in sentencing a person convicted of an offence punishable by imprisonment for life or for a term longer than 12 months, take into account the possibility that a superannuation order may be made.

## **56 Constitution of appropriate courts**

Where an application for a superannuation order or restraining order is made to a court before which a person was convicted of a corruption offence:

- (a) the application may be dealt with by the court; and
- (b) any power in relation to the superannuation order or restraining order may be exercised by the court;

whether or not it is constituted in the same way in which it was constituted when the person was convicted of the offence.

## Part VI—Miscellaneous

### 60A Secrecy

- (1) This section applies to a person who is, or was at any time:
- (a) the Commissioner; or
  - (b) a Deputy Commissioner; or
  - (c) an AFP employee; or
  - (d) a special member; or
  - (da) a special protective service officer; or
  - (e) a person engaged under section 35; or
  - (f) a person performing functions under an agreement under section 69D.

- (2) A person to whom this section applies must not, directly or indirectly:
- (a) make a record of any prescribed information; or
  - (b) divulge or communicate any prescribed information to any other person;

except for the purposes of this Act or the regulations or the *Witness Protection Act 1994* or regulations under that Act, or for the carrying out, performance or exercise of any of the person's duties, functions or powers under this Act or the regulations or the *Witness Protection Act 1994* or regulations under that Act.

Penalty: Imprisonment for 2 years.

- (2A) This section does not apply to a divulgence or communication of prescribed information that is authorised by the Commissioner under subsection (2B).
- (2B) The Commissioner may, if he or she is of the opinion that it is in the interests of the due administration of justice to do so, authorise a person to whom this section applies to divulge or communicate prescribed information that relates to the National Witness Protection Program established by the *Witness Protection Act 1994* to a person specified in the authorisation.

- (3) In this section:

***prescribed information*** means information obtained by a person to whom this section applies in the course of carrying out, performing or exercising any of the person's duties, functions or powers under this Act or the regulations or the *Witness Protection Act 1994* or regulations under that Act, or otherwise in the course of the person's service, employment or engagement under this Act or the regulations or the *Witness Protection Act 1994* or regulations under that Act.

## **61 Awards for bravery etc.**

- (1) Where a Deputy Commissioner, an AFP employee, a special member or a special protective service officer has, by his or her bravery or other conspicuous conduct, merited a prescribed award, the Commissioner may confer the award on that person.
- (2) An award shall be conferred on the basis of such criteria as are prescribed.

## **63 Personation etc. of member or special member**

- (1) A person, not being a member or special member, shall not:
  - (b) wear or display any uniform or badge of a member or special member, any colourable imitation of such a uniform or badge, or any uniform or badge so closely resembling such a uniform or badge as to be likely to deceive;
  - (c) have in his or her possession any arms or ammunition, or any article of clothing, accoutrements or equipment, supplied to any member or special member.

Penalty: Imprisonment for 12 months.

- (2) Paragraphs (1)(b) and (c) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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**63A Personation etc. of protective service officer or special protective service officer**

- (1) A person, not being a protective service officer or a special protective service officer, must not:
- (a) wear or display any uniform or badge of a protective service officer or special protective service officer, any colourable imitation of such a uniform or badge, or any uniform or badge so closely resembling such a uniform or badge as to be likely to deceive; or
  - (b) have in the person's possession any arms or ammunition, or any article of clothing, accoutrements or equipment, supplied to any protective service officer or special protective service officer.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

**63B Possession of documents etc.**

- (1) A person, not being a member, special member, protective service officer or special protective service officer, must not have in the person's possession any book or document issued by, or purporting to be issued by, the Australian Federal Police.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

**64 Assault etc.**

- (2) The court convicting a person of an offence against section 147.1 or 149.1 of the *Criminal Code* that relates to a member, special member, protective service officer or special protective service officer may, order the offender to pay such compensation as the



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court thinks fit for any damage or injury caused by the offender to the uniform, clothing or accoutrements of the member, special member, protective service officer or special protective service officer concerned or for any medical or other expenses incurred in consequence of personal injury sustained by him or her by reason of the offence.

**64A Members in uniform to wear identification numbers**

- (1) A member must, at all times when he or she is wearing his or her police uniform, wear his or her identification number clearly visible on the uniform.

Penalty: 5 penalty units.

- (1A) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that his or her identification number was not worn on, or attached to, the front of his or her uniform in consequence of:
- (a) the act of another person (not being a member) done without the consent of the defendant; or
  - (b) an unintentional omission on the part of the defendant.
- (3) The Commissioner shall take such steps as are necessary to enable members to whom subsection (1) applies to comply with that subsection.

**64AAA Protective service officers in uniform to wear identification numbers**

- (1) A protective service officer must, at all times when he or she is wearing his or her protective service officer uniform, wear his or her identification number clearly visible on the uniform.

Penalty: 5 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that his or her identification number was not clearly visible on the uniform as a consequence of:
- (a) the act of another person (not being a protective service officer) done without the consent of the defendant; or
  - (b) an unintentional omission of the defendant.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) The Commissioner must take such steps as are necessary to enable protective service officers to whom subsection (1) applies to comply with that subsection.

**64AA Suspended AFP employees who are members**

- (1) If an AFP employee who is a member is suspended from duties under the regulations, the member must not, while the suspension is in force, exercise any power conferred on a member by this Act or any other law of the Commonwealth or of a Territory.

Penalty: Imprisonment for 2 years.

**64AAB Suspended AFP employees who are protective service officers**

If an AFP employee who is a protective service officer is suspended from duties under the regulations, the protective service officer must not, while the suspension is in force, exercise any power conferred on a protective service officer by this Act or any other law of the Commonwealth or of a Territory.

Penalty: Imprisonment for 2 years.

**64B Liability for wrongful acts of members**

- (1) The Commonwealth is liable in respect of a tort committed by a member or a protective service officer in the performance or purported performance of his or her duties as such a member or a protective service officer in like manner as a person is liable in respect of a tort committed by his or her employee in the course of his or her employment, and shall, in respect of such a tort, be

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treated for all purposes as a joint tortfeasor with the member or the protective service officer.

- (2) In a claim by the Commonwealth for damages in respect of a tort, an act or omission of a member or a protective service officer in the performance or purported performance of his or her duties as a member or a protective service officer may be relied on as constituting contributory negligence by the Commonwealth if the act or omission could have been so relied on if it had been done by an employee of the Commonwealth in the course of his or her employment.
- (3) The liability of the Commonwealth under subsection (1) does not extend to a liability to pay damages in the nature of punitive damages.
- (4) Without limiting the application of subsection (1), the Commonwealth may:
  - (a) where proceedings have been instituted against a member or a protective service officer with respect to a tort committed by the member or the protective service officer in the performance or purported performance of his or her duties as a member or a protective service officer—as joint tortfeasor with the member or the protective service officer (whether or not the Commonwealth is a party to the proceedings):
    - (i) pay to the plaintiff, on behalf of the member or the protective service officer, the whole or a part of any damages or costs (not being damages in the nature of punitive damages) that the member or the protective service officer has been ordered by the Court in the proceedings to pay to the plaintiff; and
    - (ii) pay to the member or the protective service officer any costs incurred by him or her in the proceedings and not recovered from the plaintiff; or
  - (b) where a member or a protective service officer has entered into a settlement of a claim by another person that has, or might have, given rise to proceedings of a kind referred to in paragraph (a)—as joint tortfeasor with the member or the protective service officer (whether or not the Commonwealth is a party to the settlement), pay to that other person the whole or a part of the amount that, under the terms of the

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settlement, the member or the protective service officer is liable to pay to that other person.

- (5) For the purposes of this section:
- (a) an act or omission of a member in the capacity of a constable shall be deemed to have been done in the performance of his or her duties as a member; and
  - (b) a reference to a plaintiff includes a reference to a defendant counter-claiming; and
  - (c) a reference to a member includes a reference to a special member; and
  - (d) a reference to a protective service officer includes a reference to a special protective service officer.

**66 Protection of persons in respect of work reports**

- (1) An action or proceeding, civil or criminal, does not lie against a person in respect of any oral or written report made in good faith by the person for the purposes of this Act or the regulations, being a report about work done, or proposed to be done, by the Commissioner, a Deputy Commissioner, an AFP employee, a special member or a special protective service officer.
- (2) A report is to be taken to have been made in good faith if the person who made it was not actuated by ill will to the Commissioner, Deputy Commissioner, AFP employee, special member or special protective service officer, as the case may be, or by any other improper motive.
- (3) Subsection (1) does not apply unless:
  - (a) the person who made the report believed on reasonable grounds that it was the function or duty of the person to whom the report was made to receive it; and
  - (b) if the report contained matter that was false or misleading in a material respect—the person who made the report did not know, and could not with reasonable diligence have discovered, that the report contained such matter.

**67 Annual reports**

- (1) The Commissioner shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report on the administration and the operations of the Australian Federal Police during the year that ended on that date.
- (2) The Minister shall cause a report furnished to him or her under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

**68 Proof of appointment, status of member etc.***Deputy Commissioner*

- (1) The Commissioner may, by writing signed by the Commissioner, certify that a specified person has been appointed as a Deputy Commissioner under subsection 17(1) and may also certify all or any of the following in relation to the person:
  - (a) that he or she entered into the undertaking mentioned in subsection 36(2) immediately after his or her appointment;
  - (b) that, on a specified date, he or she made and subscribed the oath or affirmation mentioned in the certificate before the Commissioner;
  - (c) that he or she is, on the date on which the certificate is signed, a Deputy Commissioner and has been such a Deputy Commissioner continuously since he or she was so appointed.

*AFP employees who are members*

- (2) The Commissioner may, by writing signed by the Commissioner, certify that a specified person has been declared to be a member under section 40B and may also certify all or any of the following in relation to the person:
  - (a) that he or she entered into the undertaking mentioned in subsection 36(3) immediately after the declaration under section 40B;
  - (b) that, on a specified date, he or she made and subscribed the oath or affirmation mentioned in the certificate before the

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Commissioner or a specified person authorised by the Commissioner for the purposes of subsection 36(3);

- (c) that he or she is, on the date on which the certificate is signed, a member and has been such a member continuously since the declaration under section 40B;
- (d) that a declaration is in force, or was in force on a specified date or during a specified period, under subsection 5(3) or 9(2A) or (2B) in relation to the member (declarations about rank).

*Special members*

- (3) The Commissioner may, by writing signed by the Commissioner, certify that a specified person has been appointed as a special member under section 40E and may also certify all or any of the following in relation to the person:
  - (a) that he or she entered into the undertaking mentioned in subsection 36(4) immediately after his or her appointment;
  - (b) that, on a specified date, he or she made and subscribed the oath or affirmation mentioned in the certificate before the Commissioner or a specified person authorised by the Commissioner for the purposes of subsection 36(4);
  - (c) that he or she is, on the date on which the certificate is signed, a special member and has been such a special member continuously since he or she was so appointed.

*Certification that a person is or is not a member or special member*

- (4) The Commissioner may, by writing signed by the Commissioner, certify that a specified person:
  - (a) is, or is not, a member or special member; or
  - (b) was, or was not, on a specified day, or during a specified period, a member or special member.

*AFP employees who are protective service officers*

- (4A) The Commissioner may, by writing signed by the Commissioner, certify that a specified person has been declared to be a protective service officer under section 40EA and may also certify all or any of the following in relation to the person:

- (a) that he or she entered into the undertaking mentioned in subsection 36(4A) immediately after the declaration under section 40EA;
- (b) that, on a specified date, he or she made and subscribed the oath or affirmation mentioned in the certificate before the Commissioner or a specified person authorised by the Commissioner for the purposes of subsection 36(4A);
- (c) that he or she is, on the date on which the certificate is signed, a protective service officer and has been such a protective service officer continuously since the declaration under section 40EA.

*Special protective service officers*

- (4B) The Commissioner may, by writing signed by the Commissioner, certify that a specified person has been appointed as a special protective service officer under section 40EC and may also certify all or any of the following in relation to the person:
- (a) that he or she entered into the undertaking mentioned in subsection 36(4B) immediately after his or her appointment;
  - (b) that, on a specified date, he or she made and subscribed the oath or affirmation mentioned in the certificate before the Commissioner or a specified person authorised by the Commissioner for the purposes of subsection 36(4B);
  - (c) that he or she is, on the date on which the certificate is signed, a special member and has been such a special member continuously since he or she was so appointed.

*Certification that a person is or is not a protective service officer or special protective service officer*

- (4C) The Commissioner may, by writing signed by the Commissioner, certify that a specified person:
- (a) is, or is not, a protective service officer or a special protective service officer; or
  - (b) was, or was not, on a specified day, or during a specified period, a protective service officer or a special protective service officer.

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*Conclusive evidence of certificate under this section*

- (5) A document purporting to be a certificate given under this section is, unless the contrary is established, to be presumed to have been duly given and be conclusive evidence of the matters stated in the certificate.

**68A Certificates in relation to transferred PSOs**

- (1) This section applies in relation to a person who is a transferred PSO, instead of subsection 68(4A).
- (2) The Commissioner may, by writing signed by the Commissioner, certify that a specified person is a transferred PSO.
- (3) The Commissioner may also certify either or both of the following in relation to the person:
  - (a) that the person made and subscribed an oath or affirmation under section 10 of the *Australian Protective Service Act 1987*;
  - (b) that the person is, on the date on which the certificate is signed, a protective service officer and has been such a protective service officer continuously since being appointed under section 9 of the *Australian Protective Service Act 1987*.
- (4) Unless the contrary is proved, a document purporting to be a certificate given under this section is taken to be such a certificate and to have been duly given.
- (5) A certificate under this section is prima facie evidence of the matters stated in the certificate.
- (6) In this section:

***APS transferee*** means a person who, immediately before the transfer time, was an employee assisting the Commissioner of the Australian Federal Police under subsection 5(2) of the *Australian Protective Service Act 1987*.

***transferred PSO*** means an APS transferee who, immediately before the transfer time, was a protective service officer within the meaning of the *Australian Protective Service Act 1987*.



*transfer time* means the time specified by the Public Service Commissioner in a determination under paragraph 72(1)(b) of the *Public Service Act 1999* as the time at which the APS transferees become employees of the Australian Federal Police.

## **69 Prohibition of patronage and favouritism**

The Commissioner, or a delegate of the Commissioner, in exercising powers under this Act:

- (a) in relation to the engagement of AFP employees; or
  - (b) otherwise in relation to AFP employees;
- must do so without patronage or favouritism.

### **69A Persons engaged overseas as employees**

- (1) The Commissioner, on behalf of the Commonwealth, may engage persons overseas to perform duties overseas as employees.
- (2) The Commissioner, on behalf of the Commonwealth, has all the rights, duties and powers of an employer in respect of persons engaged under this section.
- (3) This section does not, by implication, limit any other power of the Commissioner to engage persons to work overseas.

### **69B Limited operation of Workplace Relations Act**

- (1) The *Workplace Relations Act 1996* (other than Part VIIIA or XA) does not apply in relation to any of the following matters:
  - (a) a matter covered by any of Divisions 2 to 8 of Part IV or any action taken under any of those Divisions;
  - (b) the discipline of AFP employees;
  - (c) any entitlement of AFP employees to adjustment payments;
  - (d) any other matter prescribed by the regulations.
- (2) The *Workplace Relations Act 1996* (other than Division 3 of Part VIA) does not apply in relation to the termination of employment of AFP employees.
- (3) To avoid doubt, this section does not imply that the *Workplace Relations Act 1996* applies to any matter covered by this Act:

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- (a) that is not mentioned in this section; and
- (b) to which the *Workplace Relations Act 1996* would not otherwise apply.

**69C Delegation**

The Commissioner may, in writing, delegate to a Deputy Commissioner, an AFP employee or a special member, all or any of the Commissioner's powers, functions or duties under this Act.

**69D Secondment of persons to assist the Australian Federal Police**

- (1) The Commissioner may, by written agreement with a body or organisation, whether within or outside Australia, arrange for a person who:
  - (a) is employed by that body or organisation; and
  - (b) has suitable qualifications and experience;to assist the Australian Federal Police in the performance of its functions by performing the functions specified in the agreement.
- (2) The terms and conditions (including remuneration and allowances) applicable to a person performing functions under an agreement are those specified in the agreement.

**69E Commissioner may charge for certain protective services**

- (1) If services are provided by a protective service officer or a special protective service officer at the request of a person other than:
  - (a) a person holding office under the Commonwealth; or
  - (b) a Commonwealth authority;the Commissioner may charge for the services.
- (2) A charge made under subsection (1) must be an amount reasonably related to the cost of providing the services.
- (3) In this section:

***Commonwealth authority*** means:

- (a) a body, whether incorporated or unincorporated, established for a public purpose:

- (i) by or under a law of the Commonwealth or a law of a Territory other than the Australian Capital Territory or the Northern Territory; or
- (ii) by the Governor-General or a Minister; or
- (b) an incorporated company in which the Commonwealth or a body described in paragraph (a) has a controlling interest; or
- (c) any other agency or instrumentality of the Commonwealth.

## **70 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed, for securing the discipline and good government of the Australian Federal Police, or for otherwise carrying out or giving effect to this Act, and, in particular, making provision for and in relation to:

- (a) the return to the Commissioner by a person who has ceased to be an AFP employee, a special member or a special protective service officer of property (including accoutrements and clothing) supplied to him or her for the purposes of his or her service as an AFP employee, a special member or a special protective service officer or in his or her custody by virtue of that service, and the recovery by the Commissioner of any such property not so returned, including the issue of search warrants by Magistrates for purposes of such recovery and the execution of such warrants; and
- (aa) the disposal of unclaimed property that has lawfully come into the possession of an AFP employee, a special member or a special protective service officer; and
- (b) penalties, not exceeding a fine of 5 penalty units, for offences against the regulations other than disciplinary offences; and
- (c) the police services that may be rendered by the Australian Federal Police at the request of, or under an agreement with, a member of the public or a body corporate or other organisation (other than an authority of the Commonwealth), and the payment and recovery of such fees as are prescribed in relation to rendering those services; and
- (d) the payment of such fees as are prescribed in relation to police services rendered by the Australian Federal Police in

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relation to a prescribed authority of the Commonwealth, where rendering those services is a function of the Australian Federal Police; and

- (e) requiring AFP employees who are not members to make and subscribe oaths or affirmations of secrecy in the prescribed form in relation to the matters coming to their knowledge in the course of their employment as such employees; and
- (f) the making of deductions from the salary of the Commissioner, a Deputy Commissioner or an AFP employee in order to satisfy a judgment debt (including interest on a judgment debt); and
- (g) enabling an AFP employee to resign from the Australian Federal Police for the purpose of becoming a candidate at an election of a member or members of the Parliament of the Commonwealth, the Parliament of a State, the Legislative Assembly for the Australian Capital Territory or the Legislative Assembly of the Northern Territory; and
- (h) the re-instatement of persons as AFP employees; and
- (i) disciplinary offences and penalties (including dismissal) for such offences in relation to any of the following:
  - (i) contraventions of section 39 (about compliance with Commissioner's Orders);
  - (ii) contraventions of section 40 (about compliance with specific directions, instructions or orders);
  - (iii) contraventions of subsection 40L(3) (about submission of financial statements);
  - (iv) contraventions of subsection 40M(3) or 40N(5) (about compliance with directions for drug testing);
  - (v) if tests conducted under Division 8 of Part IV indicate the presence of alcohol or prohibited drugs in blood or body samples—having such alcohol or drugs present;
  - (vi) any other matters; and
- (j) the storage, handling and confidentiality of any statement given under section 40L and the use which may be made of any such statement, including any limitations on such use; and
- (k) AFP employment decisions and the values on which such decisions must be based, including:
  - (i) impartiality and professionalism; and

- (ii) merit; and
- (iii) freedom from discrimination; and
- (iv) openness and accountability; and
- (v) fairness; and
- (vi) equity in employment; and
- (vii) effectiveness; and
- (l) the review of AFP employment decisions.

## Part VII—Transitional

### 71 Interpretation of Part VII

In this Part, unless the contrary intention appears:

- (a) a reference to the commencing date shall be read as a reference to the date fixed under subsection 2(2).
- (b) a reference to an existing Police Force shall be read as a reference to the Commonwealth Police Force or the Police Force of the Australian Capital Territory; and
- (c) a reference to a member of an existing Police Force shall be read as a reference to:
  - (i) a member of the Commonwealth Police Force referred to in paragraph 4(1)(a) of the *Commonwealth Police Act 1957*;
  - (ii) a person deemed to be a Commonwealth Police Officer by virtue of subsection 4(2) of that Act; or
  - (iii) a member, other than a special constable, of the Police Force of the Australian Capital Territory.

### 75 Recognition of previous service for certain purposes

For the purposes of this Act, the *Superannuation Act 1976*, the *Maternity Leave (Commonwealth Employees) Act 1973* and the *Long Service Leave (Commonwealth Employees) Act 1976*, service of a person as a member of the Australian Federal Police shall be deemed to include service of that person as a member of an existing Police Force.

### 77 Accrued leave

A person appointed in pursuance of section 72 of this Act, as in force on the commencing date, retains the rights, if any, in respect of:

- (a) recreation leave; and

(b) leave on the ground of illness;  
that had accrued to him or her as a member of an existing Police Force or as a member of the Australian Public Service immediately before the commencing date.

## **80 Powers and duties in relation to Commonwealth places**

Until an arrangement is made between the Commissioner and the Commissioner of Police (however designated) of a State for the purposes of subsection 8(2), members of the Australian Federal Police may, under this Act, exercise and perform, in relation to a Commonwealth place in that State within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*, powers and duties equivalent to the powers and duties that were, before the commencing date, exercised and performed in relation to those places under the *Commonwealth Police Act 1957*.





**Table of Acts****Notes to the *Australian Federal Police Act 1979*****Note 1**

The *Australian Federal Police Act 1979* as shown in this compilation comprises Act No. 58, 1979 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 7 March 2000 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Federal Police Act 1979</i>	58, 1979	15 June 1979	Ss. 1, 2, 4, 6, Div. 1 of Part IV (ss. 17–22), ss. 28 and 70: Royal Assent Remainder: 19 Oct 1979 ( <i>see Gazette</i> 1979, No. S206)	
<i>Australian Federal Police (Consequential Amendments) Act 1979</i>	155, 1979	28 Nov 1979	19 Oct 1979 ( <i>see</i> s. 2(1) and <i>Gazette</i> 1979, No. S206)	—
<i>Australian Federal Police Amendment Act 1980</i>	69, 1980	28 May 1980	28 May 1980	—
<i>Australian Federal Police Amendment Act 1981</i>	22, 1981	9 Apr 1981	1 May 1982 ( <i>see</i> s. 2 and <i>Gazette</i> 1982, No. S79)	S. 3(2)
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part XI (ss. 25–30): 20 Oct 1982 (a)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1983</i>	39, 1983	20 June 1983	(b)	—
<b>as amended by</b> <i>Australian Federal Police Amendment Act 1984</i>	117, 1984	18 Oct 1984	( <i>see</i> 117, 1984 below)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1983</i>	91, 1983	22 Nov 1983	(c)	—
<b>as amended by</b> <i>Australian Federal Police Amendment Act 1984</i>	117, 1984	18 Oct 1984	( <i>see</i> 117, 1984 below)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Federal Police Amendment Act 1985</i>	121, 1985	28 Oct 1985	28 Oct 1985	Ss. 19 and 20
<i>Australian Federal Police Amendment Act 1984</i>	117, 1984	18 Oct 1984	Ss. 1, 2 and 9: Royal Assent Remainder: 20 Oct 1984 ( <i>see Gazette</i> 1984, No. S419)	S. 19(1)–(9) and (12)
<i>Australian Federal Police Amendment Act 1985</i>	121, 1985	28 Oct 1985	28 Oct 1985	Ss. 19 and 20
<i>Australian Federal Police Amendment Act 1986</i>	35, 1986	24 June 1986	S. 3: 1 Dec 1986 ( <i>see Gazette</i> 1986, No. S577) Ss. 5, 9(1) and 10–12: 29 May 1988 ( <i>see Gazette</i> 1988, No. S149) S. 9(2): 28 Oct 1985 ( <i>see s. 2(4)</i> ) Remainder: Royal Assent	Ss. 6(2), (3), 7(2) and (3)
<i>Statute Law (Miscellaneous Provisions) Act 1988</i>	38, 1988	3 June 1988	S. 3: Royal Assent (d)	S. 5(1)
<i>Industrial Relations (Consequential Provisions) Act 1988</i>	87, 1988	8 Nov 1988	Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 ( <i>see s. 2(2)</i> and <i>Gazette</i> 1989, No. S53)	Ss. 7(5), 12, 24 and 87
<i>A.C.T. Self-Government (Consequential Provisions) Act 1988</i>	109, 1988	6 Dec 1989	S. 32 (in part): 7 Dec 1988 ( <i>see Gazette</i> 1988, No. S374) (e) S. 32 (in part): 11 May 1989 ( <i>see Gazette</i> 1989, No. S164) (e)	S. 5
<i>Law and Justice Legislation Amendment Act 1988</i>	120, 1988	14 Dec 1988	Ss. 17–19: Royal Assent (f) S. 20: 21 Dec 1989 ( <i>see Gazette</i> 1989, No. S384) (f)	S. 19(2)
<i>Australian Federal Police Legislation Amendment Act 1989</i>	71, 1989	21 June 1989	Ss. 1 and 2: Royal Assent Ss. 3–6, 8–14 and 16–18: 1 July 1989 ( <i>see Gazette</i> 1989, No. S222) Remainder: 4 Dec 1989 ( <i>see Gazette</i> 1989, No. S373)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Federal Police Amendment Act 1989</i>	147, 1989	27 Nov 1989	Ss. 1–20 and 22: 4 Dec 1989 (see s. 2(1) and <i>Gazette</i> 1989, No. S373) Remainder: 21 Dec 1989 (see s. 2(2))	—
<i>Australian Federal Police Legislation Amendment Act (No. 2) 1989</i>	153, 1989	17 Dec 1989	Ss. 1, 2, 61 and 62: Royal Assent S. 11: 1 July 1991 Ss. 38 and 71: 1 Jan 1991 Remainder: 1 Jan 1990 (see <i>Gazette</i> 1989, No. S397)	Ss. 4 and 53–60
<b>as amended by</b>				
<i>Crimes Legislation Amendment Act 1991</i>	28, 1991	4 Mar 1991	S. 74(1): Royal Assent (g)	—
<i>Law and Justice Legislation Amendment Act 1989</i>	11, 1990	17 Jan 1990	Part 2 (ss. 3–5): 14 Feb 1990 (h)	S. 5(2)
<i>Crimes Legislation Amendment Act 1991</i>	28, 1991	4 Mar 1991	Part 2 (ss. 3–19): Royal Assent (i)	—
<i>Industrial Relations Legislation Amendment Act 1991</i>	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent	S. 31(2)
<b>as amended by</b>				
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (item 31): 27 June 1991 (j)	—
<i>Crimes Legislation Amendment Act (No. 2) 1991</i>	123, 1991	23 Aug 1991	Ss. 1–4: Royal Assent Part 8 (ss. 35–37): 6 Dec 1991 (see <i>Gazette</i> 1991, No. S330) S. 51: 23 Feb 1992 (see s. 2(5)) Remainder: 20 Sept 1991	Ss. 6(2), 9 and 10(2)
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992</i>	94, 1992	30 June 1992	S. 3: 1 July 1990 Remainder: Royal Assent	S. 5

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Crimes Legislation Amendment Act 1992</i>	164, 1992	11 Dec 1992	Part 1 (ss. 1, 2) and Parts 3–11 (ss. 18–53): 8 Jan 1993 Remainder: 1 Feb 1993 ( <i>see Gazette</i> 1993, No. GN1)	—
<i>Qantas Sale Act 1992</i>	196, 1992	21 Dec 1992	Schedule (Part 1): 10 Mar 1993 ( <i>see Gazette</i> 1993, No. GN17) ( <i>k</i> ) Schedule (Part 5): 30 Aug 1995 ( <i>see Gazette</i> 1995, No. S324) ( <i>k</i> )	S. 2(6) (am. by 60, 1993, s. 4; 168, 1994, Sch. [item 17])
<b>as amended by</b>				
<i>Qantas Sale Amendment Act 1993</i>	60, 1993	3 Nov 1993	10 Mar 1993	—
<i>Qantas Sale Amendment Act 1994</i>	168, 1994	16 Dec 1994	Schedule (item 17): Royal Assent ( <i>l</i> )	—
<i>Witness Protection Act 1994</i>	124, 1994	18 Oct 1994	18 Apr 1995	S. 29
<i>Crimes and Other Legislation Amendment Act 1994</i>	182, 1994	19 Dec 1994	S. 31: 16 Jan 1995 ( <i>m</i> )	—
<i>Australian Federal Police Amendment Act 1996</i>	27, 1996	8 July 1996	5 Aug 1996	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 5 (items 22–25): Royal Assent ( <i>n</i> )	—
<i>Workplace Relations and Other Legislation Amendment Act 1996</i>	60, 1996	25 Nov 1996	Schedule 19 (items 5, 6): Royal Assent ( <i>o</i> )	S. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2])
<b>as amended by</b>				
<i>Workplace Relations and Other Legislation Amendment Act (No. 2) 1996</i>	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2) ( <i>p</i> )	—
<i>Crimes and Other Legislation Amendment Act 1997</i>	20, 1997	7 Apr 1997	Schedule 1 (items 1–8): Royal Assent ( <i>q</i> )	—
<i>Telecommunications (Interception) and Listening Device Amendment Act 1997</i>	160, 1997	11 Nov 1997	Schedule 2: 1 Feb 1998 ( <i>see Gazette</i> 1998, No. GN3) ( <i>r</i> )	S. 3 (rep. by 151, 1999, Sch. 2)
<b>as amended by</b>				
<i>Telecommunications (Interception) Amendment Act 1999</i>	151, 1999	11 Nov 1999	11 Nov 1999	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Sector Reform (Consequential Amendments) Act 1998</i>	48, 1998	29 June 1998	Schedule 1 (items 7–9): Royal Assent (s)	S. 2(3) (rep. by 44, 1999, Sch. 6 [item 15])
<b>as amended by</b>				
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 June 1999	Schedule 6 (item 16): Royal Assent (t)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 170, 171): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (u)	—
<i>Australian Federal Police Legislation Amendment Act 2000</i>	9, 2000	7 Mar 2000	2 July 2000 (see <i>Gazette</i> 2000, No. S328)	Sch. 3 (items 1–19, 34, 35) [see Table A]
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 2: (v)	S. 4(1) and (2) [see Table A]
<i>Measures to Combat Serious and Organised Crime Act 2001</i>	136, 2001	1 Oct 2001	Schedule 5 (items 1–7): 29 Oct 2001 (w)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Proceeds of Crime (Consequential Amendments and Transitional Provisions) Act 2002</i>	86, 2002	11 Oct 2002	Ss. 1–3: Royal Assent Remainder: 1 Jan 2003 (see s. 2(1) and <i>Gazette</i> 2002, No. GN44)	—
<i>Crimes Legislation Enhancement Act 2003</i>	41, 2003	3 June 2003	Schedule 2 (item 1): (x)	—
<i>Australian Federal Police and Other Legislation Amendment Act 2004</i>	64, 2004	22 June 2004	S. 4: Royal Assent Schedule 1 (items 1–7): 1 July 2004 (see <i>Gazette</i> 2004, No. GN26) Schedule 1 (item 8): (y) Schedule 1 (item 9): [see (y) and Note 2] Schedule 1 (items 10–60): 1 July 2004 Schedule 3 (items 1A, 1–3, 3A–3C): [see Note 2]	S. 4 [see Table A]

**Act Notes**

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- (a) The *Australian Federal Police Act 1979* was amended by Part XI (sections 25–30) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(16) of which provides as follows:
- (16) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (b) The proposed amendments of the *Australian Federal Police Act 1979* made by the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983* (as amended by the *Australian Federal Police Amendment Act 1984*) were repealed before a date was fixed for their commencement.
- (c) The proposed amendments of the *Australian Federal Police Act 1979* made by the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1983* (as amended by the *Australian Federal Police Amendment Act 1984* and the *Australian Federal Police Amendment Act 1985*) were repealed before a date was fixed for their commencement.
- (d) The *Australian Federal Police Act 1979* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1988*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (e) The *Australian Federal Police Act 1979* was amended by section 32 only of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, subsection 2(3) of which provides as follows:
- (3) The remaining provisions of this Act (including the amendments made by Schedule 5) commence on a day or days to be fixed by Proclamation.
- (f) The *Australian Federal Police Act 1979* was amended by sections 17–20 only of the *Law and Justice Legislation Amendment Act 1988*, subsections 2(1) and (9) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (9) Sections 20, 47, 51, 52, 53, 57, 62 and 65 commence on a day or days to be fixed by Proclamation.
- (g) The *Australian Federal Police Legislation Amendment Act (No. 2) 1989* was amended by subsection 74(1) only of the *Crimes Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (h) The *Australian Federal Police Act 1979* was amended by Part 2 (sections 3–5) only of the *Law and Justice Legislation Amendment Act 1989*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (i) The *Australian Federal Police Act 1979* was amended by Part 2 (sections 3–19) only of the *Crimes Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (j) The *Industrial Relations Legislation Amendment Act 1991* was amended by Schedule 3 (item 31) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (k) The *Australian Federal Police Act 1979* was amended by the Schedule (Parts 1 and 5) only of the *Qantas Sale Act 1992*, subsections 2(2), (3)(a) and (c) of which provide as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
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## Act Notes

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- (3) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the *Gazette* but only if:
  - (a) in the case of sections 30, 31, 37, 39, 43 and 50 and Parts 1 and 2 of the Schedule—the day is not earlier than the substantial minority sale day; and
  - (c) in the case of sections 25, 36, 38, 44 and 51 and Parts 5, 6 and 7 of the Schedule—the day is not earlier than the 100% sale day.
- (l) The *Qantas Sale Act 1992* was amended by the Schedule (item 17) only of the *Qantas Sale Amendment Act 1994*, subsection 2(1) of which provides as follows:
  - (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (m) The *Australian Federal Police Act 1979* was amended by section 31 only of the *Crimes and Other Legislation Amendment Act 1994*, subsection 2(4) of which provides as follows:
  - (4) The amendments made by this Act to the *Australian Federal Police Act 1979*, the *Crimes (Aviation) Act 1991* (other than the amendment made to Schedule 5 to that Act), the *Crimes (Hostages) Act 1989*, the *Crimes (Internationally Protected Persons) Act 1976*, the *Crimes (Overseas) Act 1964*, the *Crimes (Superannuation Benefits) Act 1989*, the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*, the *Customs Act 1901*, the *Director of Public Prosecutions Act 1983*, the *Extradition Act 1988*, the *Financial Transaction Reports Act 1988* and to sections 23 and 59 of the *Proceeds of Crime Act 1987* commence on the 28th day after the day on which this Act receives the Royal Assent.
- (n) The *Australian Federal Police Act 1979* was amended by Schedule 5 (items 22–25) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
  - (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (o) The *Australian Federal Police Act 1979* was amended by Schedule 19 (items 5 and 6) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(1) of which provides as follows:
  - (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (p) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:
  - (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.

The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.
- (q) The *Australian Federal Police Act 1979* was amended by the *Crimes and Other Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
  - (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (r) The *Australian Federal Police Act 1979* was amended by Schedule 2 only of the *Telecommunications (Interception) and Listening Device Amendment Act 1997*, subsections 2(2)(b) and (3) of which provide as follows:
  - (2) The following provisions commence on a day or days to be fixed by Proclamation:
    - (b) Schedule 2;
  - (3) If an item of a Schedule to this Act does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.



**Act Notes**

- (s) The *Australian Federal Police Act 1979* was amended by Schedule 1 (items 7–9) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (t) The *Financial Sector Reform (Consequential Amendments) Act 1998* was amended by Schedule 6 (items 15 and 16) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (u) The *Australian Federal Police Act 1979* was amended by Schedule 1 (items 170 and 171) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (v) The *Australian Federal Police Act 1979* was amended by Schedule 2 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
    - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
 Item 15 commenced on 24 May 2001.
- (w) The *Australian Federal Police Act 1979* was amended by Schedule 5 (items 1–7) only of the *Measures to Combat Serious and Organised Crime Act 2001*, subsection 2(5) of which provides as follows:
- (5) The remainder of this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (x) Subsection 2(1) (item 5) of the *Crimes Legislation Enhancement Act 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Schedule 2, item 1	Immediately after the commencement of the <i>Witness Protection Act 1994</i>	18 April 1995

- (y) Subsection 2(1) (items 3 and 4) of the *Australian Federal Police and Other Legislation Amendment Act 2004* provide as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Act Notes**

Provision(s)	Commencement	Date/Details
3. Schedule 1, item 8	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 2; and</p> <p>(b) the time Schedule 1 to the <i>Non-Proliferation Legislation Amendment Act 2003</i> commences.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	1 July 2004 (paragraph (a) applies)
4. Schedule 1, item 9	<p>The later of:</p> <p>(a) immediately after the commencement of the provision(s) covered by table item 2; and</p> <p>(b) the time section 3 of the <i>Aviation Transport Security Act 2004</i> commences.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	[see Note 2] (paragraph (b) applies)

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part I</b>	
S. 3A .....	ad. No. 9, 2000 am. No. 64, 2004
S. 4.....	am. No. 155, 1979; No. 117, 1984; Nos. 71 and 153, 1989; Nos. 94 and 196, 1992; No. 9, 2000; No. 64, 2004
S. 4A .....	ad. No. 9, 2000
S. 5.....	am. No. 155, 1979; No. 9, 2000
S. 5A .....	ad. No. 147, 1989
S. 5B .....	ad. No. 24, 2001
<b>Part II</b>	
Heading to Part II.....	rs. No. 9, 2000
<b>Division 1</b>	
Heading to Div. 1 of Part II.....	ad. No. 11, 1990 rs. No. 9, 2000; No. 64, 2004
S. 6.....	am. No. 117, 1984; No. 153, 1989 rs. No. 9, 2000 am. No. 64, 2004
S. 7.....	rep. No. 117, 1984
S. 8.....	am. No. 109, 1988; Nos. 71 and 153, 1989; Nos. 28 and 123, 1991; No. 124, 1994; No. 86, 2002; No. 41, 2003; No. 64, 2004
S. 8A .....	ad. No. 64, 2004
Heading to s. 9 .....	rs. No. 9, 2000
S. 9.....	am. No. 117, 1984; No. 35, 1986; No. 120, 1988; No. 153, 1989; No. 28, 1991; No. 9, 2000
S. 10.....	rep. No. 117, 1984
S. 12.....	am. No. 153, 1989; No. 43, 1996; No. 9, 2000
S. 12A.....	ad. No. 35, 1986 am. No. 64, 2004
<b>Division 2</b>	
Div. 2 of Part II .....	ad. No. 11, 1990
S. 12B.....	ad. No. 11, 1990 am. No. 160, 1997; No. 137, 2000
Ss. 12C, 12D .....	ad. No. 11, 1990
S. 12DA .....	ad. No. 160, 1997
S. 12E.....	ad. No. 11, 1990 am. No. 9, 2000
S. 12F.....	ad. No. 11, 1990
Subheads. to s. 12G(1), ..... (2), (4), (6) and (8)–(11)	ad. No. 136, 2001
S. 12G .....	ad. No. 11, 1990 am. No. 160, 1997; No. 136, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 12H .....	ad. No. 11, 1990 am. No. 160, 1997; No. 136, 2001
Ss. 12J, 12K .....	ad. No. 11, 1990
S. 12L .....	ad. No. 11, 1990 am. No. 164, 1992
<b>Division 3</b>	
Div. 3 of Part II .....	ad. No. 64, 2004
Ss. 14A–14G .....	ad. No. 64, 2004
<b>Division 4</b>	
Div. 4 of Part II .....	ad. No. 64, 2004
Ss. 14H–14N .....	ad. No. 64, 2004
<b>Part III</b>	
Heading to Part III .....	ad. No. 9, 2000
Part III .....	rep. No. 9, 2000
S. 13 .....	am. No. 43, 1996 rep. No. 9, 2000
S. 14 .....	am. No. 117, 1984; No. 43, 1996 rep. No. 9, 2000
S. 15 .....	am. No. 117, 1984; No. 121, 1985; Nos. 71 and 153, 1989 rs. No. 153, 1989 rep. No. 9, 2000
S. 16 .....	am. No. 121, 1985 rep. No. 153, 1989
S. 16A .....	ad. No. 121, 1985 rep. No. 9, 2000
Heading to Part IV .....	am. No. 153, 1989 rep. No. 9, 2000
<b>Division 1</b>	
Heading to s. 17 .....	am. No. 9, 2000
S. 17 .....	am. Nos. 71 and 153, 1989; No. 28, 1991; No. 43, 1996; No. 9, 2000
S. 18 .....	am. Nos. 27 and 43, 1996; No. 9, 2000
S. 19 .....	am. No. 80, 1982; No. 121, 1985; No. 28, 1991; Nos. 27 and 43, 1996; No. 9, 2000
S. 20 .....	am. No. 153, 1989; No. 28, 1991; No. 43, 1996; No. 9, 2000
S. 21 .....	am. Nos. 28 and 122, 1991; No. 146, 1999
S. 22 .....	am. No. 28, 1991; No. 122, 1991 (as am. by No. 43, 1996); No. 43, 1996
Heading to Div. 2 of Part IV .....	rs. No. 117, 1984; No. 153, 1989 rep. No. 9, 2000
Div. 2 of Part IV .....	rep. No. 9, 2000
<b>Division 2</b>	
Div. 2 of Part III .....	ad. No. 9, 2000

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision A</b>	
S. 23.....	am. No. 153, 1989 rs. No. 9, 2000
S. 24.....	am. No. 121, 1985 rs. No. 120, 1988; No. 153, 1989; No. 9, 2000
S. 25.....	rs. No. 117, 1984 am. No. 121, 1985; No. 71, 1989; Nos. 27 and 43, 1996 rs. No. 9, 2000
S. 25A.....	ad. No. 71, 1989 rs. No. 153, 1989 rep. No. 9, 2000
Ss. 25B, 25C .....	ad. No. 71, 1989 rep. No. 153, 1989
S. 26.....	rs. No. 117, 1984 am. No. 121, 1985; No. 71, 1989; No. 43, 1996 rs. No. 9, 2000
S. 26A.....	ad. No. 69, 1980 am. No. 80, 1982; No. 117, 1984; No. 87, 1988; No. 43, 1996 rep. No. 9, 2000
S. 26B.....	ad. No. 153, 1989 rep. No. 9, 2000
S. 26BA .....	ad. No. 28, 1991 rep. No. 9, 2000
S. 26C .....	ad. No. 153, 1989 rep. No. 9, 2000
S. 26D .....	ad. No. 153, 1989 am. No. 28, 1991 rep. No. 9, 2000
S. 26E.....	ad. No. 153, 1989 am. No. 123, 1991; No. 27, 1996 rep. No. 9, 2000
S. 26F.....	ad. No. 27, 1996 am. No. 60, 1996 rep. No. 9, 2000
<b>Subdivision B</b>	
S. 27.....	am. No. 117, 1984; No. 43, 1996 rs. No. 9, 2000
Div. 3 of Part IV .....	rep. No. 9, 2000
<b>Subdivision C</b>	
S. 28.....	rs. No. 80, 1982 am. No. 117, 1984; No. 153, 1989; No. 28, 1991; No. 43, 1996 rs. No. 9, 2000
Part V .....	rep. No. 9, 2000
Heading to Div. 1 of Part V.....	rep. No. 87, 1988
S. 29.....	am. No. 121, 1985; No. 35, 1986; No. 87, 1988; Nos. 71 and 153, 1989 rep. No. 9, 2000

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision D</b>	
S. 30.....	am. No. 87, 1988 rs. No. 153, 1989; No. 9, 2000
S. 31.....	rep. No. 87, 1988 ad. No. 153, 1989 am. No. 146, 1999 rs. No. 9, 2000
S. 32.....	am. No. 80, 1982 rep. No. 87, 1988 ad. No. 153, 1989 rs. No. 9, 2000
S. 32A.....	ad. No. 153, 1989 rep. No. 9, 2000
S. 33.....	am. No. 35, 1986; No. 153, 1989 rs. No. 9, 2000
S. 34.....	am. No. 35, 1986; No. 87, 1988; No. 153, 1989; No. 28, 1991; Nos. 27, 43 and 60, 1996 rs. No. 9, 2000
S. 34A.....	ad. No. 153, 1989 am. No. 164, 1992 rep. No. 9, 2000
<b>Division 3</b>	
Div. 3 of Part III.....	ad. No. 9, 2000
S. 35.....	am. No. 121, 1985; No. 35, 1986; No. 153, 1989; No. 43, 1996 rs. No. 9, 2000
S. 35A.....	ad. No. 28, 1991 rep. No. 9, 2000
<b>Division 4</b>	
Div. 4 of Part III.....	ad. No. 9, 2000
S. 36.....	rs. No. 117, 1984 am. No. 153, 1989; No. 28, 1991 rs. No. 9, 2000 am. No. 64, 2004
S. 36A.....	ad. No. 120, 1988 rep. No. 9, 2000
S. 36B.....	ad. No. 120, 1988 am. No. 153, 1989; No. 28, 1991 rep. No. 9, 2000
S. 36C.....	ad. No. 28, 1991 rep. No. 9, 2000
<b>Part IV</b>	
Part IV .....	ad. No. 9, 2000
<b>Division 1</b>	
S. 37.....	am. No. 121, 1985; No. 153, 1989; No. 43, 1996 rs. No. 9, 2000

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 38.....	rs. No. 121, 1985; No. 71, 1989 am. No. 153, 1989 rs. No. 9, 2000
S. 38A.....	ad. No. 121, 1985 rs. No. 71, 1989 rep. No. 153, 1989
S. 38B.....	ad. No. 121, 1985 rs. Nos. 71 and 153, 1989 am. No. 94, 1992 rep. No. 9, 2000
S. 38C .....	ad. No. 121, 1985 rs. Nos. 71 and 153, 1989 rep. No. 9, 2000
Ss. 38D, 38E .....	ad. No. 121, 1985 rs. No. 71, 1989 am. No. 153, 1989 rep. No. 9, 2000
S. 38F.....	ad. No. 121, 1985 am. No. 35, 1986 rs. No. 71, 1989 am. No. 153, 1989 rep. No. 9, 2000
S. 38G .....	ad. No. 121, 1985 am. No. 35, 1986 rs. No. 71, 1989 rep. No. 153, 1989
S. 38H .....	ad. No. 121, 1985 rep. No. 71, 1989
S. 39.....	am. No. 117, 1984 rs. No. 121, 1985; No. 153, 1989; No. 9, 2000 am. No. 64, 2004
S. 39A.....	ad. No. 121, 1985 am. No. 35, 1986 rep. No. 71, 1989 ad. No. 153, 1989 rep. No. 9, 2000
Ss. 39B, 39C .....	ad. No. 153, 1989 rep. No. 9, 2000
Heading to s. 39D .....	am. No. 60, 1996 rep. No. 9, 2000
S. 39D .....	ad. No. 153, 1989 am. No. 60, 1996 rep. No. 9, 2000
S. 39E.....	ad. No. 153, 1989 rs. No. 94, 1992 rep. No. 9, 2000
S. 40.....	am. No. 22, 1981; No. 117, 1984; No. 121, 1985; No. 35, 1986; Nos. 87 and 109, 1988; Nos. 71 and 153, 1989; No. 28, 1991; No. 43, 1996 rs. No. 9, 2000 am. No. 64, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 40A.....	ad. No. 9, 2000 am. No. 64, 2004
<b>Division 2</b>	
S. 40B.....	ad. No. 9, 2000 am. No. 64, 2004
Notes 1, 2 to s. 40B .....	ad. No. 64, 2004
Ss. 40C, 40D .....	ad. No. 9, 2000
<b>Division 3</b>	
S. 40E.....	ad. No. 9, 2000
<b>Division 3A</b>	
Div. 3A of Part IV .....	ad. No. 64, 2004
Ss. 40EA, 40EB.....	ad. No. 64, 2004
<b>Division 3B</b>	
Div. 3B of Part IV .....	ad. No. 64, 2004
Ss. 40EC, 40ED.....	ad. No. 64, 2004
<b>Division 4</b>	
Ss. 40F, 40G .....	ad. No. 9, 2000
<b>Division 5</b>	
Ss. 40H, 40J.....	ad. No. 9, 2000
<b>Division 6</b>	
S. 40K.....	ad. No. 9, 2000
<b>Division 7</b>	
S. 40L.....	ad. No. 9, 2000
<b>Division 8</b>	
Ss. 40M, 40N.....	ad. No. 9, 2000
Ss. 40P, 40Q .....	ad. No. 9, 2000
Div. 2 of Part V .....	rep. No. 87, 1988
<b>Part VA</b>	
Part VA .....	ad. No. 71, 1989
<b>Division 1</b>	
S. 41.....	rep. No. 87, 1988 ad. No. 71, 1989 am. Nos. 147 and 153, 1989; No. 94, 1992; No. 20, 1997; No. 9, 2000
S. 41A.....	ad. No. 9, 2000
S. 42.....	rep. No. 87, 1988 ad. No. 71, 1989 rs. No. 147, 1989
Ss. 42A–42H .....	ad. No. 147, 1989
S. 42J .....	ad. No. 147, 1989
<b>Division 2</b>	
S. 43.....	rep. No. 87, 1988 ad. No. 71, 1989 am. No. 164, 1992; No. 9, 2000



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 44.....	rep. No. 87, 1988 ad. No. 71, 1989 am. No. 147, 1989; No. 164, 1992; No. 9, 2000
S. 45.....	rep. No. 87, 1988 ad. No. 71, 1989 am. No. 147, 1989; No. 20, 1997
S. 45A.....	ad. No. 147, 1989 am. No. 123, 1991
S. 46.....	rep. No. 87, 1988 ad. No. 71, 1989 am. Nos. 147 and 153, 1989; No. 182, 1994
S. 46A.....	ad. No. 147, 1989
S. 47.....	rep. No. 87, 1988 ad. No. 71, 1989 am. Nos. 147 and 153, 1989; No. 9, 2000
S. 47A.....	ad. No. 147, 1989
S. 47B.....	ad. No. 147, 1989 am. No. 20, 1997
<b>Division 3</b>	
S. 48.....	rep. No. 87, 1988 ad. No. 71, 1989 am. No. 9, 2000
S. 49.....	rep. No. 87, 1988 ad. No. 71, 1989 am. Nos. 147 and 153, 1989; No. 9, 2000
<b>Division 3A</b>	
Div. 3A of Part VA .....	ad. No. 147, 1989
S. 49A.....	ad. No. 147, 1989
S. 49B.....	ad. No. 147, 1989 am. No. 20, 1997
Ss. 49C, 49D .....	ad. No. 147, 1989
S. 49E.....	ad. No. 147, 1989 am. No. 123, 1991
S. 49EA .....	ad. No. 123, 1991
Ss. 49F–49H.....	ad. No. 147, 1989
S. 49J .....	ad. No. 147, 1989 am. No. 123, 1991
Ss. 49K, 49L.....	ad. No. 147, 1989
S. 49M.....	ad. No. 147, 1989 am. No. 24, 2001
S. 49N .....	ad. No. 147, 1989
S. 49P.....	ad. No. 147, 1989 am. No. 20, 1997
Ss. 49Q, 49R.....	ad. No. 147, 1989

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 4</b>	
S. 50.....	rep. No. 87, 1988 ad. No. 71, 1989 rep. No. 147, 1989
Heading to s. 51 .....	am. No. 9, 2000
S. 51.....	rep. No. 87, 1988 ad. No. 71, 1989 am. Nos. 147 and 153, 1989; No. 20, 1997; No. 9, 2000
S. 52.....	rep. No. 87, 1988 ad. No. 71, 1989 am. Nos. 147 and 153, 1989 rs. No. 9, 2000
S. 53.....	rep. No. 87, 1988 ad. No. 71, 1989 am. No. 147, 1989 rep. No. 153, 1989
S. 53A.....	ad. No. 147, 1989
S. 54.....	rep. No. 87, 1988 ad. No. 71, 1989 rs. No. 147, 1989
S. 54A.....	ad. No. 147, 1989
S. 55.....	rep. No. 87, 1988 ad. No. 71, 1989
S. 56.....	rep. No. 87, 1988 ad. No. 71, 1989 am. No. 147, 1989
S. 57.....	rep. No. 87, 1988
Div. 3 of Part V .....	rep. No. 87, 1988
Ss. 58, 59 .....	rep. No. 87, 1988
<b>Part VI</b>	
S. 60.....	rep. No. 9, 2000
S. 60A.....	ad. No. 153, 1989 am. No. 124, 1994; No. 9, 2000; No. 64, 2004
S. 61.....	am. No. 164, 1992; No. 43, 1996; No. 9, 2000; No. 64, 2004
S. 62.....	am. No. 153, 1989; No. 9, 2000 rep. No. 137, 2000
Heading to s. 63 .....	rs. No. 64, 2004
S. 63.....	am. No. 43, 1996; Nos. 9 and 137, 2000; No. 24, 2001; No. 64, 2004
Ss. 63A, 63B.....	ad. No. 64, 2004
S. 64.....	am. No. 164, 1992; No. 182, 1994; No. 43, 1996; Nos. 9 and 137, 2000; No. 64, 2004
Heading to s. 64A .....	am. No. 9, 2000
S. 64A.....	ad. No. 22, 1981 am. No. 43, 1996; No. 9, 2000; No. 24, 2001; No. 64, 2004
S. 64AAA.....	ad. No. 64, 2004
Heading to s. 64AA.....	am. No. 9, 2000

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 64AA .....	ad. No. 153, 1989 am. No. 9, 2000
S. 64AAB.....	ad. No. 64, 2004
S. 64B.....	ad. No. 22, 1981 am. No. 43, 1996; No. 9, 2000; No. 64, 2004
S. 65.....	rep. No. 153, 1989
S. 66.....	rs. No. 153, 1989 am. No. 9, 2000; No. 64, 2004
S. 67.....	am. No. 43, 1996
S. 68.....	am. No. 69, 1980; No. 117, 1984; No. 121, 1985; No. 43, 1996 rs. No. 9, 2000 am. No. 64, 2004
S. 68A.....	ad. No. 155, 1979 rep. No. 121, 1985 ad. No. 64, 2004
S. 69.....	rep. No. 38, 1988 ad. No. 9, 2000
Ss. 69A–69D .....	ad. No. 9, 2000
S. 69E.....	ad. No. 64, 2004
S. 70.....	am. No. 35, 1986; No. 71, 1989; No. 43, 1996; No. 9, 2000; No. 64, 2004
<b>Part VII</b>	
S. 72.....	am. No. 35, 1986 rep. No. 9, 2000
S. 73.....	am. No. 80, 1982 rep. No. 9, 2000
S. 74.....	rep. No. 87, 1988
S. 76.....	rep. No. 9, 2000
S. 77.....	am. No. 155, 1979; No. 121, 1985; No. 43, 1996; No. 9, 2000
S. 78.....	am. No. 35, 1986; No. 43, 1996 rep. No. 9, 2000
S. 79.....	am. No. 43, 1996 rep. No. 9, 2000

## Note 2

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### Note 2

*Australian Federal Police and Other Legislation Amendment Act 2004*  
(No. 64, 2004)

The following amendment commences on 10 March 2005 unless proclaimed earlier:

#### Schedule 1

##### **9 Subsection 4(1) (after subparagraph (a)(v) of the definition of *protective service offence*)**

Insert:

(va) the *Aviation Transport Security Act 2004* or regulations made under that Act; or

The following amendments commence on 22 December 2004:

#### Schedule 3

##### **1A Subsection 4(1)**

Insert:

*federal aspect*, in relation to an offence against a law of a State or of the Australian Capital Territory, has the meaning given by subsection 4AA(1).

Note: This subsection defines *State* to include the Northern Territory.

##### **1 After section 4**

Insert:

##### **4AA State offences that have a federal aspect**

###### *Object*

- (1A) The object of this section is to identify State offences that have a federal aspect because:
- (a) they potentially fall within Commonwealth legislative power because of the elements of the State offence; or

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**Note 2**

- (b) they potentially fall within Commonwealth legislative power because of the circumstances in which the State offence was committed (whether or not those circumstances are expressed to be acts or omissions involved in committing the offence); or
- (c) the Australian Federal Police investigating them is incidental to the Australian Federal Police investigating an offence against a law of the Commonwealth or a Territory.

*State offences that have a federal aspect*

- (1) For the purposes of this Act, a State offence has a ***federal aspect*** if, and only if:
  - (a) both:
    - (i) the State offence is not an ancillary offence; and
    - (ii) assuming that the provision creating the State offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
  - (b) both:
    - (i) the State offence is an ancillary offence that relates to a particular primary offence; and
    - (ii) assuming that the provision creating the primary offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
  - (c) assuming that the Parliament of the Commonwealth had enacted a provision that created an offence penalising the specific acts or omissions involved in committing the State offence—that provision would have been a valid law of the Commonwealth; or
  - (d) both:
    - (i) the Australian Federal Police is investigating a matter relating to a relevant criminal activity that relates to an offence against a law of the Commonwealth or a Territory; and
    - (ii) if the Australian Federal Police is investigating, or were to investigate, a matter relating to a relevant criminal

## Note 2

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activity that relates to the State offence—that investigation is, or would be, incidental to the investigation mentioned in subparagraph (i).

### *Specificity of acts or omissions*

- (2) For the purposes of paragraph (1)(c), the specificity of the acts or omissions involved in committing a State offence is to be determined having regard to the circumstances in which the offence was committed (whether or not those circumstances are expressed to be elements of the offence).

### *State offences covered by paragraph (1)(c)*

- (3) A State offence is taken to be covered by paragraph (1)(c) if the conduct constituting the State offence:
- (a) affects the interests of:
    - (i) the Commonwealth; or
    - (ii) an authority of the Commonwealth; or
    - (iii) a constitutional corporation; or
  - (b) was engaged in by a constitutional corporation; or
  - (c) was engaged in in a Commonwealth place; or
  - (d) involved the use of a postal service or other like service; or
  - (e) involved an electronic communication; or
  - (f) involved trade or commerce:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States; or
    - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
  - (g) involved:
    - (i) banking (other than State banking not extending beyond the limits of the State concerned); or
    - (ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or
  - (h) relates to a matter outside Australia; or
  - (i) relates to a matter in respect of which an international agreement to which Australia is a party imposes obligations to which effect could be given by the creation of an offence against the domestic laws of the parties to the agreement; or

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**Note 2**

- (j) relates to a matter that affects the relations between Australia and another country or countries or is otherwise a subject of international concern.

- (4) Subsection (3) does not limit paragraph (1)(c).

*Definitions*

- (5) In this section:

***ancillary offence***, in relation to an offence (the ***primary offence***), means:

- (a) an offence of conspiring to commit the primary offence; or
- (b) an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of the primary offence; or
- (c) an offence of attempting to commit the primary offence.

***authority of the Commonwealth*** has the same meaning as in section 3AA of the *Crimes Act 1914*.

***Commonwealth place*** has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

***conduct*** has the same meaning as in the *Criminal Code*.

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

***electronic communication*** means a communication of information:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms;

by means of guided and/or unguided electromagnetic energy.

***engage in conduct*** has the same meaning as in the *Criminal Code*.

## **Note 2**

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*State* includes the Australian Capital Territory and the Northern Territory.

*State offence* means an offence against a law of a State.

### **2 After paragraph 8(1)(b)**

Insert:

(baa) the investigation of State offences that have a federal aspect;  
and

### **3 At the end of subsection 8(1)**

Add:

Note: For State offences that have a federal aspect, see section 4AA.

### **3A After subparagraph 9(1)(c)(iv)**

Insert:

(iva) the investigation of State offences that have a federal aspect;

### **3B Section 12B (at the end of the definition of *general offence*)**

Add:

; or (c) a State offence that has a federal aspect.

### **3C At the end of Division 2 of Part II**

Add:

### **12M Concurrent operation of State and Territory laws**

The application of this Division in relation to State offences that have a federal aspect is not intended to limit or exclude the concurrent operation of any law of a State or of the Australian Capital Territory.

Note 1: Subsection 4(1) defines *State* to include the Northern Territory.

Note 2: Section 4AA has the effect that an offence against a law of the Australian Capital Territory is a State offence that has a federal aspect.

As at 1 July 2004 the amendments are not incorporated in this compilation.



**Table A****Table A****Application, saving or transitional provisions**

*Australian Federal Police Legislation Amendment Act 2000*  
(No. 9, 2000)

**Schedule 3****1 Definitions**

In this Part, unless the contrary intention appears:

***commencing time*** means the time when this Part commences.

***former Act*** means the *Australian Federal Police Act 1979*, as in force at any time before the commencing time.

***former commissioned police officer*** means a person who held an appointment under section 25 of the former Act immediately before the commencing time.

***former consultant*** means a person who was performing services as a consultant under an engagement in force under section 39B of the former Act immediately before the commencing time.

***former non-commissioned police officer*** means a person who held an appointment under section 26 of the former Act immediately before the commencing time.

***former senior executive commissioned police officer*** means a person who, immediately before the commencing time, was a senior executive commissioned police officer (within the meaning of the *Australian Federal Police Act 1979* as in force at that time).

***former senior executive officer*** means a person who, immediately before the commencing time, was a staff member who was a senior executive officer (within the meaning of the *Australian Federal Police Act 1979* as in force at that time).

***former special member*** means a person who held an appointment under section 27 of the former Act immediately before the commencing time.

***former staff member*** means a person who held an appointment under section 26B of the former Act immediately before the commencing time.

## Table A

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***former temporary employee*** means a person who was an employee under section 39A of the former Act immediately before the commencing time.

***later Act*** means the *Australian Federal Police Act 1979*, as in force at and after the commencing time.

***pre-commencement misconduct*** means conduct of a former commissioned police officer, a former non-commissioned police officer or a former staff member before the commencing time that was serious misconduct for the purposes of section 26F of the former Act.

***statutory instrument*** means:

- (a) a law of the Commonwealth (other than the *Australian Federal Police Act 1979*); or
- (b) a law of a Territory; or
- (c) a certified agreement; or
- (d) an instrument having effect under a law covered by paragraph (a) or (b).

## 2 Conversion of former members and staff members etc.

### *Former commissioned police officer*

- (1) At the commencing time, a former commissioned police officer is taken:
- (a) to be engaged as an AFP employee under section 24 of the later Act; and
  - (b) to be declared to be a member of the Australian Federal Police under section 40B of the later Act; and
  - (c) to be declared to be a commissioned police officer under section 40D of the later Act.

### *Former non-commissioned police officer*

- (2) At the commencing time, a former non-commissioned police officer is taken:
- (a) to be engaged as an AFP employee under section 24 of the later Act; and
  - (b) to be declared to be a member of the Australian Federal Police under section 40B of the later Act.

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**Table A***Former staff member*

- (3) At the commencing time, a person who is a former staff member is taken:
- (a) to be engaged as an AFP employee under section 24 of the later Act; and
  - (b) if, immediately before the commencing time, a declaration under section 12E of the former Act was in force in relation to the person—to be declared to be a designated technical officer under section 12E of the later Act.

*Former special member*

- (4) At the commencing time, a person who is a former special member is taken to be appointed as a special member under section 40E of the later Act. For this purpose, an instrument of appointment under section 40E of the later Act is taken to be made at the commencing time:
- (a) if the instrument appointing the person under section 27 of the former Act specified the term of the person's appointment—specifying that the person is appointed for a period equal to the unexpired part of the term of his or her appointment under the former Act; and
  - (b) specifying the same other terms and conditions as were specified in the person's instrument of appointment under section 27 of the former Act; and
  - (c) specifying that the person has, during the continuance of his or her appointment, the same powers and duties conferred or imposed on members as were specified in his or her instrument of appointment under section 27 of the former Act.

*Former temporary employee*

- (5) At the commencing time, a person who is a former temporary employee is taken to be engaged as an AFP employee under section 24 of the later Act for a period equal to the unexpired part of his or her period of employment. For this purpose, a determination under subsection 27(1) of the later Act is taken to be made at the commencing time specifying the same terms and conditions as were determined in relation to the person under subsection 39A(2) of the former Act.

## **Table A**

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### *Former consultant*

- (6) At the commencing time, a person who is a former consultant is taken to be engaged as a consultant under section 35 of the later Act:
- (a) if the terms and conditions of the person's engagement under section 39B of the former Act specified the period of the person's engagement—for a period equal to the unexpired part of the period of his or her engagement under the former Act; and
  - (b) on the same other terms and conditions as were determined in relation to the person under subsection 39B(2) of the former Act.

### *Later Act applies in same way*

- (7) Except where this Part expressly provides otherwise:
- (a) the later Act applies to a person who is taken, under this item, to be appointed or engaged under the later Act in the same way as it applies to persons actually appointed or engaged under the later Act; and
  - (b) the later Act applies to a person who is taken, under this item, to be declared under the later Act to be a member of the Australian Federal Police, a commissioned police officer or a designated technical officer in the same way as it applies to persons actually declared under the later Act to be members of the Australian Federal Police, commissioned police officers or designated technical officers; and
  - (c) the later Act applies to an instrument of appointment, or a determination, that is taken, under this item, to be made under the later Act in the same way as it applies to instruments of appointment, or determinations, actually made under the later Act.

## **3 Classification as senior executive AFP employee**

- (1) At the commencing time, a former senior executive commissioned police officer or a former senior executive officer is taken to be declared to be a senior executive AFP employee under section 25 of the later Act.
- (2) The later Act applies to a person who is taken, under this item, to be declared to be a senior executive AFP employee under the later Act in
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**Table A**

the same way as it applies to persons actually declared to be senior executive AFP employees under the later Act

#### **4 Appointment of Commissioner or Deputy Commissioner not affected**

To avoid doubt, the amendments of section 17 of the *Australian Federal Police Act 1979* made by Schedule 1 to this Act do not affect the validity of an appointment made under that section before the commencement of the amendments.

#### **5 Continuation of secondments**

##### *Persons seconded from the AFP*

- (1) An arrangement in force under section 33 of the former Act immediately before the commencing time continues to be in force after the commencing time as if it had been entered into under section 40F of the later Act. In relation to a person covered by the arrangement, a determination under subsection 27(1) of the later Act is taken to be made at the commencing time specifying the same terms and conditions as were determined in relation to the person under subsection 33(5) of the former Act.
- (2) The later Act applies to a determination that is taken, under this item, to be made under the later Act in the same way as it applies to a determination actually made under subsection 27(1) of the later Act.

##### *Persons seconded to the AFP*

- (3) An agreement in force under section 39C of the former Act immediately before the commencing time continues to be in force after the commencing time as if it had been entered into under section 69D of the later Act.

#### **6 Determinations under subsection 30(1) of the former Act**

- (1) At the commencing time, the Commissioner is taken to make a determination (a *continued determination*) under subsection 27(1) of the later Act containing the terms of each determination under subsection 30(1) of the former Act that is in force immediately before the commencing time.

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**Table A**

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- (2) The later Act applies to a continued determination in the same way as it applies to a determination actually made under subsection 27(1) of the later Act.
- (3) Unless it is sooner revoked, a continued determination (including any amendments made by the Commissioner under subsection 27(1) of the later Act) ceases to be in force 1 year after the commencing time.

**7 Continuation of awards or certified agreements**

- (1) To avoid doubt, an award or a certified agreement that is in force immediately before the commencing time in relation to members or staff members of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979* as in force at that time) does not cease to be in force at and after the commencing time because of the amendments made by Schedule 1 to this Act.

Note: At and after the commencing time, any reference to a staff member of the Australian Federal Police in such an award or a certified agreement will be taken to be a reference to an AFP employee who is not a member: see item 18 of this Schedule.

- (2) If, immediately before the commencing time, a provision of such an award or a certified agreement applied to a member of the Australian Federal Police at a particular rank, or to a staff member of the Australian Federal Police at a particular level, the provision continues to apply to the person at and after the commencing time until the earlier of the following days:
  - (a) the day the person ceases to be an AFP employee;
  - (b) the day the award or certified agreement, as the case may be, ceases to be in force.

Note: A person who is a member or a staff member of the Australian Federal Police immediately before the commencing time is taken to be engaged as an AFP employee: see item 2 of this Schedule.

**8 Determinations under subsection 30(2) of the former Act**

- (1) A determination under subsection 30(2) of the former Act that is in force immediately before the commencing time continues to be in force at and after that time.
- (2) The Commissioner may at any time after the commencing time, by writing, amend, vary or revoke a determination continued in force under subitem (1).

**Table A**

- (3) Any such amendment, variation or revocation (the *alteration*) does not affect any entitlement under the determination that arose before the alteration or that, disregarding the alteration, arises after the alteration in respect of:
- (a) any service of fixed term appointments (including parts of fixed term appointments) to the extent that the service took place before the commencing time; or
  - (b) any employment as an AFP employee that took place after the commencing time and before the alteration takes effect.

**9 Misconduct**

The Commissioner may, under section 28 of the later Act, terminate the employment of an AFP employee for pre-commencement misconduct as if the conduct had happened after the commencing time.

**10 Certificates under subsection 12A(4) of the *Australian Federal Police Act 1979***

Subsection 12A(4) of the *Australian Federal Police Act 1979* as in force at and after the commencing time applies to a certificate given under that subsection at any time before the commencing time in the same way as it does to a certificate given under that subsection at or after the commencing time.

**11 Repeal of subsection 20(2B) of the *Australian Federal Police Act 1979* does not limit subsection 33(3) of the *Acts Interpretation Act 1901***

To avoid doubt, the repeal of subsection 20(2B) of the *Australian Federal Police Act 1979* made by item 44 of Schedule 1 to this Act does not mean that subsection 33(3) of the *Acts Interpretation Act 1901* has no application in relation to a determination under subsection 20(2A) of the *Australian Federal Police Act 1979*.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that any instrument can be amended, varied or revoked etc. unless a contrary intention appears.

## **Table A**

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### **12 Repeal of section 39E of the *Australian Federal Police Act 1979* has no effect on the Superannuation Acts**

The repeal of section 39E of the *Australian Federal Police Act 1979* made by Schedule 1 to this Act does not affect the operation of the *Superannuation Act 1976* or the *Superannuation Act 1990* at, or at any time after, the commencing time in relation to any period of a person's appointment under the *Australian Federal Police Act 1979* before the commencing time.

### **13 Continuation of section 49 of the *Australian Federal Police Act 1979***

Section 49 of the *Australian Federal Police Act 1979* as in force immediately before the commencing time continues to apply at and after the commencing time to any person found guilty of a relevant disciplinary offence before the commencing time as if the amendments to that section made by Schedule 1 to this Act had not been made.

### **14 Continuation of section 51 of the *Australian Federal Police Act 1979***

The amendments of section 51 of the *Australian Federal Police Act 1979* made by Schedule 1 to this Act apply to persons charged with offences whether before or after the commencing time, but do not apply where persons' resignations or retirements from the Australian Federal Police took effect before the commencing time.

### **15 Continuation of section 52 of the *Australian Federal Police Act 1979***

The amendment of section 52 of the *Australian Federal Police Act 1979* made by Schedule 1 to this Act applies to proceedings started against a person whether before or after the commencing time, but does not apply where persons' resignations or retirements from the Australian Federal Police would, but for subsection (1) of that section as in force immediately before the commencing time, have taken effect before the commencing time.



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**Table A****16 Continuation of secrecy obligations**

Section 60A of the former Act continues to apply at and after the commencing time to a person who, immediately before the commencing time, was a person to whom that section applied as if the amendment to that section made by Schedule 1 to this Act had not been made.

**17 Certificates under section 68 of the *Australian Federal Police Act 1979***

Section 68 of the *Australian Federal Police Act 1979* as in force at and after the commencing time applies to a certificate given under that section at any time before the commencing time in the same way as it does to a certificate given under that section at or after the commencing time.

**18 References in statutory instruments to “staff member”**

If a statutory instrument was in force immediately before the commencing time, for the purpose of applying the instrument to any thing done or any circumstance existing after the commencing time, references in the instrument to a staff member of the Australian Federal Police are, unless the contrary intention appears, taken to be references to an AFP employee who is not a member.

**19 Regulations**

- (1) The Governor-General may make regulations prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) The following subitems do not, by implication, limit subitem (1).
- (3) Regulations may be made:
  - (a) in relation to the continuation of the processes relating to appointment, re-instatement, transfer, promotion, advancement, resignation, retirement or discipline under the former Act, and their effects under the later Act; and
  - (b) in relation to the continuation under the later Act of suspensions that were in force under the former Act immediately before the commencing time; and

## **Table A**

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- (c) in relation to:
    - (i) the review of decisions made under the former Act before the commencing time; and
    - (ii) the effects, under the later Act, of those reviews; and
    - (iii) the powers available to a person or body conducting such a review.
- (4) Regulations made under subitem (3) prevail over the former Act and the later Act, to the extent of any inconsistency.
- (5) Regulations made under this item within one year after the commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

### **34 Warrants or writs etc. may continue to be executed**

If, immediately before the commencing time, any warrant, writ, order, permission or other instrument (the *authority*) issued under a law of the Commonwealth, a State or a Territory could be executed by a person who was at that time a member, staff member or special member of the Australian Federal Police, the authority continues to be able to be executed at and after the commencing time by the person in his or her capacity as:

- (a) the Commissioner of the Australian Federal Police; or
- (b) a Deputy Commissioner of the Australian Federal Police; or
- (c) an AFP employee; or
- (d) a special member of the Australian Federal Police;

(all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

Note: A person who is a member or staff member of the Australian Federal Police immediately before the commencing time is taken to be engaged as an AFP employee. Similarly, a person who is a special member of the Australian Federal Police immediately before the commencing time is taken to be appointed as a special member. See item 2 of this Schedule.

### **35 Regulations dealing with matters of a transitional or saving nature**

- (1) The Governor-General may make regulations, not inconsistent with any other provision of this Schedule, prescribing matters of a transitional or saving nature in relation to the amendments made by Schedule 1 or 2.

**Table A**

- (2) Regulations made under this item within one year after the commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

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*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)*

**Schedule 2****418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

## **Table A**

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*Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001* (No. 24, 2001)

### **4 Application of amendments**

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Australian Federal Police and Other Legislation Amendment Act 2004*  
(No. 64, 2004)

### **4 Transitional and application**

- (1) Each APS transferee is taken to have been engaged, at the transfer time, under section 24 of the *Australian Federal Police Act 1979*.
- (2) Each transferred PSO is taken to have been declared, at the transfer time, to be a protective service officer under section 40EA of the amended AFP Act.
- (3) Paragraph 36(4A)(a) of the amended AFP Act (about entering an undertaking) does not apply to a transferred PSO.
- (4) Each transferred PSO who has made and subscribed an oath or affirmation under section 10 of the *Australian Protective Service Act 1987* is taken to have satisfied the requirement under paragraph 36(4A)(b) of the amended AFP Act.
- (5) In this section:

**AFP employee** has the same meaning as in the *Australian Federal Police Act 1979*.

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**Table A**

***amended AFP Act*** means the *Australian Federal Police Act 1979* as amended by Schedule 1 to this Act.

***APS transferee*** means a person who, immediately before the transfer time, was an employee assisting the Commissioner of the Australian Federal Police under subsection 5(2) of the *Australian Protective Service Act 1987*.

***transferred PSO*** means an APS transferee who, immediately before the transfer time, was a protective service officer within the meaning of the *Australian Protective Service Act 1987*.

***transfer time*** means the time specified by the Public Service Commissioner in a determination under paragraph 72(1)(b) of the *Public Service Act 1999* as the time at which the APS transferees become employees of the Australian Federal Police.