

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**AUSTRALIAN FEDERAL POLICE LEGISLATION AMENDMENT
BILL 1989**

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 4 May 1989

(*Attorney-General*)

A BILL

FOR

**An Act to amend the *Australian Federal Police Act 1979*
and the *Superannuation Act 1976***

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—INTRODUCTORY

Short title

- 5 1. This Act may be cited as the *Australian Federal Police Legislation Amendment Act 1989*.

Commencement

- 10 2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
 (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

MR

(3) If a provision referred to in subsection (2) does not commence under that subsection 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.

PART 2—AMENDMENTS OF THE AUSTRALIAN FEDERAL POLICE ACT 1979 5

Principal Act

3. In this Part, “Principal Act” means the *Australian Federal Police Act 1979*.

Interpretation 10

4. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“ ‘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 15

(b) any other body declared by the regulations to be an authority of that State or Territory for the purposes of this Act, being: 20

(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 25

(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;

‘eligible employee’ has the same meaning as in the Superannuation Act; 30

‘fixed term’, in relation to a fixed-term senior executive officer, means the term determined in respect of the officer under subsection 25A (1);

‘fixed-term senior executive officer’ means a person in respect of whom a determination is in force under subsection 25A (1); 35

‘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 40

ground of invalidity or of physical or mental incapacity to perform his or her duties; or

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

5 '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;

'resign' means resign from the Australian Federal Police;

'retire' means retire from the Australian Federal Police;

10 'Superannuation Act' means the *Superannuation Act 1976*;"

Functions

5. Section 8 of the Principal Act is amended:

- (a) by inserting before subsection (2) the following subsection:

15 "(1C) The Minister and the Administrator of an External Territory may enter into arrangements for the provision of police 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.";

- (b) by inserting after subsection (2) the following subsection:

20 "(2A) The Commissioner may enter into arrangements with:

(a) a Commissioner (however designated) of the police force of a State or Territory;

(b) the Chairperson of the National Crime Authority;

(c) a prescribed authority of the Commonwealth; or

25 (d) a prescribed authority of a State or Territory (other than the Australian Capital Territory);

to provide services for the protection of witnesses, and, where the arrangements have been entered into, the provision of those services shall be in accordance with the arrangements.";

- 30 (c) by omitting from subsection (3) the definition of "police services".

Delegation by Commissioner

6. Section 15 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) "38C, 38D or 38E" and substituting "38B";

35 (b) by omitting from paragraph (1) (b) "38G or 38H" and substituting "38A or 38G".

Commissioner and Deputy Commissioner

7. Section 17 of the Principal Act is amended by inserting after subsection (4) the following subsection:

40 "(4A) 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;
- (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.”.

Commissioned police officers

8. Section 25 of the Principal Act is amended by omitting from subsection (3) “(not being a commissioned police officer in respect of whom a redeployment declaration under section 38B is in force)”.

9. After section 25 of the Principal Act the following sections are inserted:

Fixed-term senior executive appointments

“25A. (1) Where a person is appointed under section 25 to a position in a prescribed rank, the person making the appointment may determine, in writing, the term of the appointment.

“(2) A determination shall not specify a term exceeding 5 years or extending beyond the day on which the appointee will turn 60.

End of fixed-term senior executive appointments

“25B. (1) At the time of appointing a fixed-term senior executive officer, the person making the appointment may determine, in writing, that, subject to any conditions specified in the determination, if the officer is retired under paragraph (2) (b) before the end of the fixed term, the officer is entitled to the compensation specified in, or worked out under, the determination.

“(2) The appointment of a fixed-term senior executive officer ends, and the officer shall be taken to be retired:

- (a) when the fixed term ends; or
- (b) if, before the end of the fixed term, the person who made the appointment determines, in writing, that the appointment ends on a day specified in the determination, being a day earlier than the day on which the fixed term ends, but not earlier than the day on which the determination was made—on the specified day.

“(3) A person shall not make a determination under subsection (2) only because:

- (a) of an act or omission of the officer in respect of which a charge has been or could be laid against the officer under the Australian Federal Police (Discipline) Regulations; or

(b) a court has convicted the officer of a criminal offence within the meaning of those Regulations, or has found the officer guilty of such an offence without recording a conviction.

5 “(4) A fixed-term senior executive officer who is retired under subsection (2) is eligible to be reappointed to a position in the Australian Federal Police, as a fixed-term senior executive officer or otherwise.

“(5) Sections 38A to 38G (inclusive) do not apply to fixed-term senior executive officers.

Superannuation for fixed-term senior executive officers

10 “25C. (1) At the time of appointing a fixed-term senior executive officer who was not an eligible employee or a pensioner immediately before being appointed, the person making the appointment may determine, in writing, the superannuation benefits, or benefits in the nature of superannuation benefits, to be provided to the officer.

15 “(2) Without limiting the generality of subsection (1), a determination may provide that the Superannuation Act applies to the fixed-term senior executive officer as if the officer had become an eligible employee on a day specified in the determination, which may be a day not more than 12 months earlier than the day on which the determination is made, but not earlier than the day on which the officer’s appointment took effect.

20 “(3) Despite anything in the Superannuation Act or any other Act, the Superannuation Act:

(a) applies to a fixed-term senior executive officer referred to in subsection (1) if, and only if, a determination under this section expressly applies that Act to the officer; and

(b) does not apply to the officer except as provided in that determination.

“(4) A determination shall not be made otherwise than in accordance with arrangements approved by the Minister for Finance.”.

Non-commissioned police officers

30 **10.** Section 26 of the Principal Act is amended by omitting from subsection (2) “(not being a non-commissioned police officer in respect of whom a redeployment declaration under section 38B is in force)”.

Interpretation of Part V

11. Section 29 of the Principal Act is amended:

35 (a) by omitting from subsection (1) the definitions of “declared member” and “Review Committee”;

(b) by inserting the following definitions:

40 “‘Appeal Committee’ means a Redeployment and Retirement Appeal Committee established under section 22 of the Merit Protection Act;

‘Merit Protection Act’ means the *Merit Protection (Australian Government Employees) Act 1984* as modified by regulation 4 of the Merit Protection (Australian Federal Police) Regulations;

‘redeploy’ means appoint to a position in a lower rank under subsection 38A (1); 5

‘redeployment notice’ means a notice under paragraph 38A (1) (a);

‘retirement notice’ means a notice under paragraph 38A (1) (b) or section 38B;”.

12. Sections 38 to 38H (inclusive) of the Principal Act are repealed and the following sections are substituted: 10

Efficient and economical use of members

“38. The Commissioner shall ensure, to the greatest extent practicable, that the Australian Federal Police operates so as to make efficient and economical use of its members’ services. 15

Redeployment or retirement of superfluous members

“38A. (1) If, after taking the steps specified in subsection (2), the Commissioner is satisfied that the services of a member of a particular rank cannot reasonably be used in the performance of the duties of a particular position in that rank, the Commissioner may, by giving written notice to the member: 20

- (a) appoint the member to a specified position in a lower rank; or
- (b) retire the member.

“(2) For the purposes of subsection (1), the Commissioner shall take reasonable steps to identify positions in the member’s rank: 25

- (a) to which the member could be transferred, or whose duties the member could be directed to carry out; and
- (b) whose duties the member could, in the opinion of the Commissioner, carry out efficiently.

“(3) When determining, for the purposes of paragraph (2) (b), whether a member could carry out the duties of a position efficiently, the Commissioner shall have regard to: 30

- (a) the standard of the member’s work in any positions held by the member in the same rank assessed in the light of any relevant appraisal of the member’s work; 35
- (b) any experience the member has that is relevant to carrying out those duties;
- (c) the member’s educational qualifications, and training;
- (d) any of the member’s personal qualities that are relevant to carrying out those duties; 40
- (e) any physical or mental incapacity of the member that is relevant to his or her capacity to carry out those duties; and

(f) any other matter the Commissioner considers relevant.

“(4) When deciding whether to redeploy or retire a member, the Commissioner shall have regard to:

- 5 (a) the need to ensure the efficiency of the Australian Federal Police;
- (b) the period within which the member can reasonably be expected to retire under section 39 or under regulations under paragraph 40 (1) (d); and
- (c) any other matter the Commissioner considers relevant.

Retirement on grounds of invalidity

10 “38B. Where the Commissioner is satisfied that a member should be retired because of physical or mental incapacity, the Commissioner may retire the member by giving written notice to the member.

Consent to redeployment or retirement

15 “38C. Before being redeployed, or retired under subsection 38A (1) or section 38B, a member may, by giving written notice to the Commissioner, consent to being redeployed or retired.

Time when redeployment or retirement notice takes effect

20 “38D. (1) If a member has consented to being redeployed, the member’s appointment to the position specified in the redeployment notice takes effect on the day specified for the purpose in the notice, being a day not earlier than the day on which the notice is given to the member.

25 “(2) If a member has consented to being retired under subsection 38A (1) or section 38B, the member’s retirement takes effect on the day specified for the purpose in the retirement notice, being a day not earlier than the day on which the notice is given to the member.

“38E. (1) If a member has not consented to being redeployed, or retired under subsection 38A (1) or section 38B:

- 30 (a) a redeployment notice or retirement notice given to the member shall inform the member to the effect that the member is entitled to appeal to an Appeal Committee, within the period prescribed for the purposes of subsection 38E (1), against the Commissioner’s decision to appoint the member to the position specified in the notice, or to retire the member; and
- 35 (b) subject to the outcome of any appeal by the member under that subsection, the member’s appointment to that position, or retirement, as the case may be, takes effect on a day specified in the notice, not being a day before the end of that period.

Appeals against redeployment or retirement

40 “38E. (1) A member who has been redeployed, or retired under subsection 38A (1) or section 38B without the member’s consent may, within the prescribed period, appeal to an Appeal Committee against the Commissioner’s decision to redeploy or retire the member.

“(2) After hearing an appeal against a decision to redeploy or retire a member, an Appeal Committee may:

- (a) recommend that the Commissioner confirm the decision; or
- (b) recommend that the Commissioner revoke the decision.

“(3) An Appeal Committee shall state its reasons, in writing, for making a particular recommendation, and shall give a copy of the statement to each party to the appeal within 28 days after making the recommendation. 5

“(4) Despite section 25D of the *Acts Interpretation Act 1901*, if an Appeal Committee thinks that any information of a medical or psychiatric nature, that would otherwise be included in the copy of the statement to be given to a member, should not be given to the member because its disclosure to the member might be prejudicial to the member’s physical or mental health or well-being: 10

- (a) the information shall be excluded from the copy of the statement given to the member; and 15
- (b) if the member nominates a medical practitioner to receive the information—the information shall be given to the medical practitioner.

“(5) Where information is excluded from a copy of a statement given to a member, the copy shall be accompanied by a document: 20

- (a) stating that information has been excluded from the copy of the statement given to the member; and
- (b) setting out the terms of subsection (4).

Commissioner’s final decision

“38F. Where an Appeal Committee has made a recommendation under subsection 38E (2) about a decision to redeploy or retire a member, the Commissioner shall, after considering the Committee’s recommendation and its reasons for making it, confirm or revoke the decision. 25

Special benefits for certain retiring members

“38G. (1) The Commissioner may give a member written notice that, if the member retires within the period specified in the notice, the member will be entitled to a specified benefit determined under section 30. 30

“(2) A member who has been given a notice may retire within the period specified in the notice even if the member is not eligible to retire under regulations under paragraph 40 (1) (d). 35

- “(3) If the member retires within that period, he or she:
 - (a) is entitled to the benefit specified in the notice; and
 - (b) shall be taken, for all purposes, to have been compulsorily retired.”.

Repeal of section 39A

13. Section 39A of the Principal Act is repealed. 40

Regulations related to service

14. Section 40 of the Principal Act is amended by inserting after paragraph (1) (c) the following paragraph:

5 “(ca) where a scale of rates of salary applies to a position or positions within a particular rank—the advancement, or accelerated advancement, within that rank, of a member occupying that position or one of those positions;”.

15. After Part V of the Principal Act the following Part is inserted:

10 **“PART VA—LOSS OF CERTAIN SUPERANNUATION RIGHTS AND BENEFITS**

“Division 1—Introductory

Definitions

“41. In this Part:

15 ‘AGS’ means the Australian Government Solicitor;

‘appropriate authority’ means:

(a) in relation to an offence prosecuted by the DPP—the DPP; and

(b) in relation to an offence prosecuted by anyone else—the AGS;

20 ‘appropriate court’, in relation to an application for a superannuation order in respect of a person convicted of an offence, means the court before which the person was convicted of the offence;

‘benefit’ means any benefit payable under a superannuation scheme, including a lump sum payment and a pension;

25 ‘commencing day’ means the day on which this Part commences;

‘Complaints Act’ means the *Complaints (Australian Federal Police) Act 1981*;

30 ‘corruption offence’ means an offence committed, whether before, on or after the commencing day, by a person who was a 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 a member;

(b) that, having regard to the powers and duties of a member, was committed for a purpose that involved corruption; or

35 (c) that was committed for the purpose of perverting, or attempting to pervert, the course of justice;

‘Disciplinary Tribunal’ has the same meaning as in the Complaints Act;

‘DPP’ means the Director of Public Prosecutions;

‘Federal Court’ means the Federal Court of Australia;

40 ‘offence’ means a common law offence, or an offence against a law of the Commonwealth, or of a State or Territory;

'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;

'sentence' includes a suspended sentence;

'superannuation authority' means:

(a) in relation to the superannuation scheme established by the Superannuation Act—the Commissioner for Superannuation; 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;

'superannuation scheme' means a superannuation scheme under which employer contributions or benefits are paid or payable, or have at any time been paid, by the Commonwealth in respect of members of the Australian Federal Police who are members of the scheme.

Meaning of 'conviction' of offence

"42. In this Part, a reference to a conviction of an offence is a reference to a conviction of the offence, whether summarily or on indictment, on or after the commencing day.

"Division 2—Loss of superannuation: corruption offences

Notice of charge etc.

"43. (1) Where:

(a) a person who is or was (whether before, on or after the commencing day) a member 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.

Authority to apply for superannuation order

"44. Where:

(a) a person who is or was (whether before, on or after the commencing day) a member is convicted of an offence; and

(b) the Minister is of the opinion that the offence is a corruption offence;

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

Application for superannuation order

“45. Where:

- 10 (a) an appropriate authority is authorised to apply for a superannuation order in respect of a person who is convicted of an offence; and
(b) the person is sentenced in respect of the offence to imprisonment for life or for a term longer than 12 months;

the appropriate authority shall make that application to the appropriate court.

Superannuation orders

15 “46. (1) 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:

- 20 (a) the person was convicted of a corruption offence; and
(b) this Part applies in relation to the rights of, and benefits payable to, the person under any superannuation scheme.

25 “(2) An appropriate court may, in determining an application for a superannuation order in respect of a person, have regard to the transcript of any proceedings against the person for the offence to which the application relates.

30 “(3) 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 production of a document under the seal of the court, being a document in which the finding appears.

“(4) A superannuation order made in relation to a person does not take effect until:

- 35 (a) the end of such period (if any) as is 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.

40 “(5) A superannuation order made in relation to a person shall be taken to have been revoked if:

- (a) the person’s conviction is quashed; or

- (b) the person's sentence is reduced or otherwise changed so that the person is not sentenced to imprisonment, or is sentenced to imprisonment for a term of 12 months or less.

Effect of superannuation order

"47. (1) Where a court makes a superannuation order in respect of a person: 5

- (a) all rights of, and benefits payable to, the person under any superannuation scheme of which he or she is a member cease, or cease to be payable, on the day on which the order takes effect and the person ceases to be a member of that scheme on that day; and 10
- (b) the Commonwealth is not liable to pay any employer contribution or benefit under the scheme in respect of the person on or after that day.

"(2) Despite the Superannuation Act, or any other Act or any agreement, where subsection (1) applies to a person who is a member of the Australian Federal Police, 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 under the scheme) plus the amount of interest on those contributions accrued under the scheme before that day. 15 20

"(3) Despite the Superannuation Act, or any other Act or any agreement, where subsection (1) applies to a person who:

- (a) was a member of the Australian Federal Police at the time the relevant corruption offence was committed but ceased to be such a member before being charged with that offence; and 25
- (b) 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: 30

$$AC - AR$$

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 before the day on which he or she ceases to be a member of the scheme; and 35

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**. 40

“Division 3—Loss of superannuation: relevant disciplinary offences

Appeals to Federal Court on questions of law and fact

“48. (1) A member who was appointed before the commencing 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.

“(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.

Members found guilty of relevant disciplinary offences

“49. (1) This section applies where a member is found guilty of a relevant disciplinary offence and dismissed from the Australian Federal Police as a penalty for that offence and:

- (a) the member does not appeal, in relation to the finding or penalty, to the Federal Court under the Complaints Act, or (where the member is entitled to do so) under section 48 of this Act; or
- (b) the Federal Court dismisses such an appeal by the member.

“(2) Despite the Superannuation Act, or any other Act or any agreement, where this section applies to a person:

- (a) all rights of, and benefits payable to, the person under any superannuation scheme of which he or she is a member cease, or cease to be payable, on the day on which his or her dismissal takes effect and the person ceases to be a member of that scheme on that day; 5
- (b) the Commonwealth is not liable to pay any employer contributions or benefit under the scheme in respect of the person on or after that day; and
- (c) 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 under the scheme) plus the amount of interest on those contributions accrued under the scheme before that day. 10

“Division 4—Miscellaneous

Commonwealth employer contributions 15

“50. Where:

- (a) section 47 or 49 applies to a person; and
- (b) any employer contributions or benefits made or payable by the Commonwealth in respect of the person under the relevant superannuation scheme are held under the scheme on the day on which the person ceases to be a member of the scheme under section 47 or 49; 20

an amount equal to the sum of those contributions or benefits, (together with the amount of interest on those contributions or benefits accrued under the scheme before that day) is payable to the Commonwealth by the superannuation scheme and such of those contributions and benefits as are vested in the person cease to be so vested on that day. 25

Resignation or retirement: members charged with corruption offences

“51. (1) Where:

- (a) a member is charged with an offence; 30
- (b) the member, whether before or after the day on which he or she is charged, gives notice of intention to resign, or retires or is retired; and
- (c) the member’s resignation or retirement takes effect on or after the day on which he or she is charged; 35

then, if the Commissioner believes on reasonable grounds that the offence is a corruption offence, the Commissioner shall notify the member’s superannuation authority in writing that the member’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 member concerned. 40

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

- 5 (a) the member is entitled, on the day when his or her resignation or retirement takes effect, to receive payment, if the member elects to do so, of an amount equal to the sum of the employee contributions paid under the scheme by the member (being contributions held under the scheme) plus the amount of interest on those contributions accrued under the scheme before that day; and
- 10 (b) the member is not entitled to exercise any other right, or to receive any other benefit, under the scheme unless:
- 15 (i) the member is acquitted of the offence or the charge is withdrawn or otherwise disposed of without the conviction of the person;
- (ii) the member is convicted of the offence but is not sentenced to imprisonment, or is sentenced to imprisonment for 12 months or less;
- 20 (iii) the Minister refuses to authorise the relevant approved authority to apply for a superannuation order in respect of the member;
- (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.

25 “(4) Where anything mentioned in paragraph (3) (b) happens, the Commissioner shall, as soon as practicable, notify the relevant superannuation authority accordingly.

Resignation or retirement: members charged with relevant disciplinary offences

30 “52. (1) Subject to this section, but despite any other provision of this Act or the regulations, where:

- 35 (a) proceedings are started against a member under the Australian Federal Police (Discipline) Regulations in respect of a breach of a relevant disciplinary offence;
- (b) the member, whether before or after those proceedings are started, gives notice of intention to resign, or retires or is retired; and
- (c) the member’s resignation or retirement would, but for this subsection, take effect on or after the day on which those proceedings are started;

40 the resignation or retirement does not have any effect and the member shall be taken to have been suspended without pay on the day on which the resignation or retirement would have taken effect but for this subsection.

“(2) Where subsection (1) applies in relation to a member, the member shall 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 day

on which the resignation or retirement would have taken effect but for that subsection.

“(3) Where subsection (1) applies in relation to a member and:

- (a) the proceedings are finally determined in favour of the member, or are discontinued; or
- (b) the member 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 member shall be taken to have resigned or retired, as the case may be, on the day on which his or her resignation or retirement would have taken effect but for subsection (1).

End of fixed-term senior executive appointments: members charged with relevant disciplinary offences

“53. (1) Subject to this section, but despite any other provision of this Act or the regulations, where:

- (a) proceedings are started against a fixed-term senior executive officer under the Australian Federal Police (Discipline) Regulations in respect of a breach of a relevant disciplinary offence; and
- (b) the officer’s fixed term would, but for this subsection, end on or after the day on which those proceedings are started;

that fixed term shall be taken not to end on the day on which it would have ended but for this subsection, but the officer shall be taken to have been suspended without pay on that day.

“(2) Where subsection (1) applies in relation to a fixed-term senior executive officer, the officer shall 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 day on which the fixed term would have ended but for that subsection.

“(3) Where subsection (1) applies in relation to a fixed-term senior executive officer and:

- (a) the proceedings are finally determined in favour of the officer; or
- (b) the officer is, on the final determination of the proceedings, found guilty of the relevant disciplinary offence but is not dismissed from the Australian Federal Police;

the officer’s fixed term shall be taken to end or have ended on the day on which it would have ended but for subsection (1).

Amounts payable under section 47, 49 or 51

“54. (1) An amount payable to a person under subsection 47 (2), 47 (3), 49 (2) or 51 (3) is payable:

- (a) if the relevant superannuation scheme is that established by the Superannuation Act—by the Commonwealth; and
- (b) in any other case—by the relevant superannuation authority out of the superannuation fund established under the relevant superannuation scheme.

“(2) Where an amount mentioned in subsection (1) is payable by the Commonwealth, the amount is payable out of the Superannuation Fund established under the Superannuation Act or, if an amount equal to the sum of the employee contributions paid by the person has been paid into the Consolidated Revenue Fund under that Act, out of the Consolidated Revenue Fund, which is appropriated accordingly.

Possible superannuation order not to be taken into account in sentencing

“55. 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.

Constitution of appropriate courts

“56. Where an application for a superannuation 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 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.”.

Regulations

16. Section 70 of the Principal Act is amended:

- (a) by omitting from paragraph (aa) “and”;
- (b) by adding at the end the following paragraphs:

“(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 relation to a prescribed authority of the Commonwealth, where rendering those services is a function of the Australian Federal Police.”.

PART 3—AMENDMENT OF THE SUPERANNUATION ACT 1976

Principal Act

17. In this Part, “Principal Act” means the *Superannuation Act 1976*².

Early retirement

18. Section 58 of the Principal Act is amended by inserting after paragraph (3) (b) the following paragraph:

“(ba) the person retires under section 38G of the *Australian Federal Police Act 1979*.”.

NOTES

1. No. 58, 1979, as amended. For previous amendments, see No. 155, 1979; No. 69, 1980; No. 22, 1981; No. 80, 1982; Nos. 39, 91 and 117, 1983; No. 117, 1984; No. 121, 1985; No. 35, 1986; and No. 38, 1988.
2. No. 31, 1976, as amended. For previous amendments, see Nos. 37 and 51, 1976; No. 80, 1977; Nos. 17, 134, 169 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 92, 1981; No. 92, 1984; No. 80, 1986; Nos. 93, 151 and 153, 1986; and No. 38, 1988.

