

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

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## OUTLINE

1. The Australian Federal Police Amendment Bill 1986, which amends the Australian Federal Police Act 1979 (the Act) has several purposes, the most significant of which are:

- (a) to align the powers of AFP members with the functions of the AFP as presently expressed in the Act;
- (b) to overcome operational difficulties experienced by the AFP in relation to the use of police dogs;
- (c) to overcome difficulties associated with the secondment of AFP members to other bodies and the granting of special leave to members;
- (d) to permit the making of regulations in relation to:
  - . the transfer of the AFP Appeals Board to the Merit Protection and Review Agency established under the Merit Protection (Australian Government Employees) Act 1984; and
  - . the disposal of unclaimed property held by the AFP.

2. The Bill has no financial implications.



Clause 1: Short title

3. Formal

Clause 2: Commencement

4. The commencement provisions are generally self-explanatory. Sub-clause 2(4) refers to the correction in sub-clause 9(2) of a wrong cross-reference in section 39F of the Act. The reason for the retrospective provision of sub-clause 2(4) is to ensure that any appeal arising since the commencement of section 39F should not be disadvantaged by the wrong cross-reference in that section.

Clause 3: Powers and duties of members

5. Amends section 9 of the Act, which sets out the powers and duties of the Commissioner, Deputy Commissioners and members of the AFP. These powers are relied upon in carrying out the functions of the AFP set out in section 8.

6. Sub-paragraph 8(1)(b)(iii) of the Act refers to 'the safeguarding of Commonwealth interests'. Under this head the AFP performs protective duties outside the Australian Capital Territory and beyond the limits of Commonwealth property in relation to persons from time to time considered under threat, including Ministers of the Crown, judges and witnesses. Section 9 is silent, however, as to the powers available to a member of the AFP in relation to this function. Outside the Australian Capital Territory and beyond Commonwealth property an assault or threatened assault on a protected person would be an offence against State, not Commonwealth, law. It follows that the powers of a member of the AFP in such circumstances are uncertain.

7. The proposed amendment to section 9 would extend the powers already held by the AFP in relation to other functions to 'the safeguarding of Commonwealth interests'.

Clause 4: Immunity from State and Territory laws in relation to entry etc. of police dogs on premises etc.

8. Inserts section 12A into the Act to provide immunity, in relation to police dogs, from certain State and Territory laws.

9. The proposed section 12A provides that a police dog under the control of a police dog handler may lawfully be in a place where it is lawful for the handler to be in his capacity as a member of the AFP, and that no liability should attach to the Commonwealth or to a member of the AFP by reason only of the dog's presence in that place. Provision is also made that a certificate in writing signed by the Commissioner to the effect that a specified member of the AFP is a police dog handler or that a specified dog is a police dog shall be prima facie evidence of that fact.

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10. The section is intended to allow police dogs under the control of handlers to enter places such as food preparation and distribution areas, national parks and reserves, hospitals, aircraft or ships, for a number of purposes such as searches for missing persons in national parks, bomb searches of supermarkets or aircraft, and drug detection.

Clause 5: Interpretation of Part V

11. The proposed amendment to section 29 of the Act provides a definition of 'Review Committee' in substitution for the present definition of 'Appeals Board'. The effect of the new definition is to permit the transfer of the administration of the present Appeals Board from the Department of the Special Minister of State to the Merit Protection and Review Agency established under the Merit Protection (Australian Government Employees) Act 1984. The definition of 'Review Committee' is framed in such a manner as to permit the transfer without changing the character of the present Appeals Board, the criteria upon which appeals are assessed or the rights of members to appeal.

Clause 6: Secondment to other services etc.

12. Amends section 33 of Act to overcome difficulties which have arisen from uncertainty as to whether a seconded member retains his membership of the AFP, and thus his powers and duties as a constable; from uncertainty as to whether a seconded member remains subject to the disciplinary provisions normally applicable to AFP members; and from the practical effect of sub-sections 33(4) and (5) which render secondment virtually impossible.

13. The proposed amendment provides:

- . for the termination of a secondment by the Minister or the Commissioner after consultation with the organisation concerned;
- . that the terms and conditions of service of a member on secondment shall be determined by the Minister but shall not be less favourable than the terms and conditions of service of members of the AFP; and
- . that a member of the AFP on secondment retains the same rights, powers and immunities, and remains subject to the same obligations and liabilities in relation to discipline as are applicable to a member of the AFP. This, however, does not affect any rights, powers, immunities, obligations or liabilities in relation to discipline applicable to the office or position to which the member has been seconded.

Clause 7: Special leave of absence

14. Amends section 34 of the Act which provides that the Commissioner may grant a member of the AFP leave of absence for certain purposes. It is unclear whether a member granted leave remains subject to AFP disciplinary procedures.

15. The proposed amendment provides:

- . for the termination of leave by the Commissioner; and
- . (subject to one exception referred to at paragraph 16 below) that a member of the AFP on leave remains subject to the same obligations and liabilities in relation to discipline as are applicable to a member of the AFP.

16. The proposed amendment provides an exception in the case of a member granted leave to engage in service with an association to which regulations made under paragraph 40(1)(a) of the Act apply - the Australian Federal Police Association. Such a member is not subject to normal AFP disciplinary procedures in relation to actions taken by that member that are reasonably required for the proper performance of the functions of an officer of that association. However, the exception does not relieve the member on leave of liability or obligation arising under the Complaints (Australian Federal Police) Act 1981.

Clause 8: Re-appointment after secondment or special leave of absence

17. Amends section 35 of the Act so that it is consistent with the amendments to section 33 made under clause 6 above.

Clause 9: Appeals

Clause 10: Powers of Commissioner on determination of appeals

Clause 11: Certain information not to be included in statements of reasons, etc.

18. Amend section 38F, 38G and 39A of the Act by substituting the name "Review Committee" for "Appeals Board", consequent upon the amendment introduced by clause 5 above. Sub-clause 9(2) corrects a wrong cross-reference in section 38F of the Act.

Clause 12: Regulations may provide for certain other terms and conditions.

19. Amends section 40 of the Act by omitting paragraph (1)(ca). This paragraph will be superfluous following the amendment introduced by clause 5 above.

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Clause 13: Regulations

20. Amends section 70 of the Act to permit the making of regulations for the disposal of unclaimed property which has lawfully come into the possession of a member of the AFP. Such disposal is already permitted in the Australian Capital Territory under the provisions of the Police Ordinance 1927.

Clause 14: Appointment of members of existing Police Forces

Clause 15: Promotion appeals

21. Drafting corrections. These clauses amend sections 72 and 78 of the Act to take account of an amendment to section 40 made by the Australian Federal Police Amendment Act 1985.