

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN FEDERAL POLICE LEGISLATION AMENDMENT

BILL (No. 2) 1989

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Honourable Lionel Bowen MP  
Deputy Prime Minister and Attorney-General)

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OUTLINE

The Australian Federal Police Legislation Amendment Bill (No. 2) 1989 amends the Australian Federal Police Act 1979, the Complaints (Australian Federal Police) Act 1981, the Administrative Decisions (Judicial Review) Act 1977, the Industrial Relations Act 1988, the Merit Protection (Australian Government Employees) Act 1984 and the Public Service Act 1922. The principal amendments to the Australian Federal Police Act are:

- (a) the creation of a unified workforce insofar as is practicable by providing for the appointment of staff members under the Australian Federal Police Act rather than the Public Service Act 1922;
- (b) providing the Commissioner with Chief Executive powers in relation to the composition of the Australian Federal Police and the terms and conditions of service of members and staff members;
- (c) the replacement of tenure with a fixed term appointment system for all members and staff members of the Australian Federal Police; and
- (d) the entitlement to an adjustment payment which recognises the fact that the person's appointment is for a fixed term.

The Bill also provides for the terms and conditions of service of staff members under the Australian Federal Police Act and enables regulations to be made which apply to staff members.

The Bill creates a unified workforce under the Australian Federal Police Act by providing that the Australian Federal Police is constituted by the members and staff members employed, as far as practicable, on similar terms and conditions. The Bill, however, necessarily maintains the distinction between members and staff members throughout so that there is no doubt or confusion as to the exercising of police powers, duties and responsibilities. Differences in the Bill between staff members and members relate to the fact that it is the members who have police powers, duties and responsibilities.

The Bill is part of a number of reforms to the Australian Federal Police over the last 2 years to modernise the legislation which governs the Australian Federal Police so that the Commonwealth's premier law enforcement agency can successfully undertake its investigative role in relation to the fight against drug trafficking, organised crime and fraud against the Commonwealth without diminishing its public accountability.

The Bill amends the Complaints (Australian Federal Police) Act 1981 so that appeals from disciplinary proceedings before the Commissioner, in relation to staff members, are to the Federal Police Disciplinary Tribunal.

The Bill amends the Superannuation Act 1976 so that it applies to staff members and repeals paragraph 58(3)(ba) as a consequence of the introduction of fixed term appointments.

The Bill also makes consequential amendments to the Administrative Decisions (Judicial Review) Act 1977, Crimes (Superannuation Benefits) Act 1989, Industrial Relations Act 1988, Merit Protection (Australian Government Employees) Act 1984 and Public Service Act 1922.

FINANCIAL IMPACT STATEMENT

With the introduction of the new fixed term appointment employment system and unified workforce for the Australian Federal Police it can be confidently expected that the flexible deployment avenues which will then be opened up will substantially reduce the AFP's present high invalidity costs. Future cost benefits will accrue from the introduction of these proposals and the non requirement for retrenchment provisions in the AFP Act.

The Australian Federal Police Adjustment Scheme (AFPAS) Payment will be in the order of \$5.4M (in current dollar terms) in the year 2020, based on an AFPAS payment of 12 1/2% of a member's or a staff member's accumulated salary. This payment will be taxed as an Eligible Termination Payment. The first significant payment of AFPAS (estimated at \$0.8M) will occur in 1991-92.

ABBREVIATIONS

The following abbreviations are used in this Explanatory Memorandum:

AFP: Australian Federal Police

AFP Act: Australian Federal Police Act 1979

Complaints Act: Complaints (Australian Federal Police) Act 1981

## NOTES ON CLAUSES

### **PART 1 - INTRODUCTORY**

#### **Clauses 1 and 2 - Short title and commencement**

The first two clauses of the Bill provide for the short title and the commencement of the legislation. Clauses 1 and 2 come into operation on the day on which the Bill receives the Royal Assent while the remaining provisions of the Bill (other than clauses 11, 38 and 69) come into operation on a day or days fixed by proclamation. Subclause 2(2) provides that clause 11 comes operation on 1 July 1991. Subclause 2(3) provides that clauses 38 and 69 commence on 1 January 1992. If a provision is not proclaimed to come into operation within 6 months of the Bill receiving the Royal Assent, the provision commences operation on the first day after the end of that period.

### **PART 2 - AMENDMENTS OF THE AUSTRALIAN FEDERAL POLICE ACT 1979**

#### **Division 1 - Introductory**

##### **Clauses 3 and 4 - Principal Act and Definitions**

These clauses are definitional.

#### **Division 2 - Amendments**

##### **Clause 5 - Interpretation**

This clause is definitional.

##### **Clause 6 - Establishment**

This clause amends section 6 of the AFP Act so that subsection 6(1) provides that there is established the Australian Federal Police, which shall be constituted by the members mentioned in subsection 6(2) and the staff members mentioned in subsection 6(3).

Proposed subsection 6(2) provides that the members of the AFP are:

- (a) the Commissioner of Police;
- (b) a Deputy Commissioner or the Deputy Commissioners of Police;
- (c) senior executive commissioned police officers;
- (d) other commissioned police officers; and
- (e) non-commissioned police officers.

Proposed subsection 6(3) provides that the staff members of the AFP are senior executive officers, and other officers who are not police officers.

The primary differences between members and staff members are that members have police powers, duties and functions and are subject to the Complaints Act.

#### **Clause 7 - Functions**

This clause amends section 8 by inserting a new paragraph 8(1)(aa) which provides that the provision of police services in relation to the Jervis Bay Territory is one of the AFP's functions. The effect of this amendment is to separate the provision of police services in relation to Jervis Bay from the provision of police services in relation to the Australian Capital Territory.

#### **Clause 8 - Powers and duties of members**

This clause amends section 9 by inserting a new paragraph 9(1)(ba) so that, in addition to any other powers and duties, a member has, 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 of the Territory.

#### **Clause 9 - Immunities from certain State and Territory laws**

This clause amends section 12 by inserting references to staff members.

#### **Clause 10 - Delegation by Commissioner**

This clause amends paragraph 15(1)(c) by inserting a reference to a staff member.

#### **Clause 11**

This clause repeals section 15, as amended by clause 10, and substitutes a proposed section 15. Proposed section 15 provides that the Commissioner may delegate to another member, or to a staff member, all or any of the Commissioner's powers, functions or duties under the AFP Act.

#### **Clause 12 - Repeal of section 16**

This clause repeals section 16, which provides that the staff, other than members of the AFP, required for the purposes of the AFP Act, must be persons appointed or employed under the Public Service Act 1922. Staff members and temporary employees will, after the commencement of the Bill, be appointed or employed under the AFP Act.

#### **Clause 13 - Heading to Part IV**

This clause amends the heading to Part IV by omitting 'OF MEMBERS'



#### **Clause 14 - Commissioner and Deputy Commissioner**

This clause amends section 17 of the AFP Act which deals with the Commissioner and Deputy Commissioners. The amendments only relate to the Deputy Commissioners.

Paragraph 14(a) omits subsection 17(3) and substitutes new subsections (3) and (3A). Proposed subsection 17(3) provides that a Deputy Commissioner holds office for a fixed term, not exceeding 5 years. A Deputy Commissioner is eligible for re-appointment.

Proposed subsection 17(3A) provides that where there are consecutive appointments, the person's service is to be taken to be continuous. This is to enable certain benefits such as sick leave and long service leave to continue to accrue.

Paragraph 14(b) amends subsection 17(4) so that it only applies to the Commissioner.

Paragraph 14(c) inserts proposed subsection 17(4A) which provides that a Deputy Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by the AFP Act as are determined by the Commissioner. This is consistent with proposed section 30.

#### **Clause 15 - Remuneration and allowances**

Paragraph 15(a) amends subsections 20(1) and (2) by omitting the references to Deputy Commissioner.

Paragraph 15(b) inserts proposed subsection 20(2A) and (2B). Proposed subsection 20(2A) provides that the Commissioner determines the remuneration and allowances for a Deputy Commissioner. Proposed subsection 20(2B) provides that the Commissioner may amend or revoke a determination under subsection 20(2A). This is consistent with proposed section 30.

#### **Clause 16 - Heading to Division 2 of Part IV**

This clause omits the heading to Division 2 of Part IV and substitutes a new heading which includes a reference to staff members.

#### **Clause 17 - Ranks and Levels**

Paragraph 17(a) amends section 23 by inserting a reference to members in subsection 23(1) so that it only applies to members.

Paragraph 17(b) adds proposed subsections 23(2) and (3) which provide that there are to be such levels of staff members as the Commissioner determines and requires the publishing of the determination.

#### **Clause 18**

This clause repeals section 24 and substitutes a new section 24. Proposed section 24 provides that the Commissioner may determine the number of members who may be appointed to each rank of the AFP and the number of staff members who may be

appointed to each level of the AFP. This enables the Commissioner to determine the appropriate proportion of members and staff members in the AFP.

#### Clause 19

This clause repeals section 25A and substitutes proposed section 25A which provides that a person appointed under section 25 to a position in a prescribed rank is a senior executive commissioned police officer.

#### Clause 20 - Repeal of sections 25B and 25C

This clause repeals sections 25B and 25C which related to fixed-term senior executive appointments. These provisions are unnecessary now that all appointments must be for a fixed term.

#### Clause 21

This clause inserts proposed sections 26B, 26C, 26D and 26E.

#### Proposed section 26B - staff members

This proposed section provides that subject to the AFP Act, the Commissioner may:

- (a) appoint staff members (that is, senior executive service officers and officers) to a level that the person is, under the regulations, competent and qualified to hold;
- (b) promote a staff member to a position of staff member at a higher level that the person is, under the regulations, competent and qualified to hold.

Transfers and temporary performance of the whole or part of the duties of a position of staff member are to be dealt with in the regulations (see clause 40).

#### Proposed section 26C - Part-time positions

Subsection 26C(1) provides that, subject to section 26C, the Commissioner may declare a position of member or staff member to be a part-time position.

Subsection 26C(2) prohibits the Commissioner from making, amending or revoking a declaration without the consent of the person occupying the position.

#### Proposed section 26D - Term appointments

Subsection 26D(1) is the provision which implements the fixed term appointment system of service for members and staff members. It provides that a person appointed under section 25, 26 or 26B holds office for the term specified in his or her appointment. The term must not be more than the prescribed period.

Subsection 26D(2) provides that a person must not be appointed for a term that extends beyond the day on which the person

will reach the relevant maximum age, which is 60 years in relation to a member and 65 years in relation to a staff member (see clause 5).

Subsection 26D(3) provides that a person appointed under section 25, 26 or 26B holds office until his or her appointment ends. Subject to proposed section 31, the person is eligible for re-appointment.

Subsection 26D(4) provides that where a person is re-appointed for a term beginning immediately after the end of the previous appointment the person's service is to be taken as continuous service. This provision allows entitlements such as sick leave, recreation leave and long service leave to be carried over from one term appointment to the next.

#### Proposed section 26E - End of appointments

Subsection 26E(1) provides for compensation for termination of a term appointment if the member or staff member is retired prior to the end of the term of appointment and the compensation is to be in accordance with a determination made at the time of appointing the member or staff member.

Subsection 26E(2) provides that, subject to the AFP Act and the regulations, an appointment under section 25, 26 or 26B ends when the term of the appointment ends or, if before the end of the term, the appointment is determined, the appointment ends on the day specified in the determination. Subsection 26E(2) is made subject to the AFP Act because, for example, a member may resign under section 37 or be retired under section 38B on the grounds of invalidity. Subsection 26E(2) is subject to the regulations because an appointment may end if the member is dismissed under the Australian Federal Police (Discipline) Regulations.

Subsection 26E(3) provides that a person must not make a determination under 26E(2) ending a term appointment only because of an act or omission of the member or staff member in respect of which a discipline charge has been or could be laid or a court has convicted the member or staff member of a criminal offence or has found the member or staff member guilty of such an offence without recording a conviction.

Subsection 26E(4) provides that when an appointment ends, the member or staff member is to be taken to have retired unless the member is re-appointed for a term beginning immediately after the end of the appointment.

#### Clause 22 - Undertakings and oaths or affirmations

This clause amends section 28 by omitting subsection (5) and substituting a new subsection (5) which provides that 'appoint' does not include promote or transfer, or re-appoint for a term that begins immediately after the end of the term of the last appointment. A member will not have to be re-sworn or re-affirm each time he or she is re-appointed for another term.

### Clause 23 - Interpretation of Part V

This clause amends section 29 by omitting the reference to paragraph 38A(1)(b) from the definition of 'retirement notice' and by omitting the definitions of 'redeploy' and 'redeployment notice'. With the introduction of term appointments for all members and staff members, the provisions relating to redeployment and retirement of superfluous members are no longer necessary and these provisions are being amended to limit them to retirement on grounds of invalidity.

### Clause 24

This clause repeals section 30 and substitutes proposed sections 30, 31, 32 and 32A.

#### Proposed section 30 - Determinations by Commissioner

Subsection 30(1) enables the Commissioner to determine, subject to Part V, the terms and conditions of service of members and staff members inside and outside Australia. This power is subject to the jurisdiction of the Industrial Relations Commission under the Industrial Relations Act 1988, subject to the exclusions in proposed section 39D.

Subsection 30(2) provides that a member or a staff member is entitled, subject to and in accordance with a determination by the Commissioner, to an adjustment payment which recognises the proposed fixed term appointment system being introduced by the Bill. The determination is to contain the eligibility criteria for the adjustment payment. This entitlement, which will be unique to the AFP, will not be subject to the jurisdiction of the Industrial Relations Commission (see proposed section 39D).

Subsection 30(3) provides that an adjustment payment must not be made to a member or staff member unless he or she elects, in accordance with a determination of the Commissioner, to receive it. The reason why a member or staff member must elect to receive the adjustment payment is because he or she loses, by that election, any mobility rights under the Public Service Act 1922 if he or she elects to receive the adjustment payment (see proposed section 31).

Subsection 30(4) provides that the Commissioner may amend or revoke a determination under subsection 30(1).

Subsection 30(5) enables the Minister to give the Commissioner written general policy guidelines. It is intended that the Minister issue general policy guidelines requiring the Commissioner to take into accounts fully, the Government's public sector policies and consult with the Department of Industrial Relations in accordance with the existing co-ordination arrangements applying to Commonwealth statutory authorities.

Subsection 30(6) requires the Minister to consult with the Commissioner about the guidelines prior to giving them.

Subsection 30(7) provides that where the Minister gives guidelines, the Commissioner must act in accordance with the guidelines.

Proposed subsection 31 - Effect of election on certain mobility rights

This proposed section sets out for Public Service Act 1922 staff, those persons with mobility rights under the Public Service Act 1922 and those persons with Officers' Rights Declaration Act 1928 rights, the consequences of an election to receive an adjustment payment under proposed section 30.

Proposed subsection 31(1) provides that where the mobility rights in Division 3 of the Public Service Act 1922 applies to a prescribed staff member and the prescribed staff member elects, before the end of his or her first appointment, to receive an adjustment payment under section 30, then the staff member loses his or her mobility rights because they cease to apply to the staff member when his or her first appointment ends.

Proposed subsection 31(2) provides that where a prescribed staff member does not elect, before the end of his or her first appointment, to receive an adjustment payment, then the prescribed staff member is not eligible for re-appointment under the AFP Act when his or her appointment ends. The prescribed staff member has the right to return to the Australian Public Service under the mobility provisions of the Public Service Act 1922.

Proposed subsection 31(3) provides that where Part IV (the mobility provisions) of the Public Service Act 1922 or the Officers' Rights Declaration Act 1928 applies to a member or staff member (other than a prescribed staff member) and the member elects to receive an adjustment payment then the member or staff member loses his or her mobility rights because they cease to apply to the member or staff member when his or her appointment ends, and the member or staff member is to be taken to have resigned from the Australian Public Service.

Proposed subsection 31(4) is definitional.

Proposed section 32 - Conditions of occupancy of premises

This section provides for conditions of occupancy of premises to be determined by the Commissioner.

Proposed section 32A - Advancement and accelerated advancement

This section will enable the Commissioner to advance a member or staff member or accelerate the advancement of a member or staff member within a rank or level where a scale of rates of salary applies to a position or positions of member within a particular rank or staff member at a particular level.

Clause 25 - Secondment to other services etc.

Paragraph 25(a) amends subsection 33(1) so that the Commissioner may arrange for a member or staff member to be

seconded to the Police Force of a State or Territory or of a country other than Australia or any other body or organisation whether within or outside Australia.

Paragraph 25(b) amends subsection 33(1A) by omitting the reference to 'Minister' and substituting 'Commissioner' as a consequence of the amendment to subsection 30(1).

Paragraph 25(c) amends section 33 by omitting subsection (2) and substitutes proposed subsections 33(2), (2A) and (2B) which deal with the Minister giving guidelines to the Commissioner on the secondment of members or staff members to the Police Force of a foreign country, or to any other body or organisation outside Australia.

Paragraph 25(d) amends subsection 33(3) so as to also refer to staff members.

Paragraph 25(e) amends paragraph 33(4)(a) so that it refers to the Public Service Commissioner rather than the Public Service Board.

Paragraph 25(f) amends section 33 by deleting subsection (5) and substituting proposed subsections (5) and (5A). Proposed subsection 33(5) provides that the terms and conditions of service of a seconded member or staff member must be determined by the Commissioner. Proposed subsection 33(5A) provides that the Commissioner must not determine terms and conditions that are less favourable than those that would apply to the member or staff member but for the secondment.

Paragraph 25(g) amends section 33 by adding proposed subsections 33(8) and (9). Proposed subsection 33(8) provides that a staff member remains subject to the obligations and liabilities in relation to discipline while on secondment as he or she would have been subject but for the secondment. This provision is based on paragraph 33(6)(b) which applies to members.

Proposed subsection 33(9) provides that proposed subsection 33(8) does not affect the extent to which the staff member is subject to obligations or liabilities in relation to discipline in relation to the office or position to which he or she has been seconded. This provision is based on paragraph 33(7)(b) which applies to members.

#### **Clause 26 - Special leave of absence**

This clause amends section 34 which deals with special leave of absence so that it also applies to staff members.

#### **Clause 27**

This clause inserts proposed section 34A which provides that the appointment of a member or a staff member is to be taken to be suspended during any absence on maternity leave. This provision ensures that a member's or staff member's rights to maternity leave are not affected by the introduction of term appointments.

**Clause 28 - Re-appointment after secondment or special leave**

Paragraph 28(a) amends subsection 35 (1) by adding a new paragraph (d) which brings subsection 35(1) into line with proposed subsection 35(3).

Paragraph 28(b) amends section 35 by omitting subsection 35(2) and substitutes proposed subsections 35(2), (3), (4) and (5).

Proposed subsection 35(2) provides for the appointment of a staff member whose secondment under section 33 or leave of absence under section 34 ends, to a position in the AFP at a level determined by the Commissioner. Proposed subsection 35(3) sets out the matters to which the Commissioner must have regard when making a determination under subsection 35(2).

Proposed subsections 35(2) and (3) are to the same effect as subsection 35(5) and provides that the period during which a person is seconded under section 33 or absent on leave granted under section 34 forms part of his or her service for the purposes (if any) determined by the Commissioner. This provision is based on the repealed subsection 35(2).

Proposed subsection 35(4) provides for the term of appointment under subsection 35(2).

Proposed subsection 35(5) enables the Commissioner to determine for what purposes (if any) the period of secondment or leave of absence forms part of the person's service as a member or staff member.

**Clause 29 - Promotion**

Paragraphs 29(a) and (b) amend subsections 36(1) and (2) so that they also apply to staff members.

Paragraph 29 (c) amends subsection 36(2) by inserting 'potential for development'. This amendment brings subsection 36(2) into line with the Australian Public Service.

Paragraph 29(d) amends section 36 by adding proposed subsection 36(3) which provides that where a person is promoted, the person's appointment is to be taken to be an appointment to the position within the rank, or at the level, for the term determined by the Commissioner in accordance with the regulations. When a member or staff member is promoted the Commissioner must determine the term of the appointment in accordance with the regulations.

**Clause 30 - Reviews by Merit Protection and Review Agency of non-appellable promotion decisions**

This clause amends section 36B which deals with reviews by the Merit Protection and Review Agency of non-appellable promotion decisions. Paragraph 29(a) amends subsection 36B(1) so that it also applies to staff members.

Paragraph 30(b) amends paragraphs 36B(5) (a) and (b) so that they also apply to staff members.

Paragraph 30(c) amends paragraph 36B(8) so that it only applies to members.

Paragraph 30(d) inserts proposed subsection 36B(8A). This provision only applies to staff members. It sets out the conditions relating to the cancellation of the promotion of a staff member under subsection 36B(6).

Paragraph 30(e) amends the definition of non-appellable promotion in subsection 36B(11) so that it refers to sections 25, 26 and 26B and applies to members and staff members.

#### **Clause 31 - Resignation**

This clause amends section 37 by inserting proposed subsections (1A) and (1B) which deal with the resignation of staff members.

#### **Clause 32 - Efficient and economical use of members and staff members**

This clause amends section 38 so that it also applies to staff members. Section 38, as amended, requires the Commissioner to ensure, to the greatest extent practicable, that the AFP operates so as to make efficient and economical use of the services of its members and staff members.

#### **Clause 33 - Repeal of section 38A**

This clause repeals section 38A.

#### **Clause 34**

This clause repeals sections 38B and 38C and substitutes proposed sections 38B and 38C.

#### **Proposed section 38B - Retirement on grounds of invalidity**

Proposed subsection 38B(1) provides that where the Commissioner is satisfied that a person who is a member or staff member should be retired because of physical or mental incapacity, the Commissioner may retire the person.

Proposed subsection 38B(2) provides that where a person's appointment as a member or staff member ceases otherwise than under subsection 38B(1) (for example, the member or staff member's term of appointment ends) and the person is not offered re-appointment and the Commissioner certifies that the person's physical or mental incapacity was the only reason the person was not offered re-appointment the person must, for the purposes of the Commonwealth Employee's Rehabilitation and Compensation Act 1988 and the Superannuation Act 1976, be taken to have been retired under section 38B.

This provision is designed to protect a member's or staff member's right to an invalidity pension under the new term appointment system of service. For example, where a member is seriously injured while performing his or her duties immediately before the end of his or her term of appointment and the member is not re-appointed for a further term because



of their physical incapacity, then proposed subsection 38B(2) ensures that they are taken to have been retired on the grounds of invalidity for the purposes of the Commonwealth Employees' Rehabilitation and Compensation Act 1988 and the Superannuation Act 1976.

#### Proposed section 38C - Consent to retirement

This proposed section provides that before being retired under section 38B(1), a person may consent to being retired.

#### **Clause 35 - Time when retirement takes effect**

This clause amends section 38D of the AFP Act.

Paragraph 35(a) amends section 38D by omitting subsection (1) which relates to redeployment.

Paragraph 35(b) omits from subsection 38D(2) the references to 'member' and substitutes 'person'.

Paragraph 35(c) omits from subsection 38D(2) the words 'subsection 38A(1) or section 38B, the member's' and substitutes 'section 38B, the person's' as a consequence of the repeal of section 38A and to bring staff members within the subsection.

Paragraph 35(d) amends section 38D by omitting subsection (3) and substituting a new subsection (3) which provides that if a person has not consented to being retired on grounds of invalidity then a retirement notice must inform the person of his or her appeal rights and provides for the time when the person's retirement takes effect.

#### **Clause 36 - Appeals against retirement**

This clause amends section 38E. Paragraph 36(a) amends section 38E by omitting subsection (1) and substitutes a new subsection (1) which confers a right of appeal to an Appeal Committee on a person who has been retired under subsection 38B(1) (retirement on grounds of invalidity).

Paragraph 36(b) amends subsection 38E(2) so that it refers to an appeal against a decision to retire a person rather than an appeal against a decision to redeploy or retire a member.

Paragraph 36(c) amends subsection 38E(4) by omitting the reference to 'a member' and substituting 'an appellant'. As a result the subsection applies to both members and staff members.

Paragraph 36(d) amends subsection 38E(4) by omitting the references to 'the member' and substituting 'the appellant'. As a result the subsection applies to both members and staff members.

Paragraph 36(e) amends subsection 38E(4) by omitting the reference to 'the member's' and substituting 'the appellant's'. As a result the subsection applies to both members and staff members.

Paragraph 36(f) amends subsection 38E(5) so that it refers to 'an appellant' and 'the appellant'. As a result the subsection applies to both members and staff members.

**Clause 37 - Commissioner's final decision**

This clause amends section 38F so that it refers to a decision to retire a person.

**Clause 38 - Repeal of section 38G**

This clause repeals section 38G which deals with special benefits for certain retiring members. Section 38G is unnecessary as a consequence of the introduction of fixed term appointments for all members and staff members.

**Clause 39**

This clause repeals section 39 and substitutes proposed sections 39, 39A, 39B, 39C, 39D and 39E.

**Proposed section 39 - Early retirement**

This proposed section makes provision for a member or staff member to be taken to have voluntarily retired for the purposes of the Superannuation Act 1976. This provision is necessary to ensure that members and staff members have access to early retirement benefits because the concepts of a maximum retiring age and early retirement have no place in a fixed term appointment system.

**Proposed section 39A - Temporary employment**

This proposed section enables the Commissioner to employ temporary employees to assist the AFP in the performance of its functions.

**Proposed section 39B - Consultants**

Proposed subsection 39B(1) provides for the engagement of consultants by the Commissioner to perform services as consultants to the AFP.

Proposed subsection 39B(2) provides that the terms and conditions of engagement of persons as consultants are such as the Commissioner determines.

**Proposed section 39C - Secondment of persons to assist AFP**

This proposed section provides for the Commissioner to arrange for a person to be seconded to assist the AFP in the performance of its functions and for the terms and conditions applicable to the seconded person.

**Proposed section 39D - Industrial Relations Act not to apply to certain matters**

Proposed subsection 39D(1) excludes from the jurisdiction of the Industrial Relations Commission under the Industrial Relations Act 1988 the following matters:

- (a) the terms and conditions of service of a member who is a Deputy Commissioner or a senior executive commissioned police officer or of a staff member who is a senior executive officer;
- (b) any matter arising under section 26E (end of appointments), being a matter relating to a member who is a Deputy Commissioner or a senior executive commissioned police officer or a staff member who is a senior executive officer; and
- (c) any matter arising under section 26E (end of appointments) or subsection 30(2) (the adjustment payment), being a matter relating to a member who is a non-senior executive commissioned police officer or a non-commissioned police officer or a staff member who is not a senior executive officer.

These matters are excluded from the Industrial Relations Act because proposed section 39A provides that none of them is a matter pertaining to the relationship between an employer and employee for the purposes of the definition of 'industrial dispute' in subsection 4(1) of that Act nor an industrial issue within the meaning of section 5 of that Act.

While proposed section 39D excludes the Industrial Relations Commission from the terms and conditions of service of a Deputy Commissioner, a senior executive commissioned officer or a staff member who is a senior executive officer, the Commissioner is required to act in accordance with broad Ministerial general policy guidelines (see proposed subsection 30(5)). It is intended that the Minister issue guidelines requiring the Commissioner to take into account fully, the Government's public sector policies and consult with the Department of Industrial Relations in accordance with the existing co-ordination arrangements applying to Commonwealth statutory authorities.

Proposed subsection 39D(2) prevents the Industrial Relations Commission from taking into account any entitlement of a member or staff member to an adjustment payment when exercising any of its powers in relation to an industrial dispute or industrial issue.

Proposed section 39E - Members and staff members to be treated as temporary employees employed under contract

This proposed section provides that a person appointed under section 25 (commissioned police officers), 26 (non-commissioned police officers), or 26B (staff members) is to be taken, for the purposes of section 13 of the Superannuation Act 1976, to be a temporary employee employed under a contract to ensure that that Act applies to members and staff members after the introduction of fixed term appointments for all members and staff members.

#### **Clause 40 - Regulations may provide for certain other terms and conditions**

This clause amends section 40 of the AFP Act which provides for the making of regulations to provide for certain other terms and conditions.

Paragraph 40(a) amends paragraph 40(1)(b) so that it also applies to staff members.

Paragraph 40(b) amends paragraph 40(1)(c) by inserting the words 'to decline promotion' to bring that paragraph which only applies to members into line with proposed paragraph 40(1)(d) which is to apply to staff members.

Paragraph 40(c) omits paragraphs 40(1)(ca) and (d) and substitutes proposed paragraphs 40(1)(d), (da), (db), (dc), (dd) and (de).

Proposed paragraph 40(1)(d) enables regulations to be made for and in relation to the promotion of staff members, including the right of staff members to decline promotion and to appeal against the promotion of other staff members to positions at prescribed levels.

Proposed paragraph 40(1)(da) enables regulations to be made for and in relation to the temporary performance of the whole or a part of the duties of a position of a staff member.

Paragraph 40(1)(db) enables regulations to be made in relation to the transfer of staff members, including the right of staff members to decline a transfer. There is no equivalent provision in relation to members because as police officers in a disciplined force they are subject to transfer as necessary for the efficient discharge of the functions of the AFP.

Proposed paragraph 40(1)(dc) enables regulations to be made requiring staff members to take an oath or affirmation of secrecy in the prescribed form in relation to the matters coming to their knowledge in the course of their service as staff members.

Proposed paragraph 40(1)(dd) enables regulations to be made for the attachment of the salaries of members and staff members for the satisfaction of judgment debts.

Officers of the Australian Public Service are able to apply for transfer on reduction. It is currently not possible for a member of the AFP to apply for a position at a lower rank. Proposed paragraph 40(1)(de) will enable regulations to be made for and in relation to the reduction of the rank of a member or the level of a staff member.

Paragraph 40(d) repeals subsection 40(2) which enables regulations to be made providing for the interviewing of a member who is about to leave Australia in the course of his or her duties as a member for use in appeals against promotions. Modern communications have rendered this subsection unnecessary.

#### **Clause 41 - Definitions**

This clause amends section 41 so that it applies to staff

members and the adjustment payment under proposed section 30(2).

**Clause 42 - Superannuation orders**

This clause amends section 46 so that it applies to the adjustment payment under proposed subsection 30(2).

**Clause 43 - Effect of superannuation order**

This clause amends section 47 so that it also applies to staff members and the adjustment payment under proposed subsection 30(2).

**Clause 44 - Persons found guilty of relevant disciplinary offences**

This clause amends section 49 so that it also applies to staff members and the adjustment payment under proposed subsection 30(2).

**Clause 45 - Resignation or retirement: persons charged with corruption offences**

This clause amends section 51 so that it also applies to staff members and the adjustment payment under proposed subsection 30(2).

**Clause 46 - Resignation or retirement: persons charged with relevant disciplinary offences**

This clause amends section 52 so that it also applies to staff members.

**Clause 47 - Repeal of section 53**

This clause repeals section 53 as a consequence of the repeal of section 25A which relates to fixed-term senior executive officers.

**Clause 48**

This clause inserts proposed section 60A.

**Proposed section 60A - Secrecy**

This proposed section is a secrecy provision which applies to:

- (a) a member; or
- (b) a staff member; or
- (c) a temporary employee; or
- (d) a consultant; or
- (e) a person on secondment to the AFP.

The penalty for a breach of proposed section 60A is imprisonment for 2 years.

**Clause 49 - Misrepresentation by applicant**

This clause amends section 62 so that it also applies to staff members.

**Clause 50**

This clause inserts proposed section 64AA.

**Proposed section 64AA - Suspended members and staff members**

Proposed subsection 64AA(1) prohibits a member from exercising any power conferred on a member by the AFP Act or by any other law of the Commonwealth or of a Territory while the appointment of a person as a member is suspended, or a member is suspended from duty. The penalty for breaching the provision is imprisonment for 2 years.

Proposed 64AA(2) provides that where the appointment of a person as a member or staff member is taken to be suspended while on maternity leave, the period of the suspension forms part of the service of the person as a member or staff member, as the case may be, for the purposes determined by the Commissioner.

**Clause 51 - Repeal of section 65**

This clause repeals section 65 as the matters dealt with by it are covered by the Crimes Act 1914.

**Clause 52**

This clause repeals section 66 which enables the Minister to delegate any of his powers under the AFP Act and substitutes proposed section 66.

**Proposed section 66 - Protection of persons in respect of work reports**

This proposed section provides protection in respect of work reports and is based on section 64 of the Public Service Act 1922.

**Division 3 - Transitional and savings provisions**

**Clause 53 - Staff appointed under section 16 of the Principal Act**

Clause 53(1) provides that in spite of the repeal of section 16 of the AFP Act, section 16 continues to apply in relation to the persons covered by that section before the commencing day until:

- (a) in the case of a Senior Executive Service Officer :
  - (i) the prescribed day in relation to the person (see clause 4); or

- (ii) the person is appointed under section 26B of the AFP Act as amended by the Bill;

whichever happens first.

- (b) in the case of a person who is not a Senior Executive Service Officer:

- (i) the prescribed day in relation to the person (see clause 4); or
- (ii) the person is appointed under section 26B of the AFP Act as amended by the Bill;

whichever happens first.

All existing AFP Public Service Act 1922 staff will be offered appointment as staff members under the AFP Act, as amended by the Bill, and those accepting fixed term appointment will have mobility rights under the Public Service Act 1922 until the end of their first fixed term appointment. Where a person covered by section 16 before the commencement day does not wish to be appointed as a staff member the person will be redeployed within the Australian Public Service.

Subclause 53(2) provides that where a person to whom subsection 49(1) applies is appointed under proposed section 26B before the prescribed day the terms and conditions determined in relation to the person must be at least as favourable to the person as the terms and conditions which applied to the person immediately before the person's appointment.

Subclause 53(3) provides that where a person to whom subsection 49(1) applies is appointed under proposed section 26B then:

- (a) the person ceases to be an officer within the meaning of the Public Service Act 1922; and
- (b) the person is, to be taken, for the purposes of the Public Service Act 1922, to be employed by the AFP and the AFP is for that purpose to be taken to be a Commonwealth authority within the meaning of that Act; and
- (c) the Public Service Act 1922 (other than section 81C) applies in relation to the person as if he or she had been transferred into the employment of the AFP under section 81C of that Act; and
- (d) for the purpose of facilitating the change in the person's employment, the Commissioner may, despite any other law (other than an industrial award) determine any special terms of service that are to apply to the person in addition to the terms and conditions determined under proposed section 30.

These provisions facilitate the transfer of persons from appointment or employment under the Public Service Act to service under the AFP Act.

#### **Clause 54 - Deputy Commissioners**

Both Deputy Commissioners have requested that they be appointed for a fixed term so that they are not treated any differently in relation to tenure than the other members or staff members of the AFP under the AFP Act, as amended by the Bill.

Subclause 54(1) provides that, subject to clause 50, a person who was a Deputy Commissioner immediately before the commencing day is, on and after that day, to be taken to have been appointed as a Deputy Commissioner under the amended AFP Act for a term of 5 years or until he or she reaches 60, whichever happens first.

Subclause 54(2) provides that, subject to subclause 54(3), the amended AFP Act applies to a Deputy Commissioner on and after the commencing day.

Subclause 54(3) provides that the remuneration and allowances, and the terms and conditions, determined by the Commissioner under the amended AFP Act in relation to a Deputy Commissioner must be at least as favourable to the Deputy Commissioner as those which applied to the Deputy Commissioner immediately before the commencing day.

Subclause 54(4) provides that section 28 of the AFP Act, as amended by the Bill, does not apply to a Deputy Commissioner who, because of section 54 is taken to have been appointed under the AFP Act, as amended.

Subclause 54(5) provides that where a Deputy Commissioner is, because of section 54 taken to have been appointed under the AFP Act, as amended by the Bill, the service of the Deputy Commissioner under the AFP Act, and the AFP Act, as so amended, is to be taken to be continuous so that accruing entitlements such as long-service leave and sick leave are not affected by the introduction of fixed term appointments.

#### **Clause 55 - Existing members: continued application of Principal Act**

Subclause 55(1) provides for the continued application of the AFP Act, as in force immediately before the commencing day, to certain classes of members (other than the Commissioner, the Deputy Commissioners or fixed-term senior executive officers) until:

- (a) the prescribed day in relation to the member (see clause 4); or
- (b) if before the prescribed day in relation to the member, the member notifies that the member wishes to resign from the AFP on the day specified in the notice (being a day that occurs before the person is to be taken to be



appointed under the AFP Act, as amended by the Bill) - the day so specified.

The classes of member are:

- (a) a prescribed commissioned police officer (that is, an Assistant Commissioner or Commander: see subclause 55(2)); and
- (b) any other commissioned police officer (that is, a Superintendent); and
- (c) a member who is a non-commissioned police officer (that is, a sergeant or constable).

The important feature of clause 55, when read together with clause 56, is that under the fixed term appointment system proposed by the Bill, all existing members are appointed to a position which is the same as their current position unless they take action to resign.

Subclause 55(2) defines 'prescribed commissioned police officer' as meaning a commissioned officer appointed under the AFP Act and holding a position within the rank of Assistant Commissioner or Commander in clause 55.

#### **Clause 56 - Existing members: position under the amended Act**

Subclause 56(1) provides that where a member who is an Assistant Commissioner or Commander, does not give notice that he or she wishes to resign then the member is to be taken to have been appointed under section 25 of the AFP Act, as amended by the Bill, to the same position within the same rank as he or she held immediately before the prescribed day.

Subclause 56(2) provides that where a member who is a Superintendent, does not give notice that he or she wishes to resign, the member is to be taken to have been appointed as a senior executive commissioned police officer under section 25 of the AFP Act, as amended by the Bill, to the same position within the same rank as he or she held immediately before the prescribed day.

Subclause 56(3) provides that where a member who is a constable or sergeant, does not give notice that he or she wishes to resign, then the member is to be taken to have been appointed under section 26 of the AFP Act, as amended by the Bill, to the same position within the same rank as he or she held immediately before the prescribed day.

Subclause 56(4) provides that section 28 of the AFP Act, as amended by the Bill, does not apply to a member who, because of clause 56, is taken to have been appointed under proposed section 25 or 26. This removes the requirement under section 28 to make and subscribe another oath or affirmation.

Subclause 56(5) provides that where a member is, because of subclause 51A, taken to have been appointed under proposed section 25 or 26, the service of the member under the AFP Act and the AFP Act as amended by the Bill, is to be taken to be

continuous so that accruing entitlements such as long-service leave and sick leave are not affected by the introduction of fixed term appointments.

**Clause 57 - Existing members: terms and conditions**

Subclause 57(1) provides that despite anything in the AFP Act, as amended by the Bill, a member who is taken to have been appointed as a senior executive commissioned police officer holds his or her position:

- (a) for the term determined by the Commissioner; and
- (b) subject to the terms and conditions determined by the Commissioner, which are at least as favourable to the member as the terms and conditions which applied to the member immediately before the prescribed day under subclause 56(1).

Subclause 57(2) provides that despite anything in the AFP Act, as amended by the Bill, a member who is a non-senior executive commissioned police officer or a non-commissioned police officer holds his or her position:

- (a) for the term determined by the Commissioner; and
- (b) subject to terms and conditions that are the same as those which applied to the member immediately before the prescribed day under subclause 55(2) or (3) respectively.

Subclause 57(3) provides that the terms and conditions determined under paragraph 57(1)(b), or mentioned in paragraph 57(2)(b), are to be taken to have been determined under proposed section 30, and that the AFP Act as so amended (including proposed section 39D), applies in relation to the terms and conditions accordingly.

Subclause 57(4) provides that proposed section 26E applies in relation to members who are senior executive commissioned police officers, other commissioned police officers and non-commissioned police officers who are taken to be appointed under proposed section 25 or 26 by virtue of clause 56, as if the reference in proposed subsection 26E(1) to the making of a determination under that proposed section at the time of appointing the member, were a reference to the making of such a determination on the prescribed day in relation to the member and that the AFP Act, as so amended, applies in relation to proposed section 26E accordingly.

**Clause 58 - Existing members: resignation**

This clause provides that where a member gives notice under subparagraph 55(1)(a)(ii), (b)(ii) or (c)(ii), that he or she wishes to resign from the AFP, the member is to be taken to have resigned from the AFP on the day specified in the notice.

**Clause 59- Fixed-term senior executive appointments**

This clause provides the transitional arrangements in respect of fixed-term senior executive appointments. They are to be taken as having been appointed under proposed section 25 as a senior executive commissioned police officer and the AFP Act as so amended, applies to the person accordingly.

**Clause 60 - Members retiring under section 38G of the Principal Act**

This clause provides for the continued operation of section 38G both before and after that section's repeal.

**PART 3 - AMENDMENTS OF THE COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981**

**Clause 61 - Principal Act**

This clause provides that in Part 3 of the Bill 'Principal Act' means the Complaints Act 1981.

**Clause 62 - Interpretation**

This clause amends section 3 of the Complaints Act by inserting a definition of 'staff member'.

**Clause 63 - Appeal to Disciplinary Tribunal from proceedings before Commissioner**

This clause amends section 69 of the Complaints Act so that where the Commissioner imposes a penalty on a staff member in respect of a breach of discipline :

- (a) the Commissioner must cause the staff member to be notified of the finding, and of the reasons for the finding, and of the penalty; and
- (b) the staff member may appeal to the Disciplinary Tribunal.

In addition the clause amends section 69 so that it also refers to staff members and makes amendments consequential upon the insertion of proposed subsection 69(1A).

**Clause 64 - Representation of parties**

This clause amends section 75 of the Complaints Act by omitting from subsection (3) the references to 'member' and substituting 'person' which encompasses both members and staff members.

**Clause 65 - Appeal to Federal Court of Australia from decisions of Disciplinary Tribunal**

This clause amends section 79 of the Complaints Act to omit references to 'member' and substituting 'person' which encompasses both members and staff members.

**Clause 66 - Secrecy**

This clause amends section 87 of the Complaints Act by adding proposed paragraph 87(1)(f) which refers to a staff member of the AFP.

**PART 4 - AMENDMENTS OF THE SUPERANNUATION ACT 1976**

**Clause 67 - Principal Act**

This clause provides that in Part 4 'Principal Act' means the Superannuation Act 1976.

**Clause 68 - Interpretation**

This clause amends section 3 of the Principal Act by inserting in subsection (5A) a reference to staff member.

**Clause 69 - Early retirement**

This clause amends section 58 of the Principal Act by omitting paragraph (3)(ba) as a consequence of the repeal of section 38G of the AFP Act.

**PART 5 - CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

**Clause 70 - Consequential amendments**

This clause provides that the Acts specified in the Schedule are amended as set out in the Schedule.

**SCHEDULE**

**CONSEQUENTIAL AMENDMENTS**

**Administrative Decisions (Judicial Review) Act 1977**

**Schedule 2**

This Schedule is amended by adding paragraphs (z) and (za). The effect of proposed paragraph (z) is that statements of reasons under section 13 of the Administrative Decisions (Judicial Review) Act 1977 will not be able to be obtained in relation to decisions relating to promotions, transfers, temporary performance of duties, or appeals against promotions or selections for temporary performance of duties, of or by individual members or staff members of the AFP.

The effect of proposed paragraph (za) is that statements of reasons under section 13 of the Administrative Decisions (Judicial Review) Act 1977 will not be able to be obtained in relation to determinations under proposed section 26E of the AFP Act relating to individual members or staff members of the AFP.

**Crimes (Superannuation Benefits) Act 1989**

**Subsection 7(1)**

This subsection has a reference to staff members inserted in

it to exclude them from the Crimes (Superannuation Benefits) Act as the Bill amends Part VA of the AFP Act to apply to staff members.

#### **Industrial Relations Act 1988**

##### **Subsection 4(10)**

This subsection is amended so that it also applies to staff members.

##### **Paragraph 5(3)(e)**

This subsection is amended so that it also applies to staff members.

#### **Schedule 1**

Paragraph 3(b) is amended to put beyond doubt that the exclusion relating to appointments includes terms for which persons are appointed (that is, the period for which a member or staff member is appointed). It does not relate to the terms and conditions on which a member or staff member is appointed.

Paragraph 3(c) is amended so that it also applies to staff members.

#### **Merit Protection (Australian Government Employees) Act 1984**

##### **Subsection 3(1) (definition of 'Commonwealth Authority')**

This subsection is amended so that the definition of 'Commonwealth Authority' does not include the AFP.

##### **Subparagraph 85(2)(k)(i)**

This subparagraph is amended so that it also applies to staff members. This amendment will enable regulations to be made applying the provisions of the Merit Protection (Australian Government Employees) Act 1984, subject to such modifications (if any) as are prescribed, to and in relation to the members and staff members of the AFP (the Merit Protection (Australian Federal Police) Regulations only apply to the members of the AFP).

#### **Public Service Act 1922**

##### **Paragraph 87(2)(d)**

This paragraph is omitted and a new paragraph substituted which refers to service as a member (other than as Commissioner of Police) or staff member of the AFP.

##### **Paragraph 87J(2)(b)**

This paragraph is omitted and a new paragraph substituted which refers to service as a member (other than as Commissioner of Police) or staff member of the AFP.





