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AUSTRALIAN PROTECTIVE SERVICE BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Local Government and
Administrative Services,
the Hon. Tom Uren, M.P.)

AUSTRALIAN PROTECTIVE SERVICE BILL 1986

OUTLINE

The Australian Protective Service Bill 1986 has the following purposes:

- (1) to give legislative recognition to the Australian Protective Service as a body within the Public Service providing personal and property security and custodial services for and on behalf of the Commonwealth;
- (2) to identify protective service officers as a distinct category of officers;
- (3) to ensure that protective service officers acting in the course of their duties, have the power to arrest a person committing an offence relevant to those duties, that in doing so they enjoy appropriate rights and are subject to appropriate restraints and that persons arrested are promptly transferred to police custody;
- (4) to provide for appointment of other Commonwealth officers or employees as special protective service officers, subject to appropriate controls; and
- (5) to free the Australian Protective Service from State licensing and registration requirements directed to the regulation of private persons and institutions.

FINANCIAL IMPACT

The Bill gives statutory recognition to the existing Australian Protective Service which already performs a range of the functions provided for in the Bill. The Bill is not in itself authority for the acquisition of new duties by the Service and, accordingly, enactment of this legislation should have no financial impact.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1

Short Title

The short title of the legislation is the Australian Protective Service Act 1986.

Clause 2

Commencement

The legislation will come into effect on a day fixed by Proclamation.

Clause 3

Interpretation

Words and phrases used in the legislation are formally defined in sub-clause (1). The following significant definitions should be noted:

"Director" means the Director of the Australian Protective Service

"Protective Service" is the term used in the legislation to refer to the Australian Protective Service

"protective service officer" (PSO) means an officer of the Australian Protective Service on whom powers are conferred by this legislation

"special protective service officer" means any other officer or employee under the Public Service Act 1922 on whom the powers of a protective service officer are conferred by the Director under clause 9.

Sub-clause (2) provides that, wherever appropriate, references to a "protective service officer" are also references to a "special protective service officer".

Clause 4

Extension to External Territories

The legislation will extend to every external Territory of Australia.

PART II - AUSTRALIAN PROTECTIVE SERVICE

Clause 5

Establishment of Protective Service

The Australian Protective Service (APS) is established as part of the Department. This amounts to statutory recognition of an existing administrative arrangement.

The APS consists of two groups of people. Protective Service Officers (PSO's) including the Director, are all officers of the Public Service and are entitled to wear the uniform of the Service. They become PSO's under the legislation by occupying offices designated under clauses 7 and 8 and have the powers created by Part III of the legislation. The other group consists of Public Service officers and employees (non-uniformed) whose work is an integral part of the functioning of the APS. The legislation does not deal further with this group. In particular, they do not have powers under Part III.

Clause 6

Functions of Protective Service

This clause sets out the functions of the APS in broad terms and specifies those areas in which it has current responsibilities. The clause does not place an obligation on the APS in respect of any particular function nor does it exclude other competent bodies (eg the Australian Federal Police) from performing any of these functions.

Sub-clause 6(1) describes the function of APS broadly as provision of protective and custodial services for and on behalf of the Commonwealth. It limits the extent of functions actually performed by the APS by requiring that each such function must be authorised in writing by the Minister and notified in the Gazette.

Sub-clause 6(2) lists certain more specific functions of the APS. This does not mean that the functions of the APS are in any way narrower than sub-clause 6(1) suggests, except in one particular, viz close personal protection. The specific functions are:

- . property protection;
- . protection of certain categories of persons; and
- . custody of detained illegal immigrants.

The property protection function is expressed in wide terms. It is sufficient that the Commonwealth, a foreign country, an international organisation or an authority of any of these has an interest in the property for the APS to be able to guard it if the Commonwealth so requires. The property can include confidential information as well as land, buildings, money and moveable goods.

The personal protection function covers two groups, viz:

- . holders of office under the Commonwealth and their families and households; and
- . internationally protected persons as defined by the Crimes (Internationally Protected Persons) Act 1976, ie a foreign Head of State, Head of Government or Foreign Minister, or a representative or official of a foreign state or an international organisation and accompanying members of the person's family.

It specifically excludes close personal protection (body guard work) which is undertaken by the Australian Federal Police. The personal protection work to be performed by the APS includes static guarding and patrols in relation to premises occupied by a protected person, such as the Official Establishments of the Governor-General and the Prime Minister.

Custody of detained illegal immigrants by the APS will consist of staffing Immigration Detention Centres and escorting detainees to and from the Centres and airports. This legislation does not deal with the powers of PSO's in relation to detainees under the Migration Act. Custodial powers will be formalised by regulations to be issued under the Migration Act.

Clause 7

Director of Protective Service

The office of Director of the APS will be an office created in the normal manner under the Public Service Act, except that the Secretary is required to identify the position by publishing a notice in the Gazette. Any person occupying the specified office will have the powers of the Director while he or she continues to occupy the office.

Clause 8

Protective Service Officers other than Director

Similarly, the office of each PSO will be established under the Public Service Act but will have to be identified by notice in the Gazette. Only a person actually occupying one of the specified offices can lawfully exercise the powers of a PSO.

Clause 9

Special Protective Service Officers

The Director may appoint persons from outside the APS to be special PSO's with some or all of the powers and duties of a PSO. Only persons who are officers or employees under the Public Service Act may be appointed special PSO's and the Secretary of their department must first agree to each appointment.

Clause 10

Oath or Affirmation of Office

No PSO can exercise his or her powers and duties until he or she has taken an oath of office or equivalent affirmation.

Clause 11

General Administration and Control of Protective Service

The Secretary of the department in which the APS is located has all his or her normal powers in relation to the part of his or her department which is the APS but the Director is specifically responsible to the Secretary for the administration and operations of the APS.

Clause 12

General Orders

The Director can control the administration and operations of the APS by issuing General Orders which PSO's are legally bound to obey. Such Orders must be approved by the Secretary before issue.

The General Orders and amendments to them will be invalid to the extent that they purport to override any applicable Act or regulations or any determination of terms and conditions of employment under the Public Service Act.

PART III - POWERS AND DUTIES OF PROTECTIVE SERVICE OFFICERS

Clause 13

Powers of Arrest

A PSO may make an arrest without warrant where he or she believes on reasonable grounds:

- . that the person has just committed or is committing any one of the offences listed in the clause;
- . that it was necessary to:
 - ensure the person's appearance in court;
 - prevent the person from continuing or repeating the offence or committing another listed offence;
 - prevent the person (or others) from hiding, losing or destroying relevant evidence; or
 - preserve the person's safety or welfare; and
- . that the result could not be achieved by summons rather than arrest.

The list of offences for which PSO's have power to arrest under this clause cover the following areas (full details are at Attachment A to these notes):

- . property damage, including sabotage;
- . personal injury and kidnapping;
- . assault and obstruction;
- . espionage and related acts;
- . non-compliance with special laws and directions concerning restricted-access areas;
- . trespass;
- . personation of public officers;

- . bribery of public officers;
- . aid to escape lawful custody;
- . unlawful possession or use of nuclear material; and -
- . threats in relation to obtaining or using nuclear material.

The power of arrest covers not only persons who commit these offences but also persons who attempt to commit or incite others to commit the offences or who become accessories after the fact in relation to the offences (Crimes Act sections 7, 7A and 6 respectively).

Clause 14

Use of Force in Making Arrest, etc

To arrest or prevent the escape of a person a PSO may use no more force and subject the person to no more indignity than is reasonable and necessary for the purpose. In particular a PSO should not use potentially lethal force against a person unless he or she believes on reasonable grounds that this is necessary to save any other person (including the PSO) from death or serious injury.

Clause 15

Arrested Person to be Informed of Grounds of Arrest

A PSO who arrests a person must tell the arrested person, in general terms, for what offence he or she is being arrested, unless the person prevents the PSO from doing so. If, because of a language problem or because of some other disability the person does not understand the PSO's explanation the PSO is to take immediate steps to ensure that an effective explanation is given by an interpreter or other appropriately qualified person.

Clause 16

Search of Arrested Person

If a PSO arrests a person the PSO may search the person for weapons, other aids to escape and evidence of the offence if the PSO believes on reasonable grounds that this is necessary

and may seize any such thing he or she finds. The search includes clothes worn by the person, property found under the control of the person and any vessel or vehicle used by the person and found in the immediate vicinity. A PSO must not search an arrested person of the opposite sex, but may obtain the assistance of any person of the same sex as the arrested person to perform the search subject to the rules applying to PSO's. No legal action can be brought against a person who assists a PSO in this way, provided he or she acts in good faith.

In carrying out a search a PSO must not use more force or subject the person to greater indignity than is reasonable or necessary for the purpose. Accordingly, searches of persons would rarely involve removal of any clothing.

Clause 17

How Arrested Person to be Dealt With

After arresting a person a PSO should ensure that the person is transferred to police custody promptly. Any property seized should be transferred to police custody together with the person.

Clause 18

Release of Arrested Persons

If, before transferring an arrested person to police custody, the PSO holding the person in custody becomes aware that the grounds for arrest are no longer valid, with respect either to the suspicion of guilt or to the impracticability of proceeding by summons, the PSO must release the person forthwith.

Clause 19

Uniforms and Identification Numbers of Protective Service Officers

PSO's on duty will normally be required to wear uniforms and identification numbers provided for them. It is an offence deliberately not to wear the identification number when in uniform (penalty: \$500). It is also an offence not to return the uniform (including the number) on ceasing to be a PSO (penalty: \$100).

Clause 20

Identity Cards

Identity cards may be issued to PSO's. If performing duty in plain clothes a PSO must produce the card when exercising any of his or her powers unless the person concerned makes such action impracticable. If the PSO does not produce the card when it would be practicable to do so his or her requests and directions will not be binding on the person to whom they are made. It is an offence for a person who ceases to be a PSO not to return his or her card (penalty: \$100). Cards issued before the commencement of operation of the legislation can be deemed issued under the legislation if the Director so orders.

Clause 21

Relationship of Part to Other Laws

The arrest power of PSO's created by clause 13 does not abolish any powers available to PSO's under other Commonwealth, State or Territory legislation but if a PSO in the course of duty makes any lawful arrest the rules laid down in clauses 14 to 18 and the rules in clause 20 concerning exercise of powers by PSO's in plain clothes apply in all cases, whatever the source of the power to make the arrest. The only exceptions to this rule are the espionage provisions of the Crimes Act 1914 and the provisions on custody of prohibited non-citizens (illegal immigrants) which establish their own special codes of rules for the handling of suspects upon arrest. Any other powers or duties arising from existing law, and particularly duties arising from laws protecting the rights of the individual, are preserved to the extent that they can operate concurrently with those created by Part III of this legislation.

Clause 22

Immunity from Certain State and Territory Laws

Commonwealth property used or held by PSO's does not require licensing, registration or any other form of permission under State or Territory laws.

PART-IV - MISCELLANEOUS

Clause 23

Certificates

A certificate by the Secretary that at a specified time or period a person was a PSO or held a particular office in the Department will be accepted by a court as sufficient evidence of the stated fact unless credibly challenged.

Clause 24

Delegation by Director

The Director can delegate any of his or her powers, except the power under clause 12 to issue General Orders, to another PSO, but not to any other officer in the APS. The power of delegation is in other respects normal.

Clause 25

Delegation by Secretary

The Secretary can delegate his or her power to authorise any person to take the oath of affirmation of persons becoming PSO's. The power of delegation has no abnormal features.

Clause 26

Regulations

The Governor-General is empowered to make regulations under the legislation. These may include minor offences with a penalty not exceeding \$500. No heads of power are specified in this clause but clause 10 clearly requires regulations to be made.

ATTACHMENT A TO
NOTES ON CLAUSES

ARREST POWER OF PROTECTIVE SERVICE OFFICERS
UNDER CLAUSE 13

The list of substantive offences in respect of which PSO's are given power to arrest by clause 13 is as follows:

. Crimes Act 1914:

- s.24AB - sabotage
- s.29 - destroy or damage Commonwealth property
- s.30 - seizing goods in Commonwealth custody
- s.46(a) - aid a prisoner to escape from lawful custody
- s.71 - steal property of the Commonwealth
- s.73 - bribe a Commonwealth officer
- s.75 - personate a Commonwealth officer
- s.76 - resist or obstruct a Commonwealth officer
- s.78 - espionage and similar activities
- s.79 - unlawful dealing with official secrets
- s.83A - illegal use of uniforms and official permits for purposes of espionage
- s.89 - trespass on prohibited Commonwealth land
- s.89A - shoot on or over a prohibited area.

. Crimes (Internationally Protected Persons) Act 1976:

- s.8 - murder, kidnap or otherwise attack or threaten to attack the person or liberty of an internationally protected person.

. Defence (Special Undertakings) Act 1952:

- s.9 - unlawfully enter a prohibited area or make a record of anything therein

- s.11 - fail to obey entry permit conditions or to return a revoked permit
- s.12 - fail to comply with directions of officer in charge of a prohibited area
- s.13 - sabotage
- s.14 - fail to comply with prohibitions or restrictions relating to a restricted area
- s.16 - fail to follow lawful procedures on accidental overflight of a prohibited or restricted area
- s.17 - carry or use a camera in or over a prohibited area without authority
- s.23(2) - refuse to identify self to a Commonwealth officer or constable in or near a prohibited area
- s.24 - obstruct, mislead or interfere with a person exercising a power or performing a duty under the Act.

. Public Order (Protection of Persons and Property) Act 1971:

- s.6 - do (or act so as to give cause to apprehend) violence to a person or damage to property in an assembly in a Territory or wholly or partly on Commonwealth premises
- s.7 - cause actual bodily harm or substantial property damage in such an assembly
- s.8 - being in such an assembly fail to comply with a police direction to disperse
- s.9 - cause unreasonable obstruction in such an assembly
- s.10 - have or use a weapon, missile or noxious substance or thing in such an assembly
- s.12 - trespass, obstruction, offensive behaviour or failure to comply with a lawful direction to leave, in relation to Commonwealth premises
- s.15 - do (or act so as to give cause to apprehend) violence to a person or damage to property in an assembly in relation to foreign diplomatic or consular staff or premises

- s.16 - cause actual bodily harm or substantial property damage in such an assembly
 - s.17 - being in such an assembly, fail to comply with a police direction to disperse
 - s.18 - assault, obstruct or harass a foreign diplomatic or consular official
 - s.19 - have or use a weapon missile or noxious substance or thing in an assembly in relation to foreign diplomatic or consular staff or premises
 - s.20 - trespass, obstruction, offensive behaviour or failure to comply with a lawful direction to leave, in relation to foreign diplomatic or consular premises.
- . Nuclear Non-Proliferation (Safeguards) Act 1986:
- s.23 - possession of nuclear material or associated item without permit
 - s.25 - breach of condition of permit or authority
 - s.26 - unauthorised communication of information
 - s.31 - obstruction of Agency inspector
 - s.33 - stealing or otherwise unlawfully obtaining nuclear material
 - s.34 - demanding nuclear material by threats
 - s.35 - use of nuclear material causing injury to persons or damage to property
 - s.36 - threat to use nuclear material
 - s.37 - threat to commit an offence under s.33
 - s.71 - breach of confidentiality of information by an officer, employee or consultant associated with the Australian Safeguards Office.