

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMPLAINTS (AUSTRALIAN FEDERAL POLICE) AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Special Minister of State)

OUTLINE

1. The Complaints (Australian Federal Police) Amendment Bill 1985, which amends the Complaints (Australian Federal Police) Act 1981, has several purposes, the most significant of which are:

- (a) to clarify the manner of giving, and the scope of, a direction to a member under investigation that he furnish information, produce a document or other record or answer a question;
- (b) to provide that the Commissioner may discontinue proceedings against a member;
- (c) to extend the present conciliation provisions of the Act;
- (d) to permit a member to make representations as to appropriate penalty; and
- (e) to provide a right of appeal to the Federal Court from decisions of the Disciplinary Tribunal.

2. The Bill will have no financial impact.

NOTES ON CLAUSES

Clause 1: Short Title; Clause 2: Commencement

3. Self-explanatory.

Clause 3: Interpretation

4. Deletes the definitions of 'member' and 'special member of the Australian Federal Police', substituting an alternative definition of the same terms. As presently framed, the provisions of the Principal Act refer only to 'members', and there is thus doubt as to whether 'special members', although defined, are included.

Clause 4: Powers of Investigation Division

5. Deletes sub-section 7(5), replacing it with arrangements which reflect the terminology used in sub-section 7(1) - 'complaint' or 'matter' - and extends the protection afforded to a member by providing that:

- . a direction to furnish information etc under sub-section 7(5) must be expressly identified as such;
- . a direction shall specify particulars of the complaint or matter under investigation;
- . where practicable, a direction shall be in writing, a copy of which is furnished to the member.

6. It is also provided that the onus of proving that a direction was properly given lies on the person giving it.

Clause 5: Power of Commissioner to withdraw charges by consent

7. Provides for the insertion of a new section 11A into the Principal Act. The new section makes it clear that the Commissioner may withdraw proceedings instituted against a member. Withdrawal is to be by leave of the Disciplinary Tribunal and to follow consultation with the Attorney-General, the Minister or the Ombudsman, as appropriate.

Clause 6: Conciliation

8. Deletes sub-sections 19(1)-(4). These sub-sections provide for an attempt to reconcile a complainant and the member concerned. The proposed new provisions preserve that capacity, and extend it to cover situations where either a complaint may not be directed at a member individually or where a complaint against a member raises wider questions in relation to AFP practices and procedures. In these cases, provision is proposed that a senior member of the AFP should attempt to conciliate the complainant.

Clause 7: Special or additional investigations conducted by Ombudsman

9. Amends existing sub-section 26(5) to overcome apparent inconsistency in that sub-section as presently drafted.

Clause 8: Reports by Ombudsman

10. Self-explanatory.

Clause 9: Officers to observe secrecy

11. Self-explanatory.

Clause 10: Charges in respect of breaches of discipline

12. The present sub-section 67(5) provides that the Disciplinary Tribunal may seek representations as to penalty from the Commissioner or his nominee. The proposed amendment to that sub-section affords a similar opportunity to the member concerned. The proposed replacement of sub-section 67(7) retains the present consultancy provisions - with the deletion of reference to the Disciplinary Tribunal, since this is now covered by sub-section 67(5).

Clause 11: Appeals to Disciplinary Tribunal from proceedings remitted to Commissioner

13. Amends paragraph 68(2)(c) to allow extensions of time beyond the present 28 day limit for lodgement of appeals to the Disciplinary Tribunal from a decision by the Commissioner.

Clause 12: Appeals to Disciplinary Tribunal from proceedings before Commissioner

14. Amends paragraph 69(2)(c) in a manner consistent with the change proposed to paragraph 68(2)(c) - Clause 11 above.

15. The amendment of sub-section 69(5) affords the Commissioner or his nominee, as well as the member, an opportunity to show cause why a substituted finding should not be made.

Clause 13: Powers of Tribunal

16. Amends sub-section 71(2) to provide that a summons may be issued by the Registrar or Deputy Registrar.

Clause 14: Appeals to Federal Court of Australia from decisions of
Disciplinary Tribunal

17. Provides new sub-sections 79(1A) and (1B). The first permits appeals to the Federal Court on penalty by the member or the Commissioner. The second provides for a stay of execution of the Tribunal's decision in the event of an appeal.

Clause 15: Application

18. Self-explanatory transitional arrangements.

