

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMPLAINTS (AUSTRALIAN FEDERAL POLICE) AMENDMENT BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice,  
the Honourable Duncan Kerr)





## COMPLAINTS (AUSTRALIAN FEDERAL POLICE) AMENDMENT BILL 1994

### SUPPLEMENTARY OUTLINE

The proposed amendment to clause 6 of the Complaints (Australian Federal Police) Amendment Bill 1994 ('the Bill') will require the agreement of the Ombudsman before a person can be charged with the offence of making a false complaint or providing false information in relation to a complaint. The amendment will replace the Bill's original subsection 19(3), which simply required consultation with the Ombudsman before an action could proceed. The amendment arose out of a hearing into the Bill by the Senate Standing Committee on Legal and Constitutional Affairs, the report of which was tabled in Parliament on 22 September 1994. Witnesses at the hearing included representatives from the Attorney-General's Department, Australian Federal Police, Australian Federal Police Association, the Commonwealth Ombudsman's Office, the Law Council of Australia and various civil liberties groups.

Some of these thought that the consultation requirement was not strong enough to deter the possible intimidation of complainants. There were also concerns that the provision would generally deter complainants from coming forward, when ideally there should be no impediment to the making of complaints. Most participants thought that a consent provision would lessen these concerns and that the Ombudsman would provide an external control over potential prosecutions under the section.

The amendment to the Bill now requires the Ombudsman to consent to the bringing of proceedings under this section. In the event of disagreement between the Ombudsman and the person who sought his/her consent, the bringing of proceedings will be a matter for the Attorney-General to decide. The independent roles of the Ombudsman and Attorney-General are seen as an important safeguard to ensure that police do not use the provision capriciously, and ensure that complainants are not discouraged from coming forward.

### FINANCIAL IMPACT STATEMENT

The amendment will have no significant financial impact.

## NOTES ON CLAUSES

### **Clause 6: False complaints and providing false information in relation to complaints**

Proposed subsection 19(3) introduces a requirement for the Ombudsman to consent before a charge of making a false complaint or providing false information in relation to complaints may be brought by anyone.

Under the proposed subsection, proceedings will only be able to be commenced after the Ombudsman (or a person authorised by the Ombudsman) consents in writing to the bringing of proceedings. The Ombudsman's role is seen as a safeguard to ensure that the section is not used capriciously against complainants, and to protect the complainant against any possible intimidation.

If the Ombudsman's consent is not forthcoming, the Attorney-General will ultimately decide whether to bring proceedings. This additional control over possible prosecutions under the section will give further protection to complainants. Either the Ombudsman or the person who sought the Ombudsman's consent to proceed will be able to refer the matter to the Attorney-General for resolution. The referral of the matter to the Attorney-General is in keeping with other provisions in the Principal Act. It will, for example, give a similar degree of protection to complainants as members of the AFP receive before being charged with disciplinary offences under section 11 of the Principal Act.