



Australian Federal Police Legislation Amendment Act 2000

No. 9, 2000



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An Act to amend the *Australian Federal Police Act 1979* and other legislation, and for related purposes

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Australian Federal Police Legislation Amendment Act 2000

No. 9, 2000

An Act to amend the *Australian Federal Police Act 1979* and other legislation, and for related purposes

[Assented to 7 March 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Federal Police Legislation Amendment Act 2000*.

2 Commencement

- (1) Subject to this section, this Act commences on a day to be fixed by Proclamation.
- (2) If this Act (other than items 34, 47 and 48 of Schedule 2) does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, then this Act (other than those items) commences on the first day after the end of that period.

Items 34, 47 and 48 of Schedule 2

- (3) If the *Public Service Act 1999* has commenced before the day on which this section commences, then items 34, 47 and 48 of Schedule 2 to this Act do not commence.

Note: To work out the day on which this section commences: see subsections (1) and (2).

- (4) If the *Public Service Act 1999* has not commenced before the day on which this section commences, then items 34, 47 and 48 of Schedule 2 to this Act commence on the day on which this section commences.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Australian Federal Police Act 1979

1 After section 3

Insert:

3A Overview of Act

Constitution of the Australian Federal Police

- (1) Division 1 of Part II of this Act provides that the Australian Federal Police consists of a Commissioner of Police, one or more Deputy Commissioners of Police, AFP employees and special members.

Commissioner and Deputy Commissioners

- (2) The Commissioner and Deputy Commissioners are appointed by the Governor-General. Division 1 of Part III sets out matters dealing with such appointments.

AFP employees

- (3) The Commissioner may engage persons as AFP employees. Division 2 of Part III covers matters to do with the employment of AFP employees. For example, it deals with the remuneration and terms and conditions of employment of AFP employees, how AFP employees can resign or retire and how the Commissioner may terminate the employment of AFP employees.

Members of the Australian Federal Police

- (4) The Commissioner and any Deputy Commissioner are members of the Australian Federal Police. Under Division 2 of Part IV, the Commissioner may declare AFP employees to be members and certain members may be declared to be commissioned police officers. Under Division 1 of Part II, members provide police services and that Division also deals with powers of members.

Special members of the Australian Federal Police

- (5) Under Division 3 of Part IV, the Commissioner may appoint persons as special members to assist the Australian Federal Police in carrying out its functions.

Commissioner's command powers

- (6) The Commissioner has the general administration of, and the control of the operations of, the Australian Federal Police. Part IV is mainly about the Commissioner's command powers. For example, the Commissioner may determine the duties of AFP employees and where those duties are to be performed. Other topics covered by that Part include secondment and drug testing.

Other matters

- (7) This Act also:
- (a) deals with the use of listening devices in relation to offences (see Division 2 of Part II); and
 - (b) deals with when AFP employees lose certain superannuation rights and benefits (see Part VA); and
 - (c) deals with other matters such as secrecy obligations, offences and certain administrative matters (all of which are contained in Part VI).

2 Subsection 4(1) (definition of *adjustment payment*)

Repeal the definition, substitute:

adjustment payment means a payment made in accordance with a determination that is continued in force by item 8 of Part 1 of Schedule 3 to the *Australian Federal Police Legislation Amendment Act 2000* (including a payment made in accordance with such a determination as amended or varied in accordance with that item).

3 Subsection 4(1)

Insert:

AFP employee means a person engaged under section 24.

4 Subsection 4(1) (definition of *appoint*)

Repeal the definition.

5 Subsection 4(1)

Insert:

Australian workplace agreement has the same meaning as in the *Workplace Relations Act 1996*.

6 Subsection 4(1)

Insert:

blood test means a test of a person's blood to determine the amount of alcohol (if any) in the person's blood.

7 Subsection 4(1)

Insert:

body sample means any of the following:

- (a) any human biological fluid;
- (b) any human biological tissue (whether alive or otherwise);
- (c) any human breath.

8 Subsection 4(1)

Insert:

breath test means a test of a person's breath to determine the amount of alcohol (if any) in the person's blood.

9 Subsection 4(1)

Insert:

certified agreement has the same meaning as in the *Workplace Relations Act 1996*.

10 Subsection 4(1)

Insert:

commissioned police officer means any member in respect of whom a declaration under section 40D is in force.

11 Subsection 4(1) (definition of *commissioned rank*)

Repeal the definition.

12 Subsection 4(1)

Insert:

Commissioner's Orders means orders under section 38.

13 Subsection 4(1) (definition of *maximum age*)

Repeal the definition.

14 Subsection 4(1)

Insert:

member of the Australian Federal Police means any of the following:

- (a) the Commissioner of Police;
- (b) a Deputy Commissioner of Police;
- (c) an AFP employee in respect of whom a declaration under section 40B is in force.

15 Subsection 4(1) (definition of *non-commissioned rank*)

Repeal the definition.

16 Subsection 4(1)

Insert:

overseas means outside Australia and the Territories.

17 Subsection 4(1)

Insert:

prohibited drug means:

- (a) a narcotic substance (within the meaning of the *Customs Act 1901*); or
- (b) any drug specified in a determination under section 4A.

18 Subsection 4(1)

Insert:

prohibited drug test means a test of a body sample of a person to determine the presence (if any) of a prohibited drug in the sample.

19 Subsection 4(1)

Insert:

senior executive AFP employee means an AFP employee in respect of whom a declaration under section 25 is in force.

20 Subsection 4(1) (definition of *senior executive commissioned police officer*)

Repeal the definition.

21 Subsection 4(1)

Insert:

serious misconduct has the meaning given by section 40K.

22 Subsection 4(1) (definition of *special member*)

Omit “section 27”, substitute “section 40E”.

23 Subsection 4(1) (definition of *staff member*)

Repeal the definition.

24 After section 4

Insert:

4A Commissioner may specify prohibited drugs

The Commissioner may, by written determination, specify drugs for the purposes of the definition of *prohibited drug* in section 4.

25 Subsection 5(2)

Repeal the subsection, substitute:

(2) If:

- (a) a provision of a law is, by virtue of subsection (1), to be read as referring to a member of the Australian Federal Police holding a particular rank; and

(b) a declaration is in force under subsection (3) that a member is of that rank for the purposes of this paragraph;
the provision of the law is to be read as referring to the member to whom the declaration applies.

(3) The Commissioner may, by writing, declare that a member is of a particular rank for the purposes of paragraph (2)(b).

26 Part II (heading)

Repeal the heading, substitute:

Part II—Constitution, functions and powers of the Australian Federal Police

27 Division 1 of Part II (heading)

Repeal the heading, substitute:

Division 1—Constitution, functions and laws conferring powers etc.

28 Section 6

Repeal the section, substitute:

6 Constitution of the Australian Federal Police

The Australian Federal Police consists of:

- (a) the Commissioner of Police; and
- (b) any Deputy Commissioner of Police; and
- (c) AFP employees; and
- (d) special members.

29 Paragraph 9(1)(a)

Repeal the paragraph, substitute:

- (a) the powers and duties that are conferred or imposed by or under a law of the Commonwealth on:
 - (i) a constable; or

- (ii) a constable of a particular rank, if a declaration under subsection (2A) is in force that the member is of that rank for the purposes of this subparagraph; and

Note: The heading to section 9 is replaced by the heading “**Laws conferring powers on members**”.

30 Paragraph 9(1)(c)

Repeal the paragraph, substitute:

- (c) in relation to the following:
 - (i) the laws of the Commonwealth;
 - (ii) matters in connection with property of the Commonwealth or of an authority of the Commonwealth;
 - (iii) matters arising on or in connection with land or premises owned or occupied by the Commonwealth or an authority of the Commonwealth;
 - (iv) the safeguarding of Commonwealth interests; the powers and duties that are conferred or imposed, in the place in which the member is acting, on:
 - (v) a constable or an officer of police; or
 - (vi) a constable, or an officer of police, of a particular rank, if a declaration under subsection (2B) is in force that the member is of that rank for the purposes of this subparagraph.

31 Paragraph 9(2)(b)

Repeal the paragraph, substitute:

- (b) if a declaration is in force under subsection (2B) that a member is of a particular rank for the purposes of this paragraph—any reference in those provisions to an officer of police of that rank included a reference to the member.

32 After subsection 9(2)

Insert:

- (2A) The Commissioner may, by writing, declare that a member is of a particular rank for the purposes of subparagraph (1)(a)(ii).

(2B) The Commissioner may, by writing, declare that a member is of a particular rank (the *State law rank*) for the purposes of subparagraph (1)(c)(vi) or paragraph (2)(b) if:

- (a) a declaration is in force under subsection (2A) that the member is of a particular rank (the *Commonwealth law rank*); and
- (b) the Commissioner considers the State law rank is equivalent to the Commonwealth law rank.

(2C) Unless it ceases to be in force sooner, a declaration under subsection (2B) ceases to be in force when the declaration under subsection (2A) ceases to be in force.

33 Section 12

Omit “A member or staff member”, substitute “The Commissioner, a Deputy Commissioner or an AFP employee”.

34 Paragraph 12(a)

Omit “a member or staff member”, substitute “the Commissioner, a Deputy Commissioner or an AFP employee”.

35 Paragraph 12E(1)(a)

Omit “a staff member”, substitute “an AFP employee who is not a member”.

36 Paragraph 12E(1)(b)

Omit “staff members”, substitute “AFP employees who are not members”.

37 Subsection 12E(2)

Omit “a staff member”, substitute “an AFP employee”.

38 Part III

Repeal the Part.

39 Part IV (heading)

Repeal the heading, substitute:

Part III—Commissioner, Deputy Commissioners and AFP employees etc.

40 Subsection 17(1)

Omit “a Deputy Commissioner”, substitute “one or more Deputy Commissioners”.

Note: The heading to section 17 is altered by omitting “**Deputy Commissioner**” and substituting “**Deputy Commissioners**”.

41 Subsections 17(5) and (6)

Repeal the subsections.

42 Subsection 18(2)

Omit “make an appointment or promotion under subsection 25(1A))”, substitute “make a declaration under subsection 40D(4))”.

43 Subsection 19(1)

Omit “make an appointment or promotion under subsection 25(1A))”, substitute “make a declaration under subsection 40D(4))”.

44 Subsection 20(2B)

Repeal the subsection.

45 Divisions 2 and 3 of Part IV

Note: The reference to Part IV is to that Part as numbered before items 39 and 46 of this Schedule apply.

Repeal the Divisions, substitute:

Division 2—AFP employees

Subdivision A—Engagement of AFP employees etc.

23 Employer powers etc. of Commissioner

- (1) The Commissioner, on behalf of the Commonwealth, has all the rights, duties and powers of an employer in respect of AFP employees.

- (2) Without limiting subsection (1), the Commissioner has, in respect of AFP employees, the rights, duties and powers that are prescribed by the regulations.

24 Engagement of AFP employees

- (1) The Commissioner, on behalf of the Commonwealth, may, by writing, engage persons as employees.

Engagement may be made subject to conditions

- (2) The engagement of an AFP employee may be made subject to conditions notified to the employee, including conditions dealing with any of the following matters:
- (a) probation;
 - (b) citizenship;
 - (c) formal qualifications;
 - (d) security and character clearances;
 - (e) health clearances;
 - (f) secrecy requirements.

- (3) Subsection (2) does not, by implication, limit the conditions that may be applied to the engagement of an AFP employee.

Non-Australian citizen

- (4) The Commissioner must not engage, as an AFP employee, a person who is not an Australian citizen, unless the Commissioner considers it appropriate to do so.

This section has no application to overseas engagement

- (5) This section does not apply to the engagement of persons overseas to perform duties overseas as employees.

Note: Section 69A deals with the engagement of such persons.

25 Senior executive AFP employees

The Commissioner may, by writing, declare an AFP employee to be a senior executive AFP employee.

26 Continuous employment

For the purposes of the *Long Service Leave (Commonwealth Employees) Act 1976* and any other law of the Commonwealth, if:

- (a) a person is engaged as an AFP employee under section 24 for a period; and
 - (b) the person completes that period of engagement (the *initial period*); and
 - (c) the person is re-engaged under that section for a further period starting immediately after the end of the initial period;
- the person's employment is taken to be continuous from the beginning of the initial period until the end of the re-engagement.

Subdivision B—Remuneration and other terms and conditions

27 Remuneration and other conditions

- (1) The Commissioner may from time to time determine in writing the remuneration and other terms and conditions of employment applying to an AFP employee, other than:
 - (a) terms and conditions of employment that the Commissioner may determine under subsection 40H(2); or
 - (b) accommodation arrangements that are to apply to an AFP employee, and allowances an AFP employee is to be paid, while the employee is performing duties of the kind covered by paragraph 40H(3)(b).

Application etc. of award or certified agreement

- (2) A determination under subsection (1) may apply, adopt or incorporate, with or without modification, any of the provisions of an award or certified agreement, as in force at a particular time or as in force from time to time.

Award, certified agreement or Australian workplace agreement prevails over a determination under subsection (1)

- (3) An award, a certified agreement or an Australian workplace agreement overrides any determination under subsection (1), to the extent of any inconsistency.

Interpretation

- (4) For the purposes of this section, *award* has the same meaning as in the *Workplace Relations Act 1996*.

Subdivision C—Termination of employment

28 Termination of employment by Commissioner

The Commissioner may at any time, by notice in writing, terminate the employment of an AFP employee.

Note: The *Workplace Relations Act 1996* has rules that apply to termination of employment.

Subdivision D—Resignation and retirement

30 Resignation

- (1) An AFP employee may resign from the Australian Federal Police if, and only if:
- (a) he or she gives written notice to the Commissioner of his or her resignation and the notice specifies, in accordance with subsection (2), the day his or her resignation is to take effect; or
 - (b) his or her resignation is in accordance with regulations under paragraph 70(g) (about resigning for the purpose of becoming a candidate at certain elections).

Limitation

- (2) The day specified in a notice under paragraph (1)(a) must not:
- (a) be earlier than 14 days, or such shorter period as the Commissioner allows; or
 - (b) be later than 4 months;
- after the day on which the notice is given to the Commissioner.

31 Retirement upon reaching minimum retiring age

- (1) An AFP employee who has reached the minimum retiring age is entitled to retire at any time by notice in writing to the Commissioner.

Minimum retiring age

- (2) For the purposes of this section, the **minimum retiring age** is 55 years, or such higher or lower age as is prescribed by the regulations.

32 Retirement on invalidity grounds

Retirement of AFP employee by Commissioner

- (1) If the Commissioner is satisfied that an AFP employee should be retired because of physical or mental incapacity, the Commissioner may retire the employee by notice in writing given to the employee.

AFP employee consents to retirement

- (2) Before the Commissioner retires an AFP employee under subsection (1), the employee may, by notice in writing given to the Commissioner, consent to the Commissioner retiring the employee under that subsection.

Note: To find out when an AFP employee's retirement takes effect in such a case, see section 33.

AFP employee not re-engaged because of invalidity

- (3) If:
- (a) a person is engaged as an AFP employee under section 24 for a period; and
 - (b) the person completes that period of engagement (the **initial period**); and
 - (c) the person is not re-engaged under that section for a further period starting immediately after the end of the initial period; and
 - (d) the Commissioner certifies in writing that the person's physical or mental incapacity was the only reason why the person was not so re-engaged;
- the person is taken, for the purposes of the *Safety, Rehabilitation and Compensation Act 1988* and the Superannuation Act, to have been retired under this section on the day on which the initial period ended.

AFP employee is an eligible employee under the Superannuation Act 1976

- (4) In spite of this section, an AFP employee who:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- is not capable of being retired on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

AFP employee is a member of the superannuation scheme under the Superannuation Act 1990

- (5) In spite of this section, an AFP employee who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- is not capable of being retired on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

33 Time when retirement on invalidity grounds takes effect

AFP employee consents to retirement

- (1) If an AFP employee has consented to being retired under subsection 32(1), the employee's retirement takes effect on the day specified in the notice under that subsection. The day specified must not be before the day on which the notice is given to the employee.

AFP employee does not consent to retirement

- (2) If an AFP employee who is retired under subsection 32(1) has not consented to being retired under that subsection:
- (a) the notice given to the employee under that subsection must inform the employee that the employee is entitled to apply,

within the period, and in the manner, prescribed by the regulations, for review of the Commissioner's decision to retire the employee; and

- (b) subject to the outcome of any such review, the employee's retirement takes effect on a day specified in the notice.
- (3) The day specified in the notice must not be before the end of the period mentioned in paragraph (2)(a).

Regulations

- (4) The regulations may make provision in relation to the review of decisions of the Commissioner to retire AFP employees under subsection 32(1), where the employees have not consented to being retired under that subsection, including:
- (a) the period within which, and the manner in which, AFP employees may apply for review of such decisions; and
 - (b) the powers available to a person or body conducting such a review; and
 - (c) if the regulations make provision for a person or body conducting such a review to make recommendations to the Commissioner—the Commissioner giving effect to such recommendations by confirming or revoking such decisions.
- (5) Despite section 25D of the *Acts Interpretation Act 1901*, if regulations under subsection (4) make provision for a person or body conducting a review of decisions of a kind mentioned in that subsection to:
- (a) give written reasons for any decision the person or body makes in relation to such a review; and
 - (b) give a copy of those reasons to the AFP employee concerned;
- the regulations may also make provision in relation to:
- (c) the exclusion from that copy of any information of a medical or psychiatric nature that the person or body thinks may be prejudicial to the employee's physical or mental health or well-being; and
 - (d) the employee nominating a medical practitioner to receive that information.

34 Voluntary retirement for the purposes of the Superannuation Act

Resignation

- (1) If:
- (a) an AFP employee resigns from the Australian Federal Police in accordance with section 30; and
 - (b) the resignation takes effect on or after the day on which he or she reaches 55 but before he or she reaches 60;
- he or she is taken, for the purposes of the Superannuation Act, to have retired voluntarily.

Termination of employment

- (2) If:
- (a) an AFP employee's employment is terminated under section 28; and
 - (b) the termination takes effect on or after the day on which he or she reaches 55 but before he or she reaches 60;
- he or she is taken, for the purposes of the Superannuation Act, to have retired voluntarily.

Period of employment ends

- (3) If:
- (a) a person is engaged as an AFP employee under section 24 for a period; and
 - (b) the person completes that period of engagement (the *initial period*); and
 - (c) the person is not re-engaged under that section for a further period starting immediately after the end of the initial period; and
 - (d) the initial period ends on or after the day on which he or she reaches 55 but before he or she reaches 60;
- he or she is taken, for the purposes of the Superannuation Act, to have retired voluntarily.

Division 3—Consultants and independent contractors

35 Commissioner may engage consultants or independent contractors

The Commissioner may, under written agreements, engage persons as consultants, or independent contractors, to perform services.

Division 4—Undertakings and oaths or affirmations

36 Undertakings and oaths or affirmations

Commissioner

- (1) A person appointed as the Commissioner must, before commencing to perform his or her duties, make and subscribe, before a person authorised by the Minister, such oath or affirmation as is prescribed by the regulations.

Deputy Commissioner

- (2) A Deputy Commissioner appointed under section 17 must, immediately after his or her appointment:
 - (a) enter into an undertaking, in accordance with the form prescribed by the regulations, relating to the performance of his or her duties; and
 - (b) make and subscribe, before the Commissioner, such oath or affirmation as is prescribed by the regulations.

Members

- (3) A person declared to be a member under section 40B must, immediately after the declaration:
 - (a) enter into an undertaking, in accordance with the form prescribed by the regulations, relating to the performance of his or her duties; and
 - (b) make and subscribe, before the Commissioner or a person authorised by the Commissioner, such oath or affirmation as is prescribed by the regulations.

Special members

- (4) A person appointed under section 40E to assist in the performance of the functions of the Australian Federal Police must, immediately after his or her appointment:
- (a) enter into an undertaking, in accordance with the form prescribed by the regulations, relating to the performance of his or her duties; and
 - (b) make and subscribe, before the Commissioner or a person authorised by the Commissioner, such oath or affirmation as is prescribed by the regulations.

Interpretation

- (5) For the purposes of subsections (1) and (2), *appoint* does not include re-appoint for a term that begins immediately after the end of the term of the last previous appointment.

46 Part V

Repeal the Part, substitute:

Part IV—Commissioner’s command powers etc.

Division 1—Administration and control etc.

37 General administration and control

- (1) Subject to this Act, the Commissioner has the general administration of, and the control of the operations of, the Australian Federal Police.

Ministerial directions

- (2) The Minister may, after obtaining and considering the advice of the Commissioner and of the Secretary, give written directions to the Commissioner with respect to the general policy to be pursued in relation to the performance of the functions of the Australian Federal Police.
- (3) In addition to his or her power to give directions under subsection (2), the Minister may give written directions (either specific or

general) to the Commissioner in relation to the use of common services in accordance with an arrangement made under subsection (5).

Commissioner must comply with directions

- (4) The Commissioner must comply with all directions given under this section.

Ministerial arrangements

- (5) The Minister may, after obtaining and considering the advice of the Commissioner and of the Secretary, make an arrangement with the appropriate Minister of a State for the provision or development of common services and for the use of such common services by the Australian Federal Police and the Police Force of the State.

Reports

- (6) The Commissioner must give to the Minister such reports as the Minister requests relating to the administration and the performance of the functions of the Australian Federal Police.

Definitions

- (7) In this section:

common services includes services consisting of, or provided by means of:

- (a) computer systems; or
- (b) forensic science laboratories; or
- (c) research and planning systems; or
- (d) training institutions; or
- (e) anything of a like nature.

Secretary means the Secretary to the Department.

38 Commissioner's Orders

In the exercise of his or her powers under section 37, the Commissioner may, by writing, issue orders with respect to the

general administration of, and the control of the operations of, the Australian Federal Police.

39 Compliance with Commissioner's Orders

An AFP employee or a special member must comply with Commissioner's Orders.

Note: The regulations may make provision for the consequences of contravening this section: see paragraph 70(i).

40 Compliance with specific directions, instructions or orders

An AFP employee or a special member must not:

- (a) disobey; or
- (b) fail to carry out;

a lawful direction, instruction or order, whether written or oral, given to him or her by:

- (c) the Commissioner; or
- (d) a Deputy Commissioner; or
- (e) the AFP employee or the special member under whose control, direction or supervision he or she performs his or her duties.

Note: The regulations may make provision for the consequences of contravening this section: see paragraph 70(i).

40A Self-incrimination

- (1) If an AFP employee or a special member is required under section 39 or 40 to give information, answer a question or produce a document, he or she is not excused from giving the information, answering the question or producing the document on the ground that the information, the answer to the question or the production of the document might tend to incriminate him or her or make him or her liable to a penalty.
- (2) However, any information or answer so given or any document so produced is not admissible in evidence against the employee or special member in any proceedings, other than proceedings for a disciplinary offence under the Australian Federal Police (Discipline) Regulations.

- (3) Subsection (2) does not apply to any information or answer so given, or any document so produced, that is relevant to conducting a test under section 40M or 40N (about testing for alcohol or prohibited drugs)

Note: Section 40Q deals with the admissibility of such information etc.

Division 2—Conferral of status of member and conferral of commissions

40B AFP employees who are members of the Australian Federal Police

The Commissioner may, by writing, declare an AFP employee to be a member of the Australian Federal Police if the Commissioner is satisfied that the employee meets the requirements specified in a determination under section 40C.

40C Determination of competency or qualification requirements

The Commissioner may, by written determination, specify either or both of the following for the purposes of section 40B:

- (a) competency requirements;
- (b) qualification requirements.

40D Commissioned police officers

Commission by Governor-General

- (1) The Governor-General may, by commission, declare a member to be a commissioned police officer.
- (2) Before the Governor-General makes a declaration under subsection (1), the Minister must have received a recommendation from the Commissioner that the member be declared to be a commissioned police officer.
- (3) The Commissioner may make such a recommendation only if he or she is satisfied that the member is, in accordance with the regulations, competent and qualified to be a commissioned police officer.

Commission by Commissioner or Deputy Commissioner

- (4) If the Governor-General, in writing, authorises the Commissioner or a Deputy Commissioner to make declarations of the kind mentioned in subsection (1), the Commissioner or Deputy Commissioner may, by commission, declare a member to be a commissioned police officer.
- (5) The Commissioner or Deputy Commissioner may make a declaration under subsection (4) only if he or she is satisfied that the member is, in accordance with the regulations, competent and qualified to be a commissioned police officer.
- (6) The giving of an authorisation under subsection (4) does not limit the Governor-General's power under subsection (1).

Division 3—Special members

40E Special members

- (1) The Commissioner may, on such terms and conditions as he or she determines in writing, appoint a person as a special member of the Australian Federal Police to assist in the performance of its functions.
- (2) A person appointed under subsection (1) has, during the continuance of his or her appointment:
 - (a) any powers and duties that are expressly conferred or imposed on special members under a provision of this Act or of any other Act; and
 - (b) such of the powers and duties conferred or imposed on members as are specified in his or her instrument of appointment.

Division 4—Secondment

40F Secondment of AFP employees to other police forces etc.

- (1) The Commissioner may arrange for an AFP employee to be seconded for a specified period to:

- (a) the Police Force of a State or Territory or of a foreign country; or
- (b) the Australian Public Service; or
- (c) any other body or organisation (including an international body or organisation) whether within or outside Australia.

Note: Under subsection 27(1), the Commissioner may determine the terms and conditions of employment applying to an AFP employee seconded under this section.

Termination of secondment

- (2) The Commissioner may at any time terminate a secondment under subsection (1) after consultation with the Police Force, the Public Service Commissioner or the body or organisation, as the case may be.

Minister may give guidelines for secondments outside Australia

- (3) The Minister may give the Commissioner written guidelines on the secondment of AFP employees to the Police Force of a foreign country, or to any other body or organisation outside Australia.
- (4) The Minister must consult the Commissioner about the guidelines before giving them to the Commissioner.
- (5) If the Minister gives guidelines to the Commissioner, the Commissioner must not arrange for an AFP employee to be seconded to the Police Force of a foreign country, or to any other body or organisation outside Australia, except in accordance with the guidelines.

40G Effect of secondment on status as AFP employee etc.

Secondment has no effect on person's status

- (1) The secondment under section 40F of a person who is an AFP employee does not affect:
 - (a) the person's status as an AFP employee; and
 - (b) if the person is a member—the person's status as a member; and
 - (c) the application of any provision of this Act in relation to the person during the period of the secondment.

Discipline obligations etc. continue

- (2) During a period of secondment of an AFP employee under section 40F, the employee remains subject to the same obligations and liabilities in relation to discipline as those to which the employee would, but for the secondment, have been subject as such an employee.

Rights etc. arising from office or position to which person seconded

- (3) Nothing in this section affects:
- (a) any rights, powers or immunities that an AFP employee who is seconded under section 40F has by virtue of holding the office or position to which the employee has been seconded; or
 - (b) the extent to which the employee is subject to obligations or liabilities in relation to discipline by virtue of holding the office or position to which the employee has been seconded.

Division 5—Assignment and suspension of duties etc.

40H Assignment of duties etc.

- (1) The Commissioner may from time to time determine in writing the duties of an AFP employee, and the place or places at which the duties are to be performed.

Determination of terms and conditions while AFP employee outside Australia

- (2) The Commissioner may from time to time determine in writing the terms and conditions applying to an AFP employee while the employee is performing duties outside Australia.

Duties to meet special operational needs

- (3) If:
- (a) the Commissioner makes a determination under subsection (1); and

- (b) the Commissioner specifies in the determination that the duties concerned are to meet the special operational needs of the Australian Federal Police;

the Commissioner may determine in writing the accommodation arrangements that are to apply to the employee, or any allowances the employee is to be paid, while the employee is performing those duties.

40J Suspension from duties etc.

The regulations may do either or both of the following:

- (a) provide for the suspension from duties of AFP employees, with or without remuneration;
- (b) provide that declarations under section 40B (about declaring AFP employees to be members) cease to be in force during a specified period.

Note: A declaration under section 40B could also be revoked etc. under subsection 33(3) of the *Acts Interpretation Act 1901*.

Division 6—Declarations of serious misconduct

40K Termination of employment for serious misconduct

- (1) If the Commissioner terminates the employment of an AFP employee under section 28 because the Commissioner believes, on reasonable grounds, that the employee's conduct or behaviour, or any part of it:
 - (a) amounts to serious misconduct by the employee; and
 - (b) is having, or is likely to have, a damaging effect on:
 - (i) the professional self-respect or morale of some or all of the AFP employees; or
 - (ii) the reputation of the Australian Federal Police with the public, or with any section of the public, or with an Australian or overseas government or law enforcement agency;

the Commissioner may make a written declaration to that effect.

Timing of declaration etc.

- (2) Any declaration under subsection (1) must be made within 24 hours of the Commissioner's decision to terminate the employment of the AFP employee. The Commissioner must give a copy of the declaration to the AFP employee.

Definition

- (3) In this section:

serious misconduct means:

- (a) corruption, a serious abuse of power, or a serious dereliction of duty; or
- (b) any other seriously reprehensible act or behaviour by an AFP employee, whether or not acting, or purporting to act, in the course of his or her duties as an AFP employee.

Division 7—Submission of financial statements

40L Financial statements

- (1) The Commissioner may give a person who is an AFP employee or a special member a written direction requiring the person to give the Commissioner a statement in accordance with subsection (2).

Nature etc. of statement

- (2) The statement must:
- (a) be made in a form and manner required by the Commissioner; and
 - (b) contain any information required by the Commissioner about the financial affairs of the person during a period, or each period, specified by the Commissioner; and
 - (c) be accompanied by any documents required by the Commissioner.

Time limit for giving statement

- (3) The person must give the statement to the Commissioner within 2 months after the end of the period to which the statement relates.

Note: The regulations may make provision for the consequences of contravening this section: see paragraph 70(i).

Extension of time

- (4) The Commissioner may grant an extension of time for giving the statement in special circumstances.

Self-incrimination

- (5) The person is not excused from giving the statement on the ground that the statement might tend to incriminate him or her or make him or her liable to a penalty.
- (6) However, any statement so given is not admissible in evidence against the person in any proceedings, other than proceedings for a disciplinary offence under the Australian Federal Police (Discipline) Regulations.

Division 8—Drug testing

40M General testing of AFP employees or special members for alcohol and prohibited drugs

- (1) A person authorised to do so under the regulations may give an AFP employee, or a special member, who is on duty a written direction requiring him or her:
- (a) to undergo a breath test; or
 - (b) to provide a body sample of a kind specified in the direction for a prohibited drug test;
- in accordance with the regulations.

Providing blood sample if breath test indicates the presence of alcohol

- (2) If:
- (a) an AFP employee or a special member, in accordance with a direction under subsection (1), undergoes a breath test; and
 - (b) the breath test indicates the presence of alcohol;
- he or she may provide a sample of his or her blood for the purpose of a blood test, in accordance with the regulations.

Compliance with direction

- (3) An AFP employee or a special member must comply with a direction given to him or her under this section.

Note: The regulations may make provision for the consequences of the employee or member not complying with such a direction. They may also make provision for the consequences of the employee or special member testing positive for alcohol or prohibited drugs. See paragraph 70(i).

40N Testing of AFP employees or special members for alcohol and prohibited drugs after certain incidents

Person killed or seriously injured in an incident involving a motor vehicle or vessel or while in police custody

- (1) If:
- (a) a person is killed or seriously injured as a result of an incident involving a motor vehicle or vessel; or
 - (b) an incident occurs in which a person is killed or seriously injured while in police custody;
- a person authorised to do so in accordance with the regulations may give any AFP employee or special member directly involved in the incident while on duty a written direction requiring him or her:
- (c) to undergo a breath test; or
 - (d) to provide a body sample of a kind specified in the direction for a prohibited drug test;
- in accordance with the regulations.

Note: Such a direction may be given whether or not the employee or special member is still on duty: see subsection (3).

Person killed or seriously injured by a firearm discharging or physical force

- (2) If an incident occurs in which a person is killed or seriously injured as a result of:
- (a) the discharge of a firearm; or
 - (b) the application of physical force;
- by a member or a special member while he or she is on duty, a person authorised to do so in accordance with the regulations may

give the member or special member a written direction requiring him or her:

- (c) to undergo a breath test; or
- (d) to provide a body sample of a kind specified in the direction for a prohibited drug test;

in accordance with the regulations.

Note: Such a direction may be given whether or not the member or special member is still on duty: see subsection (3).

Direction to be given as soon as practicable after the incident

- (3) A direction under subsection (1) or (2) must be given by an authorised person as soon as practicable after the incident concerned and may be given whether or not the AFP employee or special member is still on duty.

Provision of blood or body sample while in hospital

- (4) If an AFP employee or a special member involved in the incident attends or is admitted to a hospital for examination or treatment because of the incident, a person authorised to do so in accordance with the regulations may give the employee or special member a written direction requiring him or her:
 - (a) to provide a sample of his or her blood for a blood test; or
 - (b) to provide a body sample of a kind specified in the direction for a prohibited drug test;in accordance with the regulations.

Compliance with direction

- (5) An AFP employee or a special member must comply with a direction given to him or her under this section.

Note: The regulations may make provision for the consequences of the employee or member not complying with such a direction. They may also make provision for the consequences of the employee or special member testing positive for alcohol or prohibited drugs. See paragraph 70(i).

40P Regulations

For the purposes of sections 40M and 40N, the regulations may make provision, not inconsistent with those sections, in relation to the following:

- (a) the authorisation of persons to give directions under those sections;
- (b) the authorisation of persons:
 - (i) to conduct breath tests, blood tests or prohibited drug tests for the purpose of those sections; and
 - (ii) to operate equipment for that purpose;
- (c) the provision of samples of blood for the purpose of blood tests under those sections;
- (d) the provision of body samples for the purpose of prohibited drug tests under those sections;
- (e) the conduct of breath tests, blood tests or prohibited drug tests under those sections;
- (f) the devices used in conducting breath tests, blood tests or prohibited drug tests under those sections, including the calibration, inspection and testing of those devices;
- (g) in the case of blood tests and prohibited drug tests—the accreditation of persons to conduct analyses in connection with such tests;
- (h) the procedure for the handling and analysis of:
 - (i) samples of blood taken in connection with blood tests under those sections; or
 - (ii) body samples taken in connection with prohibited drug tests under those sections;
- (i) the giving of the test results in certificates or other documents and the evidentiary effect of such certificates or other documents;
- (j) the confidentiality of the test results.

40Q Admissibility of test results etc. in legal proceedings

The following:

- (a) a certificate or other document recording the results of a test conducted under section 40M or 40N in relation to an AFP employee or a special member;

- (b) any other information, answer to a question or document relevant to conducting such a test (including any information or answer given or document produced in compliance with section 40);

is not admissible in evidence against the employee or special member in any proceedings other than the following:

- (c) proceedings for a disciplinary offence under the Australian Federal Police (Discipline) Regulations;
- (d) proceedings in relation to a decision of the Commissioner to terminate the employment of the employee or to terminate the appointment of the special member;
- (e) proceedings under the *Safety, Rehabilitation and Compensation Act 1988*;
- (f) proceedings in tort against the Commonwealth that are instituted by the employee or special member.

47 Section 41

Insert:

changeover day means the day on which Schedule 1 to the *Australian Federal Police Legislation Amendment Act 1999* commences.

48 Section 41 (definition of *corruption offence*)

Omit “was a member or a staff member”, substitute “was an AFP employee or an old law member or staff member”.

49 Section 41 (paragraph (a) of the definition of *corruption offence*)

Omit “office as such a member or staff member, as the case may be”, substitute “office as such a person”.

50 Section 41 (paragraph (b) of the definition of *corruption offence*)

Omit “such a member or staff member”, substitute “such a person”.

51 Section 41

Insert:

old law member or staff member has the meaning given by section 41A.

52 After section 41

Insert:

41A Old law members or staff members

For the purposes of this Part, if at a particular time before the changeover day a person was a member or staff member (within the meaning of this Act as in force at that time), the person was an *old law member or staff member* at that time.

53 Paragraph 43(1)(a)

Repeal the paragraph, substitute:

- (a) either:
 - (i) a person who is or was an AFP employee is charged with an offence; or
 - (ii) a person who was an old law member or staff member at any time is charged with an offence; and

54 Paragraph 44(a)

Repeal the paragraph, substitute:

- (a) either:
 - (i) a person who is or was an AFP employee is convicted of an offence; or
 - (ii) a person who was an old law member or staff member at any time is convicted of an offence; and

55 Subsection 47(2)

Omit “a member or a staff member of the Australian Federal Police”, substitute “an AFP employee”.

56 Subsection 47(3)

Omit “applies to a person who”, substitute “applies to a person”.

57 Paragraph 47(3)(a)

Repeal the paragraph, substitute:

- (a) who:

- (i) was an AFP employee at the time the relevant corruption offence was committed but was not such an employee when charged with that offence; or
- (ii) was an old law member or staff member at the time the relevant corruption offence was committed but was not such a member or an AFP employee when charged with that offence; and

58 Paragraph 47(3)(b)

Omit “would,”, substitute “who would,”.

59 Subsection 47(3)

Omit “member or staff member of the scheme”, substitute “member of the scheme”.

60 Subsection 48(1)

Omit “A member who was appointed before the commencing day”, substitute “A person who was appointed, before the commencing day, as a member (within the meaning of this Act as in force at any time before that day)”.

61 Subsection 49(1)

Omit “where a member or staff member”, substitute “if a person who is an AFP employee”.

62 Paragraph 49(1)(a)

Omit “the member or staff member” (wherever occurring), substitute “the person”.

63 Paragraph 49(1)(b)

Omit “the member or staff member”, substitute “the person”.

64 Paragraphs 51(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the person ceases, for any reason, to be an AFP employee on or after the day on which the person is charged (whether because the period of the person’s engagement ends, by operation of law or because of anything done by the person or the Commissioner);

Note: The heading to section 51 is altered by omitting “**Resignation or retirement**” and substituting “**Person ceases to be an AFP employee**”.

65 Paragraph 51(3)(a)

Omit “when his or her resignation or retirement takes effect”, substitute “on which he or she ceases to be an AFP employee”.

66 At the end of section 51

Add:

- (5) To avoid doubt, for the purposes of paragraph (1)(b), a person does not cease to be an AFP employee in circumstances where the person completes a period of engagement under section 24 (the *initial period*) and is re-engaged under that section for a further period starting immediately after the end of the initial period.

67 Section 52

Repeal the section, substitute:

52 Person ceases to be an AFP employee: persons charged with relevant disciplinary offences

- (1) Subject to this section, but despite any other provision of this Act or the regulations, if:
- (a) proceedings are started against a person under the Australian Federal Police (Discipline) Regulations in respect of a breach of a relevant disciplinary offence; and
 - (b) the person would, but for this subsection, cease to be an AFP employee on a day (the *cessation day*) that is on or after the day on which those proceedings are started (whether because the period of the person’s engagement ends, by operation of law or because of anything done by the person or the Commissioner);

the person does not cease to be an AFP employee on the cessation day and the person is taken to have been suspended without pay on the cessation day.

No further employee contributions

- (2) If subsection (1) applies in relation to a person, the person must not be required or permitted to pay employee contributions under any

superannuation scheme of which he or she is a member on or after the cessation day.

Proceedings finally determined

- (3) If subsection (1) applies in relation to a person and:
- (a) the proceedings are finally determined in favour of the person, or are discontinued; or
 - (b) the person is, on the final determination of the proceedings, found guilty of a relevant disciplinary offence but is not dismissed from the Australian Federal Police;
- the person is, in spite of subsection (1), taken to have ceased to be an AFP employee on the cessation day.

Interest entitlement

- (4) If:
- (a) subsection (3) applies in respect of a person; and
 - (b) the person is entitled under a superannuation scheme to interest on contributions made under the scheme by or on behalf of the person, being interest accrued up to, but not on or after, the cessation day;
- the person is taken to have ceased to be an AFP employee, for the purposes of that entitlement only, on the day on which the relevant event mentioned in paragraph (3)(a) or (b) happened.

Interpretation

- (5) To avoid doubt, for the purposes of paragraph (1)(b), a person does not cease to be an AFP employee in circumstances where the person completes a period of engagement under section 24 (the *initial period*) and is re-engaged under that section for a further period starting immediately after the end of the initial period.

68 Section 60

Repeal the section.

69 Subsection 60A(1)

Repeal the subsection, substitute:

- (1) This section applies to a person who is, or was at any time:
-

- (a) the Commissioner; or
- (b) a Deputy Commissioner; or
- (c) an AFP employee; or
- (d) a special member; or
- (e) a person engaged under section 35; or
- (f) a person performing functions under an agreement under section 69D.

70 Subsection 61(1)

Omit “a member, staff member or special member”, substitute “a Deputy Commissioner, an AFP employee or a special member”.

71 Subsection 62(1)

Omit “appointment as a member or staff member”, substitute “engagement as an employee under subsection 24(1)”.

72 Subsection 62(1) (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 12 months.

73 Subsection 62(2)

Repeal the subsection.

74 Section 63

After “member” (wherever occurring), insert “or special member”.

75 Section 63 (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 12 months.

76 Subsection 64(1)

After “member”, insert “or special member”.

77 Subsection 64(2)

After “member”, insert “or special member”.

78 Subsection 64A(1)

Omit “who holds a rank declared by the regulations to be a rank to which this section applies shall,”, substitute “must,”.

Note: The heading to section 64A is altered by omitting “**of certain ranks**” and substituting “**in uniform**”.

79 Subsection 64A(1) (penalty)

Omit “\$500”, substitute “5 penalty units”.

80 Subsection 64AA(1)

Omit “Where the appointment of a person as a member is suspended, or a member is suspended from duty, under this Act or the regulations, the person”, substitute “If an AFP employee who is a member is suspended from duties under the regulations, the member”.

Note: The heading to section 64AA is altered by omitting “**members and staff members**” and substituting “**AFP employees who are members**”.

81 Subsection 64AA(2)

Repeal the subsection.

82 Paragraph 64B(5)(a)

Omit “, under whatever authority he or she was appointed as such,”.

83 Subsection 66(1)

Omit “a member or staff member”, substitute “the Commissioner, a Deputy Commissioner, an AFP employee or a special member”.

84 Subsection 66(2)

Omit “member or staff member concerned”, substitute “Commissioner, Deputy Commissioner, AFP employee or special member, as the case may be,”.

85 Section 68

Repeal the section, substitute:

68 Proof of appointment, status of member etc.

Deputy Commissioner

- (1) The Commissioner may, by writing signed by the Commissioner, certify that a specified person has been appointed as a Deputy Commissioner under subsection 17(1) and may also certify all or any of the following in relation to the person:
 - (a) that he or she entered into the undertaking mentioned in subsection 36(2) immediately after his or her appointment;
 - (b) that, on a specified date, he or she made and subscribed the oath or affirmation mentioned in the certificate before the Commissioner;
 - (c) that he or she is, on the date on which the certificate is signed, a Deputy Commissioner and has been such a Deputy Commissioner continuously since he or she was so appointed.

AFP employees who are members

- (2) The Commissioner may, by writing signed by the Commissioner, certify that a specified person has been declared to be a member under section 40B and may also certify all or any of the following in relation to the person:
 - (a) that he or she entered into the undertaking mentioned in subsection 36(3) immediately after the declaration under section 40B;
 - (b) that, on a specified date, he or she made and subscribed the oath or affirmation mentioned in the certificate before the Commissioner or a specified person authorised by the Commissioner for the purposes of subsection 36(3);
 - (c) that he or she is, on the date on which the certificate is signed, a member and has been such a member continuously since the declaration under section 40B;
 - (d) that a declaration is in force, or was in force on a specified date or during a specified period, under subsection 5(3) or 9(2A) or (2B) in relation to the member (declarations about rank).

Special members

- (3) The Commissioner may, by writing signed by the Commissioner, certify that a specified person has been appointed as a special member under section 40E and may also certify all or any of the following in relation to the person:
- (a) that he or she entered into the undertaking mentioned in subsection 36(4) immediately after his or her appointment;
 - (b) that, on a specified date, he or she made and subscribed the oath or affirmation mentioned in the certificate before the Commissioner or a specified person authorised by the Commissioner for the purposes of subsection 36(4);
 - (c) that he or she is, on the date on which the certificate is signed, a special member and has been such a special member continuously since he or she was so appointed.

Certification that a person is or is not a member or special member

- (4) The Commissioner may, by writing signed by the Commissioner, certify that a specified person:
- (a) is, or is not, a member or special member; or
 - (b) was, or was not, on a specified day, or during a specified period, a member or special member.

Conclusive evidence of certificate under this section

- (5) A document purporting to be a certificate given under this section is, unless the contrary is established, to be presumed to have been duly given and be conclusive evidence of the matters stated in the certificate.

69 Prohibition of patronage and favouritism

The Commissioner, or a delegate of the Commissioner, in exercising powers under this Act:

- (a) in relation to the engagement of AFP employees; or
 - (b) otherwise in relation to AFP employees;
- must do so without patronage or favouritism.

69A Persons engaged overseas as employees

- (1) The Commissioner, on behalf of the Commonwealth, may engage persons overseas to perform duties overseas as employees.
- (2) The Commissioner, on behalf of the Commonwealth, has all the rights, duties and powers of an employer in respect of persons engaged under this section.
- (3) This section does not, by implication, limit any other power of the Commissioner to engage persons to work overseas.

69B Limited operation of Workplace Relations Act

- (1) The *Workplace Relations Act 1996* (other than Part VIII A or XA) does not apply in relation to any of the following matters:
 - (a) a matter covered by any of Divisions 2 to 8 of Part IV or any action taken under any of those Divisions;
 - (b) the discipline of AFP employees;
 - (c) any entitlement of AFP employees to adjustment payments;
 - (d) any other matter prescribed by the regulations.
- (2) The *Workplace Relations Act 1996* (other than Division 3 of Part VI A) does not apply in relation to the termination of employment of AFP employees.
- (3) To avoid doubt, this section does not imply that the *Workplace Relations Act 1996* applies to any matter covered by this Act:
 - (a) that is not mentioned in this section; and
 - (b) to which the *Workplace Relations Act 1996* would not otherwise apply.

69C Delegation

The Commissioner may, in writing, delegate to a Deputy Commissioner, an AFP employee or a special member, all or any of the Commissioner's powers, functions or duties under this Act.

69D Secondment of persons to assist the Australian Federal Police

- (1) The Commissioner may, by written agreement with a body or organisation, whether within or outside Australia, arrange for a person who:
 - (a) is employed by that body or organisation; and
 - (b) has suitable qualifications and experience;to assist the Australian Federal Police in the performance of its functions by performing the functions specified in the agreement.
- (2) The terms and conditions (including remuneration and allowances) applicable to a person performing functions under an agreement are those specified in the agreement.

86 Paragraph 70(a)

After “member” (wherever occurring), insert “or special member”.

87 At the end of paragraph 70(a)

Add “and”.

88 Paragraph 70(aa)

After “member”, insert “or special member”.

89 At the end of paragraph 70(aa)

Add “and”.

90 Paragraph 70(b)

Omit “\$500”, substitute “5 penalty units”.

91 At the end of paragraph 70(b)

Add “and”.

92 At the end of section 70

Add:

- ; and (e) requiring AFP employees who are not members to make and subscribe oaths or affirmations of secrecy in the prescribed form in relation to the matters coming to their knowledge in the course of their employment as such employees; and

- (f) the making of deductions from the salary of the Commissioner, a Deputy Commissioner or an AFP employee in order to satisfy a judgment debt (including interest on a judgment debt); and
- (g) enabling an AFP employee to resign from the Australian Federal Police for the purpose of becoming a candidate at an election of a member or members of the Parliament of the Commonwealth, the Parliament of a State, the Legislative Assembly for the Australian Capital Territory or the Legislative Assembly of the Northern Territory; and
- (h) the re-instatement of persons as AFP employees; and
- (i) disciplinary offences and penalties (including dismissal) for such offences in relation to any of the following:
 - (i) contraventions of section 39 (about compliance with Commissioner's Orders);
 - (ii) contraventions of section 40 (about compliance with specific directions, instructions or orders);
 - (iii) contraventions of subsection 40L(3) (about submission of financial statements);
 - (iv) contraventions of subsection 40M(3) or 40N(5) (about compliance with directions for drug testing);
 - (v) if tests conducted under Division 8 of Part IV indicate the presence of alcohol or prohibited drugs in blood or body samples—having such alcohol or drugs present;
 - (vi) any other matters; and
- (j) the storage, handling and confidentiality of any statement given under section 40L and the use which may be made of any such statement, including any limitations on such use; and
- (k) AFP employment decisions and the values on which such decisions must be based, including:
 - (i) impartiality and professionalism; and
 - (ii) merit; and
 - (iii) freedom from discrimination; and
 - (iv) openness and accountability; and
 - (v) fairness; and
 - (vi) equity in employment; and
 - (vii) effectiveness; and

(l) the review of AFP employment decisions.

93 Sections 72 and 73

Repeal the sections.

94 Section 76

Repeal the section.

95 Section 77

After “section 72”, insert “of this Act, as in force on the commencing date,”.

96 Sections 78 and 79

Repeal the sections.

Schedule 2—Amendment of other Acts

Administrative Decisions (Judicial Review) Act 1977

1 Paragraphs (z) and (za) of Schedule 2

Repeal the paragraphs, substitute:

- (z) decisions under section 28, 40F or 40H of the *Australian Federal Police Act 1979*;

Archives Act 1983

2 Subparagraph 47(2)(a)(iia)

Repeal the subparagraph, substitute:

- (iia) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*), in connection with the National Witness Protection Program;

Canberra Water Supply (Googong Dam) Act 1974

3 Paragraph 23(d)

Repeal the paragraph, substitute:

- (d) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*);

Complaints (Australian Federal Police) Act 1981

4 Subsection 3(1) (definition of *AFP appointee*)

Repeal the definition, substitute:

AFP appointee means a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the

Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*).

5 Subsection 3(1)

Insert:

Commissioner's Orders has the same meaning as in the *Australian Federal Police Act 1979*.

6 Subsection 3(1) (definition of *Federal police officer*)

Repeal the definition, substitute:

Federal police officer means:

- (a) a member of the Australian Federal Police; or
- (b) a special member of the Australian Federal Police.

7 Subsection 6(5) (definition of *authorised appointee*)

Omit "General Orders or General Instructions", substitute "Commissioner's Orders".

8 Subsection 6(5) (definition of *General Instructions*)

Repeal the definition.

9 Subsection 6(5) (definition of *General Orders*)

Repeal the definition.

10 Subsection 6B(1)

Omit "a senior member", substitute "an authorised member".

11 Subsection 6B(7)

Repeal the subsection, substitute:

- (7) For the purposes of subsection (1), an authorised member is an AFP appointee (other than the appointee against whom the complaint is made) who is a member of the Australian Federal Police and who is authorised in writing by the Commissioner for the purposes of this section.

12 Subsection 21(5)

Omit “General Orders and General Instructions”, substitute “Commissioner’s Orders”.

13 Subsection 52B(2)

Omit “reducing an AFP appointee to a lower rank or level or”.

14 Paragraph 52B(3)(a)

Omit “reducing the appointee to a lower rank or level or”.

15 Subsection 53(3)

Omit “reduce an AFP appointee to a lower rank or level or”.

16 Subsection 67(7)

Omit “reducing the appointee to a lower rank or”.

Crimes Act 1914

17 Subsection 3(1) (definition of *Assistant Commissioner*)

Repeal the definition.

18 Subsection 3(1) (paragraph (b) of the definition of *Commonwealth officer*)

Repeal the paragraph, substitute:

- (b) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*); and

19 Subsection 3(1) (paragraph (a) of the definition of *law enforcement officer*)

Repeal the paragraph, substitute:

- (a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*);

20 Subsection 3(1)

Insert:

senior executive AFP employee has the same meaning as in the *Australian Federal Police Act 1979*.

21 Paragraph 15J(a)

Omit “an Assistant Commissioner”, substitute “a senior executive AFP employee who is a member of the Australian Federal Police and who is authorised in writing by the Commissioner for the purposes of this section”.

22 Subsection 15R(1)

Omit “an Assistant Commissioner”, substitute “a senior executive AFP employee authorised in writing under section 15J”.

23 Paragraph 15S(4)(a)

Omit “an Assistant Commissioner”, substitute “a senior executive AFP employee authorised in writing under section 15J”.

Crimes (Aviation) Act 1991

24 Subsection 3(1) (paragraph (b) of the definition of *authorised person*)

Repeal the paragraph, substitute:

(b) in section 32:

- (i) a member of the Australian Federal Police; or
- (ii) an officer of the police force (however described) of a State or Territory of or above the rank of sergeant; or

Crimes (Superannuation Benefits) Act 1989

25 Subsection 2(1)

Insert:

AFP employee has the same meaning as in the *Australian Federal Police Act 1979*.

26 Subsection 7(1)

Omit “a member or staff member of the AFP”, substitute “an AFP employee”.

Director of Public Prosecutions Act 1983

27 Section 13

Omit “members, or staff members (or both), of the Australian Federal Police”, substitute “the Commissioner, a Deputy Commissioner of the Australian Federal Police or AFP employees (within the meaning of the *Australian Federal Police Act 1979*)”.

Disability Discrimination Act 1992

28 Subsection 4(1) (paragraph (g) of the definition of Commonwealth employee)

Repeal the paragraph, substitute:

- (g) is the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*).

Evidence Act 1995

29 Subsection 171(3) (paragraphs (b) and (c) of the definition of authorised person)

Repeal the paragraphs, substitute:

- (b) an AFP employee (within the meaning of the *Australian Federal Police Act 1979*); or
- (c) a special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

30 Subsection 180(1)

Omit “a member of the Australian Federal Police”, substitute “an AFP employee (within the meaning of the *Australian Federal Police Act 1979*) or a special member of the Australian Federal Police (within the meaning of that Act)”.

Note: The heading to section 180 is altered by inserting “**AFP employees or special**” after “**affidavits by**”.

31 Part 1 of the Dictionary (definition of *member of the Australian Federal Police*)

Repeal the definition.

32 Part 1 of the Dictionary (paragraph (a) of the definition of *police officer*)

After “member”, insert “or special member”.

Long Service Leave (Commonwealth Employees) Act 1976

33 Subsection 10(2A)

Repeal the subsection, substitute:

- (2A) For the purposes of this Act, the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee (within the meaning of the *Australian Federal Police Act 1979*) is taken to be employed in Government Service.

Merit Protection (Australian Government Employees) Act 1984

34 Subparagraph 85(2)(k)(i)

Repeal the subparagraph, substitute:

- (i) AFP employees (within the meaning of the *Australian Federal Police Act 1979*);

Migration Act 1958

35 Subsection 143(2)

Omit “a member of the Australian Federal Police of a rank not lower than Superintendent”, substitute “a commissioned police officer (within the meaning of the *Australian Federal Police Act 1979*)”.

***Occupational Health and Safety (Commonwealth
Employment) Act 1991***

36 Subsection 8(2)

Insert:

AFP employee has the same meaning as in the *Australian Federal Police Act 1979*.

37 Subsection 8(2) (definition of *dangerous operation*)

Omit “a member”, substitute “the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, or an AFP employee”.

38 Subsection 8(2) (definition of *member*)

Repeal the definition.

39 Subsection 8(2) (definition of *unauthorised person*)

Omit “a member”, substitute “an AFP employee”.

40 Paragraph 9(2)(a)

Repeal the paragraph, substitute:

- (a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee (all within the meaning of the *Australian Federal Police Act 1979*); or

41 Subsection 9(2)

Omit “such a member or staff member of the Australian Federal Police or member of the Defence Force or”, substitute “the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee, by the person’s performance of duties as such a member of the Defence Force or by the person’s performance of”.

Privacy Act 1988

**42 Subsection 6(1) (paragraph (d) of the definition of
Commonwealth officer)**

Repeal the paragraph, substitute:

- (d) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*);

43 Paragraph 8(1)(c)

Repeal the paragraph, substitute:

- (c) an act done or practice engaged in by, or information disclosed to, a person who is the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*) in the performance of his or her duties as such a person is treated as having been done or engaged in by, or disclosed to, the Australian Federal Police.

44 Paragraph 9(2)(b)

Repeal the paragraph, substitute:

- (b) as the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*) in the performance of his or her duties as such a person;

45 Paragraph 10(2)(b)

Repeal the paragraph, substitute:

- (b) as the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*) in the performance of his or her duties as such a person;

46 Paragraph 11(2)(c)

Repeal the paragraph, substitute:

- (c) as the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*) in the performance of his or her duties as such a person;

Public Service Act 1922

47 Paragraph 87(2)(d)

Repeal the paragraph, substitute:

- (d) service as a Deputy Commissioner of the Australian Federal Police or employment as an AFP employee (within the meaning of the *Australian Federal Police Act 1979*);

48 Paragraph 87J(2)(b)

Repeal the paragraph, substitute:

- (b) service as a Deputy Commissioner of the Australian Federal Police or employment as an AFP employee (within the meaning of the *Australian Federal Police Act 1979*);

Radiocommunications Act 1992

49 Section 5 (paragraph (d) of the definition of Commonwealth officer)

Repeal the paragraph, substitute:

- (d) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*); or

Safety, Rehabilitation and Compensation Act 1988

50 Paragraph 5(2)(a)

Repeal the paragraph, substitute:

- (a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP

employee (all within the meaning of the *Australian Federal Police Act 1979*); or

51 Subsection 5(2)

Omit “such a member or staff member of the Australian Federal Police or member of the Defence Force or”, substitute “the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee, by the person’s performance of duties as such a member of the Defence Force or by the person’s performance of”.

Service and Execution of Process Act 1992

52 Subsection 3(1) (definition of *member*)

Repeal the definition.

53 Paragraph 82(3)(c)

After “member”, insert “or special member”.

54 Paragraph 84(5)(b)

After “member”, insert “or special member”.

55 Subparagraph 84(6)(b)(iii)

After “member”, insert “or special member”.

Superannuation Act 1976

56 Subsection 3(5A)

Omit “a member or staff member of the Australian Federal Police (other than the Commissioner of Police or a Deputy Commissioner of Police)”, substitute “an AFP employee (within the meaning of the *Australian Federal Police Act 1979*)”.

Superannuation Act 1990

57 Section 10

Omit “a member, or staff member, of the Australian Federal Police (other than the Commissioner of Police or a Deputy Commissioner of Police)”, substitute “an AFP employee (within the meaning of the *Australian Federal Police Act 1979*)”.

Note: The heading to section 10 is replaced by the heading “**Australian Federal Police employees**”.

Telecommunications (Interception) Act 1979

58 Subsection 5(1)

Insert:

AFP employee has the same meaning as in the *Australian Federal Police Act 1979*.

59 Subsection 5(1) (paragraph (a) of the definition of *certifying officer*)

Omit “a member of the rank of Assistant Commissioner”, substitute “a senior executive AFP employee who is a member of the Australian Federal Police and who is authorised in writing by the Commissioner of Police for the purposes of this paragraph”.

60 Subsection 5(1) (subparagraph (b)(ia) of the definition of *permitted purpose*)

Repeal the subparagraph, substitute:

- (ia) the making by a person of a decision under the *Australian Federal Police Act 1979* in relation to the engagement of an AFP employee, the retirement of an AFP employee or the termination of the employment of an AFP employee or in relation to the appointment or the termination of the appointment of a special member of the Australian Federal Police;

61 Subsection 5(1)

Insert:

senior executive AFP employee has the same meaning as in the *Australian Federal Police Act 1979*.

62 Subsection 5(1) (definition of *staff member*)

Repeal the definition, substitute:

staff member, in relation to the Australian Federal Police, means an AFP employee who is not a member of the Australian Federal Police.

63 Subsection 6N(2)

Omit “staff members of the Australian Federal Police”, substitute “AFP employees who are not members of the Australian Federal Police”.

64 Paragraph 47(b)

Omit “a member or staff member of the Australian Federal Police”, substitute “the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police”.

Witness Protection Act 1994

65 Section 3

Insert:

AFP employee has the same meaning as in the *Australian Federal Police Act 1979*.

66 Section 3 (definition of *designated position*)

Omit “a member or staff member”, substitute “a Deputy Commissioner, an AFP employee or a special member of the Australian Federal Police”.

67 Section 3 (definition of *staff member*)

Repeal the definition.

68 Subsection 4(1)

Omit “members and staff members”, substitute “persons”.

69 Subsection 9(3)

Omit “a member or a staff member”, substitute “a person”.

70 Subsection 12(1)

Omit “members or staff members”, substitute “persons”.

71 Subsection 13(1)

Omit “members and staff members”, substitute “the Commissioner, a Deputy Commissioner, AFP employees and special members of the Australian Federal Police”.

72 Paragraph 13(2)(b)

Omit “members or staff members”, substitute “persons”.

73 Paragraph 20(f)

Omit “members or staff members”, substitute “the Commissioner, a Deputy Commissioner, AFP employees or special members of the Australian Federal Police”.

74 Paragraph 22(2)(c)

Omit “any member or staff member”, substitute “the Commissioner, a Deputy Commissioner, any AFP employee or any special member of the Australian Federal Police”.

75 Subsection 25(1)

Omit “a member or a staff member”, substitute “a person”.

76 Subsection 25(2)

Omit “A member or a staff member”, substitute “A person”.

77 Subsection 25(2)

Omit “member or staff member”, substitute “person”.

78 Subsection 26(1)

Omit “a member or a staff member”, substitute “a Deputy Commissioner, an AFP employee or a special member of the Australian Federal Police”.

Workplace Relations Act 1996

79 Subsection 4(10)

Repeal the subsection.

80 At the end of section 4

Add:

Note: Section 69B of the *Australian Federal Police Act 1979* provides that this Act does not apply to certain matters relating to AFP employees.

81 Paragraph 5(3)(e)

Repeal the paragraph.

82 Clause 3 of Schedule 1

Repeal the clause.

Schedule 3—Application and transitional provisions

Part 1—Application and transitional provisions relating to the amendments made by Schedule 1

1 Definitions

In this Part, unless the contrary intention appears:

commencing time means the time when this Part commences.

former Act means the *Australian Federal Police Act 1979*, as in force at any time before the commencing time.

former commissioned police officer means a person who held an appointment under section 25 of the former Act immediately before the commencing time.

former consultant means a person who was performing services as a consultant under an engagement in force under section 39B of the former Act immediately before the commencing time.

former non-commissioned police officer means a person who held an appointment under section 26 of the former Act immediately before the commencing time.

former senior executive commissioned police officer means a person who, immediately before the commencing time, was a senior executive commissioned police officer (within the meaning of the *Australian Federal Police Act 1979* as in force at that time).

former senior executive officer means a person who, immediately before the commencing time, was a staff member who was a senior executive officer (within the meaning of the *Australian Federal Police Act 1979* as in force at that time).

former special member means a person who held an appointment under section 27 of the former Act immediately before the commencing time.

former staff member means a person who held an appointment under section 26B of the former Act immediately before the commencing time.

former temporary employee means a person who was an employee under section 39A of the former Act immediately before the commencing time.

later Act means the *Australian Federal Police Act 1979*, as in force at and after the commencing time.

pre-commencement misconduct means conduct of a former commissioned police officer, a former non-commissioned police officer or a former staff member before the commencing time that was serious misconduct for the purposes of section 26F of the former Act.

statutory instrument means:

- (a) a law of the Commonwealth (other than the *Australian Federal Police Act 1979*); or
- (b) a law of a Territory; or
- (c) a certified agreement; or
- (d) an instrument having effect under a law covered by paragraph (a) or (b).

2 Conversion of former members and staff members etc.

Former commissioned police officer

- (1) At the commencing time, a former commissioned police officer is taken:
 - (a) to be engaged as an AFP employee under section 24 of the later Act; and
 - (b) to be declared to be a member of the Australian Federal Police under section 40B of the later Act; and
 - (c) to be declared to be a commissioned police officer under section 40D of the later Act.

Former non-commissioned police officer

- (2) At the commencing time, a former non-commissioned police officer is taken:
 - (a) to be engaged as an AFP employee under section 24 of the later Act; and
 - (b) to be declared to be a member of the Australian Federal Police under section 40B of the later Act.

Schedule 3 Application and transitional provisions

Part 1 Application and transitional provisions relating to the amendments made by Schedule 1

Former staff member

- (3) At the commencing time, a person who is a former staff member is taken:
- (a) to be engaged as an AFP employee under section 24 of the later Act; and
 - (b) if, immediately before the commencing time, a declaration under section 12E of the former Act was in force in relation to the person—to be declared to be a designated technical officer under section 12E of the later Act.

Former special member

- (4) At the commencing time, a person who is a former special member is taken to be appointed as a special member under section 40E of the later Act. For this purpose, an instrument of appointment under section 40E of the later Act is taken to be made at the commencing time:
- (a) if the instrument appointing the person under section 27 of the former Act specified the term of the person's appointment—specifying that the person is appointed for a period equal to the unexpired part of the term of his or her appointment under the former Act; and
 - (b) specifying the same other terms and conditions as were specified in the person's instrument of appointment under section 27 of the former Act; and
 - (c) specifying that the person has, during the continuance of his or her appointment, the same powers and duties conferred or imposed on members as were specified in his or her instrument of appointment under section 27 of the former Act.

Former temporary employee

- (5) At the commencing time, a person who is a former temporary employee is taken to be engaged as an AFP employee under section 24 of the later Act for a period equal to the unexpired part of his or her period of employment. For this purpose, a determination under subsection 27(1) of the later Act is taken to be made at the commencing time specifying the same terms and conditions as were determined in relation to the person under subsection 39A(2) of the former Act.

Former consultant

- (6) At the commencing time, a person who is a former consultant is taken to be engaged as a consultant under section 35 of the later Act:
- (a) if the terms and conditions of the person's engagement under section 39B of the former Act specified the period of the person's engagement—for a period equal to the unexpired part of the period of his or her engagement under the former Act; and
 - (b) on the same other terms and conditions as were determined in relation to the person under subsection 39B(2) of the former Act.

Later Act applies in same way

- (7) Except where this Part expressly provides otherwise:
- (a) the later Act applies to a person who is taken, under this item, to be appointed or engaged under the later Act in the same way as it applies to persons actually appointed or engaged under the later Act; and
 - (b) the later Act applies to a person who is taken, under this item, to be declared under the later Act to be a member of the Australian Federal Police, a commissioned police officer or a designated technical officer in the same way as it applies to persons actually declared under the later Act to be members of the Australian Federal Police, commissioned police officers or designated technical officers; and
 - (c) the later Act applies to an instrument of appointment, or a determination, that is taken, under this item, to be made under the later Act in the same way as it applies to instruments of appointment, or determinations, actually made under the later Act.

3 Classification as senior executive AFP employee

- (1) At the commencing time, a former senior executive commissioned police officer or a former senior executive officer is taken to be declared to be a senior executive AFP employee under section 25 of the later Act.

Schedule 3 Application and transitional provisions

Part 1 Application and transitional provisions relating to the amendments made by Schedule 1

- (2) The later Act applies to a person who is taken, under this item, to be declared to be a senior executive AFP employee under the later Act in the same way as it applies to persons actually declared to be senior executive AFP employees under the later Act

4 Appointment of Commissioner or Deputy Commissioner not affected

To avoid doubt, the amendments of section 17 of the *Australian Federal Police Act 1979* made by Schedule 1 to this Act do not affect the validity of an appointment made under that section before the commencement of the amendments.

5 Continuation of secondments

Persons seconded from the AFP

- (1) An arrangement in force under section 33 of the former Act immediately before the commencing time continues to be in force after the commencing time as if it had been entered into under section 40F of the later Act. In relation to a person covered by the arrangement, a determination under subsection 27(1) of the later Act is taken to be made at the commencing time specifying the same terms and conditions as were determined in relation to the person under subsection 33(5) of the former Act.
- (2) The later Act applies to a determination that is taken, under this item, to be made under the later Act in the same way as it applies to a determination actually made under subsection 27(1) of the later Act.

Persons seconded to the AFP

- (3) An agreement in force under section 39C of the former Act immediately before the commencing time continues to be in force after the commencing time as if it had been entered into under section 69D of the later Act.

6 Determinations under subsection 30(1) of the former Act

- (1) At the commencing time, the Commissioner is taken to make a determination (a *continued determination*) under subsection 27(1) of the later Act containing the terms of each determination under
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subsection 30(1) of the former Act that is in force immediately before the commencing time.

- (2) The later Act applies to a continued determination in the same way as it applies to a determination actually made under subsection 27(1) of the later Act.
- (3) Unless it is sooner revoked, a continued determination (including any amendments made by the Commissioner under subsection 27(1) of the later Act) ceases to be in force 1 year after the commencing time.

7 Continuation of awards or certified agreements

- (1) To avoid doubt, an award or a certified agreement that is in force immediately before the commencing time in relation to members or staff members of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979* as in force at that time) does not cease to be in force at and after the commencing time because of the amendments made by Schedule 1 to this Act.

Note: At and after the commencing time, any reference to a staff member of the Australian Federal Police in such an award or a certified agreement will be taken to be a reference to an AFP employee who is not a member: see item 18 of this Schedule.

- (2) If, immediately before the commencing time, a provision of such an award or a certified agreement applied to a member of the Australian Federal Police at a particular rank, or to a staff member of the Australian Federal Police at a particular level, the provision continues to apply to the person at and after the commencing time until the earlier of the following days:
 - (a) the day the person ceases to be an AFP employee;
 - (b) the day the award or certified agreement, as the case may be, ceases to be in force.

Note: A person who is a member or a staff member of the Australian Federal Police immediately before the commencing time is taken to be engaged as an AFP employee: see item 2 of this Schedule.

8 Determinations under subsection 30(2) of the former Act

- (1) A determination under subsection 30(2) of the former Act that is in force immediately before the commencing time continues to be in force at and after that time.

Schedule 3 Application and transitional provisions

Part 1 Application and transitional provisions relating to the amendments made by Schedule 1

- (2) The Commissioner may at any time after the commencing time, by writing, amend, vary or revoke a determination continued in force under subitem (1).
- (3) Any such amendment, variation or revocation (the *alteration*) does not affect any entitlement under the determination that arose before the alteration or that, disregarding the alteration, arises after the alteration in respect of:
 - (a) any service of fixed term appointments (including parts of fixed term appointments) to the extent that the service took place before the commencing time; or
 - (b) any employment as an AFP employee that took place after the commencing time and before the alteration takes effect.

9 Misconduct

The Commissioner may, under section 28 of the later Act, terminate the employment of an AFP employee for pre-commencement misconduct as if the conduct had happened after the commencing time.

10 Certificates under subsection 12A(4) of the *Australian Federal Police Act 1979*

Subsection 12A(4) of the *Australian Federal Police Act 1979* as in force at and after the commencing time applies to a certificate given under that subsection at any time before the commencing time in the same way as it does to a certificate given under that subsection at or after the commencing time.

11 Repeal of subsection 20(2B) of the *Australian Federal Police Act 1979* does not limit subsection 33(3) of the *Acts Interpretation Act 1901*

To avoid doubt, the repeal of subsection 20(2B) of the *Australian Federal Police Act 1979* made by item 44 of Schedule 1 to this Act does not mean that subsection 33(3) of the *Acts Interpretation Act 1901* has no application in relation to a determination under subsection 20(2A) of the *Australian Federal Police Act 1979*.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that any instrument can be amended, varied or revoked etc. unless a contrary intention appears.

12 Repeal of section 39E of the *Australian Federal Police Act 1979* has no effect on the Superannuation Acts

The repeal of section 39E of the *Australian Federal Police Act 1979* made by Schedule 1 to this Act does not affect the operation of the *Superannuation Act 1976* or the *Superannuation Act 1990* at, or at any time after, the commencing time in relation to any period of a person's appointment under the *Australian Federal Police Act 1979* before the commencing time.

13 Continuation of section 49 of the *Australian Federal Police Act 1979*

Section 49 of the *Australian Federal Police Act 1979* as in force immediately before the commencing time continues to apply at and after the commencing time to any person found guilty of a relevant disciplinary offence before the commencing time as if the amendments to that section made by Schedule 1 to this Act had not been made.

14 Continuation of section 51 of the *Australian Federal Police Act 1979*

The amendments of section 51 of the *Australian Federal Police Act 1979* made by Schedule 1 to this Act apply to persons charged with offences whether before or after the commencing time, but do not apply where persons' resignations or retirements from the Australian Federal Police took effect before the commencing time.

15 Continuation of section 52 of the *Australian Federal Police Act 1979*

The amendment of section 52 of the *Australian Federal Police Act 1979* made by Schedule 1 to this Act applies to proceedings started against a person whether before or after the commencing time, but does not apply where persons' resignations or retirements from the Australian Federal Police would, but for subsection (1) of that section as in force immediately before the commencing time, have taken effect before the commencing time.

16 Continuation of secrecy obligations

Schedule 3 Application and transitional provisions

Part 1 Application and transitional provisions relating to the amendments made by Schedule 1

Section 60A of the former Act continues to apply at and after the commencing time to a person who, immediately before the commencing time, was a person to whom that section applied as if the amendment to that section made by Schedule 1 to this Act had not been made.

17 Certificates under section 68 of the *Australian Federal Police Act 1979*

Section 68 of the *Australian Federal Police Act 1979* as in force at and after the commencing time applies to a certificate given under that section at any time before the commencing time in the same way as it does to a certificate given under that section at or after the commencing time.

18 References in statutory instruments to “staff member”

If a statutory instrument was in force immediately before the commencing time, for the purpose of applying the instrument to any thing done or any circumstance existing after the commencing time, references in the instrument to a staff member of the Australian Federal Police are, unless the contrary intention appears, taken to be references to an AFP employee who is not a member.

19 Regulations

- (1) The Governor-General may make regulations prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Part.
 - (2) The following subitems do not, by implication, limit subitem (1).
 - (3) Regulations may be made:
 - (a) in relation to the continuation of the processes relating to appointment, re-instatement, transfer, promotion, advancement, resignation, retirement or discipline under the former Act, and their effects under the later Act; and
 - (b) in relation to the continuation under the later Act of suspensions that were in force under the former Act immediately before the commencing time; and
 - (c) in relation to:
 - (i) the review of decisions made under the former Act before the commencing time; and
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- (ii) the effects, under the later Act, of those reviews; and
 - (iii) the powers available to a person or body conducting such a review.
- (4) Regulations made under subitem (3) prevail over the former Act and the later Act, to the extent of any inconsistency.
- (5) Regulations made under this item within one year after the commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

Part 2—Application and transitional provisions relating to the amendments made by Schedule 2

20 Definition

In this Part:

commencing time means the time when this Part commences.

21 Amendment of the *Administrative Decisions (Judicial Review) Act 1977*

The amendment of the *Administrative Decisions (Judicial Review) Act 1977* made by Schedule 2 to this Act applies to decisions under the *Australian Federal Police Act 1979* made at or after the commencing time.

22 Amendments of the *Complaints (Australian Federal Police) Act 1981*

The amendments of the *Complaints (Australian Federal Police) Act 1981* made by Schedule 2 to this Act apply to action taken by an AFP appointee (within the meaning of the *Complaints (Australian Federal Police) Act 1981* as in force at and after the commencing time) at or after the commencing time.

23 Amendment of the *Crimes Act 1914*

(1) Section 15U of the *Crimes Act 1914* as in force at and after the commencing time applies to a former 15M certificate in the same way as it does to a later 15M certificate.

(2) In this item:

former 15M certificate means a certificate given under section 15M of the *Crimes Act 1914* at any time before the commencing time by a member of the Australian Federal Police holding the rank of Assistant Commissioner.

later 15M certificate means a certificate given under section 15M of the *Crimes Act 1914* at or after the commencing time by a senior executive AFP employee (within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

24 Amendment of the *Disability Discrimination Act 1992*

The amendment of the *Disability Discrimination Act 1992* made by Schedule 2 to this Act applies to acts done at or after the commencing time in relation to:

- (a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time); or
- (b) persons seeking to become persons of the kind mentioned in paragraph (a).

25 Amendments of the *Evidence Act 1995*

Evidence given by police officers

- (1) Section 33 of the *Evidence Act 1995* as in force at and after the commencing time applies as if a reference in that section to a police officer included a reference to a person who was a member or special member of the Australian Federal Police at any time before the commencing time.

Exclusion of records of oral questioning

- (2) Section 86 of the *Evidence Act 1995* as in force at and after the commencing time applies as if a reference in that section to an investigating official included a reference to a person who was a member or special member of the Australian Federal Police at any time before the commencing time.

Exclusion of evidence of identification by pictures

- (3) Section 115 of the *Evidence Act 1995* as in force at and after the commencing time applies as if a reference in that section to a police officer included a reference to a person who was a member or special member of the Australian Federal Police at any time before the commencing time.

Schedule 3 Application and transitional provisions

Part 2 Application and transitional provisions relating to the amendments made by Schedule 2

Proof of certain matters

- (4) Section 171 of the *Evidence Act 1995* as in force at and after the commencing time applies as if a reference in that section to an authorised person included a reference to a person who was:
- (a) a member of the Australian Federal Police at or above the rank of sergeant; or
 - (c) a staff member of the Australian Federal Police whose salary was at least equal to that of a sergeant in the Australian Federal Police;
- at any time before the commencing time.

Fingerprint affidavits

- (5) Section 180 of the *Evidence Act 1995* as in force at and after the commencing time applies to an affidavit made under that section at any time before the commencing time in the same way as it does to an affidavit made under that section at or after the commencing time.

26 Amendment of the *Long Service Leave (Commonwealth Employees) Act 1976*

The amendment of section 10 of the *Long Service Leave (Commonwealth Employees) Act 1976* made by Schedule 2 to this Act does not affect the operation of that Act at, or at any time after, the commencing time in relation to the deeming of a member or staff member of the Australian Federal Police, at any time before the commencing time, to be employed in Government Service for the purposes of that Act.

27 Amendment of the *Migration Act 1958*

- (1) The *Migration Act 1958* as in force at and after the commencing time applies to a former 147 certificate in the same way as it does to a later 147 certificate.
- (2) In this item:
- former 147 certificate*** means a certificate given under section 147 of the *Migration Act 1958* at any time before the commencing time by a member of the Australian Federal Police of a rank not lower than Superintendent.

later 147 certificate means a certificate given under section 147 of the *Migration Act 1958* at or after the commencing time by a commissioned police officer (within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

28 Amendment of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*

The amendment of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* made by Schedule 2 to this Act applies to things done at or after the commencing time by or in relation to the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee (all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

29 Amendment of the *Privacy Act 1988*

Continuation of Act in relation to things done before the commencing time

- (1) The *Privacy Act 1988* as in force at and after the commencing time applies to things of the kind mentioned in section 8, 9, 10 or 11 of that Act in relation to members, staff members or special members of the Australian Federal Police that occurred before the commencing time in the same way as it does to such things that occur at or after the commencing time in relation to AFP employees or special members (both within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

Obligations of confidence

- (2) The amendment of the *Privacy Act 1988* made by item 42 of Schedule 2 to this Act applies to obligations of confidence that arise under Part VIII of that Act at or after the commencing time in relation to:
 - (a) the Commissioner of the Australian Federal Police; or
 - (b) a Deputy Commissioner of the Australian Federal Police; or
 - (c) an AFP employee; or
 - (d) a special member of the Australian Federal Police;(all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

30 Amendment of the *Radiocommunications Act 1992*

The *Radiocommunications Act 1992* as in force at and after the commencing time applies to a certificate issued under section 305 of that Act at any time before the commencing time by a member or special member of the Australian Federal Police in the same way as it does to a certificate given under that section at or after the commencing time.

31 Amendments of the *Safety, Rehabilitation and Compensation Act 1988*

The amendments of the *Safety, Rehabilitation and Compensation Act 1988* made by Schedule 2 to this Act apply in relation to:

- (a) any injury suffered at or after the commencing time by the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee (all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time); or
- (b) any accident a person mentioned in paragraph (a) has at or after the commencing time.

32 Amendment of the *Telecommunications (Interception) Act 1979*

- (1) The *Telecommunications (Interception) Act 1979* as in force at and after the commencing time applies to a former 61 certificate in the same way as it does to a later 61 certificate.
- (2) The *Telecommunications (Interception) Act 1979* as in force at and after the commencing time applies to a former 61A document in the same way as it does to a later 61A document.
- (3) In this item:
former 61 certificate means a certificate issued under section 61 of the *Telecommunications (Interception) Act 1979* at any time before the commencing time by a member of the Australian Federal Police of the rank of Assistant Commissioner.

former 61A document means a document certified in writing under section 61A of the *Telecommunications (Interception) Act 1979* at any time before the commencing time by a member of the Australian Federal Police of the rank of Assistant Commissioner.

later 61 certificate means a certificate issued under section 61 of the *Telecommunications (Interception) Act 1979* at or after the commencing time by a senior executive AFP employee (within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

later 61A document means a document certified in writing under section 61A of the *Telecommunications (Interception) Act 1979* at or after the commencing time by a senior executive AFP employee (within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

33 Former members or staff members become permanent employees for the purposes of the Superannuation Acts at the commencing time

Superannuation Act 1976

- (1) If subitem 2(1), (2) or (3) of Part 1 of this Schedule applies to the engagement of a person who, immediately before the commencing time, was covered by subsection 39E(1) or (2) of the *Australian Federal Police Act 1979* as in force at that time, then, for the purposes of the application of the *Superannuation Act 1976* in relation to that engagement, the person is taken to be a permanent employee during that engagement.

Superannuation Act 1990

- (2) If subitem 2(1), (2) or (3) of Part 1 of this Schedule applies to the engagement of a person who, immediately before the commencing time, was covered by subsection 39E(3) of the *Australian Federal Police Act 1979* as in force at that time, then, for the purposes of the application of the *Superannuation Act 1990* in relation to that engagement, the person is taken to be a permanent employee during that engagement.

Part 3—Transitional provisions relating to the amendments made by Schedules 1 and 2

34 Warrants or writs etc. may continue to be executed

If, immediately before the commencing time, any warrant, writ, order, permission or other instrument (the *authority*) issued under a law of the Commonwealth, a State or a Territory could be executed by a person who was at that time a member, staff member or special member of the Australian Federal Police, the authority continues to be able to be executed at and after the commencing time by the person in his or her capacity as:

- (a) the Commissioner of the Australian Federal Police; or
- (b) a Deputy Commissioner of the Australian Federal Police; or
- (c) an AFP employee; or
- (d) a special member of the Australian Federal Police;

(all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

Note: A person who is a member or staff member of the Australian Federal Police immediately before the commencing time is taken to be engaged as an AFP employee. Similarly, a person who is a special member of the Australian Federal Police immediately before the commencing time is taken to be appointed as a special member. See item 2 of this Schedule.

35 Regulations dealing with matters of a transitional or saving nature

- (1) The Governor-General may make regulations, not inconsistent with any other provision of this Schedule, prescribing matters of a transitional or saving nature in relation to the amendments made by Schedule 1 or 2.
- (2) Regulations made under this item within one year after the commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 30 September 1999
Senate on 21 October 1999]*

(186/99)