

Australian Federal Police Act 1979

No. 58 of 1979

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Australian Federal Police Act 1979

No. 58 of 1979

An Act to establish the Australian Federal Police, and for related purposes.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

1. This Act may be cited as the *Australian Federal Police Act 1979*.¹ Short title

2. (1) Sections 1, 2, 4 and 6, Division 1 of Part IV and sections 28 and 70 shall come into operation on the day on which this Act receives the Royal Assent.¹ Commencement

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

3. The *Commonwealth Police Act 1957* is repealed. Repeal

4. (1) In this Act, unless the contrary intention appears—
“Australian Capital Territory” includes the Jervis Bay Territory;
“authority of the Commonwealth” means— Interpretation

(a) a body, whether incorporated or unincorporated, established for a public purpose by or under a law of the Commonwealth, other than a body that, under the regulations, is not to be taken to be an authority of the Commonwealth for the purposes of this Act; or

(b) any other body declared by the regulations to be an authority of the Commonwealth for the purposes of this Act, being—

(i) a body, whether incorporated or unincorporated, established by the Governor-General or by a Minister; or

(ii) an incorporated company in which the Commonwealth or a body corporate falling within paragraph (a) or sub-paragraph (i) of this paragraph has a controlling interest.

“commissioned rank” means a commissioned rank referred to in section 23;

“Commissioner” means the Commissioner of Police referred to in section 6;

“component” means a component of the Australian Federal Police referred to in sub-section 7 (1) or (2);

“Deputy Commissioner” means a Deputy Commissioner of Police referred to in section 6;

“duties” includes responsibilities;

“member” means a member of the Australian Federal Police;

“non-commissioned rank” means a non-commissioned rank referred to in section 23;

“powers” includes authorities, rights, privileges and immunities;

“special member” means a person appointed under section 27;

“State” includes the Northern Territory.

(2) A reference in this Act to an officer of police shall be read as including a reference to a police officer, or to any member of a police force, however described.

References
in other laws

5. (1) In a law of the Commonwealth or of the Australian Capital Territory—

- (a) a reference to a Commonwealth Police Officer shall be read as a reference to a member of the Australian Federal Police;
- (b) a reference to the Commonwealth Police Force shall be read as a reference to the Australian Federal Police;
- (c) a reference to the Police Force of that Territory shall be read as a reference to the Australian Federal Police;
- (d) a reference to an officer of police of that Territory shall be read as a reference to a member of the Australian Federal Police; and
- (e) a reference to the Commissioner of Police of that Territory, however described, shall be read as a reference to the Commissioner.

(2) Where a provision of a law is, by virtue of sub-section (1), to be read as referring to a member of the Australian Federal Police holding a particular rank, but that rank does not exist as a rank in the Australian Federal Police, the provision shall be read as referring to a member of the Australian Federal Police holding the rank that is declared by the regulations to be the equivalent of that particular rank.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AUSTRALIAN FEDERAL POLICE

Establish-
ment

6. There is hereby established the Australian Federal Police, which shall be constituted by the following members:

- (a) the Commissioner of Police;
- (b) a Deputy Commissioner or Deputy Commissioners of Police;
- (c) commissioned and non-commissioned police officers; and

- (d) commissioned and non-commissioned protective service officers.

7. (1) The members referred to in paragraph 6 (c) shall comprise a component of the Australian Federal Police performing such of the functions of the Australian Federal Police as are determined, by General Orders under section 14, to be general police functions. Components

(2) The members referred to in paragraph 6 (d) shall comprise a component of the Australian Federal Police performing such of the functions of the Australian Federal Police as are determined, by General Orders under section 14, to be police protective service functions.

8. (1) The functions of the Australian Federal Police are— Functions

- (a) the provision of police services in relation to the Australian Capital Territory;
- (b) the provision of police services in relation to—
- (i) laws of the Commonwealth;
 - (ii) property of the Commonwealth (including Commonwealth places) and property of authorities of the Commonwealth; and
 - (iii) the safeguarding of Commonwealth interests; and
- (c) to do anything incidental or conducive to the performance of the foregoing functions.

(2) The provision of police services in relation to a Commonwealth place in a State, being services by way of the investigation of offences against the laws of that State having application in relation to that place by virtue of the *Commonwealth Places (Application of Laws) Act 1970*, shall be in accordance with arrangements made between the Commissioner and the Commissioner of Police (however designated) of that State.

(3) In this section—

“Commonwealth place” has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*;

“police services” includes services by way of the prevention of crime and the protection of persons from injury or death, and property from damage, whether arising from criminal acts or otherwise.

9. (1) In addition to any other powers and duties, the Commissioner, a Deputy Commissioner or a member referred to in paragraph 6 (c) (in this section, in each case, referred to as a member) has— Powers and duties of members referred to in paragraphs 6 (a), (b) and (c)

- (a) the powers and duties that are conferred or imposed on a constable by or under a law of the Commonwealth;
- (b) when performing functions in the Australian Capital Territory— the powers and duties conferred or imposed on a constable or on

an officer of police by or under any law (including the common law) of the Territory; and

- (c) in relation to—
- (i) the laws of the Commonwealth;
 - (ii) matters in connection with property of the Commonwealth or of an authority of the Commonwealth; and
 - (iii) matters arising on or in connection with land or premises owned or occupied by the Commonwealth or an authority of the Commonwealth,

the powers and duties that are conferred or imposed on a constable, or on an officer of police, of the rank that is, or is declared by the regulations to be, equivalent to the rank that the member holds in the Australian Federal Police, in the place in which the member is acting.

(2) Where any provisions of a law of a State apply in relation to offences against the laws of the Commonwealth or of a Territory, those provisions so apply as if—

- (a) any reference in those provisions to a constable or to an officer of police included a reference to a member; and
- (b) any reference in those provisions to an officer of police of a particular rank included a reference to a member holding the rank that is, or is declared by the regulations to be, the equivalent of that rank.

Powers and duties of members referred to in paragraph 6 (d)

10. A member referred to in paragraph 6 (d) has the powers and duties conferred or imposed on a constable or an officer of police by or under a law of the Commonwealth (including the powers and duties conferred or imposed on a member by section 9), to the extent that the powers and duties are necessary for, or appropriate to, the performance of the functions of the component referred to in sub-section 7 (2).

State and Territory writs and warrants

11. Where a writ or warrant is issued under the law of a State or Territory in relation to an offence or other matter under a law of the Commonwealth or of a Territory, the writ or warrant may be executed by a member, notwithstanding that it is not addressed to a member and notwithstanding any requirement of the law of the State or Territory as to the person by whom it may be executed.

Immunities from certain State and Territory laws

12. A member is not required under, or by reason of, a law of a State or Territory—

- (a) to obtain or have a licence or permission for doing any act or thing in the exercise of his powers or the performance of his duties as a member; or
- (b) to register any vehicle, vessel, animal or article belonging to the Commonwealth.

PART III—ADMINISTRATION

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

(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 power to give directions under sub-section (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 sub-section (5).

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

(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 the Crown 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.

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

(7) In this section—

“common services” includes services consisting of, or provided by means of—

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

“Secretary” means the Secretary to the Department administered by the Minister.

14. In the exercise of his powers under section 13, the Commissioner may issue— General
Orders and
General
Instructions

- (a) orders (to be known as General Orders) with respect to the general administration of the Australian Federal Police and determining the respective functions of the components referred to in sub-sections 7 (1) and (2); and
- (b) instructions (to be known as General Instructions) for the effective and efficient conduct of the operations of the Australian Federal Police,

and may, at any time, amend or revoke any General Orders or General Instructions so made.

Delegation
by Commis-
sioner

15. (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a member any of his powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commissioner.

(3) A delegation under this section does not prevent the exercise of a power by the Commissioner.

Public
Service
support staff

16. (1) The staff, other than members of the Australian Federal Police, required for the purposes of this Act shall be persons appointed or employed under the *Public Service Act 1922*.

(2) In relation to the members of the staff referred to in sub-section (1), the Commissioner—

- (a) may give such directions with respect to the performance of their duties as he thinks fit;
- (b) has all the powers of a Chief Officer under the *Public Service Act 1922* in respect of the granting of leave of absence; and
- (c) has such of the other powers of a Chief Officer under that Act as are prescribed.

PART IV—APPOINTMENT AND SERVICE OF MEMBERS

Division 1—Commissioner and Deputy Commissioners

Commis-
sioner and
Deputy
Commis-
sioners

17. (1) The Commissioner of Police and a Deputy Commissioner of Police shall be appointed by the Governor-General by Commission.

(2) Subject to this Part, the Commissioner holds office for such period, not exceeding 7 years, as is specified in his instrument of appointment, but is eligible for re-appointment.

(3) A Deputy Commissioner shall retire from the Australian Federal Police on attaining 60 years of age, but, subject to sub-sections (5) and (6), is eligible for re-appointment.

(4) A person appointed under this section holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

(5) Subject to sub-section (6), a person who has attained the age of 60 years shall not be appointed or re-appointed under this section and a person shall not be appointed or re-appointed under this section for a

period that extends beyond the date on which he will attain the age of 60 years.

(6) The Governor-General may, where he is satisfied that special circumstances justify his so doing, appoint a person under this section as if the references in sub-section (5) to 60 years were references to 65 years.

18. (1) At any time when the office of Commissioner or an office of Deputy Commissioner is or is expected to be vacant (whether or not the office has previously been filled), the Minister may appoint a person to act as Commissioner or as a Deputy Commissioner, as the case may be, until the filling of the vacancy, but a person so appointed shall not continue so to act for more than 12 months.

Acting
Commissioner and
Deputy
Commissioner during
vacancy

(2) While a person is acting as Commissioner or as a Deputy Commissioner under sub-section (1), he has, and may exercise, all the powers, and shall perform all the functions and duties, of the Commissioner or of the Deputy Commissioner, as the case may be.

(3) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and
- (b) at any time terminate such an appointment.

(4) The appointment of a person under this section ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

(5) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question by reason of any defect or irregularity in or in connection with his appointment or on the ground that the occasion for his so acting had not arisen or had ceased.

19. (1) At any time when the Commissioner or a Deputy Commissioner is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the Commissioner or a Deputy Commissioner, as the case may be, the next most senior member who is available has, and may exercise, all the powers, and shall perform all the functions and duties, of the Commissioner or the Deputy Commissioner, as the case may be.

Absence,
&c., of
Commissioner or
Deputy
Commissioner

(2) The exercise of the powers and the performance of the functions and duties of the Commissioner or of a Deputy Commissioner by a member under this section does not affect the exercise of any power or the performance of any function or duty by the Commissioner or by the Deputy Commissioner, as the case may be.

(3) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his so acting had not arisen or had ceased.

(4) For the purposes of sub-section (1), the order of seniority of members is as determined by the Commissioner.

(5) In this section, except so far as the contrary intention appears, a reference to the Commissioner or to a Deputy Commissioner shall be read as including a reference to an acting Commissioner or acting Deputy Commissioner, as the case may be, appointed under section 18.

Remuner-
ation and
allowances

20. (1) The Commissioner or a Deputy Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration is in operation, he shall be paid such remuneration as is prescribed.

(2) The Commissioner or a Deputy Commissioner shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act* 1973.

Leave of
absence

21. The Minister may grant leave of absence to the Commissioner or a Deputy Commissioner on such terms and conditions as to remuneration or otherwise as the Minister determines.

Termination
of appoint-
ment

22. (1) The Governor-General may terminate the appointment of the Commissioner or a Deputy Commissioner by reason of misbehaviour or physical or mental incapacity.

(2) If the Commissioner or a Deputy Commissioner—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister;
- (b) is absent from duty, except on leave granted by the Minister, for 14 consecutive days, or for 28 days in any 12 months; or
- (c) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Governor-General shall terminate his appointment.

Division 2—Commissioned officers, non-commissioned officers and special members

Commis-
sioned and
non-
commis-
sioned ranks

23. There shall be such commissioned and non-commissioned ranks of the Australian Federal Police as are prescribed.

24. The Minister may, after obtaining and considering the advice of the Commissioner and of the Public Service Board, determine the number of persons that may be appointed to each rank of the Australian Federal Police.

Determin-
ation of
numbers by
Minister

25. (1) Subject to this Act, the Governor-General may, by Commission, on the recommendation of the Commissioner, or, if the Commissioner is authorized by the Governor-General in writing to make appointments under this section, the Commissioner may, by Commission—

Commis-
sioned
officers

- (a) appoint a person to be a commissioned officer in a component, being an appointment to a rank that the person is, in accordance with the regulations, competent and qualified to hold;
- (b) promote a person who is a commissioned officer in a component to a higher commissioned rank in either component, being a rank that the person is, in accordance with the regulations, competent and qualified to hold; or
- (c) transfer a person who is a commissioned officer in a component to an equivalent rank in the other component, being a rank that the person is, in accordance with the regulations, competent and qualified to hold.

(2) The Commissioner may direct a person who is a non-commissioned officer or commissioned officer in a component to act for a specified period in a commissioned rank, or a higher commissioned rank, as the case may be, in either component.

(3) At any time when a person holding a rank in a component is acting in a rank in another component in accordance with a direction under sub-section (2), section 9 or 10, as the case may be, applies in relation to that person as if he had been appointed under this section to the rank in which he is so acting.

(4) In this section—

“commissioned officer” means a commissioned police officer referred to in paragraph 6 (c) or a commissioned protective service officer referred to in paragraph 6 (d);

“Commissioner” includes a person acting as Commissioner under section 18 or 19;

“non-commissioned officer” means a non-commissioned police officer referred to in paragraph 6 (c) or a non-commissioned protective service officer referred to in paragraph 6 (d).

26. (1) Subject to this Act, the Commissioner may, by instrument in writing—

Non-
commis-
sioned
officers

- (a) appoint a person to be a non-commissioned officer in a component, being an appointment to a rank that the person is, in accordance with the regulations, competent and qualified to hold;

- (b) promote a person who is a non-commissioned officer in a component to a higher non-commissioned rank in either component, being a rank that the person is, in accordance with the regulations, competent and qualified to hold;
- (c) transfer a person who is a non-commissioned officer in a component to an equivalent rank in the other component, being a rank that the person is, in accordance with the regulations, competent and qualified to hold; or
- (d) direct a person holding non-commissioned rank in a component to act for a specified period in a higher non-commissioned rank in either component.

(2) At any time when a person holding a rank in a component is acting in a rank in another component in accordance with a direction under paragraph (1) (d), section 9 or 10, as the case may be, applies in relation to that person as if he had been appointed under this section to the rank in which he is so acting.

(3) In this section, “non-commissioned officer” means a non-commissioned police officer referred to in paragraph 6 (c) or a non-commissioned protective service officer referred to in paragraph 6 (d).

Special
members

27. (1) The Commissioner may, on such terms and conditions as he thinks fit, appoint a person as a special member of the Australian Federal Police to assist in the performance of the functions of a component.

(2) A person appointed under sub-section (1) has, during the continuance of his appointment, such of the powers and duties conferred or imposed on the persons comprising the component in connection with which he is appointed as are specified in his instrument of appointment.

(3) The provisions of Part III have effect in relation to a person appointed under this section as if he were a member of the Australian Federal Police.

Division 3—Undertakings and Oaths or Affirmations

Under-
takings and
oaths or
affirmations

28. (1) A person appointed under this Part, other than the Commissioner, shall, immediately after his appointment, enter into an undertaking, in accordance with the prescribed form, relating to the performance of his duties.

(2) A person appointed under Division 1 shall, before commencing to perform his duties, make and subscribe, before a person authorized by the Minister, such oath or affirmation as is prescribed.

(3) A person appointed under Division 2 shall, in accordance with the regulations, make and subscribe, before a person authorized by the Commissioner, such oath or affirmation as is prescribed in relation to the component whose functions he is to assist in performing.

PART V—TERMS AND CONDITIONS OF SERVICE

Division 1—Terms and Conditions

29. (1) In this Part, unless the contrary intention appears—

“agreement” means an agreement referred to in section 31;

“association” means an association of members formed in accordance with regulations made by virtue of paragraph 40 (a);

“Commission” means the Australian Conciliation and Arbitration Commission;

“determination” means—

(a) a determination by the Minister under section 30;

(b) a determination by the Tribunal under section 46;

(c) anything done by the Tribunal in the exercise of a power conferred by paragraph 49 (1) (a), (b), (c) or (o); or

(d) a determination by the Commissioner under section 54, and “determination by the Tribunal” means a determination as defined by paragraph (b) or (c);

“member” does not include the Commissioner or a Deputy Commissioner;

“Tribunal” means the Federal Police Arbitral Tribunal established by section 42.

(2) A reference in this Part to a member, in relation to an association, shall be read as a reference to a member of the Australian Federal Police who is a member of the association.

30. Subject to this Part, the Minister may determine the terms and conditions of service of members.

31. (1) Subject to this Part, the Minister may, on behalf of the Commonwealth, make an agreement in writing with an association relating to terms or conditions of service of members of that association.

(2) An agreement shall be submitted to the Tribunal, and the Tribunal shall certify the agreement, specifying in the certification the date on which the agreement is to come into effect.

(3) An agreement so certified shall be filed with the Secretary to the Tribunal.

(4) Subject to sub-section (5), an agreement has effect, unless sooner rescinded under section 58, for a term to be specified in the agreement, not exceeding 5 years from the date of its coming into effect.

(5) Except where otherwise provided in the agreement, an agreement continues in effect, unless sooner rescinded under section 58, after the expiration of the term specified in the agreement until the expiration of one month after a party to the agreement has given written notice to

Interpretation of Part V

Determinations by Minister

Agreements

the Secretary to the Tribunal and to the other party of the desire to terminate the agreement.

- (6) An agreement is, during its continuance, binding on—
 - (a) the parties to the agreement; and
 - (b) all persons who, at any time while the agreement is in effect, are members of the association that is a party to the agreement.

Minister to
obtain
advice

32. The Minister shall not make a determination under section 30 or an agreement under section 31 except after obtaining and considering the advice of the Public Service Board, the Secretary to the Department of Industrial Relations and the Secretary to the Department administered by the Minister.

Secondment
to other
services, &c.

33. (1) Subject to this section, the Minister may arrange for a member to be seconded for a specified period to—

- (a) the Police Force of a State or Territory or of a country other than Australia; or
- (b) any other body or organization (including an international body or organization) whether within or outside Australia.

(2) The Minister shall not make an arrangement under sub-section (1) except on the advice of the Commissioner.

(3) Subject to this section, the Commissioner may arrange for a member to be seconded for a specified period to—

- (a) the Australian Public Service; or
- (b) a body, whether incorporated or unincorporated, established for a public purpose by or under a law of the Commonwealth or of a Territory.

(4) A member shall not be seconded under this section unless, in the opinion of the Minister, having regard to the operation of sub-section (5), the terms and conditions of service applicable to the member during his secondment will be no less favourable to him than the terms and conditions of service that would, but for the secondment, be applicable to him as a member.

(5) Where in respect of any period during the secondment of a member under this section the total remuneration, allowances and other amounts (if any) payable to the member under the terms and conditions applicable to him under his secondment is less than the total remuneration, allowances and other amounts (if any) that would, but for his secondment, be payable to him in respect of that period under the terms and conditions of service that would be applicable to him as a member, the amount of the shortfall is payable to him by the Commonwealth.

Special leave
of absence

34. (1) The Commissioner may, on application by a member, grant to the member leave of absence with or without pay for the purpose of enabling him to engage, whether in Australia or elsewhere, in—

- (a) service with the government of a country other than Australia;
- (b) service with a prescribed institution, organization or body, or an institution, organization or body included in a prescribed class of institutions, organizations or bodies; or
- (c) prescribed studies or research, or studies or research included in a prescribed class of studies or research.

(2) Leave shall not be granted under sub-section (1), and a period of leave so granted shall not be extended, where, at the end of the leave or of the extended period, the member will have been absent on leave under sub-section (1) for a continuous period exceeding 12 months, unless the Minister has certified that, in his opinion, the engagement, or further engagement, of the member in the service, studies or research concerned for the period of the grant or extension is in the public interest.

35. (1) Upon the termination of a period of secondment of a member under section 33 or a period of leave of absence granted to a member under section 34, the member is, unless he is or has been dismissed or has attained the age of 60 years, entitled to appointment to a rank in the Australian Federal Police determined by the Commissioner, having regard to—

Re-
appointment
after
secondment
or special
leave of
absence

- (a) the rank held by the member prior to his secondment or absence on leave;
- (b) the period of the secondment or absence on leave; and
- (c) the duties performed, or studies or research undertaken, by the member during that period.

(2) The period during which a member is seconded under section 33 or absent on leave granted under section 34 forms part of his service as a member for such purposes (if any) as are determined by the Commissioner.

36. (1) In the selection of a member for promotion to a rank, consideration shall be given to the relative efficiency of the members available for promotion and, in the event of equality of efficiency of 2 or more of those members, then to the relative seniority of those members.

Selection of
members for
promotion

- (2) For the purposes of this section—
- (a) “efficiency”, in relation to a member, in relation to a rank, means the possession by the member of special qualifications and aptitude for the discharge of duties of the kind to be performed by members holding that rank, together with merit, diligence and good conduct; and
- (b) the seniority of members shall be determined as prescribed.

37. (1) A member is not at liberty to resign from the Australian Federal Police unless—

Resignation

- (a) having given to the Commissioner notice in writing of his intention to resign, he resigns on a date that is not earlier than 3 months, or such shorter period as the Commissioner allows, and not later than 4 months, after the date on which the notice was given; or
- (b) his resignation is in accordance with regulations made by virtue of paragraph 40 (e).

(2) A member shall not purport to resign from the Australian Federal Police except in accordance with sub-section (1).

(3) A member shall not, while he continues to be a member, cease to serve as a member.

Penalty: \$500.

Retirement

38. (1) A member shall, on attaining 60 years of age, retire from the Australian Federal Police.

(2) If a member appears to the Commissioner to be, by reason of mental or physical infirmity, unfit to discharge or incapable of discharging the duties of his rank or position in the Australian Federal Police, the Commissioner may retire him from the Australian Federal Police or transfer him to a lower rank or another position in the same rank.

Retrenchment

39. If at any time the Commissioner is satisfied that there is a greater number of members of a particular classification than is necessary for the efficient working of the Australian Federal Police, any member whom the Commissioner finds to be redundant may be—

- (a) transferred by the Commissioner from one component to an equivalent rank in the other component, being a rank that the member is competent and qualified to hold;
- (b) if no such rank is available for the member—transferred by the Commissioner to a lower rank in either component; or
- (c) if no lower rank is available for the member—retired by the Commissioner from the Australian Federal Police.

Regulations may provide for certain other terms and conditions

40. Regulations may make provision for and in relation to—

- (a) the formation of an association or associations of members for the purposes of this Part;
- (b) the appointment of members under section 25 or 26 on probation;
- (c) the promotion of members, including the right of members to appeal against promotion of other members, and the establishment of a Promotion Appeals Board to hear and determine such appeals;
- (d) the early retirement from the Australian Federal Police of members who have attained the age of 55 years;

- (e) enabling a member 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 of the Northern Territory of Australia or the Australian Capital Territory House of Assembly, and to be re-instated in the event of his failing to be nominated or elected at that election; and
- (f) disciplinary offences, penalties for such offences (including dismissal) and appeals in respect of matters arising in connection with such offences, including the establishment of a Disciplinary Board to hear and determine matters under regulations made by virtue of this paragraph, with powers of summoning witnesses, requiring the production of books, documents and other things and receiving evidence on oath.

Division 2—Arbitration

41. Notwithstanding anything in the *Conciliation and Arbitration Act 1904*, the Commission has no powers or functions in relation to members except as provided by this Part. Exclusion of powers of Commission

42. (1) There is hereby established a tribunal to be known as the Federal Police Arbitral Tribunal. Federal Police Arbitral Tribunal

(2) The Tribunal shall be constituted by a Presidential Member of the Commission designated by the President of the Commission.

(3) There shall be a Secretary of the Tribunal, who shall be a person holding or performing the duties of an office in the Department administered by the Minister, being an office designated by the Minister for the purposes of this sub-section.

43. (1) The President of the Commission may designate a Presidential Member of the Commission to perform the functions of the Tribunal during any period, or during all periods, when the person constituting the Tribunal is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the Tribunal. Acting appointment

(2) Where a person, in performing the functions of the Tribunal in accordance with sub-section (1), has commenced the hearing of a matter, the President of the Commission may direct that he shall continue to hear and determine the matter after the circumstances giving rise to his performance of those functions cease.

(3) At any time when a person is performing the functions of the Tribunal in accordance with sub-section (1), he shall be deemed to constitute the Tribunal.

(4) At any time when a person is hearing and determining a matter in accordance with a direction given under sub-section (2), he shall be deemed to constitute the Tribunal for the purposes of that matter.

Continuation
of hearing of
matters

44. If the hearing of a matter has been commenced before the Tribunal as constituted by a person and, before the matter has been determined, the person has ceased to constitute the Tribunal or has otherwise become unable to perform the functions of the Tribunal, the matter, or so much of the matter as has not been determined, may be heard and determined by the Tribunal as constituted by another person, and the Tribunal as so constituted may have regard to the evidence given, the arguments adduced and any order or determination made during the hearing before the Tribunal as previously constituted.

Validity of
proceedings

45. The validity of anything done by a person purporting to perform the functions of the Tribunal in pursuance of section 42 or 43 shall not be called in question by reason of any defect or irregularity in or in connection with his designation under that section or, in the case of a person purporting to act in pursuance of section 43, on the ground that the occasion for his so doing had not arisen or had ceased.

Determin-
ations by
Tribunal

46. (1) Subject to sub-section (3), the Minister may submit to the Tribunal any matter relating to the terms or conditions of service of members.

(2) Subject to sub-section (3), an association may submit to the Tribunal any matter relating to the terms or conditions of service of members of that association.

(3) The Tribunal shall hear and determine all matters submitted to it under this section, other than matters relating to—

- (a) the right of the Governor-General or of the Commissioner to transfer members;
- (b) appointments, promotions, discipline, demotions, retirements or dismissals; or
- (c) any other terms or conditions expressly provided for by this Act or the regulations or by any other law of the Commonwealth applicable to members.

Persons
bound by
determin-
ations by
Tribunal

47. Subject to this Part, the determination by the Tribunal of a matter is binding on—

- (a) the Commonwealth, the Minister and the Commissioner;
- (b) any association, being a party to the hearing, specified by the Tribunal in the determination;
- (c) all members of an association so specified; and
- (d) any person affected under paragraph 49 (1) (o).

48. In making any determination under this Part, the Tribunal is not restricted to the specific matter or matters submitted to it, but may include in the determination any other matter or thing if the Tribunal thinks that the public interest or the interests of the Australian Federal Police justify its so doing.

Determin-
ation by
Tribunal not
limited to
matters
submitted

49. (1) The Tribunal may, in relation to a matter submitted to it under this Part—

Particular
powers of
Tribunal

- (a) give an interpretation of—
 - (i) a determination; or
 - (ii) an agreement;
- (b) vary a determination and re-open any question;
- (c) make a provisional or interim determination relating to the whole or part of the matter so submitted;
- (d) dismiss the matter or part of the matter or refrain from further hearing or from determining the matter or part of the matter;
- (e) hear and determine the matter in the absence of a party that has been summoned or served with notice to appear;
- (f) sit at any place and adjourn to any time and place;
- (g) summon any witness before it, and compel the production before it of books, documents and things for the purpose of reference to such matters only as relate to the matter so submitted;
- (h) take evidence on oath or affirmation in public or, if it appears to the Tribunal that the public interest so requires, in private;
- (j) refer any matter to a person who appears to the Tribunal to be an expert and accept his report on the matter as evidence;
- (k) direct a party, being an association, to be joined or struck out;
- (l) allow the amendment of the submission;
- (m) correct, amend or waive any error, defect or irregularity, whether in substance or in form;
- (n) extend any prescribed time;
- (o) on the application of the Minister or an association, declare that any term of a determination made by it shall, subject to such conditions, exceptions and limitations as are specified in the declaration, extend to a member of the Australian Federal Police who is not a member of an association; and
- (p) generally give such directions and do all such things as the Tribunal considers necessary or convenient for the expeditious and just hearing and determination of the matter.

(2) A determination by the Tribunal, or a decision by the Tribunal under paragraph (1) (d), shall be made by an instrument signed by the person constituting the Tribunal and dated with the date on which it is so signed, and that date shall, for the purposes of this Division, be deemed

to be the date of the making of the determination or decision, as the case may be.

(3) The instrument shall be filed with the Secretary to the Tribunal and copies of it shall be supplied, on the date of the determination or decision, to the parties.

Procedure of Tribunal

50. In any proceedings before the Tribunal—

- (a) the procedure of the Tribunal shall, subject to this Act, be as determined by the Tribunal;
- (b) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks appropriate.

Failure of witness to attend

51. A person served in accordance with paragraph 49 (1) (g) with a summons to appear as a witness before the Tribunal shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by the Tribunal.

Penalty: \$1,000 or imprisonment for 3 months, or both.

Refusal to be sworn or to answer questions

52. (1) A person appearing as a witness before the Tribunal shall not, without reasonable excuse—

- (a) when required under paragraph 49 (1) (h) either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he is required by the Tribunal to answer; or
- (c) refuse or fail to produce a book, document or thing that he is required to produce in accordance with paragraph 49 (1) (g).

Penalty: \$1,000 or imprisonment for 3 months, or both.

(2) It is a reasonable excuse for a person to refuse or fail to answer a question or produce a book, document or thing, that the answer to the question, or the book, document or thing (or any matter contained in the book, document or thing), as the case may be, may tend to incriminate him.

Contempt of Tribunal

53. A person shall not—

- (a) insult the person constituting the Tribunal in or in relation to the exercise or performance of his powers or functions under this Part;
- (b) interrupt the proceedings of the Tribunal;

- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting;
- (d) by writing or speech use words calculated—
 - (i) to influence improperly the Tribunal or a witness before the Tribunal; or
 - (ii) to bring the Tribunal or the person constituting the Tribunal into disrepute; or
- (e) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: \$1,000 or imprisonment for 3 months, or both.

54. (1) In this section, “Commission” means a Full Bench of the Appeals to
Commission
Commission.

- (2) An appeal lies to the Commission against—
 - (a) a determination by the Tribunal; or
 - (b) a decision by the Tribunal dismissing a matter or part of a matter or refraining from further hearing or from determining a matter or part of a matter.

(3) An appeal does not lie under sub-section (2) unless, in the opinion of the Commission, the matter is of such importance that, in the public interest, an appeal should lie.

- (4) An appeal under sub-section (2)—
 - (a) shall be made within 21 days after the date of the making of the determination or decision appealed against; and
 - (b) may be made by the Minister or—
 - (i) in the case of an appeal under paragraph (2) (a)—by an association affected by the determination; or
 - (ii) in the case of an appeal under paragraph (2) (b)—by an association aggrieved by the decision.

(5) Where an appeal has been instituted under this section against a determination, the Commission may, on such terms and conditions as it thinks fit, make an order that the operation of the whole or a part of the determination be stayed pending the determination of the appeal or until further order of the Commission.

(6) Upon the hearing of an appeal under this section, the Commission may—

- (a) admit further evidence; and
- (b) direct the Tribunal to furnish a report to the Commission with respect to such matter as the Commission specifies,

and may, subject to this section, do one or more of the following:

- (c) confirm, quash or vary the determination or decision under appeal;

- (d) make a determination or decision dealing with the subject matter of the determination or decision under appeal;
- (e) direct the Tribunal to take further action in the proceedings in relation to which the appeal arose in accordance with the directions of the Commission.

(7) Where, in pursuance of paragraph (6) (b), the Commission directs the Tribunal to furnish a report, the Tribunal shall, after such investigation (if any) as is necessary, furnish a report accordingly.

(8) The provisions of this Part relating to the hearing and determination of matters submitted to the Tribunal under this Act extend, so far as applicable, to the hearing and determination of an appeal under this section.

Representation
before
Tribunal or
Commission

55. (1) Subject to this section, the Minister or an association shall not be represented in proceedings under this Part before the Tribunal or the Commission by counsel, solicitor or paid agent.

(2) Sub-section (1) does not prevent the representation, in proceedings under this Part before the Tribunal or the Commission—

- (a) of an association by—
 - (i) a member or officer of that association; or
 - (ii) a member or officer of another association who is representing that other association in proceedings being heard at the same time as the first-mentioned proceedings; or
- (b) of the Minister by an officer of the Department administered by the Minister.

(3) In proceedings under this Part before the Commission, the Minister or an association may be represented by counsel, solicitor or paid agent—

- (a) by leave of the Commission and with the consent of all parties to the proceedings; or
- (b) by leave of the Commission, granted upon application made by a party to the proceedings, on the ground that, having regard to the subject matter of the proceedings, there are special circumstances that make it desirable that the parties be so represented.

No costs in
proceedings
before
Tribunal or
Commission

56. No costs shall be allowed in respect of any proceedings under this Part before the Tribunal or the Commission.

Decisions to
be final

57. (1) In this section, “decision to which this section applies” means—

- (a) a determination by the Tribunal under section 46;
- (b) anything done by the Tribunal under sub-section 49 (1); or

(c) anything done by the Commission under section 54.

(2) Subject to section 54 and to the *Administrative Decisions (Judicial Review) Act 1977*, a decision to which this section applies—

- (a) is final and conclusive; and
- (b) is not subject to appeal or review, and shall not be quashed or called in question, in any court.

(3) In this section, “review” means review by way of—

- (a) the grant of an injunction;
- (b) the grant of a prerogative or statutory writ or the making of any order of the same nature or having the same effect as, or of a similar nature or having a similar effect to, any such writ; or
- (c) the making of a declaratory order.

Division 3—General

58. (1) A determination may be varied or rescinded—

- (a) by a determination; or
- (b) to the extent that the determination applies to the members of an association—by an agreement made by that association.

Effect of
determinations and
agreements

(2) An agreement shall not be varied, but may be rescinded by a further agreement or by a determination.

59. (1) Subject to this section, where an amount has become payable to a person in accordance with a determination or agreement, but is unpaid, the person, or an association of which he is a member, acting on his behalf and with his consent, may sue the Commonwealth for the amount in the Federal Court of Australia.

Applications
to Federal
Court of
Australia

(2) In proceedings under this section, a party—

- (a) being a member of the Australian Federal Police, may appear personally or may be represented by counsel or solicitor or by a member, officer or employee of an association of which he is a member; or
- (b) being an association, may be represented by counsel or solicitor or by a member, officer or employee of the association.

(3) A party to proceedings under this section shall not be ordered to pay any costs incurred by any other party to the proceedings except where the party against whom the order is made instituted or prolonged the proceedings vexatiously or without reasonable cause.

(4) Proceedings shall not be instituted under this section in respect of an amount after the expiration of 6 years after the amount became payable.

(5) This section does not limit or abridge any right or remedy existing apart from this section.

PART VI—MISCELLANEOUS

Interpretation of Part VI

60. In this Part, “member” includes a special member.

Awards for bravery, &c.

61. (1) Where a member has, by his bravery or other conspicuous conduct, merited a prescribed award, the Commissioner may confer the award on that member.

(2) An award shall be conferred on the basis of such criteria as are prescribed.

Misrepresentation by applicant

62. (1) A person shall not make a statement, whether orally or in writing, in or in connection with, or in support of, an application for appointment as a member, knowing it to be false or misleading in a material particular.

Penalty: \$2,000 or imprisonment for 12 months, or both.

(2) The Commissioner may dismiss a member who is convicted of an offence against sub-section (1).

Personation, &c.

63. A person, not being a member, shall not—

- (a) personate or pass himself off as a member;
- (b) without lawful excuse, wear or display any uniform or badge of a member, any colourable imitation of such a uniform or badge, or any uniform or badge so closely resembling such a uniform or badge as to be likely to deceive;
- (c) have in his possession, without lawful excuse, any arms or ammunition, or any article of clothing, accoutrements or equipment, supplied to any member; or
- (d) have in his possession, without lawful excuse, any book or document issued by, or purporting to be issued by, the Australian Federal Police.

Penalty: \$2,000 or imprisonment for 12 months, or both.

Assault, &c.

64. (1) A person shall not assault, resist, obstruct or hinder, or aid, incite or assist any other person to assault, resist, obstruct or hinder, a member in the execution of his duty.

Penalty—

- (a) on conviction on indictment—imprisonment for 2 years; or
- (b) on summary conviction—\$2,000 or imprisonment for 12 months, or both.

(2) The court convicting a person of an offence against sub-section (1) may, in addition to the penalty provided by that sub-section, order the offender to pay such compensation as the court thinks fit for any

damage or injury caused by the offender to the uniform, clothing or accoutrements of the member concerned or for any medical or other expenses incurred in consequence of personal injury sustained by him by reason of the offence.

65. An offence against this Act may be prosecuted either summarily or on indictment, but an offender is not liable to be punished more than once in respect of the same offence. Prosecution of offences

66. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of the Department administered by him or to a member any of his powers under this Act, other than this power of delegation. Delegation by Minister

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

67. (1) The Commissioner shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report on the administration and the operations of the Australian Federal Police during the year that ended on that date. Annual reports

(2) The Minister shall cause a report furnished to him under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

68. (1) The Commissioner may, by writing signed by him, certify that a specified person has been appointed under a specified provision of this Act or the regulations, as the case may be, and that he holds a specified rank and has specified powers under this Act. Proof of appointment

(2) A document purporting to be a certificate given under subsection (1) shall, unless the contrary is established, be presumed to have been duly given and be conclusive evidence of the matters stated in the certificate.

69. (1) The Minister shall establish a Police Liaison Advisory Committee for the Australian Capital Territory. Police Liaison Advisory Committee

(2) The constitution and functions of the Committee established under sub-section (1) shall be as prescribed.

70. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed, for securing the discipline and good government of the Australian Federal Police, or for otherwise carrying out or giving effect to this Act, and, in particular, making provision for and in relation to— Regulations

- (a) the return to the Commissioner by a person who has ceased to be a member of property (including accoutrements and clothing) supplied to him for the purposes of his service as a member or in his custody by virtue of that service, and the recovery by the Commissioner of any such property not so returned, including the issue of search warrants by Magistrates for purposes of such recovery and the execution of such warrants; and
- (b) penalties, not exceeding a fine of \$500, for offences against the regulations other than disciplinary offences.

PART VII—TRANSITIONAL

Interpretation of Part VII

71. In this Part, unless the contrary intention appears—

- (a) a reference to the commencing date shall be read as a reference to the date fixed under sub-section 2 (2).
- (b) a reference to an existing Police Force shall be read as a reference to the Commonwealth Police Force or the Police Force of the Australian Capital Territory; and
- (c) a reference to a member of an existing Police Force shall be read as a reference to—
 - (i) a member of the Commonwealth Police Force referred to in paragraph 4 (1) (a) of the *Commonwealth Police Act 1957*;
 - (ii) a person deemed to be a Commonwealth Police Officer by virtue of sub-section 4 (2) of that Act; or
 - (iii) a member, other than a special constable, of the Police Force of the Australian Capital Territory.

Appointment of members of existing Police Forces

72. (1) A person who, immediately before the commencing date, was a member of an existing Police Force, other than a person referred to in sub-section (2), shall be appointed under section 25 or 26, as the case requires, to be a member of the Australian Federal Police.

(2) A person who, immediately before the commencing date, was serving in an existing Police Force on probation shall be appointed on probation under regulations made by virtue of paragraph 40 (b).

(3) The appointment of a person made in pursuance of this section takes effect on the commencing date.

Preference for certain appointments

73. (1) Where an appointment, other than an appointment in pursuance of section 72, is to be made to a rank in the Australian Federal Police, an applicant who—

- (a) is a member;
- (b) was, immediately before the commencing date, a member of an existing Police Force;
- (c) is qualified to hold that rank; and

(d) is, in the opinion of the Commissioner, suitable for the appointment,

is entitled to be appointed in preference to any other applicant.

(2) Sub-section (1) does not apply in relation to an appointment made after the expiration of 5 years, or such longer period as is prescribed, after the commencing date.

74. (1) Until a determination under section 30 or an agreement in effect under section 31 otherwise provides, the terms and conditions of service of a member of the Australian Federal Police who was, immediately before the commencing date, a member of an existing Police Force shall be deemed to be the terms and conditions of service that were, immediately before that date, applicable to him as a member of that Force.

Initial terms
and
conditions of
service

(2) A reference in sub-section (1) to terms and conditions of service that were, immediately before the commencing date, applicable to a person shall be read as including a reference to—

- (a) a determination made by the Public Service Arbitrator;
- (b) a determination of the Public Service Board in force under the *Public Service Act 1922*;
- (c) a determination of the Minister in force under sub-section 5 (4) of the *Commonwealth Police Act 1957*;
- (d) a determination of the Police Arbitral Tribunal in force under the *Police Ordinance 1927* of the Australian Capital Territory as amended; or
- (e) an agreement made, or purporting to be made, under section 5B of that Ordinance as amended.

75. For the purposes of this Act, the *Superannuation Act 1976*, the *Maternity Leave (Commonwealth Employees) Act 1973* and the *Long Service Leave (Commonwealth Employees) Act 1976*, service of a person as a member of the Australian Federal Police shall be deemed to include service of that person as a member of an existing Police Force.

Recognition
of previous
service for
certain
purposes

76. Where a person appointed in pursuance of section 72 was, before the commencing date, granted leave of absence for a particular purpose and for a period commencing on or before that date and ending on or after that date—

Leave
already
granted

- (a) that person shall be deemed to have been granted leave of absence for that purpose in accordance with this Act, the *Maternity Leave (Commonwealth Employees) Act 1973* or the *Long Service Leave (Commonwealth Employees) Act 1976*, whichever is applicable, for a period commencing on that date and ending on the last day of the first-mentioned period; and
- (b) any salary or allowances paid before that date in respect of any leave on or after that date shall be deemed to have been paid in

respect of the leave that is deemed to have been granted by virtue of paragraph (a).

Accrued
leave

77. A person appointed in pursuance of section 72 retains the rights, if any, in respect of—

- (a) recreation leave; and
- (b) leave on the ground of illness,

that had accrued to him as a member of an existing Police Force or as a member of the Australian Public Service immediately before the commencing date.

Promotion
appeals

78. (1) In sub-section (2), “prescribed promotion” means the promotion of a member of an existing Police Force made before the commencing date, being a promotion that was subject to appeal and, immediately before that date, had not been confirmed or cancelled.

(2) The power to make regulations conferred by paragraph 40 (c) extends to the making of regulations—

- (a) for enabling a person who, immediately before the commencing date, had a right of appeal against a prescribed promotion (whether or not he had lodged or commenced such an appeal before that date) to appeal against the appointment made in pursuance of section 72 of the person so promoted as if that appointment were a promotion made under this Act; and
- (b) providing for matters connected with, arising out of, or consequential upon the foregoing, including matters relating to the effect of the allowance or dismissal of an appeal so made on any other appointment made in pursuance of section 72.

Disciplinary
offences

79. (1) This section applies to persons appointed in pursuance of section 72.

(2) A reference in this section to a disciplinary offence, in relation to a person to whom this section applies, shall be read as a reference—

- (a) if the person was, immediately before the commencing date, a member of the Commonwealth Police Force—to a disciplinary offence referred to in regulation 13 of the Commonwealth Police Regulations made under the *Commonwealth Police Act 1957*;
- (b) if the person was, immediately before that date, a member of the Police Force of the Australian Capital Territory—to a disciplinary offence referred to in section 29 of the *Police (Disciplinary Provisions) Ordinance 1972* of the Australian Capital Territory as amended; and
- (c) if the person was, immediately before that date, deemed to be a Commonwealth Police officer by virtue of sub-section 4 (2) of the *Commonwealth Police Act 1957*—to an offence mentioned in section 55 of the *Public Service Act 1922*.

- (3) The regulations may make provision for and in relation to—
- (a) the hearing and determination of a charge, made before the commencing date, in respect of a disciplinary offence alleged to have been committed by a person to whom this section applies, being a charge that had not been disposed of before that date;
 - (b) the institution of, and the hearing and determination of, an appeal in respect of a finding made, or penalty imposed, in relation to a charge referred to in paragraph (a);
 - (c) the institution, on or after the commencing date, of an appeal in respect of a charge determined before that date in respect of a disciplinary offence alleged to have been committed by a person to whom this section applies, and the hearing and determination of an appeal so instituted or of an appeal instituted, but not determined, before that date in respect of a finding made or penalty imposed in relation to such a charge;
 - (d) the charging, on or after the commencing date, of a person to whom this section applies in respect of a disciplinary offence committed by him before that date, and the hearing and determination of the charge; and
 - (e) the institution of, and the hearing and determination of, an appeal by a person to whom this section applies in respect of a finding made, or penalty imposed, in relation to a charge referred to in paragraph (d).

80. Until an arrangement is made between the Commissioner and the Commissioner of Police (however designated) of a State for the purposes of sub-section 8 (2), members of the Australian Federal Police may, under this Act, exercise and perform, in relation to a Commonwealth place in that State within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*, powers and duties equivalent to the powers and duties that were, before the commencing date, exercised and performed in relation to those places under the *Commonwealth Police Act 1957*.

Powers and
duties in
relation to
Common-
wealth
places

NOTE

1. Act No. 58, 1979; assented to 15 June 1979.