



Complaints (Australian Federal Police) Act 1981

No. 21 of 1981

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Complaints (Australian Federal Police) Act 1981

No. 21 of 1981

**An Act relating to complaints made in respect of members
of the Australian Federal Police, and for related purposes**

[Assented to 9 April 1981]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Complaints (Australian Federal Police) Act 1981*.

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“breach of discipline” means an offence that is a disciplinary offence for the purposes of the prescribed regulations;

“Commissioner” means the Commissioner of Police referred to in section 6 of the *Australian Federal Police Act 1979*, and includes

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a person acting as the Commissioner of Police in accordance with section 18 of that Act or exercising all the powers, and performing all the functions and duties, of the Commissioner of Police in accordance with section 19 of that Act;

“Disciplinary Tribunal” means the Federal Police Disciplinary Tribunal established by section 54;

“duties” include responsibilities;

“Investigation Division” means the Internal Investigation Division established in pursuance of section 14;

“law” means a law of the Commonwealth or of a State or Territory;

“member” means a member of the Australian Federal Police and includes a special member of the Australian Federal Police;

“officer in charge” means the officer in charge of the Investigation Division;

“Ombudsman” means the Commonwealth Ombudsman;

“responsible Minister” means the Minister administering the *Australian Federal Police Act 1979*;

“special member of the Australian Federal Police” means a person appointed as a special member of the Australian Federal Police under section 27 of the *Australian Federal Police Act 1979*.

(2) For the purposes of this Act, where the Ombudsman has referred a matter to the Commissioner for investigation by the Investigation Division, that matter shall, upon being referred by the Commissioner to the Division, be taken to have been referred to the Division at the request of the Ombudsman.

(3) In this Act, unless the contrary intention appears—

- (a) a reference to action taken in relation to the employment of members generally shall, without limiting the generality of that expression, be construed as including a reference to action taken with respect to the promotion, termination of appointment or discipline of, or the payment of remuneration to, members generally;
- (b) a reference to action taken in relation to the employment of a particular member shall, without limiting the generality of that expression, be construed as including a reference to action taken with respect to the promotion of, or the payment of remuneration to, a particular member, but shall not be construed as including a reference to action taken with respect to a breach of discipline committed, or alleged to have been committed, by a particular member;
- (c) a reference to the charging of a member in respect of a breach of discipline shall be construed as a reference to the institution of proceedings against that member in respect of that breach of discipline in accordance with the prescribed regulations; and

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- (d) a reference to the taking of action shall be construed as including a reference to—
- (i) the making of a decision or recommendation; and
 - (ii) failure or refusal to take any action or to make a decision or recommendation.

(4) In this Act, references to the prescribed regulations shall be construed as references to such regulations made under the *Australian Federal Police Act 1979* as are declared by the regulations made under this Act to be the prescribed regulations.

Meaning of action taken by a member

4. In this Act, unless the contrary intention appears, a reference to action that is taken by a member shall be construed as a reference to action that a member takes or purports to take, whether within or outside Australia—

- (a) by virtue of his being a member; or
- (b) in the exercise of powers, or the performance of functions, conferred on him in his capacity as a member by this Act or by another law,

whether or not the taking of the action is within, or is incidental to the performance of, his duties.

Application of Act

5. (1) Subject to this section, where a person complains to a member, whether within or outside Australia, concerning action taken by that member, or by another member, this Act applies to and in relation to the complaint whether—

- (a) the complaint is made orally or in writing;
- (b) the member whose action is complained of is identified in the complaint; or
- (c) the identity of the complainant is known by, or disclosed to, the member to whom the complaint is made.

(2) Subject to this section, where a person complains to the Ombudsman concerning action taken by a member, this Act applies to and in relation to the complaint whether or not—

- (a) the member whose action is complained of is identified in the complaint; or
- (b) the identity of the complainant is known by, or disclosed to, the Ombudsman.

(3) This Act does not apply to or in relation to a complaint concerning action taken in relation to the employment of members generally or to the employment of a particular member.

- (4) The provisions of this Act, insofar as they confer rights on a complainant with respect to action taken by a member—
- (a) are in addition to the provisions of any other law;
 - (b) except as provided in sub-section 22 (5), do not affect the operation of any other law; and
 - (c) without limiting the generality of the foregoing, do not prevent or affect the taking of legal proceedings in respect of that action under some other law or affect the operation of any other law in respect of legal proceedings so taken.

PART II—RESPONSIBILITIES OF THE AUSTRALIAN FEDERAL POLICE

Division 1—Investigation of complaints by the Internal Investigation Division

Certain complaints to be referred to Investigation Division

6. (1) Where a person complains to a member concerning action taken by that member or by another member, whether before or after the commencement of this Act, the member to whom the complaint is made shall, in accordance with the General Orders or General Instructions—

- (a) refer the complaint, by the most expeditious means available to him, to the Investigation Division for investigation; or
- (b) refer the complainant to a member who, under the General Orders or General Instructions, is an appropriate member to receive the complaint.

(2) Where a person complains to a member to whom he has been referred under sub-section (1), the member shall refer the complaint, by the most expeditious means available to him, to the Investigation Division for investigation.

(3) Where a complaint is referred to the Investigation Division, the Ombudsman shall be notified of the complaint and furnished with particulars of the complaint.

(4) This section does not apply to a complaint made by a person who is known to the member to whom the complaint is made to be, or discloses to that member that he is, another member.

(5) In this section, the expressions “General Orders” and “General Instructions” have the same respective meanings as they have in the *Australian Federal Police Act 1979*.

Powers of Investigation Division

7. (1) Subject to this Act, each complaint that is referred to the Investigation Division under section 6, each complaint that is referred to the Commissioner under section 23, and each matter that is referred to that Division under sub-section 25 (5), shall be investigated by that Division.

(2) A complaint that has been investigated by the Investigation Division shall, in accordance with sub-section 11 (7) or upon request being made by the Ombudsman under sub-paragraph 36 (1) (a) (i), be investigated further by that Division.

(3) The investigation or further investigation of a complaint, or the investigation of a matter referred to in sub-section (1), shall be conducted, subject to this Part, in such manner as the officer in charge thinks fit.

(4) Subject to this Part, a member of the Investigation Division may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as he thinks fit.

(5) A member of the Investigation Division may, for the purposes of the investigation, direct a member of the Australian Federal Police to furnish information, produce a document or other record or answer a question, being information, a document or record or a question that is relevant to the investigation.

(6) Where a member of the Australian Federal Police is directed under sub-section (5) to furnish information, produce a document or record or answer a question, the member is not excused from complying with the direction on the ground that—

- (a) the furnishing of the information, the production of the document or record or the answering of the question—
 - (i) would be contrary to the public interest; or
 - (ii) might make him liable to a penalty; or
- (b) the information, the production of the document or record or the answer to the question might tend to incriminate him,

or on any other ground, but the information, the production of the document or record or the answer to the question is not admissible in evidence against him in any civil or criminal proceedings other than proceedings for an offence against sub-section (8) or for or in relation to a breach of discipline.

(7) Nothing in sub-section (6) shall be taken to affect the admissibility in evidence, in any civil or criminal proceedings, of—

- (a) any information furnished by a member of the Australian Federal Police to a member of the Investigation Division;
- (b) the production of a document or other record by a member of the Australian Federal Police to a member of the Investigation Division; or
- (c) an answer given by a member of the Australian Federal Police to a question put to him by a member of the Investigation Division,

where the member of the Australian Federal Police has not been expressly directed, under sub-section (5), to furnish the information, produce the document or record or answer the question.

(8) A member of the Australian Federal Police shall not—

- (a) without reasonable excuse, refuse or fail to furnish information, produce a document or other record or answer a question when so required in pursuance of this section; or
- (b) furnish information or make a statement to a member of the Investigation Division knowing that it is false or misleading in a material particular.

Penalty: \$1,000 or imprisonment for 6 months.

(9) For all purposes of the *Australian Federal Police Act 1979*, and the regulations in force under that Act, a direction given by a member of the Investigation Division under sub-section (5) has effect as if it had been given by the Commissioner.

(10) Sub-sections (3) and (4) do not authorize a member of the Australian Federal Police to contravene or fail to comply with a law that would, if those sub-sections had not been enacted, apply in relation to the investigation of a complaint or other matter referred to the Investigation Division, but nothing in this sub-section affects the operation of any other provision of this section.

(11) A member of the Australian Federal Police is not liable to any penalty under the provisions of any other law by reason of his furnishing information, producing a document or other record or answering a question when directed to do so by a member of the Investigation Division under this section.

Reference of complaints to other persons

8. (1) The officer in charge may—

- (a) if he is of the opinion that the whole or a part of the investigation of a complaint should be carried out by a person possessing special qualifications and the Commissioner so approves, authorize a member of the Australian Federal Police who is not serving in the Investigation Division, or some other person, being a member or other person who possesses those qualifications, to make that investigation, or that part of the investigation, on behalf of the Division; or
- (b) if he is of the opinion that a complaint is not such as to require investigation by a member of the Division and the Commissioner so approves, authorize a member of the Australian Federal Police who is not serving in the Division to make the investigation on behalf of the Division.

(2) Where the officer in charge gives such an authority, references in section 7 to a member of the Investigation Division shall, in the application of that section in relation to the investigation or part of the investigation, be read as including references to a member of the Australian Federal Police or other person so authorized.

Investigation Division to refrain from investigation in certain circumstances

9. (1) Where a complaint is required to be investigated as provided by section 46, the Commissioner shall ensure that no action, or no further action, is taken by the Investigation Division in connection with the investigation of that complaint.

(2) Where the Ombudsman informs the Commissioner under section 25 that he intends to investigate a complaint, the Commissioner may, in his discretion, direct the officer in charge—

- (a) if the Investigation Division has not commenced to investigate the complaint—to cause the Division to refrain from investigating the complaint; or
- (b) if the Investigation Division has commenced to investigate the complaint—to cause the Investigation Division to refrain from further investigating the complaint and to furnish to the Ombudsman a report, in writing, setting out any information acquired by the Division as a result of the investigation already carried out.

(3) Where, after the Ombudsman has referred to the Commissioner a complaint that was made to the Ombudsman under this Act or a matter relating to such a complaint, the Ombudsman informs the Commissioner that he has determined under section 24 that the complaint should not be investigated, or investigated further, as the case requires, the Commissioner may, in his discretion, direct the officer in charge to cause the Investigation Division to refrain from investigating, or further investigating, that complaint or matter.

Division 2—Reports of the Investigation Division

Reports

10. (1) When the Investigation Division has completed its investigation of a complaint or other matter referred to it under this Act, the officer in charge shall cause a report, in writing, of the results of the investigation to be prepared, and a copy of that report shall, as soon as practicable after it has been prepared, be furnished to the Ombudsman, together with any comments that the Commissioner wishes to make in relation to the report.

(2) When the Investigation Division has completed its investigation of a complaint that was referred to it under section 6, the Commissioner shall cause to be furnished to the member concerned and, unless the identity of the complainant is not known, to the complainant, in such manner and at such times as he thinks fit, particulars of the results of the investigation carried out by the Division together with any comments he wishes to make concerning the investigation.

(3) In this section, “investigation”, in relation to a complaint, includes a further investigation of that complaint by the Investigation Division under sub-section 11 (7) or upon request made by the Ombudsman under sub-paragraph 36 (1) (a) (i).

Charges consequential on report

11. (1) As soon as practicable after the Commissioner receives a report of the results of the investigation, or further investigation, of a complaint by the Investigation Division or a report of the results of a special or additional investigation of a complaint by the Ombudsman, the Commissioner shall consider the report, together with—

- (a) in the case of a report of the results of the investigation, or further investigation, of a complaint by the Investigation Division—any notification or recommendation under section 36 that he may have received with respect to the report; or
- (b) in the case of a report of the results of a special or additional investigation of a complaint by the Ombudsman—any recommendation under sub-section 26 (3) that he may have received with respect to the report,

and, without limiting the generality of the foregoing, shall consider whether, in his opinion, any action should be taken by way of charging a member or members.

(2) Where the Commissioner receives a notification or recommendation under section 36 with respect to a report of the results of the investigation, or further investigation, of a complaint by the Investigation Division after he has complied with sub-section (1) in respect of the report, he shall consider the notification or recommendation in conjunction with a further consideration of the report and, without limiting the generality of the foregoing, shall consider whether, in his opinion, any action, or any further action, should be taken by way of charging a member or members.

(3) Where, upon complying with sub-section (1) or (2) in respect of a report of the results of the investigation, or further investigation, of a complaint by the Investigation Division or upon complying with sub-section (1) in respect of a report of the results of a special or additional investigation of a complaint by the Ombudsman, the Commissioner proposes—

- (a) that a member or members be charged; or
- (b) that no action be taken by way of charging any member or members,

the Commissioner shall confer with the Ombudsman concerning his proposal and may, from time to time in the course of so conferring, modify his proposal having regard to relevant matters, including matters put to him by the Ombudsman.

(4) Subject to sub-section (5), when the Commissioner has conferred with the Ombudsman in respect of a report, the Commissioner shall give effect to the proposal put by him to the Ombudsman.

(5) Where the result of the Commissioner's conferring with the Ombudsman in respect of a report was that the Ombudsman expressly disagreed, either in whole or in part, with the proposal that was put to him, the Commissioner shall refer the matter on which they disagreed to the Attorney-General.

(6) A reference in sub-section (4) or (5) to a proposal put by the Commissioner to the Ombudsman shall, in a case where the proposal first put by the Commissioner to the Ombudsman in the course of his conferring with the Ombudsman was later modified, be construed as a reference to the proposal so first put as modified or last modified in the course of his so conferring.

(7) Where the Commissioner refers a matter to the Attorney-General under sub-section (5), the Attorney-General shall, after considering the report to which the matter relates and the results of any inquiries he makes or causes to be made—

- (a) direct what action (if any) should be taken by way of charging the member, or any of the members, as the case may be, to whom the matter relates; or
- (b) direct that no action should be taken at that time by way of charging the member, or any of the members, as the case may be, to whom the matter relates pending—
 - (i) unless sub-paragraph (ii) applies—further investigation by the Investigation Division under Part II or by the Ombudsman under Part III, as the Attorney-General determines; or
 - (ii) if the matter referred to the Attorney-General relates to a complaint that was the subject of a special or additional investigation by the Ombudsman—further investigation by the Ombudsman under Part III.

(8) Nothing in this section shall be taken to limit the powers conferred on the Ombudsman by section 36 in relation to a complaint.

(9) In this section—

- (a) a reference to the additional investigation of a complaint by the Ombudsman shall be construed as a reference to an investigation of the complaint conducted by the Ombudsman in accordance with a notification made under sub-paragraph 36 (1) (a) (ii) or 36 (2) (a) (i);
- (b) a reference to the charging of a member shall be construed as a reference to the charging of a member with an offence or breach of discipline;
- (c) a reference to the modification of a proposal shall be construed as including a reference to the substitution of a proposal for another proposal;

- (d) a reference to a notification under section 36 shall be construed as a reference to a notification under paragraph 36 (1) (b) or (2) (b);
- (e) a reference to a recommendation under section 36 shall be construed as a reference to a recommendation under paragraph 36 (1) (c) or (2) (c); and
- (f) a reference to the special investigation of a complaint by the Ombudsman shall be construed as a reference to an investigation of the complaint by the Ombudsman in pursuance of section 46.

Notification of charges to Ombudsman

12. Where a member is charged with an offence or breach of discipline in accordance with section 11, the Commissioner shall notify the Ombudsman, in writing, that the member has been so charged.

Notification of charges to complainant

13. Where a member is charged with an offence or breach of discipline in accordance with section 11, the Commissioner shall, unless the identity of the complainant is not known, at the same time as he complies with section 12 in respect of the charge, notify the complainant, in writing, that the member has been so charged and furnish to the complainant any comments he wishes to make in relation to the charge.

Division 3—Establishment and Functions of the Internal Investigation Division

Constitution and functions of Investigation Division

14. (1) The Commissioner shall constitute, within the Australian Federal Police, a Division to be known as the Internal Investigation Division.

(2) The functions of the Investigation Division are—

- (a) to investigate complaints concerning action taken by members that are referred to it under section 6 or referred to the Commissioner under section 23; and
- (b) to investigate matters concerning action taken by members that are referred to it by the Commissioner, including matters that are so referred to it at the request of the Ombudsman.

(3) In addition to the functions of the Investigation Division under sub-section (2), the Investigation Division has such other functions as are conferred on it by or under any other Act.

Establishment of Investigation Division

15. (1) The establishment of the Investigation Division shall be such as is from time to time determined by the Commissioner.

(2) In determining the establishment of the Investigation Division, and in varying that establishment from time to time, the Commissioner shall ensure, so far as it is practicable for him to do so, that the staff of the Investigation Division is adequate to enable the Division to perform its functions effectively.

(3) The officer in charge is responsible directly to the Commissioner, or, if the Commissioner so directs, to a specified Deputy Commissioner, for the performance by the Investigation Division of its functions.

Transfers to Investigation Division

16. (1) The Commissioner shall, in transferring members to the Investigation Division, and in transferring members from that Division to another part of the Australian Federal Police, ensure that there are, at all times, not less than 2 members serving in the Division and that, as far as practicable, the members serving in the Division are adequate for the effective performance of the functions of the Division.

(2) The Commissioner shall, in selecting a member for transfer to the Investigation Division take into account, in addition to any other matters that he considers to be relevant—

- (a) the nature of the functions of the Division; and
- (b) the need to ensure that, at all times, there are included among the members serving in the Division a member with experience in criminal investigations and a member with experience in general police duties.

(3) Where a member serving in the Investigation Division is able to do so without unduly interfering with the performance by the Division of its functions, the member shall perform such duties, not related to the investigation of complaints referred to in paragraph 14 (2) (a) or of matters referred to in paragraph 14 (2) (b), as the Commissioner directs, but not including the investigation of offences alleged to have been committed by persons other than members.

Members to be transferred to Investigation Division for limited periods

17. (1) Where the Commissioner transfers a member to the Investigation Division, the Commissioner shall, by instrument under his hand, determine the period, being a period not exceeding 3 years, during which the member is to serve in the Division.

(2) Where a Commissioner is of the opinion that there are special reasons for doing so, he may vary an instrument under sub-section (1) (including an instrument that has been previously varied under this sub-section) by substituting for the period specified in the instrument a shorter or longer period (including a longer period in excess of 3 years).

(3) As soon as practicable after a member of the Investigation Division has performed duty in the Investigation Division for the period specified in the instrument under sub-section (1) that relates to him, the Commissioner shall cause him to be transferred from that Division.

Division 4—General

Record of matters

18. (1) The officer in charge shall maintain a register containing the prescribed particulars with respect to each complaint or other matter that is referred to the Investigation Division for investigation.

(2) The Commissioner shall include in the annual report prepared by him in accordance with section 67 of the *Australian Federal Police Act 1979* in respect of a year the prescribed particulars—

- (a) with respect to complaints and other matters referred during that year to the Investigation Division for investigation;
- (b) of the action taken by the Investigation Division during that year in respect of complaints and other matters referred to the Investigation Division for investigation; and
- (c) of the action taken by him during that year in respect of—
 - (i) reports received by him of the results of investigations by the Investigation Division;
 - (ii) reports received by him from the Ombudsman in respect of investigations by the Ombudsman; and
 - (iii) proceedings remitted to him by the Disciplinary Tribunal.

Conciliation

19. (1) Where the Commissioner considers that a complaint made under section 6 with respect to action taken by a member may properly be dealt with by attempting to reconcile the complainant and the member, the Commissioner may, after having notified the Ombudsman and the officer in charge that he intends to do so, attempt to reconcile the complainant and the member.

(2) The Commissioner shall not notify the Ombudsman, under sub-section (1), that he intends to attempt to reconcile the complainant and the member concerned if he has been notified by the Ombudsman that the Ombudsman intends to attempt to reconcile the complainant and the member concerned.

(3) Where the Commissioner becomes satisfied—

- (a) that a reconciliation has been effected between the complainant and the member concerned; or
 - (b) that, for any reason, it is unlikely that he will be able to effect a reconciliation between the complainant and the member concerned,
- the Commissioner shall inform the Ombudsman and the officer in charge that he is so satisfied and, in a case where he notifies them that he is satisfied of the matter referred to in paragraph (a), furnish particulars of the basis on which the reconciliation has been effected.

(4) The officer in charge may, in his discretion, defer the investigation, or further investigation, of the complaint pending the outcome of an attempt under this section to effect a reconciliation between the complainant and the member concerned, but not after he has been informed that the Commissioner is satisfied of the matter referred to in paragraph (3) (b).

(5) Where the officer in charge is informed that the Commissioner is satisfied of the matter referred to in paragraph (3) (a), he shall take no action, or no further action, by way of investigating the complaint, or investigating the complaint further, unless the Ombudsman requests the Commissioner, in writing, to cause the complaint to be investigated, or further investigated, by the Investigation Division.

(6) A statement made by a member, or an answer of a member to a question asked of him, in the course of an attempt under this section to effect a reconciliation is not admissible in evidence against that member in proceedings (including proceedings for or in relation to a breach of discipline).

(7) Nothing in this section shall be taken to prevent the Ombudsman from investigating under Part III a complaint made under section 6 that is, in substance, a complaint about the practices and procedures of the Australian Federal Police.

Delegation

20. (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 delegate shall, upon request by a person affected by the exercise of any powers delegated to him, produce the instrument of delegation, or a copy of that instrument, for inspection.

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

PART III—RESPONSIBILITIES OF THE OMBUDSMAN

Division 1—Preliminary

Interpretation

21. (1) In this Part, unless the contrary intention appears—
“authorized person” means—

(a) a person appointed by the Ombudsman to be an authorized person for the purposes of this Part; or

- (b) a person included in a class of persons determined by the Ombudsman, by writing under his hand, to be a class of authorized persons for the purposes of this Part;

“Deputy Ombudsman” means a Deputy Commonwealth Ombudsman;

“enactment” means—

- (a) an Act;
- (b) an Ordinance of the Australian Capital Territory; or
- (c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance;

“Ordinance”, in relation to the Australian Capital Territory, includes a law of a State that applies, or the provisions of a law of a State that apply, in the Territory by virtue of an enactment.

(2) In this Part, unless the contrary intention appears—

- (a) references to a Department;
- (b) references to an officer, or a principal officer, in relation to a Department or a prescribed authority;
- (c) references to the responsible Minister, in relation to a matter or to action taken in relation to a matter; and
- (d) subject to sub-section (3), references to a prescribed authority,

have the same respective meanings as they have in the *Ombudsman Act 1976*.

(3) In this Part, a reference to a prescribed authority shall be construed as not including a reference to the Australian Federal Police.

(4) In this Part, unless the contrary intention appears, a reference to a complaint concerning action taken by a member shall be construed as including a reference to a complaint concerning action taken by the Australian Federal Police.

(5) In this Part, a reference to a complaint that is, in substance, about the practices and procedures of the Australian Federal Police shall be construed as a reference to a complaint that is, in substance, about the rules, orders and instructions (including the General Orders and General Instructions) in accordance with which the member to whom the complaint relates is required to perform his duties or about the practices and procedures ordinarily followed by members in the performance of their duties.

Complaints to Ombudsman concerning action of members

22. (1) A complaint may be made to the Ombudsman under this Part by any person (including a member) concerning action taken, whether before or after the commencement of this Act, by a member.

(2) A complaint under sub-section (1) shall be made to the Ombudsman in writing.

(3) A person who is detained in custody is entitled, upon making a request to the person in whose custody he is detained or to another person performing duties in connection with his detention—

- (a) to be provided with facilities for preparing a complaint under this Part and for enclosing the complaint in a sealed envelope; and
- (b) to have forwarded to the Ombudsman, without undue delay, a sealed envelope delivered by him to the person and addressed to the Ombudsman.

(4) Where a sealed envelope is delivered to a person under sub-section (3) for forwarding to the Ombudsman, neither the person in whose custody he is detained nor any other person performing duties in connection with his detention is entitled to open the envelope or inspect any document enclosed in the envelope.

(5) Notwithstanding anything contained in the *Ombudsman Act 1976*, the provisions of that Act (other than section 19 of that Act) do not apply to or in relation to action that is, within the meaning of that Act, action taken by the Australian Federal Police or to action that is, within the meaning of this Act, action taken by a member of the Australian Federal Police, whether that action was taken before, or is taken after, the commencement of this Act, if that action is the subject of a complaint made, or to be treated, by virtue of sub-section (6), as having been made, to the Ombudsman under sub-section (1).

(6) For the purpose of sub-section (5), if a complaint is made to the Ombudsman under the *Ombudsman Act 1976*, after the commencement of this Act, with respect to action that is, within the meaning of the *Ombudsman Act 1976*, action taken by the Australian Federal Police or with respect to action that is, within the meaning of this Act, taken by a member of the Australian Federal Police, the Ombudsman shall treat the complaint as if it were a complaint made to him under sub-section (1).

(7) Notwithstanding sub-section (5)—

- (a) where a complaint made to the Ombudsman under sub-section (1) is, as to part, a complaint with respect to action taken by a member and, as to the remainder, a complaint with respect to action that is, within the meaning of the *Ombudsman Act 1976*, action taken by a Department or a prescribed authority other than the Australian Federal Police; or
- (b) where a complaint made to the Ombudsman under the *Ombudsman Act 1976*, after the commencement of this Act is, as to part, a complaint with respect to action that is, within the meaning of that Act, action taken by the Australian Federal Police or with respect to action that is, within the meaning of this Act, action taken by a member of the Australian Federal Police, or both, and, as to the remainder, a complaint with respect to action that is,

within the meaning of the *Ombudsman Act 1976*, action taken by a Department or a prescribed authority other than the Australian Federal Police,

the Ombudsman shall treat the first-mentioned part of the complaint as if it were a complaint made to him under sub-section (1) and the remainder of the complaint as if it were a separate complaint made to him under the *Ombudsman Act 1976*.

Duties of Ombudsman with respect to complaints

23. (1) Subject to this Part, where a complaint is made to the Ombudsman under this Part about action taken by a member—

- (a) if the complaint is, in substance, about the practices and procedures of the Australian Federal Police—the Ombudsman shall investigate the complaint under this Part; or
- (b) in any other case—the Ombudsman shall refer the complaint to the Commissioner.

(2) Subject to this Part, where particulars of a complaint are furnished to the Ombudsman in accordance with section 6, and the complaint is, in substance, about the practices and procedures of the Australian Federal Police, the Ombudsman may investigate the complaint under this Part.

(3) Subject to this Part, where the Ombudsman furnishes a notification to the Commissioner under sub-paragraph 36 (1) (a) (ii) or (2) (a) (i) in respect of a complaint after it has been investigated by the Investigation Division, the Ombudsman shall investigate the complaint under this Part.

(4) Where—

- (a) a complaint is made to the Ombudsman under this Part or particulars of a complaint are furnished to the Ombudsman in accordance with section 6; and
- (b) before the complaint is so made, or particulars of the complaint are so furnished, the Ombudsman had been carrying out an investigation, under paragraph 5 (1) (b) of the *Ombudsman Act 1976*, of—
 - (i) the action taken by a member (in this sub-section referred to as the “relevant action”) which is the subject of the complaint;
 - (ii) action taken by a member which includes the relevant action; or
 - (iii) action taken by a member which forms part of the relevant action,

but had not completed that investigation,

then—

- (c) the Ombudsman shall not continue that investigation, or that investigation in so far as it relates to the relevant action, as the case requires, under the *Ombudsman Act 1976*;

- (d) subject to paragraphs (e) and (f), the complaint shall be investigated under this Act as if the Ombudsman had not previously commenced to investigate the relevant action;
- (e) if the complaint is to be investigated under this Act by the Investigation Division—the Ombudsman shall forward to the Investigation Division a report concerning the progress of his investigation of the relevant action under the *Ombudsman Act 1976*; and
- (f) if the complaint is to be investigated by the Ombudsman under this Part—the Ombudsman shall treat the information obtained in the course of his investigation of the relevant action under the *Ombudsman Act 1976* as if it had been obtained in the course of his investigation of the complaint under this Part.

(5) Where the Ombudsman is of the opinion that a complaint made to him under this Part, or to a member under Part II, is, in part, a complaint that is, in substance, about the practices and procedures of the Australian Federal Police and in part a complaint that is not, in substance, about the practices and procedures of the Australian Federal Police—

- (a) if the Ombudsman is also of the opinion that those parts of the complaint cannot conveniently be dealt with separately—the Ombudsman may inform the Commissioner, under sub-section 25 (1), that he proposes to investigate the complaint as if the whole of the complaint was, in substance, about the practices and procedures of the Australian Federal Police and, where he does so, this Act applies as if the complaint were such a complaint; and
- (b) in any other case—the Ombudsman may inform the Commissioner that he proposes to investigate the first-mentioned part of the complaint under this Part and, where he does so, this Act applies as if the first-mentioned part and the second-mentioned part of the complaint were separate complaints.

(6) Nothing in this section shall be taken to limit the duty of the Ombudsman to investigate a complaint under this Part in pursuance of sub-section 11 (7) or section 46.

Discretion not to investigate complaints

24. (1) Where a complaint has been made to the Ombudsman under this Part concerning action taken by a member, the Ombudsman may, in his discretion, determine that the complaint should not be investigated, or investigated further, as the case requires, under this Act—

- (a) if he is satisfied that the complainant became aware of that action more than 12 months before the complaint was made and that undue hardship will not be caused to the complainant if that action is not investigated or further investigated;

- (b) if, in his opinion—
 - (i) the complaint is frivolous or vexatious or was not made in good faith; or
 - (ii) the complainant does not have a sufficient interest in the subject matter of the complaint,
and there are no special reasons justifying the investigation, or further investigation, of that action;
- (c) if a person has been charged with an offence or breach of discipline in relation to the action complained of; or
- (d) if, in his opinion, the investigation or further investigation, of that action is unnecessary having regard to all the circumstances of the case.

(2) Where the Ombudsman is satisfied, with respect to a complaint that has been made to him under this Part, that the complainant has exercised a right to cause the action complained of to be reviewed by a court or tribunal constituted by or under a law, the Ombudsman shall determine that the complaint should not be investigated, or investigated further, as the case requires, under this Act unless he is of the opinion that there are special reasons why the complaint should be investigated, or investigated further, under this Act.

(3) Where, for any reason referred to in this section, the Ombudsman makes a determination referred to in sub-section (1) or (2), he shall inform the complainant and the Commissioner accordingly in writing and furnish to the complainant and to the Commissioner particulars of his reasons for so determining.

(4) Where the Ombudsman makes a determination under sub-section (1) or (2) in respect of a complaint, section 23 shall not be taken to require him to commence or to continue an investigation of the complaint or to refer the complaint to the Investigation Division.

(5) Where a complaint is made to the Ombudsman under this Part by a complainant at the request of another person or of a body of persons, this section applies as if references to the complainant were references to the person or the body of persons at whose request the complaint is made.

Division 2—Investigations by the Ombudsman

Investigations

25. (1) Before commencing to investigate a complaint under this Part, the Ombudsman shall inform the responsible Minister and the Commissioner that the complaint is to be investigated.

(2) An investigation under this Part shall be conducted in private and, subject to this Act, in such manner as the Ombudsman thinks fit.

(3) Whenever it becomes necessary or desirable for the Ombudsman to use persons with police training in connection with his investigation under this Part of a complaint, the Ombudsman may, and shall in so far as it is practicable to do so, use, in connection with that investigation—

- (a) a member of the Australian Federal Police who is made available to him by the Commissioner for the purposes of the investigation; or
- (b) a member of the police force of a State whom the police force of the State agrees to make available to the Ombudsman, for the purposes of the investigation, under arrangements made by the Commissioner.

(4) Subject to this Act, the Ombudsman may, for the purposes of an investigation under this Part obtain information from such persons, and make such inquiries, as he thinks fit.

(5) The Ombudsman may, if he considers it would be desirable in a particular case to do so, refer to the Commissioner for investigation and report by the Investigation Division a matter relating to a complaint that is being investigated by the Ombudsman under this Part, being a complaint that is, in substance, about the practices and procedures of the Australian Federal Police.

(6) Subject to sub-section (7), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the Ombudsman or any other person in connection with an investigation by the Ombudsman under this Part.

(7) The Ombudsman shall not make a report in respect of an investigation of a complaint under this Part in which he sets out opinions that are, either expressly or impliedly, critical of—

- (a) the Australian Federal Police, a Department or a prescribed authority; or
 - (b) a person (including a member),
- unless, before completing the investigation, he has afforded—
- (c) if the opinions relate to the Australian Federal Police or to a member—the Commissioner and the member principally concerned in the complaint;
 - (d) if the opinions relate to a Department or a prescribed authority—the principal officer of the Department or authority and the officer of that Department or authority principally concerned in the complaint; or
 - (e) if the opinions relate to a person—that person,

opportunities, or an opportunity, to appear before him, or before an authorized person, and to make such submissions, either orally or in writing, in relation to the complaint, as the persons or person to whom the opportunities or opportunity are or is given think or thinks fit.

(8) Where the Ombudsman affords the Commissioner, or the principal officer of a Department or of a prescribed authority, an opportunity to appear before him or before an authorized person, under sub-section (7), the Commissioner or principal officer may appear before the Ombudsman or before the authorized person in person or a person authorized by the Commissioner or principal officer, as the case may be, may appear before the Ombudsman or before the authorized person on behalf of the Commissioner or principal officer.

(9) Where the Ombudsman affords a person other than the Commissioner, or the principal officer of a Department or prescribed authority, an opportunity to appear before him, or before an authorized person, under sub-section (7), the person may, with the approval of the Ombudsman or of the authorized person, as the case may be, be represented by another person.

(10) The Ombudsman may, either before or after the completion of an investigation under this Part, discuss any matter that is relevant to the investigation with a Minister concerned with the matter.

(11) On the request of the responsible Minister, the Ombudsman shall consult the responsible Minister before he forms a final opinion on any of the matters referred to in sub-section 31 (1) or (2) that are relevant to the action under investigation.

(12) Where the Ombudsman becomes of the opinion, either before or after completing an investigation under this Part, that there is evidence that any action taken by the Commissioner or by a Deputy Commissioner was contrary to law or otherwise improper and that the evidence is, in all the circumstances, of sufficient force to justify his doing so, the Ombudsman shall bring the evidence to the notice of the Minister.

(13) Where the Ombudsman becomes of the opinion, either before or after completing an investigation under this Part, that there is evidence that a member other than the Commissioner or a Deputy Commissioner has been guilty of an offence or a breach of discipline and that the evidence is, in all the circumstances, of sufficient force to justify his doing so, the Ombudsman shall bring the evidence to the notice of the Commissioner.

Special or additional investigations conducted by Ombudsman under this Part

26. (1) This section applies to an investigation of a complaint in pursuance of sub-paragraph 36 (1) (a) (ii) or (2) (a) (i) or section 46.

(2) Nothing in this section shall be taken to limit the power of the Ombudsman to take, either before or after completing an investigation to which this section applies, any action that he would, in all the circumstances, be authorized to take under any other section contained in this Part and that appears to him to be appropriate.

(3) Upon the completion of an investigation to which this section applies, the Ombudsman may, if he thinks it appropriate to do so, when furnishing particulars of the results of his investigation to the Commissioner under sub-section 34 (1), recommend to the Commissioner that a member be charged with an offence or breach of discipline that, in the opinion of the Ombudsman, the member has committed.

(4) Where the Ombudsman, in accordance with sub-section (3), furnishes a report to the Commissioner of the results of an investigation, being an investigation conducted by the Ombudsman in pursuance of section 46, the Ombudsman shall at the time he furnishes that report to the Commissioner, furnish a copy of that report to the Minister, together with any comments relating to that report that he wishes to make.

(5) As soon as practicable after the Commissioner receives a report of an investigation to which this section applies from the Ombudsman under sub-section (3) the Commissioner shall, unless it is impracticable to do so, furnish particulars of the results of the investigation, together with any comments he wishes to make concerning the investigation, to the member, or each member, concerned.

Power to require persons to answer questions and produce documents

27. (1) The Ombudsman may, by notice in writing, require a person whom he believes to be capable of giving information relevant to an investigation under this Part to furnish to him in writing, within a period specified in the notice, such information, and to produce to him such documents and other records, being information, documents or records relevant to the investigation, as are specified in the notice.

(2) Without limiting the application of sub-section (1), the Commissioner shall, at the request, in writing, of the Ombudsman, cause any documents that are in the possession or under the control of the Investigation Division and that relate to the investigation by the Investigation Division of a complaint that is being investigated under this Part to be produced to the Ombudsman.

(3) For the purposes of an investigation under this Part, the Ombudsman may, by notice in writing, require—

- (a) the complainant;
 - (b) if the complaint was made by the complainant at the request of another person or of a body of persons—that other person or a person included in that body of persons;
 - (c) a member, or an officer of a Department or prescribed authority, who is, in the opinion of the Ombudsman, able to give information relevant to the investigation; or
 - (d) with the approval of the Minister, any other person who is, in the opinion of the Ombudsman, able to give any such information,
- to attend before him at a time and place specified in the notice and there to answer questions relevant to the investigation.**

(4) Where the Attorney-General furnishes to the Ombudsman a certificate certifying that the disclosure of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure of the contents of any documents or records would be contrary to the public interest—

- (a)** by reason that it would prejudice the security, defence or international relations of the Commonwealth;
- (b)** by reason that it would involve the disclosure of communications between a Minister and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of the State; or
- (c)** by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet,

the Ombudsman is not entitled to require a person to furnish any information concerning the matter, or to produce those documents or records to the Ombudsman.

(5) Notwithstanding the provisions of any enactment, a person is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this Part on the ground that—

- (a)** the furnishing of the information, the production of the document or record or the answering of the question—
 - (i)** would contravene the provisions of any other enactment;
 - (ii)** would be contrary to the public interest; or
 - (iii)** might make him liable to a penalty;
- (b)** the information, the production of the document or record or the answer to the question might tend to incriminate him; or
- (c)** the information, the document or record or the answer would disclose legal advice furnished to a Minister, to a Department, to the Australian Federal Police or to a prescribed authority,

but the information, the production of the document or record or the answer to the question is not admissible in evidence against him in proceedings other than proceedings for an offence against section 44.

(6) A person is not liable to any penalty under the provisions of any other enactment by reason of his furnishing information, producing a document or other record or answering a question when required to do so under this Part.

(7) In this section, a reference to a State shall be construed as including a reference to the Northern Territory.

Reference of question to the Administrative Appeals Tribunal

28. (1) Where a complaint concerning the taking of action in pursuance of a discretionary power conferred by an enactment is being investigated

by the Ombudsman or by the Investigation Division, the Ombudsman may recommend to the Commissioner that a specified question relating to the taking of that action or to the exercise of the power be referred to the Administrative Appeals Tribunal for an advisory opinion.

(2) Where the Ombudsman makes a recommendation to the Commissioner in accordance with sub-section (1), the Commissioner shall refer the question specified in the recommendation to the Administrative Appeals Tribunal, and that Tribunal may then give an advisory opinion on the question.

Power to examine witnesses

29. The Ombudsman may administer an oath or affirmation to a person required to attend before him in pursuance of section 27 and may examine the person on oath or affirmation.

Power to enter premises

30. (1) For the purposes of an investigation under this Part, an authorized person may, at any reasonable time of the day, enter any place occupied by the Australian Federal Police, a Department or a prescribed authority and may carry on the investigation at that place.

(2) Sub-section (1) does not authorize a person to enter, or carry on an investigation at—

- (a) a place referred to in paragraph 80 (c) of the *Crimes Act 1914*;
- (b) a place that is a prohibited place for the purposes of the *Defence (Special Undertakings) Act 1952* by virtue of section 7 of that Act; or
- (c) an area of land or water, or an area of land and water, that is declared under section 14 of the *Defence (Special Undertakings) Act 1952* to be a restricted area for the purposes of that Act,

unless the Minister administering that Act, or another Minister acting for and on behalf of that Minister, has approved his entering the place or area and he complies with any conditions imposed by the Minister giving the approval in relation to his entering that place or area and the manner in which his investigation is to be conducted at that place or area.

(3) Where the Attorney-General is satisfied that the carrying on of an investigation at a place might prejudice the security or defence of the Commonwealth, the Attorney-General may, by notice in writing delivered to the Ombudsman, declare the place to be a place to which this sub-section applies and, while the declaration is in force, sub-section (1) does not authorize a person to enter, or carry on an investigation at, the place unless a Minister specified in the declaration, or another Minister acting for and on behalf of that Minister, has approved his entering the place

and he complies with any conditions imposed by the Minister giving the approval in relation to his entering the place and the manner in which his investigation is to be conducted at the place.

(4) For the purposes of an investigation under this Part, an authorized person is entitled to inspect any documents relevant to the investigation kept at premises entered by him under this section, other than documents in respect of which the Attorney-General has furnished a certificate under sub-section 27 (4), at a reasonable time of the day arranged with the Commissioner or with the principal officer of the Department or prescribed authority, as the case requires.

(5) Sub-section (4) shall not be taken to restrict the operation of section 27.

(6) A reference under this section to an authorized person includes a reference to the Ombudsman and a Deputy Ombudsman.

Reports by Ombudsman

31. (1) Where, after an investigation of a complaint under this Part has been completed, the Ombudsman is of the opinion—

- (a) that any action taken by a member—
 - (i) appears to have been contrary to law;
 - (ii) was unreasonable, unjust, oppressive or improperly discriminatory;
 - (iii) was in accordance with a rule of law, a provision of an enactment or a practice, being a rule, provision or practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
 - (iv) was based either wholly or partly on a mistake of law or of fact; or
 - (v) was otherwise, in all the circumstances, wrong;
- (b) that, in the course of taking any action, a member exercised a discretionary power for an improper purpose or on irrelevant grounds; or
- (c) in a case where the action to which the complaint relates comprised or included a decision by a member to exercise a discretionary power in a particular manner or to refuse to exercise such a power—
 - (i) that irrelevant considerations were taken into account in the course of reaching the decision to exercise the power in that manner or to refuse to exercise the power, as the case may be; or
 - (ii) that the complainant in respect of the investigation or some other person should have been furnished, but was not furnished, with particulars of the reasons for deciding

to exercise the power in that manner or to refuse to exercise the power, as the case may be,

this section applies to the decision, recommendation, act or omission constituting that action.

(2) Where the Ombudsman is of the opinion—

- (a) that a decision, recommendation, act or omission to which this section applies should be referred to the Commissioner for further consideration;
- (b) that some particular action could be, and should be, taken to rectify, mitigate or alter the effects of a decision, recommendation, act or omission to which this section applies;
- (c) that a decision to which this section applies should be cancelled or varied;
- (d) that a rule of law, provision of an enactment or practice on which a decision, recommendation, act or omission to which this section applies was based should be altered;
- (e) that reasons should have been, but were not, given for a decision to which this section applies; or
- (f) that any other thing should be done in relation to a decision, recommendation, act or thing to which this section applies,

the Ombudsman shall report accordingly to the Commissioner.

(3) The Ombudsman—

- (a) shall include in a report under sub-section (2) his reasons for the opinions specified in the report; and
- (b) may also include in such a report any recommendations he thinks fit to make.

(4) The Ombudsman may request the Commissioner to furnish to him, within a specified time, particulars of any action that he proposes to take with respect to the matters and recommendations included in the report.

(5) Where the Ombudsman reports under sub-section (2) to the Commissioner, the Commissioner may furnish to the Ombudsman such comments concerning the report as he wishes to make.

(6) The Ombudsman shall furnish a copy of a report made by him under sub-section (2) to the responsible Minister.

Reports to Prime Minister

32. (1) Where action that is, in the opinion of the Ombudsman, adequate and appropriate in the circumstances is not taken with respect to the matters and recommendations included in a report to the Commissioner under section 31 within a reasonable time after the Ombudsman furnished the report to the Commissioner, the Ombudsman may inform the Prime Minister accordingly in writing.

(2) Where the Ombudsman furnishes information to the Prime Minister in accordance with sub-section (1) in relation to a report, the Ombudsman shall furnish to the Prime Minister, with the information, a copy of the comments (if any) that the Commissioner has furnished to the Ombudsman concerning the report.

(3) In considering whether to furnish information in relation to a report to the Prime Minister in accordance with sub-section (1), the Ombudsman shall have regard to any comments concerning the report furnished to him by the Commissioner.

Special reports to Parliament

33. Where the Ombudsman has, in accordance with sub-section 32 (1), furnished information to the Prime Minister in relation to a report concerning an investigation made by him, the Ombudsman may also forward to the President of the Senate and the Speaker of the House of Representatives, for presentation to the Senate and the House of Representatives, respectively, copies of a report prepared by him concerning the investigation for presentation to both Houses of the Parliament, being a report that sets out a copy of any comments concerning the report furnished to the Ombudsman under sub-section 31 (5) by the Commissioner.

Persons affected to be informed of results of investigation by Ombudsman

34. (1) Where the Ombudsman completes his investigation of a complaint, he shall furnish to the Commissioner, to the member concerned and, unless the identity of the complainant is not known, to the complainant, in such manner and at such times as he thinks fit, particulars of the results of his investigation of the complaint.

(2) The Ombudsman may, at any time during the course of his investigation of a complaint, furnish to the complainant a report of the progress of his investigation.

(3) Where action that is, in the opinion of the Ombudsman, adequate and appropriate to the circumstances is not taken with respect to recommendations included in a report made by the Ombudsman under section 31 within a reasonable time after the report is furnished to the Commissioner, the Ombudsman shall furnish to the member concerned and, unless the identity of the complainant is not known, to the complainant, in such manner and at such times as he thinks fit, particulars of the recommendations made by him in the report, together with such comments, if any, as he thinks fit.

Division 3—Power and duties of Ombudsman in respect of investigations carried out by Investigation Division

Powers of Ombudsman in relation to complaints referred to Investigation Division

35. (1) At any time, and from time to time, the Ombudsman may discuss a complaint that is required to be, is being, or has been, investigated by the Investigation Division, or any aspect of such a complaint, with the complainant.

(2) At any time, and from time to time, after a complaint has been referred to the Investigation Division and before a copy of the report of the Investigation Division in relation to its investigation of the complaint has been furnished to him, the Ombudsman may do all or any of the following things:

- (a)** request the Commissioner to furnish to him a report concerning the progress of the investigation;
- (b)** request the Commissioner to arrange for him to have access to any document specified in the request, being a document that is in the possession or under the control of the Investigation Division and that is relevant to the complaint;
- (c)** with the consent of the Commissioner, interview a person (other than the complainant) in relation to the complaint.

(3) The Commissioner shall, as soon as practicable after receipt of a request under paragraph (2) (a) or (b) in relation to a complaint, cause the request to be complied with.

Action to be taken by Ombudsman upon receipt of report of an investigation

36. (1) Upon receipt of a copy of a report of the results of the investigation of a complaint carried out by the Investigation Division, the Ombudsman may do some or all of the following things:

- (a)** if he is of the opinion that the complaint has not been adequately investigated—
 - (i)** request the Commissioner, in writing, to arrange for the complaint to be investigated further by the Investigation Division under Part II; or
 - (ii)** notify the Commissioner, in writing, that he proposes himself to conduct an investigation of the complaint under this Part;
- (b)** notify the Commissioner, in writing, that, in his opinion, a member referred to in the report took action that he should not have taken although he did not, in taking that action, commit an offence or breach of discipline, and of his reasons for being of that opinion;

- (c) recommend to the Commissioner, in writing, that a member referred to in the report be charged with an offence or breach of discipline that, in the opinion of the Ombudsman, the member has committed.

(2) Where the Ombudsman requests the Commissioner to arrange for a complaint to be further investigated by the Investigation Division under Part II, the Ombudsman may, on receipt of a copy of a report of the results of the further investigation of the complaint, do some or all of the following things:

- (a) if he is of the opinion that the complaint has still not been adequately investigated—
 - (i) notify the Commissioner, in writing, that he proposes himself to conduct an investigation of the complaint under this Part; or
 - (ii) forward to the Minister a request that the Minister cause an inquiry under section 50 to be held into the action the subject of the complaint;
- (b) notify the Commissioner, in writing, that, in his opinion, a member referred to in the report took action that he should not have taken although he did not, in taking that action, commit an offence or breach of discipline, and of his reasons for being of that opinion;
- (c) recommend to the Commissioner, in writing, that a member referred to in the report be charged with an offence or breach of discipline that, in the opinion of the Ombudsman, the member has committed.

(3) Where the Ombudsman furnishes to the Commissioner a notification under paragraph (1) (b) or (2) (b)—

- (a) he may also include in the notification any recommendation, not being a recommendation that a member be charged with an offence or a breach of discipline, that he thinks fit to make; and
- (b) he may also request the Commissioner to furnish to him, within a specified time, particulars of any action that the Commissioner proposes to take in consequence of the recommendation.

(4) The Commissioner may furnish to the Ombudsman comments concerning a notification furnished to him under paragraph (1) (b) or (2) (b).

(5) Sections 32 and 33 apply to and in relation to a recommendation made in a notification under paragraph (1) (b) or (2) (b) of this section in like manner as they apply to and in relation to a report made to the Commissioner under section 31.

Ombudsman to inform complainant of results of investigation

37. (1) Upon receipt of a copy of a report of the investigation, or further investigation, of a complaint carried out by the Investigation

Division, being a complaint that was originally referred to the Commissioner by the Ombudsman under section 23, the Ombudsman shall, in such manner and at such times as he thinks fit—

- (a) furnish to the member concerned and to the complainant, in such manner and at such times as he thinks fit, particulars of the results of the investigation or further investigation and of any recommendation he proposes to make, or has made, to the Commissioner concerning the charging of a member with an offence or breach of discipline; and
- (b) in a case where he proposes to recommend, or has recommended, that a member be charged with an offence or breach of discipline—inform the complainant that he will be notified, by the Commissioner, of any charge laid in relation to the complaint.

(2) Where action that is, in the opinion of the Ombudsman, adequate and appropriate to the circumstances is not taken with respect to recommendations included in a notification made by the Ombudsman under paragraph 36 (1) (b) or 36 (2) (b) within a reasonable time after the notification is furnished to the Commissioner, the Ombudsman shall, furnish to the member concerned and to the complainant, in such manner and at such times as he thinks fit, particulars of the recommendations made by him in the notification, together with such comments (if any) as he thinks fit.

(3) In sub-section (1), a reference to a complainant does not include a reference to a complainant whose identity is not known.

Division 4—General

Annual report and additional reports to Parliament

38. (1) Section 19 of the *Ombudsman Act 1976* extends, by virtue of this section, to operations of the Ombudsman under this Act as if—

- (a) references in that section to operations of the Ombudsman included references to operations of the Ombudsman under this Act;
- (b) references in that section to complaints made under the *Ombudsman Act 1976* concerning action taken by officers included references to complaints made under this Act, either to the Ombudsman or to members of the Australian Federal Police, concerning action taken by members of the Australian Federal Police; and
- (c) the reference in sub-section 19 (8) of the *Ombudsman Act 1976* to sub-section 8 (5) of that Act were a reference to sub-section 8 (5) of the *Ombudsman Act 1976* or sub-section 25 (7) of this Act, whichever is applicable to the relevant investigation.

(2) The Ombudsman shall include in each report made by him under paragraph 19 (1) (a) of the *Ombudsman Act 1976* the prescribed particulars

with respect to complaints that were made to him, or made to members and notified to him, under this Act, during the year to which the report relates.

Ombudsman not to be sued

39. (1) Subject to section 41, neither the Ombudsman nor a person acting under his direction or authority is liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise or purported exercise of any power or authority conferred by this Act.

(2) A reference in this section to the Ombudsman includes a reference to a Deputy Ombudsman.

Delegation

40. (1) The Ombudsman may, by instrument in writing, delegate to a Deputy Ombudsman, to a member of the staff appointed or employed for the purposes of the *Ombudsman Act 1976* under the *Public Service Act 1922* or, with the consent of the Minister, to any other person any of his powers under this Act, except this power of delegation or the power conferred by section 31, 32 or 33.

(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 Ombudsman.

(3) A delegate shall, upon request by a person affected by the exercise of any powers delegated to him, produce the instrument of delegation, or a copy of the instrument, for inspection.

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

Officers to observe secrecy

41. (1) In this section, “officer” means—

- (a)** the Ombudsman;
- (b)** a Deputy Ombudsman;
- (c)** a person who is a member of the staff appointed or employed for the purposes of the *Ombudsman Act 1976* under the *Public Service Act 1922*;
- (d)** a person, not being a person referred to in paragraph (b) or (c), to whom the Ombudsman has, under section 40, delegated any of his powers or who is an authorized person; or
- (e)** a person who is made available to the Ombudsman as mentioned in paragraph 25 (3) (a) or (b).

(2) Subject to this section, an officer shall not, either directly or indirectly, and either while he is, or after he ceases to be, an officer, make a

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record of, or divulge or communicate, any information acquired by him by reason of his being an officer, being information that was disclosed or obtained under the provisions of this Act.

Penalty: \$1,000.

- (3) Sub-section (2) does not prevent an officer—
- (a) from making a record of, or divulging or communicating information acquired by him in the performance of his duties as an officer for purposes connected with the performance of the functions of the Ombudsman under this Act;
 - (b) from divulging or communicating information—
 - (i) if the information was furnished by a member in the performance of his duties as such a member—with the consent of the Commissioner or of the responsible Minister; or
 - (ii) if the information was furnished by a person otherwise than as set out in sub-paragraph (i)—with the consent of the person who furnished the information; or
 - (c) from divulging or communicating information in any proceedings before a court.

(4) Subject to sub-section (5), sub-section (2) does not prevent the Ombudsman or a Deputy Ombudsman from disclosing, in a report made under this Act, such matters as, in his opinion, ought to be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.

- (5) Where the Attorney-General furnishes to the Ombudsman a certificate in writing certifying that—
- (a) the disclosure of information or documents concerning a specified matter or matters included in a specified class of matters; or
 - (b) the disclosure of a specified document or of documents included in a specified class of documents,

would, for a reason specified in the certificate, being a reason referred to in paragraph 27 (4) (a), (b) or (c), be contrary to the public interest, an officer shall not, either directly or indirectly and either while he is, or after he ceases to be, an officer, except as provided in sub-section (6) of this section—

- (c) divulge or communicate any information acquired by him under the provisions of this Act concerning such a matter or such a document;
- (d) divulge or communicate any of the contents of such a document; or
- (e) furnish such a document, or a copy of, or an extract from, such a document.

Penalty: \$5,000 or imprisonment for 2 years.

(6) Sub-section (5) does not prevent an officer, in the performance of his duties as an officer—

- (a) from divulging or communicating information referred to in that sub-section to another officer;
- (b) from furnishing any of the contents of a document referred to in that sub-section, or a copy of or an extract from such a document, to another officer; or
- (c) from returning such a document that has been produced to him to the person lawfully entitled to the custody of the document.

(7) Sub-section (2) does not prevent the Ombudsman—

- (a) from furnishing information (not being information referred to in sub-section (5)) that relates to—
 - (i) a matter arising under a law of a State or of the Northern Territory; or
 - (ii) an undertaking that is being carried out jointly by the Commonwealth and a State or the Commonwealth and the Northern Territory,
to a person exercising, under a law of a State or of the Northern Territory, functions similar to the functions of the Ombudsman; or
- (b) from forwarding a document, or a copy of, or extract from, a document, that relates to such a matter or undertaking (not being a document referred to in sub-section (5)) to such a person.

Ombudsman may attempt to reconcile complainant and member

42. (1) Where the Ombudsman considers that, having regard to all the circumstances, a complaint that has been made to him with respect to action taken by a member, or that has been notified to him under section 6, may properly be dealt with by attempting to reconcile the complainant and the member concerned, the Ombudsman may, after having notified the Commissioner that he intends to do so, attempt to reconcile the complainant and the member concerned.

(2) The Ombudsman shall not notify the Commissioner, under sub-section (1), that he intends to attempt to reconcile the complainant and the member concerned if he has been notified by the Commissioner that the Commissioner intends to attempt to reconcile the complainant and the member concerned.

(3) Where, in respect of a complaint referred to the Commissioner by the Ombudsman under paragraph 23 (1) (b), the Ombudsman informs the Commissioner, in writing, that he intends to attempt to reconcile the complainant and the member concerned, the Commissioner shall, unless he has already referred the complaint to the officer in charge, refrain from so referring the complaint unless and until he is informed that the Ombudsman is satisfied of the matter referred to in paragraph (6) (b) of this section.

(4) Where, in respect of a complaint that has already been referred by the Commissioner to the Investigation Division, the Ombudsman informs the Commissioner, in writing, that he intends to attempt to reconcile the complainant and the member concerned, the Commissioner shall direct the officer in charge to cause the Division to refrain from investigation or further investigation of that complaint.

(5) The Ombudsman may, for the purpose of attempting to reconcile the complainant and the member concerned, obtain from the Commissioner an explanation with respect to the policies, practices and procedures of the Australian Federal Police that the Ombudsman considers to be relevant.

(6) Where the Ombudsman becomes satisfied—

(a) that a reconciliation has been effected between the complainant and the member concerned; or

(b) that for any reason it is unlikely that he will be able to effect a reconciliation between the complainant and the member concerned, the Ombudsman shall inform the Commissioner that he is so satisfied and, in a case where he informs the Commissioner that he is satisfied of the matter referred to in paragraph (a), furnish to the Commissioner particulars of the basis on which the reconciliation has been effected.

(7) Where, after the Commissioner has given a direction to the officer in charge under sub-section (4) in respect of a complaint, the Commissioner is informed that the Ombudsman is satisfied with respect to the matter referred to in paragraph (6) (b) in relation to the complaint, the Commissioner shall direct the officer in charge to cause the Investigation Division to commence, or to continue, its investigation or further investigation of the complaint.

(8) A statement by a member, or an answer by a member to a question asked of him, in the course of an attempt under this section to effect a reconciliation, is not admissible in evidence against that member in proceedings (including proceedings in respect of a breach of discipline).

Register to be kept by Ombudsman

43. The Ombudsman shall establish and maintain a register containing the prescribed particulars of, or relating to—

- (a) complaints made to him under this Part and complaints that are to be treated as having been so made; and
- (b) complaints made to members that are notified to him under section 6.

Offences

44. (1) A person shall not, without reasonable excuse—

- (a) fail to attend before the Ombudsman;
- (b) refuse or fail to be sworn or make an affirmation; or

- (c) refuse or fail to answer a question or produce a document or record,
when so required in pursuance of this Part.

Penalty: \$1,000 or imprisonment for 6 months.

(2) A person shall not—

- (a) without reasonable excuse, wilfully obstruct, hinder or resist the Ombudsman or any other person in the exercise of his functions under this Part; or
(b) furnish information or make a statement to the Ombudsman or to an authorized person knowing that it is false or misleading in a material particular.

Penalty: \$500 or imprisonment for 3 months.

(3) A reference in this section to the Ombudsman includes a reference to a Deputy Ombudsman.

Protection from civil actions

45. Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person by reason of—

- (a) the making of a complaint to the Ombudsman under this Part; or
(b) the making of a statement to, or the furnishing of a document (including a report furnished under sub-section 10 (1)) or information to, a person (being an officer within the meaning of section 41) for the purposes of this Part.

PART IV—SPECIAL INVESTIGATIONS

Circumstances in which special investigation to be conducted

46. (1) Where the Commissioner informs the Ombudsman, or the Ombudsman informs the Commissioner, that he is satisfied that a complaint—

- (a) concerns action taken by a member holding a rank equal or senior to the rank held by the officer in charge of the Investigation Division;
(b) concerns action taken by a member serving in the Investigation Division; or
(c) is, for any other reason, not appropriate for investigation or further investigation by the Investigation Division,
the complaint shall be investigated—
(d) if the Commissioner and the Ombudsman so agree or the Minister so determines under sub-section (2)—by the Ombudsman under Part III;

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- (e) if the Commissioner and the Ombudsman so agree—under this Part, in accordance with arrangements made by the Commissioner, by a person agreed to by the Commissioner and the Ombudsman; or
- (f) if the Minister so determines under sub-section (2)—under this Part, in accordance with arrangements made by the Commissioner, by a person specified by the Minister in the determination.

(2) Where the Commissioner and the Ombudsman are unable to reach agreement in respect of a complaint to which sub-section (1) applies that the complaint be investigated by the Ombudsman or by some other person who is available to conduct the investigation, they shall report accordingly to the Minister who, subject to sub-section (4), shall determine whether the complaint is to be investigated by the Ombudsman or by another person who is available to conduct the investigation of the complaint.

(3) The Ombudsman or other person required to investigate a complaint under sub-section (1)—

- (a) may, if he is of the opinion that an inquiry that is being, or is to be held under section 50 is likely to be concerned with any matter to which the complaint relates, defer or suspend his investigation of the complaint until that inquiry has been completed; and
- (b) may, after considering the report of the results of an inquiry under section 50 into any matter to which the complaint relates, determine that the complaint should not be investigated or further investigated by him.

(4) Where the Minister, upon receipt of a report under sub-section (2) in respect of a complaint, is of the opinion that any inquiry that is being, or is to be, held under section 50 is likely to be concerned with any matter to which the complaint relates—

- (a) he may defer making a determination under sub-section (2) until that inquiry has been completed; and
- (b) if, after considering the report of the results of the inquiry and consulting with the Ombudsman, he is satisfied that the matters to which the complaint relates have been adequately inquired into, he may determine that the complaint need not be investigated further.

(5) Sub-section 25 (1) does not apply in relation to the investigation of a complaint by the Ombudsman in pursuance of sub-section (1).

(6) Nothing in this section shall be taken to prevent the Commissioner from taking action, or causing action to be taken, to prevent the loss, destruction or fabrication of evidence relating to a complaint that may be, or is being, investigated in accordance with arrangements made under this section.

Investigations by special investigator

47. (1) The person conducting an investigation of a complaint under this Part shall, subject to sub-section (2), investigate the complaint in such manner as he thinks fit.

(2) The Ombudsman may, where the Commissioner agrees, give to the person conducting the investigation directions in relation to the conduct of the investigation.

(3) Sub-sections 50 (2) to (10) (inclusive) apply to and in relation to an investigation of a complaint under this Part in like manner as they apply to and in relation to an inquiry held under sub-section 50 (1) and as if references in those sub-sections to an inquiry were references to an investigation under this Part.

(4) The person carrying out the investigation shall, whenever required to do so by the Commissioner or the Ombudsman, as the case may be, furnish to the Commissioner or the Ombudsman, as the case may be, a report concerning the progress of the investigation.

Report of investigation

48. (1) Where an investigation is conducted under this Part, the person holding the investigation shall report the results of the investigation—

- (a) subject to paragraph (b)—to the Commissioner; or
- (b) if the Commissioner had agreed to the investigation being conducted in accordance with the directions given by the Ombudsman—to the Ombudsman,

and may include in his report such recommendations (if any) arising out of the investigation as he deems fit.

(2) Where the person holding the investigation reports to the Commissioner, the Commissioner shall—

- (a) as soon as practicable after the report is furnished to him, cause a copy of the report to be furnished to the Ombudsman, together with any comments relating to the report that he wishes to make; and
- (b) cause to be furnished to the member concerned and, unless the identity of the complainant is not known, to the complainant, in such manner and at such times as he thinks fit, particulars of the results of the investigation, together with any comments he wishes to make concerning the investigation.

(3) Where the person holding the investigation reports to the Ombudsman, the Ombudsman shall—

- (a) as soon as practicable after the report is furnished to him, furnish a copy of the report to the Commissioner, together with any comments relating to the report that he wishes to make; and

- (b) unless the identity of the complainant is not known, furnish particulars of the results of the investigation to the complainant in such manner and at such time as he thinks fit, together with any comments he wishes to make concerning the investigation.

(4) Where the Commissioner receives a copy of the report from the Ombudsman under sub-section (3), the Commissioner shall furnish particulars of the results of the investigation to the member concerned in such manner and at such time as he thinks fit, together with any comments he wishes to make concerning the investigation.

Action consequential upon report

49. (1) Where the Ombudsman receives the report, or a copy of the report, of the results of an investigation of a complaint that was investigated under this Part or of the results of the further investigation of a complaint that was previously so investigated—the provisions of section 36 apply as if the complaint had been investigated, or further investigated, by the Investigation Division and that report were the report of the results of that investigation or further investigation.

(2) Where the Commissioner is requested by the Ombudsman under sub-paragraph 36 (1) (a) (i) to arrange for a complaint that has been investigated under this Part to be investigated further under this Part—

- (a) the Commissioner shall, unless it is for any reason impracticable to do so, make arrangements for the complaint to be investigated further by the person who carried out the original investigation; and
- (b) sections 47 and 48 apply to and in relation to the further investigation in like manner as they applied to and in relation to the original investigation.

(3) Where the Commissioner receives a report, or a copy of the report, of the results of an investigation, or further investigation, of a complaint under this Part the provisions of sections 11, 12 and 13 apply as if the complaint had been investigated, or further investigated, by the Investigation Division and that report were the report of the results of that investigation or further investigation.

(4) As soon as practicable after the Commissioner has decided to take any action (including action by way of causing a member to be charged with an offence or breach of discipline), or has decided not to take any action, in consequence of his consideration of a report of the investigation, or further investigation, of a complaint under this Part the Commissioner shall inform the Minister, in writing, of his decision.

PART V—INQUIRIES DIRECTED BY THE MINISTER

Minister may arrange special inquiries

50. (1) The Minister may, where he thinks it appropriate to do so, arrange for an inquiry to be held, by such person or persons, and in such manner, as he determines, concerning—

- (a) any action taken by a member (including action the subject of a complaint made to a member or to the Ombudsman); or
- (b) any other matter relating to the Australian Federal Police.

(2) Subject to this section, the person or persons holding an inquiry under sub-section (1) may, for the purposes of the inquiry, obtain information from such persons, and make such inquiries, as he thinks, or they think, fit.

(3) The person or persons holding an inquiry under sub-section (1) may, for the purposes of the inquiry—

- (a) enter premises occupied by the Australian Federal Police and carry on the inquiry on those premises;
- (b) inspect any documents or records kept at premises occupied by the Australian Federal Police and take extracts from, or a copy of, such a document or record or cause such extracts or such a copy to be taken; and
- (c) examine any property used by the Australian Federal Police.

(4) For the purposes of an inquiry under sub-section (1)—

- (a) the person holding the inquiry, or any of the persons holding the inquiry, may direct a member of the Australian Federal Police—
 - (i) to furnish information or produce a document or other record, being information or a document or record that is relevant to the inquiry; or
 - (ii) to attend before him at a time and place specified by him and then and there to answer questions relevant to the inquiry;
- (b) the person or persons holding the inquiry may, by means of sound recording apparatus or otherwise, make a record of any information furnished, or answer given, in compliance with such a direction or cause such a record to be made; and
- (c) the person or persons holding the inquiry may take extracts from, or a copy of, a document or record produced in compliance with such a direction or cause such extracts or such a copy to be taken.

(5) A person, or any of the persons, holding an inquiry under sub-section (1) may administer an oath or affirmation to a member of the Australian Federal Police required to attend before him in pursuance of paragraph (4) (a) and may examine the member of the Australian Federal Police on oath or affirmation.

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(6) Where a member of the Australian Federal Police is directed under sub-section (4) to furnish information, produce a document or other record or answer a question, the member is not excused from complying with the direction on the ground that—

- (a) the furnishing of the information, the production of the document or record or the answering of the question—
 - (i) would be contrary to the public interest; or
 - (ii) might make him liable to a penalty; or
- (b) the information, the production of the document or record or the answer to the question might tend to incriminate him,

or on any other ground, but the information, the production of the document or record or the answer to the question is not admissible in evidence against him in any civil or criminal proceedings other than proceedings for an offence against sub-section (8) or for or in relation to a breach of discipline.

(7) Nothing in sub-section (6) shall be taken to affect the admissibility in evidence, in any civil or criminal proceedings, of—

- (a) any information furnished by a member of the Australian Federal Police to the person or persons holding an inquiry under sub-section (1);
- (b) the production of a document or other record by a member of the Australian Federal Police to the person or persons holding an inquiry under sub-section (1); or
- (c) an answer given by a member of the Australian Federal Police to a question put to him by the person, or by any of the persons, holding an inquiry under sub-section (1),

where the member of the Australian Federal Police has not been expressly directed, under sub-section (4), to furnish the information, produce the document or record or answer the question.

(8) A member of the Australian Federal Police shall not—

- (a) without reasonable excuse—
 - (i) fail to attend before a person;
 - (ii) refuse or fail to be sworn or make an affirmation; or
 - (iii) refuse or fail to furnish information, produce a document or other record or answer a question,when so required in pursuance of this section;
- (b) without reasonable excuse, wilfully obstruct, hinder or resist a person, or any of the persons, holding an inquiry under sub-section (1); or
- (c) furnish information or make a statement to a person, or any of the persons, holding an inquiry under sub-section (1) knowing that it is false or misleading in a material particular.

Penalty: \$1,000 or imprisonment for 6 months.

(9) For all the purposes of the *Australian Federal Police Act 1979*, and the regulations in force under that Act, a direction given under paragraph (4) (a) by the person, or any of the persons, holding an inquiry under sub-section (1) has effect as if it had been given by the Commissioner.

(10) A member of the Australian Federal Police is not liable to any penalty (other than a penalty for an offence against sub-section (8)) under the provisions of any other law by reason of his furnishing information, producing a document or other record or answering a question when directed to do so by the person, or any of the persons, holding an inquiry under sub-section (1).

Minister to cause Ombudsman, &c., to be informed of manner of inquiry

51. (1) Where the Minister arranges for an inquiry to be held into any action or other matter, the Minister shall cause the Ombudsman, and such other persons or bodies as he deems appropriate, to be informed that the inquiry will be held and of the person or persons by whom, and the manner in which, the inquiry will be held.

(2) Where the Ombudsman is of the opinion that an inquiry under section 50 relates to a complaint which the Ombudsman is investigating, or proposes to investigate, under Part III, the Ombudsman may suspend the investigation, or defer commencing the investigation, of the complaint under that Part until after the inquiry has been completed.

Reports of special inquiries

52. (1) Where an inquiry is held in accordance with arrangements made under section 50, the person or persons holding the inquiry shall report to the Minister the results of the inquiry and may make such recommendations (if any) arising out of the inquiry as he deems or they deem fit.

(2) On receipt of a report of the results of an inquiry held in accordance with arrangements made under section 50—

- (a) if the inquiry was held in pursuance of a request made to the Minister by the Ombudsman under paragraph 36 (2) (a) (ii)—the Minister shall cause a copy of the report of the results of the inquiry to be forwarded to the Ombudsman; and
- (b) the Minister may cause such action to be taken, arising out of his consideration of the report, as he deems fit, including action by way of causing a member to be charged with an offence or breach of discipline.

PART VI—THE FEDERAL POLICE DISCIPLINARY TRIBUNAL

Division 1—Preliminary

Interpretation

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

“Deputy President” means a Deputy President of the Disciplinary Tribunal;

“judicial office” means—

- (a) an office of Judge of the Federal Court of Australia or of the Supreme Court of a State or Territory; or
- (b) an office the holder of which has, by virtue of an Act, the same status as a Judge referred to in paragraph (a);

“legal practitioner” means a barrister, a solicitor, a barrister and solicitor or a legal practitioner of the High Court or of the Supreme Court of a State or Territory;

“President” means the President of the Disciplinary Tribunal;

“Registrar” means the Registrar of the Disciplinary Tribunal.

(2) In this Part, unless the contrary intention appears, a reference to a proceeding before the Disciplinary Tribunal shall be read as a reference to—

- (a) a proceeding in respect of a charge required to be heard by the Tribunal under section 67;
- (b) an appeal to the Tribunal under section 68 or 69; or
- (c) an inquiry by the Tribunal into a matter referred by the Minister to the Tribunal under section 70.

(3) For the purposes of this Part and of the prescribed regulations in their application for the purposes of this Part, a power under the prescribed regulations to recommend to the Governor-General that the Governor-General reduce a member to a lower rank or dismiss the member from the Australian Federal Police in respect of a breach of discipline shall be deemed to be a power to impose a penalty on the member in respect of the breach of discipline, and the making, in respect of a member, of such a recommendation shall be deemed to be the imposition of a penalty on the member.

Division 2—Establishment of Federal Police Disciplinary Tribunal

Establishment and constitution of Federal Police Disciplinary Tribunal

54. (1) There is hereby established a Tribunal, to be known as the Federal Police Disciplinary Tribunal.

(2) The Disciplinary Tribunal shall consist of a President and such number of Deputy Presidents and other members as are appointed in accordance with this section.

(3) A member of the Disciplinary Tribunal shall be appointed by the Governor-General.

(4) The Deputy Presidents and other members of the Disciplinary Tribunal have seniority as Deputy Presidents or other members, respectively, according to the dates of their appointments.

(5) A person holding office as a member of the Disciplinary Tribunal is not required to devote the whole of his time to the duties of his office.

Qualifications of members

55. (1) A person is not qualified to be appointed as President or as a Deputy President unless he is the holder of a judicial office.

(2) A person is not qualified to be appointed as a member other than President or a Deputy President unless—

- (a) he holds an office of Magistrate of a State or Territory; or
- (b) he has been, for a period of not less than 5 years, a legal practitioner.

Appointment of holder of judicial office as member of Disciplinary Tribunal not to affect tenure, &c.

56. Where a person who holds—

- (a) an office of Judge of the Federal Court of Australia or of the Supreme Court of a Territory other than the Northern Territory;
- (b) an office the holder of which has, by virtue of an Act, the same status as a Judge referred to in paragraph (a); or
- (c) an office of Magistrate of a Territory other than the Northern Territory,

is appointed as a member of the Disciplinary Tribunal, the appointment or service of the person as such a member does not affect his tenure of that office, or his rank, title, status or precedence, his salary or other allowances or his other rights or privileges as the holder of that office, and, for all purposes, his service as a member of the Tribunal shall be taken to be service as the holder of that office.

Terms and conditions of appointment

57. Subject to this Part, a member of the Tribunal holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment and on such terms and conditions as the Governor-General determines, but is eligible for re-appointment.

Arrangements for appointment of holder of judicial office of a State or of the Northern Territory, &c.

58. (1) The Governor-General may arrange—

- (a) with the Governor of a State for the performance by a person who holds office as a judge of the Supreme Court of that State; or
- (b) with the Administrator of the Northern Territory for the performance by a person who holds office as a judge of the Supreme Court of that Territory,

of the functions of the President or of a Deputy President of the Disciplinary Tribunal.

(2) The Governor-General may arrange—

- (a) with the Governor of a State for the performance by a person who holds an office of Magistrate of that State; or

- (b) with the Administrator of the Northern Territory for the performance by a person who holds an office of Magistrate of that Territory,

of the functions of a member, other than the President or a Deputy President, of the Disciplinary Tribunal.

Remuneration of members of Disciplinary Tribunal

59. (1) A member of the Disciplinary Tribunal, not being the holder of a judicial office or of an office of Magistrate of a State or Territory, shall be paid such remuneration as the Remuneration Tribunal determines but, if no determination of that remuneration by that Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A member of the Disciplinary Tribunal shall be paid such allowances as are prescribed.

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

Acting appointments

60. (1) The Minister may appoint the holder of a judicial office to act as President—

- (a) during a vacancy in the office of President, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the President is absent from duty or from Australia or is, for any other reason, unavailable to perform the duties of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Minister may appoint the holder of a judicial office to act as a Deputy President during any period, or during all periods, when a Deputy President is absent from duty or from Australia or is, for any other reason, unavailable to perform the duties of his office.

(3) The Minister may appoint a person qualified to be appointed as a member of the Disciplinary Tribunal (other than the President or a Deputy President) to act as such a member during any period, or during all periods, when a member of the Tribunal (other than the President or a Deputy President) is absent from duty or from Australia or is, for any other reason, unavailable to perform the duties of his office.

(4) An appointment of a person under sub-section (1), (2) or (3) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(5) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under sub-section (1), (2) or (3); and
- (b) terminate such an appointment at any time.

(6) Where a person has been appointed under sub-section (1), (2) or (3) during a period when a member of the Disciplinary Tribunal is absent from duty or from Australia or is, for any other reason, unavailable to perform the duties of his office, the Minister may, by reason of a pending proceeding or other special circumstances, direct, before the member of the Tribunal who is absent ceases to be so absent or unavailable, that the person so appointed shall continue to act under the appointment after the member of the Tribunal ceases to be absent or unavailable and until he resigns the appointment or the Minister terminates the appointment, but a person shall not continue to act by virtue of this sub-section for more than 12 months after the member of the Tribunal ceases to be absent or unavailable.

(7) The appointment of a person to act as a member of the Disciplinary Tribunal ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

(8) While a person is acting as the President, a Deputy President or another member of the Disciplinary Tribunal he has and may exercise all the powers and shall perform all the functions, of the President, a Deputy President or another member of the Tribunal, as the case may be, under this Act.

(9) Where—

- (a) the Disciplinary Tribunal as constituted for the purposes of a proceeding consists of a person acting or purporting to be appointed under this section; or
- (b) a person so acting or purporting to be appointed has done any act, the validity of any decision of, or of any direction given or other act done by, the person so acting or purporting to be appointed shall not be called in question on the ground that—
 - (c) the occasion for the person to act or for the appointment of the person has not arisen;
 - (d) there is a defect or irregularity in or in connection with the appointment of the person;
 - (e) the occasion for the person to act had ceased; or
 - (f) the appointment had ceased to have effect.

Removal from office—President or Deputy President

61. (1) If the President or a Deputy President ceases to be a person who holds judicial office, the Governor-General may remove him from office.

(2) The removal from office of the President under sub-section (1) does not prevent his re-appointment as a member other than the President or a Deputy President.

(3) The President or a Deputy President shall not be removed from office except as provided by this section.

Removal from office—other members

62. (1) This section applies to a member of the Disciplinary Tribunal other than the President or a Deputy President.

(2) The Governor-General may remove from office a member of the Disciplinary Tribunal to whom this section applies on an address praying for his removal on the ground of proved misbehaviour or incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

(3) The Governor-General may suspend such a member of the Disciplinary Tribunal from office on the ground of proved misbehaviour or incapacity.

(4) Where the Governor-General suspends a member of the Disciplinary Tribunal from office under sub-section (3), the Minister shall cause a statement of the grounds of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

(5) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member of the Disciplinary Tribunal should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the member of the Disciplinary Tribunal from office.

(6) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.

(7) The suspension of a member of the Disciplinary Tribunal from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

(8) If a member of the Disciplinary Tribunal to whom this section applies becomes bankrupt, or if the affairs of such a member are being dealt with under Part X of the *Bankruptcy Act* 1966, the Governor-General shall remove him from office.

(9) If a member of the Disciplinary Tribunal to whom this section applies ceases to possess the qualifications necessary for his appointment, the Governor-General shall remove him from office.

(10) Where the Governor-General is satisfied that a member of the Disciplinary Tribunal to whom this section applies has failed, without reasonable excuse, to comply with his obligations under section 84, the Governor-General shall remove him from office.

(11) A member of the Disciplinary Tribunal to whom this section applies shall not be removed or suspended from office except as provided by this section.

Resignation

63. A member of the Disciplinary Tribunal may resign his office by writing under his hand delivered to the Governor-General.

Division 3—Staff of Disciplinary Tribunal

Staff of Disciplinary Tribunal

64. (1) There shall be a Registrar of the Disciplinary Tribunal and such Deputy Registrars of the Disciplinary Tribunal as are appointed in accordance with this section.

(2) The Registrar and the Deputy Registrars shall be appointed by the Minister and have such duties and functions as are provided by the regulations and such other duties and functions as the President directs.

(3) The Registrar and the Deputy Registrars, and the staff necessary to assist them, shall be persons appointed or employed under the *Public Service Act 1922*.

Division 4—Constitution and Powers of Disciplinary Tribunal

Arrangement of business

65. (1) The President may give directions as to the arrangement of the business of the Disciplinary Tribunal and as to the person who is to constitute the Tribunal for the purposes of a particular proceeding.

(2) The President may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate all or any of his powers under sub-section (1) to a Deputy President.

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

(4) A delegation under sub-section (2) does not prevent the exercise of a power by the President.

(5) Sittings of the Disciplinary Tribunal for the purposes of a particular proceeding shall be held at such place and times as are determined by the member who constitutes the Tribunal for the purposes of the proceeding.

Exercise of powers of Disciplinary Tribunal

66. (1) The Disciplinary Tribunal shall, for the purposes of the exercise of its powers in relation to a particular proceeding, be constituted by one member of the Tribunal.

(2) The Disciplinary Tribunal constituted by one member of the Tribunal may sit and exercise the powers of the Tribunal notwithstanding that the Tribunal constituted by another member of the Tribunal is at the same time sitting and exercising the powers of the Tribunal.

Charges in respect of breaches of discipline

67. (1) Where proceedings are instituted by the Commissioner against a member under the prescribed regulations in respect of a breach of discipline—

(a) as a result of an investigation of a complaint that was referred to the Commissioner by the Ombudsman; or

(b) as a result of an investigation of a complaint that was referred to the Investigation Division under section 6, not being a complaint made by a person known to the Commissioner to be a member,

the proceedings shall be heard and determined by the Disciplinary Tribunal.

(2) Where proceedings (other than proceedings to which subsection (1) applies) are instituted by the Commissioner against a member under the prescribed regulations in respect of a breach of discipline and the member concerned does not admit the truth of the matters alleged to constitute the breach of discipline, the proceedings shall be heard and determined by the Disciplinary Tribunal—

(a) if the member requests the Commissioner, in writing, that the proceedings be so heard and determined; or

(b) if the Commissioner determines, in writing, that it would be desirable for the proceedings to be so heard and determined.

(3) Where the Disciplinary Tribunal, in proceedings heard by it in pursuance of sub-section (1) or (2), finds a member guilty of a breach of discipline—

(a) if the Tribunal is constituted by the President or a Deputy President—the Tribunal may, subject to sub-sections (5) and (7), impose on the member, in respect of the breach of discipline, such penalty as the Tribunal deems fit, being a penalty that the Commissioner would have had the power to impose upon the member, under the prescribed regulations, in respect of the breach of discipline if the Commissioner had heard and determined the proceedings and found the member guilty of that breach of discipline; or

(b) if the Tribunal is not so constituted—the Tribunal shall inform the Commissioner, in writing, of its findings in the proceedings and remit the proceedings to the Commissioner for the imposition of a penalty on the member in respect of the breach of discipline.

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(4) The Tribunal may, under paragraph (3) (a), in the case of a commissioned officer, recommend to the Governor-General that the officer be reduced to a lower rank or dismissed from the Australian Federal Police but shall not itself reduce him to a lower rank or dismiss him from the Australian Federal Police.

(5) Before imposing a penalty under paragraph (3) (a) in respect of a breach of discipline, the Disciplinary Tribunal shall consult with the Commissioner or with another member of the Federal Police nominated by the Commissioner with respect to the penalty that it would be appropriate to impose in respect of that breach of discipline.

(6) Where the Disciplinary Tribunal remits proceedings to the Commissioner under paragraph (3) (b) for the imposition of a penalty on a member in respect of a breach of discipline, the Commissioner may, subject to sub-section (7), impose on the member, in respect of the breach of discipline, such penalty as he thinks fit, being a penalty that the Commissioner would have had the power to impose on the member, under the prescribed regulations, if the Commissioner had heard and determined the proceedings and found the member guilty of the breach of discipline.

(7) Neither the Disciplinary Tribunal under sub-section (3) nor the Commissioner under sub-section (6) shall impose on a member a penalty by way of recommending to the Governor-General that the member be reduced to a lower rank or dismissed from the Australian Federal Police or by way of reducing the member to a lower rank or dismissing him from the Australian Federal Police unless the Tribunal or the Commissioner, as the case requires—

(a) has caused to be served on the member a notice informing the member—

(i) that it or he considers that it might be appropriate to impose that penalty on the member; and

(ii) that the member may, within 7 days after service of the notice on him, deliver to the Tribunal or the Commissioner, as the case requires, in writing, any written statement that the member wishes to be taken into consideration in deciding the appropriate penalty to be imposed upon him; and

(b) has, before imposing such a penalty on the member, taken into consideration the matters contained in any statements delivered to it or to him in accordance with the notice,

but nothing in this sub-section prejudices the rights of the member under sections 74 and 75.

(8) The provisions of the *Australian Federal Police Act 1979* and of the regulations in force under that Act apply to any penalty imposed under this section as if it had been imposed by the Commissioner under the prescribed regulations.

(9) As soon as practicable after the Disciplinary Tribunal has made its finding in respect of proceedings heard by it in pursuance of sub-section (1), but subject to any decision of the Disciplinary Tribunal prohibiting or restricting the disclosure of the finding—

- (a) if the complainant complained to a member of the Australian Federal Police—the Commissioner; or
- (b) if the complainant complained to the Ombudsman—the Ombudsman,

shall, unless the identity of the complainant is not known, cause particulars of the decision to be furnished, in writing, to the complainant.

Appeals to Disciplinary Tribunal from proceedings remitted to Commissioner

68. (1) Where the Commissioner imposes a penalty on a member in respect of a breach of discipline in pursuance of sub-section 67 (6)—

- (a) the Commissioner shall cause the member to be notified of the penalty imposed on him in respect of the breach of discipline; and
- (b) the member or the Attorney-General may appeal to the Disciplinary Tribunal against the penalty imposed on the member in respect of the breach of discipline.

(2) An appeal to the Disciplinary Tribunal under sub-section (1)—

- (a) shall be in writing;
- (b) shall set out the grounds on which it is made; and
- (c) shall be lodged with the Registrar of the Tribunal within 28 days after the member is notified of the penalty imposed on him.

(3) An appeal to the Disciplinary Tribunal under sub-section (1) by a member against the penalty imposed on him in respect of a breach of discipline may be made on either or both of the following grounds:

- (a) that the penalty is unduly severe;
- (b) that the penalty is not authorized by law.

(4) An appeal to the Disciplinary Tribunal under sub-section (1) by the Attorney-General may be made on the ground that the penalty imposed on the member in respect of a breach of discipline is inadequate.

(5) The Disciplinary Tribunal constituted by the President or a Deputy President shall hear and determine the appeal and may—

- (a) affirm the penalty imposed on the member in respect of the breach of discipline; or
- (b) set aside the penalty imposed on the member in respect of the breach of discipline and substitute for that penalty such other penalty as the Tribunal deems fit, being a penalty that the Commissioner would have had the power to impose under the prescribed regulations if he had heard the proceedings and had found the member guilty of the breach of discipline.

- (6) Where the Disciplinary Tribunal under sub-section (5)—
- (a) affirms the penalty imposed on a member in respect of a breach of discipline; or
 - (b) substitutes for the penalty imposed on a member in respect of a breach of discipline another penalty that the Tribunal deems fit,
- the provisions of the *Australian Federal Police Act 1979* and of the regulations in force under that Act apply to and in relation to the penalty so affirmed or substituted as if it had been imposed on the member by the Commissioner under the prescribed regulations.

(7) The institution of an appeal to the Disciplinary Tribunal under sub-section (1) against a penalty imposed on a member by the Commissioner does not affect the imposition of the penalty but, if the Disciplinary Tribunal directs that the imposition of the penalty be suspended pending the hearing and determination of the appeal, the imposition of the penalty is suspended accordingly.

Appeal to Disciplinary Tribunal from proceedings before Commissioner

69. (1) Where the Commissioner imposes a penalty on a member in respect of a breach of discipline otherwise than in pursuance of sub-section 67 (6)—

- (a) the Commissioner shall cause the member to be notified—
 - (i) of his finding and of the reasons for his finding; and
 - (ii) of the penalty imposed in respect of the breach of discipline; and
- (b) the member may appeal to the Disciplinary Tribunal.

(2) An appeal to the Disciplinary Tribunal under sub-section (1)—

- (a) shall be in writing;
- (b) shall set out the grounds on which it is made; and
- (c) shall be lodged with the Registrar of the Tribunal within 28 days after the member is notified of the finding.

(3) An appeal to the Disciplinary Tribunal under sub-section (1) may be made on one or more of the following grounds:

- (a) that the finding was wrong either in law or in fact or both;
- (b) that the penalty is unduly severe;
- (c) that the penalty is not authorized by law.

(4) The Disciplinary Tribunal, constituted by the President or a Deputy President, shall hear and determine an appeal by a member under sub-section (1) and may—

- (a) set aside the finding of the Commissioner and either substitute for that finding such finding as, in its opinion, should have been made in the proceeding, or dismiss the proceeding;

- (b) if the Tribunal substitutes a finding that the member committed a different breach of discipline—impose such penalty in respect of the breach of discipline as the Tribunal deems fit, being a penalty that the Commissioner would have had the power to impose on the member under the prescribed regulations if he had found the member guilty of that breach of discipline;
- (c) affirm the penalty imposed on the member in respect of the breach of discipline; or
- (d) set aside the penalty imposed on the member in respect of the breach of discipline and substitute for that penalty such other penalty as the Tribunal deems fit, being a penalty that the Commissioner had the power to impose on the member under the prescribed regulations in respect of the breach of discipline.

(5) The Disciplinary Tribunal shall not substitute, for a finding that a member is guilty of a breach of discipline, a finding that the member is guilty of another breach of discipline unless it has afforded the member an opportunity to show cause to the Tribunal why he should not be found guilty of that other breach of discipline.

(6) Where the Disciplinary Tribunal under sub-section (4)—

- (a) imposes a penalty in respect of a breach of discipline different from that with which the member concerned was charged;
- (b) affirms the penalty imposed on the member concerned in respect of a breach of discipline; or
- (c) substitutes for the penalty imposed on the member concerned in respect of a breach of discipline another penalty that the Tribunal deems fit,

the provisions of the *Australian Federal Police Act 1979* and of the regulations in force under that Act apply to and in relation to the penalty so imposed, affirmed or substituted as if it had been imposed on the member by the Commissioner under the prescribed regulations.

(7) The institution by a member of an appeal to the Disciplinary Tribunal under sub-section (1) does not affect the imposition of a penalty on the member by the Commissioner but, if the Disciplinary Tribunal directs that the imposition of the penalty be suspended pending the hearing and determination of the appeal, the imposition of the penalty is suspended accordingly.

Minister may refer matter to Disciplinary Tribunal for inquiry and report

70. (1) The Disciplinary Tribunal may inquire into a matter relating to the Australian Federal Police that is referred to it by the Minister.

(2) If the Minister so directs, the Disciplinary Tribunal shall be constituted, for the purposes of the inquiry, by the President or by a Deputy President.

(3) The Minister may arrange for counsel to be engaged to assist the Disciplinary Tribunal in connection with the inquiry.

(4) Where the Disciplinary Tribunal is not assisted by counsel, the Commissioner shall, if he is requested by the Tribunal to do so, arrange for a member of the Investigation Division or for another appropriate member of the Australian Federal Police to assist the Tribunal in connection with the inquiry.

(5) Upon completing its inquiry, the Disciplinary Tribunal shall report to the Minister the results of the inquiry.

Powers of Tribunal

71. (1) The Disciplinary Tribunal may, in any proceeding before it—

- (a) take evidence on oath or affirmation; and
- (b) adjourn the proceeding from time to time.

(2) The Disciplinary Tribunal may, at any time during the course of any proceeding before it—

- (a) of its own motion; or
- (b) at the request of a person who is a party to the proceeding,

by notice in writing under the hand of a member of the Tribunal, summon a person to appear before the Tribunal at the hearing of the proceeding to give evidence and to produce such documents (if any) as are referred to in the summons.

(3) The Disciplinary Tribunal may, at any time during the course of any proceeding before it, refer a matter arising in the proceeding to the Commissioner for investigation, and where a matter is so referred—

- (a) the Commissioner shall refer the matter to the Investigation Division for investigation;
- (b) sections 7 and 8 apply as if the matter were a complaint referred to the Investigation Division under section 6; and
- (c) section 10 does not apply but, when the Investigation Division has completed the investigation, the officer in charge shall cause a report, in writing, of the results of the investigation to be prepared and given to the Commissioner, who shall furnish the report to the Disciplinary Tribunal.

(4) The Disciplinary Tribunal may, at any time during the course of any proceeding before it—

- (a) if the Tribunal is constituted by a person who holds judicial office—direct; or
- (b) in any other case—recommend,

that a member be suspended from duty pending the hearing and determination of the proceeding.

(5) Where the Disciplinary Tribunal gives a direction under subsection (4) that a member be suspended from duty, the Commissioner

shall suspend the member from duty accordingly and, where the Disciplinary Tribunal makes a recommendation under sub-section (4) that a member be suspended from duty, the Commissioner may, if he thinks fit, suspend the member from duty accordingly.

Amendment of defect or error in proceeding

72. (1) At any stage in a proceeding before the Disciplinary Tribunal, the Tribunal may, on such terms as are just, make such amendment as it thinks necessary to correct any defect or error in the proceedings.

(2) All necessary amendments shall be made for the purpose of determining the real questions in controversy or otherwise depending on the proceeding.

Arrest of witness failing to attend inquiry

73. (1) Where a person who has been summoned under sub-section 71 (2) to attend before the Disciplinary Tribunal as a witness in an inquiry fails to attend as required by the summons, the member constituting the Tribunal may, upon being satisfied that the summons has been duly served and that reasonable expenses have been paid or tendered to the person, issue a warrant for the apprehension of the person.

(2) The warrant authorizes any member of the Australian Federal Police or of the Police Force of a State or Territory to apprehend the person and bring him before the Disciplinary Tribunal and, for that purpose, to detain him in custody until he is released by order of the Tribunal.

(3) The apprehension of a person under this section does not relieve him from any liability incurred by him by reason of his failure to attend before the Disciplinary Tribunal.

Hearings to be in public except in special circumstances

74. (1) Subject to sub-section (2), the hearing of a proceeding before the Disciplinary Tribunal shall be in public.

(2) Where the Disciplinary Tribunal is satisfied that it is desirable to do so in the public interest or by reason of the confidential nature of any evidence or matter, the Tribunal may—

- (a) direct that the hearing, or a part of the hearing, shall take place in private and give directions as to the persons who may be present; and
- (b) give directions restricting or prohibiting the publication or disclosure—
 - (i) of evidence given before the Tribunal, whether in public or in private;
 - (ii) of any matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal; or
 - (iii) of any finding or decision of the Tribunal in relation to the proceeding.

(3) A person shall not contravene or fail to comply with a direction under this section that is applicable to him.

Penalty: \$1,000 or imprisonment for 6 months.

Representation of parties

75. (1) At the hearing of a proceeding, other than a proceeding by way of an inquiry under section 70, before the Disciplinary Tribunal, a party to the proceeding may appear in person or may be represented by a legal practitioner or by some other person.

(2) In proceedings heard by the Disciplinary Tribunal in pursuance of sub-section 67 (1) or (2), the Commissioner and the member charged shall be the parties to the proceeding before the Tribunal.

(3) Where a member appeals to the Disciplinary Tribunal under section 68 or 69, the Commissioner and the member so appealing shall be the parties to the proceeding before the Tribunal.

(4) Where the Attorney-General appeals to the Disciplinary Tribunal under section 68 on the ground that the penalty imposed on a member in respect of a breach of discipline is inadequate, the Attorney-General and the member concerned shall be the parties to the proceeding before the Tribunal.

(5) The Disciplinary Tribunal may, in an inquiry under section 70, permit any person whom it deems fit to appear before the Tribunal in person or to be represented before it by a legal practitioner or by some other person.

(6) At the hearing of a proceeding before the Disciplinary Tribunal in relation to a matter in respect of which there was made a complaint to which section 6 or 22 applied, the Tribunal may, if it is satisfied that there are special circumstances that justify it in so doing, grant leave to the complainant to appear in person before the Tribunal in the proceeding or be represented before the Tribunal in the proceeding by a legal practitioner or by some other person, and where leave is so granted, the complainant or his representative may take such part in the proceeding as the Tribunal permits.

Procedure generally

76. (1) In a proceeding before the Disciplinary Tribunal, the procedure of the Tribunal is, subject to this Part, and to the regulations, within the discretion of the Tribunal.

(2) A proceeding before the Disciplinary Tribunal shall be conducted with as little formality and technicality and with as much expedition as the requirements of this Part and a proper consideration of the matter before the Tribunal permit.

(3) The Disciplinary Tribunal is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

(4) The regulations may make provision, not inconsistent with this Part, for or in relation to—

- (a) the practice and procedure of the Disciplinary Tribunal;
- (b) the stay of proceedings before the Tribunal or of all or any action under a decision of the Tribunal; and
- (c) the payment of costs and expenses in respect of proceedings before the Tribunal and the assessment of those costs and expenses.

(5) Subject to section 74, the Tribunal shall, in a proceeding heard by it in pursuance of section 67 or an appeal heard by it under section 68 or 69, give reasons in writing for its decision and those reasons shall include its findings on material questions of fact and a reference to the evidence or other material on which those findings are based.

(6) The Disciplinary Tribunal shall cause a copy of its decision and reasons to be furnished to each person who is a party to the proceeding.

Protection of members of Disciplinary Tribunal, barristers and witnesses

77. (1) A member of the Disciplinary Tribunal has, in the performance of his duty as such a member, the same protection and immunity as a Justice of the High Court.

(2) A legal practitioner or other person appearing before the Disciplinary Tribunal has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Part, a person summoned to attend or appearing before the Disciplinary Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Part, subject to the same liabilities, as a witness in proceedings in the High Court.

Division 5—Appeals to Federal Court of Australia

Interpretation

78. In this Division, unless the contrary intention appears—

- (a) a reference to a proceeding before the Disciplinary Tribunal shall be construed as not including a reference to a proceeding by way of inquiry under section 70;
- (b) a reference to a question of law shall be construed as including a reference to the question whether there was sufficient evidence to justify a finding of fact by the Tribunal; and
- (c) a reference to the Court shall be construed as a reference to the Federal Court of Australia.

Appeal to Federal Court of Australia from decisions of Disciplinary Tribunal

79. (1) A person who was a party to a proceeding before the Disciplinary Tribunal may appeal to the Court, on a question of law, from a decision of the Tribunal in that proceeding.

(2) The appeal shall be instituted—

- (a) within 28 days after the day on which a document setting out the terms of the decision of the Disciplinary Tribunal was furnished to

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the person or within such further time as the Court, whether before or after the expiration of that period, allows; and

(b) in such manner as is prescribed by rules of court made under the *Federal Court of Australia Act 1976*.

(3) The Court has jurisdiction to hear and determine the appeal, and that jurisdiction shall be exercised by the Court constituted as a Full Court.

(4) The Court shall, in determining the appeal, make such order as it thinks appropriate.

(5) Without limiting by implication the generality of sub-section (4), the orders that may be made by the Court on the appeal include an order affirming or setting aside the decision of the Disciplinary Tribunal and an order remitting the proceeding to be heard and determined again, either with or without the hearing of further evidence, by the Tribunal and in accordance with any directions of the Court.

(6) Subject to the following provisions of this section, the institution of an appeal to the Court from a decision of the Disciplinary Tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.

(7) Where an appeal is instituted in the Court from a decision of the Disciplinary Tribunal, the Court or a Judge of the Court may make such order or orders staying or otherwise affecting the operation or implementation of either or both of the following:

(a) the decision of the Tribunal or a part of that decision; and

(b) the decision to which the proceeding before the Tribunal related or a part of that decision,

as the Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(8) Where an order is in force under sub-section (7) (including an order that has previously been varied on one or more occasions under this sub-section), the Court or a Judge of the Court may make an order varying or revoking the first-mentioned order.

(9) An order in force under sub-section (7) (including an order that has previously been varied on one or more occasions under sub-section (8))—

(a) is subject to such conditions as are specified in the order; and

(b) has effect until—

(i) where a period for the operation of the order is specified in the order—the expiration of that period or, if a decision is given on the appeal before the expiration of that period, the giving of the decision; or

(ii) where no period is so specified—the giving of a decision on the appeal.

Reference of question of law to the Federal Court of Australia

80. (1) The Disciplinary Tribunal may, of its own motion or, if it thinks fit, on the application of a party to a proceeding before the Tribunal, refer a question of law arising in that proceeding for determination by the Court but, in the case of a proceeding before the Tribunal constituted by a member of the Tribunal other than the President or a Deputy President, a question shall not be so referred without the concurrence of the President.

(2) The Court has jurisdiction to hear and determine the question of law, and that jurisdiction shall be exercised by the Court constituted as a Full Court.

(3) Where a question of law arising in a proceeding before the Disciplinary Tribunal has been referred to the Court under sub-section (1), the Tribunal shall not, in that proceeding—

- (a)** give a decision to which the question is relevant while the reference is pending; or
- (b)** proceed in a manner, or give a decision, that is inconsistent with the determination of the Court on the question.

Sending of documents to, and disclosure of documents by, Federal Court of Australia

81. (1) Where an appeal is instituted in the Court under section 79 or a question of law is referred to the Court under section 80—

- (a)** the Disciplinary Tribunal shall, notwithstanding any direction under section 74, cause to be sent to the Court all documents that were before the Tribunal in connection with the proceedings to which the appeal or reference relates; and
- (b)** at the conclusion of the appeal, the Court shall cause the documents to be returned to the Tribunal.

(2) If there is in force in respect of any of the documents a direction under section 74 restricting or prohibiting the disclosure of any matter contained in a document, the Court shall, subject to any order of the Court to the contrary, ensure that that matter is not disclosed to a person other than a member of the Court as constituted for the purposes of the appeal.

Division 6—General

Failure of witness to attend

82. A person served with a summons to appear as a witness before the Disciplinary 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 6 months.

Refusal to be sworn or to answer questions

83. (1) A person appearing as a witness before the Disciplinary Tribunal shall not, without reasonable excuse, refuse or fail—

- (a) to be sworn or to make an affirmation;
- (b) to answer a question that he is required to answer by the Tribunal;
or
- (c) to produce a document that he was required to produce by a summons under this Act served on him as prescribed.

Penalty: \$1,000 or imprisonment for 6 months.

(2) A person appearing as a witness before the Disciplinary Tribunal shall not give evidence that is false or misleading.

Penalty: \$1,000 or imprisonment for 6 months.

(3) Subject to sub-section (4), it is a reasonable excuse for such a person to refuse or fail to answer a question or to produce a document if the answer to the question, or the production of the document, may tend to prove that he has committed an offence against a law or, in the case of a member, that he has been guilty of a breach of discipline.

(4) Where the Disciplinary Tribunal is inquiring into a matter into which the Tribunal has, under section 70, been directed to inquire, a person appearing before the Tribunal to give evidence or produce documents is not excused from answering a question or producing a document on the ground that the answer to the question, or the production of the document, may tend to prove that he has committed an offence against a law or, in the case of a member, that he has been guilty of a breach of discipline.

(5) Evidence given by a person, or the production by a person of a document, upon an inquiry referred to in sub-section (4) is not admissible against him in any civil or criminal proceedings other than proceedings for an offence against this section or against section 35 or 36 of the *Crimes Act 1914*.

Disclosure of interests by members of Disciplinary Tribunal

84. (1) Where a member who constitutes, or is to constitute, the Disciplinary Tribunal for the purposes of a proceeding has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his functions in relation to that proceeding—

- (a) he shall disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all the parties to the proceeding, he shall not take part in the proceeding.

(2) Where the President of the Disciplinary Tribunal becomes aware that a member who constitutes, or is to constitute, the Tribunal for the purposes of a proceeding has, in relation to that proceeding, such an interest as is mentioned in sub-section (1)—

- (a) if the President considers that the member should not take part, or should not continue to take part, in the proceeding—he shall give a direction to the member accordingly; or
- (b) in any other case—he shall cause the interest of the member to be disclosed to the parties to the proceeding.

(3) In this section a reference to a party to a proceeding, being an inquiry conducted by the Disciplinary Tribunal in pursuance of section 70, shall be construed as a reference to a person permitted by the Tribunal under sub-section 75 (5) to appear or be represented before the Tribunal in the inquiry.

Contempt of Disciplinary Tribunal

85. A person shall not—

- (a) insult or disturb a member of the Disciplinary Tribunal in the exercise of his powers or functions as a member;
- (b) interrupt the proceedings of the Tribunal;
- (c) create a disturbance in or near a place where the Tribunal is sitting; or
- (d) 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 6 months.

Annual Report

86. (1) The President shall, as soon as practicable after 30 June in each year, submit to the Minister a report of the operations of the Disciplinary Tribunal during that year.

(2) The Minister shall cause the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by him.

(3) The first report under this section shall be submitted as soon as practicable after 30 June first occurring after the date of commencement of this Act and shall relate to the operations of the Disciplinary Tribunal during the period that commenced on that date and ended on that 30 June.

PART VII—MISCELLANEOUS

Secrecy

87. (1) Each of the following persons is a person to whom this section applies:

- (a) a member of the Investigation Division;

- (b) a person who is conducting an investigation on behalf of the Investigation Division in pursuance of an authority given under section 8;
- (c) a person who is conducting an investigation in accordance with arrangements made by the Commissioner under section 46;
- (d) a person who is conducting an inquiry in accordance with arrangements made by the Minister under section 50.

(2) Subject to this section, a person who is, or has been, a person to whom this section applies, shall not, either directly or indirectly, and either while he is, or after he has ceased to be, a person to whom this section applies, except in the performance of his duties or with the consent, in writing, of the appropriate person, make a record of, or divulge or communicate, information acquired by him by reason of his being or having been a person to whom this section applies and in the course of, or for the purposes of, an investigation of a complaint, or the holding of an inquiry, concerning action taken by a member.

Penalty: \$1,000.

(3) Sub-section (2) does not—

- (a) prevent a person who is, or has been, a person to whom this section applies from disclosing, in a report under this Act, such matters as, in his opinion, ought to be disclosed in the course of setting out the grounds for the conclusions contained in the report; or
- (b) prevent a person from producing a record referred to in sub-section (2) or giving information so referred to in evidence before a court, the Disciplinary Tribunal or a person who is authorized to hear and determine proceedings instituted against a member in respect of a breach of discipline.

(4) Sub-section (2) does not prevent a member of the Australian Federal Police from making a communication for the purposes of, or in connection with, the making of a complaint to the Ombudsman or to the Commissioner in respect of action taken by a member of the Investigation Division or by a member of the Australian Federal Police or other person authorized under section 8 to make an investigation on behalf of that Division, in the course of, or for the purposes of, an investigation by that Division.

(5) For the purposes of this section—

- (a) the Ombudsman is the appropriate person in the case of a person who is conducting, or has conducted, an investigation in accordance with arrangements made by the Commissioner under section 46 and is or was required, under section 48, to report to the Ombudsman in relation to the investigation;
- (b) the Minister is the appropriate person in the case of a person who is conducting, or has conducted, an inquiry in accordance with arrangements made under section 50; and

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- (c) the Commissioner is the appropriate person in the case of any other person to whom this section applies.

(6) In this section, a reference to the duties of a person to whom this section applies shall be construed as a reference to the duties of the position or appointment by virtue of the holding of which the person is or was a person to whom this section applies.

Member to furnish name and address of place of duty on request

88. A member who is requested by a person to furnish to the person his name or the address of his place of duty, or both, and is informed by the person, either expressly or by necessary implication, that the person is complaining, or proposes to complain, concerning action taken by that member—

- (a) shall not refuse or fail to comply with the request;
- (b) shall not furnish to the person a false name; and
- (c) shall not furnish to the person as the address of his place of duty an address other than the full and correct address of his ordinary place of duty.

Penalty: \$500.

Regulations

89. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing penalties not exceeding a fine of \$200 for offences against the regulations.