



Australian Protective Service Act 1987

No. 7 of 1987

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Australian Protective Service Act 1987

No. 7 of 1987

An Act to establish an Australian Protective Service

[Assented to 13 March 1987]

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 *Australian Protective Service Act 1987*.

Commencement

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

Interpretation

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

“Director” means the Director of the Protective Service, being the person occupying such office in the Department as is designated under section 7;

“police officer” means—

- (a) a member or special member of the Australian Federal Police; or
- (b) a member, however described, of a police force of a State or Territory;

“Protective Service” means the Australian Protective Service established by this Act;

“protective service officer” means the Director or a person occupying such office in the Department as is designated under section 8;

“Secretary” means the Secretary to the Department;

“special protective service officer” means a person holding an appointment under sub-section 9 (1) as a special protective service officer.

(2) A reference in this Act (other than in sub-section (1) of this section, sub-section 5 (2), section 8 and sub-section 9 (3)) to a protective service officer includes a reference to a special protective service officer.

Extension to external Territories

4. This Act extends to every external Territory.

PART II—AUSTRALIAN PROTECTIVE SERVICE

Establishment of Protective Service

5. (1) There is hereby established in the Department a Service to be known as the Australian Protective Service.

(2) The Protective Service consists of—

- (a) the following officers of the Department, namely, the Director and the other protective service officers; and
- (b) persons whose duties in the Department are wholly or principally related to the performance of the functions of the Protective Service.

Functions of Protective Service

6. (1) Subject to sub-section (4), the functions of the Protective Service are to provide such protective and custodial services for or on behalf of the Commonwealth as the Minister, by notice in writing published in the *Gazette*, directs.

(2) Without limiting the generality of sub-section (1), but subject to sub-section (4), the functions of the Protective Service may include—

- (a) the protection of property in which—
 - (i) the Commonwealth, a foreign country or an international organisation has an interest; or
 - (ii) an authority of the Commonwealth, of a foreign country or of an international organisation has an interest;

- (b) the protection of, and of members of the family and household of, persons holding office under the Commonwealth;
- (c) the protection of internationally protected persons;
- (d) the keeping of persons in custody under the *Migration Act 1958*; and
- (e) functions incidental or conducive to a function referred to in paragraph (a), (b), (c) or (d).

(3) Without limiting the generality of paragraph (2) (a), the Commonwealth, a foreign country or an international organisation, or an authority of the Commonwealth, of a foreign country or of an international organisation, as the case requires, shall be taken, for the purposes of that paragraph, to have an interest in any property that it owns, occupies or uses or that is in its possession or under its control.

(4) The functions of the Protective Service do not include the provision of bodyguard services.

(5) In this section—
“authority”—

(a) in relation to the Commonwealth, means—

(i) a body, whether incorporated or unincorporated, established for a public purpose—

(A) by or under a law of the Commonwealth or a law of a Territory other than the Northern Territory; or

(B) by the Governor-General or a Minister;

(ii) an incorporated company in which the Commonwealth or a body described in sub-paragraph (i) has a controlling interest; or

(iii) any other agency or instrumentality of the Commonwealth;

(b) in relation to a foreign country, means—

(i) a body, whether incorporated or unincorporated, established for a public purpose—

(A) by or under a law of the foreign country;

(B) by the head of the foreign country in his or her public capacity; or

(C) by the executive government of the foreign country, including by a department or organ of the executive government of the foreign country;

(ii) an incorporated company in which the foreign country or a body described in sub-paragraph (i) has a controlling interest; or

(iii) any other agency or instrumentality of the foreign country; and

(c) in relation to an international organisation, includes an agency or instrumentality of the organisation;

“foreign country” means any country outside Australia (whether or not an independent sovereign State), and includes a province, state, self-governing territory or other political sub-division (by whatever name known) of such a country;

“international organisation” has the same meaning as the term international organization in section 5A of the *Diplomatic Privileges and Immunities Act 1967*;

“internationally protected person” has the same meaning as in the *Crimes (Internationally Protected Persons) Act 1976*;

“office under the Commonwealth” includes—

- (a) office as Governor-General;
- (b) office as a Minister;
- (c) office as a Senator or member of the House of Representatives;
- (d) office as a Justice of the High Court;
- (e) an office established by, or an appointment made under, a law of the Commonwealth or a law of a Territory other than the Northern Territory; or
- (f) an appointment made by the Governor-General or a Minister otherwise than under such a law;

“property” means real and personal property of every description.

Director of Protective Service

7. The Secretary may, by notice in writing published in the *Gazette*, designate a specified office in the Department as the office the occupant of which is the Director of the Protective Service.

Protective service officers other than Director

8. The Secretary may, by notice in writing published in the *Gazette*, designate specified offices in the Department as offices the occupants of which are protective service officers.

Special protective service officers

9. (1) Subject to sub-section (2), the Director may, by instrument signed by him or her, appoint as a special protective service officer a person who is an officer or employee within the meaning of the *Public Service Act 1922*.

(2) The Director shall not appoint a person as a special protective service officer unless the Director has previously obtained the written consent of the person's Secretary within the meaning of the *Public Service Act 1922*.

(3) A special protective service officer has all the powers and duties of a protective service officer except in so far as any of those powers or duties are excluded or limited in the instrument of his or her appointment, and

any such exclusion or limitation may be expressed either generally or in relation to persons, places or things.

Oath or affirmation of office

10. A protective service officer shall not perform the duties, or exercise the powers, of his or her office unless the protective service officer has made and subscribed an oath or affirmation in the prescribed form before a person authorised, in writing, by the Secretary.

General administration and control of Protective Service

11. The Director has, under the Secretary, responsibility for the general administration of, and the control of the operations of, the Protective Service.

General Orders

12. (1) The Director may, with the written approval of the Secretary, issue directions (to be known as General Orders)—

- (a) with respect to the general administration of the Protective Service; or
- (b) for the effective and efficient conduct of the operations of the Protective Service.

(2) It is the duty of a protective service officer to comply with the General Orders.

(3) Where a provision of the General Orders is inconsistent with a provision of—

- (a) this Act or any other Act;
- (b) regulations made under this Act or any other Act; or
- (c) a determination made under section 82D of the *Public Service Act 1922*,

the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid.

PART III—POWERS AND DUTIES OF PROTECTIVE SERVICE OFFICERS

Powers of arrest

13. (1) A protective service officer may, without warrant, arrest a person for an offence to which this section applies if the protective service officer believes on reasonable grounds that—

- (a) the person has just committed, or is committing, the offence;
- (b) the arrest of the person is necessary for the purpose of—
 - (i) ensuring the appearance of the person before a court of competent jurisdiction for the offence;

- (ii) preventing the continuation of, or a repetition of, the offence or the commission of a further offence to which this section applies;
 - (iii) preventing the concealment, loss or destruction of evidence of, or relating to, the offence; or
 - (iv) preserving the safety or welfare of the person; and
- (c) proceedings by way of summons against the person for the offence would not achieve such a purpose.
- (2) This section applies to—
- (a) an offence in relation to a person, place or thing in respect of which the Protective Service is performing its functions, being an offence under—
 - (i) section 24AB, 29 or 30, paragraph 46 (a) or section 71, 73, 75, 76, 78, 79, 83A, 89 or 89A of the *Crimes Act 1914*;
 - (ii) the *Crimes (Internationally Protected Persons) Act 1976*;
 - (iii) the *Defence (Special Undertakings) Act 1952* (other than sub-section 31 (2));
 - (iv) the *Public Order (Protection of Persons and Property) Act 1971* (other than section 11); or
 - (v) the *Nuclear Non-Proliferation (Safeguards) Act 1987* (other than section 27, sub-section 29 (2), 30 (1), 40 (1), 58 (2) or 65 (1) or section 66); or
 - (b) an offence against section 6, 7 or 7A of the *Crimes Act 1914* that relates to an offence referred to in paragraph (a).

Use of force in making arrest, &c.

14. (1) A protective service officer shall not, in arresting or attempting to arrest a person for an offence or in preventing a person who has been arrested for an offence from escaping, use more force, or subject the person to greater indignity, than is reasonable and necessary in order to make the arrest or prevent the escape of the person.

(2) Without limiting the generality of sub-section (1), a protective service officer shall not, in arresting or attempting to arrest a person for an offence or in preventing a person who has been arrested for an offence from escaping, do an act likely to cause death or grievous bodily harm to the person unless the officer believes on reasonable grounds that the doing of the act is necessary to protect life or prevent serious injury to the officer or any other person.

Arrested person to be informed of grounds of arrest

15. (1) A protective service officer who arrests a person for an offence shall inform the person, at the time of the arrest, of the offence for which the person is arrested.

(2) It is sufficient compliance with sub-section (1) if the protective service officer informs the person of the substance of the offence, and it is not necessary to do so in language of a precise or technical nature.

(3) Sub-section (1) does not apply to the arrest by a protective service officer of a person for an offence if the person, by his or her own actions, makes it impracticable for the protective service officer to inform the person of the offence.

(4) Where a protective service officer who arrests a person for an offence believes or has reasonable grounds for believing that the person is unable, by reason of inadequate knowledge of the English language or any physical or mental disability, to understand the substance of the offence for which the person is arrested, the protective service officer shall forthwith take all reasonable steps to ensure that the person is provided with an explanation of the substance of the offence that the person is able to understand.

Search of arrested person

16. (1) A protective service officer may, upon lawfully arresting a person for an offence, search the person, the clothing that the person is wearing and any vessel, vehicle or other property under the person's immediate control if the officer believes on reasonable grounds that it is necessary to do so—

- (a) to ascertain whether there is concealed on the person, in the clothing or in the property, a weapon or other thing capable of being used to inflict bodily injury or to assist the person to escape from custody; or
- (b) to prevent the concealment, loss or destruction of evidence of, or relating to, the offence.

(2) A search under this section of a person or the clothing that a person is wearing shall be conducted by—

- (a) a protective service officer of the same sex as the person; or
- (b) in a case where a protective service officer of the same sex as the person is not available to conduct the search—any other person who is of the same sex and is requested by a protective service officer to conduct the search.

(3) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of a protective service officer, conducts a search under this section if the person acts in good faith and does not contravene sub-section (4).

(4) A protective service officer or other person who conducts a search under this section shall not use more force, or subject a person to greater indignity, than is reasonable and necessary in order to conduct the search.

(5) A protective service officer or other person who lawfully conducts a search under this section may seize—

- (a) any weapon or thing referred to in paragraph (1) (a); or

- (b) anything that the officer or other person has reasonable grounds to believe is a thing—
 - (i) with respect to which an offence has been committed;
 - (ii) that will afford evidence of the commission of an offence; or
 - (iii) that was used, or intended to be used, for the purpose of committing an offence.

How arrested person to be dealt with

17. (1) A protective service officer who arrests a person for an offence shall ensure that the person is forthwith delivered into the custody of a police officer to be dealt with according to law.

(2) Where a weapon or other thing has been seized from the person under sub-section 16 (5), the protective service officer shall ensure that the weapon or other thing is delivered to the police officer into whose custody the person is delivered.

Release of arrested person

18. Where—

- (a) a person has been arrested for an offence by a protective service officer;
- (b) the person is in the custody of the protective service officer or another protective service officer; and
- (c) the protective service officer who has the custody of the person—
 - (i) ceases to have reasonable grounds for believing that the person committed, or was committing, an offence;
 - (ii) ceases to have reasonable grounds for believing that the holding of the person in custody is necessary in order to achieve a purpose referred to in paragraph 13 (1) (b), and does not have reasonable grounds for believing that the holding of the person in custody is necessary in order to achieve any other purpose referred to in that paragraph; or
 - (iii) ceases to have reasonable grounds for believing that proceedings by way of summons against the person for the offence would not achieve a purpose referred to in paragraph 13 (1) (b), and does not have reasonable grounds for believing that proceedings by way of summons against the person for the offence would not achieve any other purpose referred to in that paragraph,

the protective service officer shall forthwith release the person from custody in respect of the offence.

Uniforms and identification numbers

19. (1) A protective service officer shall, at all times when on duty, wear a uniform of the kind that the protective service officer is, under the General Orders, required to wear when on duty.

(2) Sub-section (1) does not apply to a protective service officer during periods when the protective service officer is required or permitted by the Director not to wear uniform.

(3) A protective service officer shall, at all times when in uniform, wear his or her identification number on, or attached to, the front of the uniform.

Penalty: \$500.

(4) It is a defence to a prosecution for an offence against sub-section (3) if the defendant proves that the contravention of the sub-section resulted from—

- (a) an act of another person (not being a protective service officer) done without the consent of the defendant; or
- (b) an unintentional omission of the defendant.

(5) The Director shall take such steps as are necessary to enable protective service officers to comply with sub-sections (1) and (3).

(6) Where a person in possession of a protective service officer's uniform ceases to be a protective service officer, the person shall forthwith return the uniform to a person occupying such office in the Department as is designated, in writing, by the Director.

Penalty: \$100.

Identity cards

20. (1) The Director may cause an identity card, in a form approved in writing by the Director, to be issued to a protective service officer.

(2) A protective service officer who is not in uniform shall not, in the course of his or her duties as a protective service officer, arrest a person or exercise any other power in relation to a person unless the protective service officer produces his or her identity card for the person's inspection and, if the protective service officer fails to do so, the person is not obliged to comply with any request made by, or any requirement of, the protective service officer.

(3) Sub-section (2) does not apply if the person, by his or her own actions, makes it impracticable for the protective service officer to produce his or her identity card for the person's inspection.

(4) Where a person in possession of an identity card issued under sub-section (1) ceases to be a protective service officer, the person shall forthwith return the identity card to a person occupying such office in the Department as is designated, in writing, by the Director.

Penalty: \$100.

(5) The Director may, in writing, direct that identity cards issued before the commencement of this Act to persons who are, after that commencement, protective service officers shall be taken, after that commencement, to have been issued under sub-section (1).

Relationship of Part to other laws

21. (1) The power of arrest conferred by section 13 on protective service officers is in addition to, and not in derogation of, powers of arrest available to protective service officers under any other law of the Commonwealth or the law of a State or Territory.

(2) Subject to sub-section (3), where a protective service officer, in the course of his or her duties as a protective service officer, arrests a person for any offence (whether the arrest is made under section 13, under any other law of the Commonwealth or under the law of a State or Territory), sections 14 to 18 (inclusive) and sub-sections 20 (2) and (3) apply in relation to the arrest notwithstanding any other law of the Commonwealth or the law of a State or Territory.

(3) Sub-section (2) has effect subject to—

- (a) sub-sections 84 (2), (3) and (4) of the *Crimes Act 1914*; and
- (b) sections 38 and 39 of the *Migration Act 1958*.

(4) Subject to sub-section (2), the powers conferred, and duties imposed, by this Part on protective service officers are in addition to, and not in derogation of, any other powers conferred, or duties imposed, by any other law of the Commonwealth or the law of a State or Territory, and this Part is not intended to exclude or limit the operation of any other law of the Commonwealth or the law of a State or Territory providing for such powers or duties in so far as it is capable of operating concurrently with this Part.

(5) This Part in so far as it protects the individual is in addition to, and not in derogation of, any rights and freedoms of the individual, whether under the law of the Commonwealth or of a State or Territory, and this Part is not intended to exclude or limit the operation of any law of the Commonwealth or of a State or Territory providing for those rights and freedoms in so far as it is capable of operating concurrently with this Part.

Immunity from certain State and Territory laws

22. A protective service officer is not bound by any law of a State or Territory that would require the officer to have permission (whether in the form of a licence or otherwise) to use or to have in his or her possession, or would require the officer to register, a vehicle, vessel, animal, firearm or other thing belonging to the Commonwealth.

PART IV—MISCELLANEOUS

Certificates

23. In any action or proceeding in a court (including a court of a State or Territory), a certificate signed by the Secretary certifying that a person specified in the certificate was, at a specified time or during a specified period, the Director or another protective service officer, or the person occupying a specified office in the Department, is *prima facie* evidence of the facts certified.

Delegation by Director

24. (1) The Director may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Director, delegate to another protective service officer all or any of the powers of the Director under this Act, other than this power of delegation or the power to issue General Orders.

(2) A power delegated under sub-section (1) shall, when exercised by the delegate, be deemed to have been exercised by the Director.

(3) A delegation of a power by the Director under sub-section (1) does not prevent the exercise of the power by the Director.

Delegation by Secretary

25. (1) The Secretary may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Secretary, delegate to the Director or another protective service officer the power of the Secretary to authorise persons under section 10.

(2) The power shall, when exercised by the delegate, be deemed to have been exercised by the Secretary.

(3) A delegation by the Secretary under sub-section (1) does not prevent the exercise of the power by the Secretary.

Regulations

26. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

- (a)** required or permitted by this Act to be prescribed; or
- (b)** necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and, in particular, may make regulations prescribing fines not exceeding \$500 for offences against the regulations.

*[Minister's second reading speech made in—
House of Representatives on 16 October 1986
Senate on 24 February 1987]*