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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**LAW ENFORCEMENT (AFP PROFESSIONAL
STANDARDS AND RELATED MEASURES) BILL 2006**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice and Customs, Senator the
Honourable Chris Ellison)

Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006

General Outline

This Bill amends the *Australian Federal Police Act 1979* (the Act) to insert a new part to modernise complaints and professional standards regime within the Australian Federal Police. The new part implements a contemporary managerial approach to AFP complaints and professional conduct issues. The Bill also repeals the *Complaints (Australian Federal Police) Act 1981* (the Complaints Act) and amends the *Ombudsman Act*.

The new professional standards regime does the following:

- provides for a graduated system of categories of conduct to allow for minor complaints to be dealt with by managers in the context of performance agreements
- provides that more serious categories of complaints are investigated by the unit established within the AFP to deal with professional standards concerns

The Bill confers a revised role for the Ombudsman in relation to professional standards. This involves:

- ability to jointly determine, with the AFP Commissioner, the kinds of issues that belong to various categories of conduct
- entitled under the Bill to have access to the records that are kept in relation to AFP conduct and practices issues
- conduct annual reviews and ad hoc reviews of the operation of the new part.

Financial impact

There is no financial impact flowing directly from the provisions of this Bill.

LAW ENFORCEMENT (AFP PROFESSIONAL STANDARDS AND RELATED MEASURES) BILL 2006

NOTES ON ITEMS

Clause 1 Short title

This is a formal clause which provides for the citation of the Bill.

Clause 2 Commencement

This clause sets out when various parts of the Bill commence.

Sections 1 to 3 (the short title, the commencement, and the schedules provision) and anything in this Bill not elsewhere covered by this table will commence on the day that the Bill receives Royal Assent.

Schedules 1 (the main amendments) to 5 will commence at the same time as section 3 of the *Law Enforcement Integrity Commissioner Act 2006*.

Clause 3 Schedule(s)

This clause makes it clear that the schedules to the Bill will amend the Acts set out in those schedules in accordance with the provisions set out in each schedule.

SCHEDULE 1 – MAIN AMENDMENTS

Australian Federal Police Act 1979

Item 1 Subsection 3A(6)

This item inserts a new subsection into section 3A of the Act which is the section that sets out the overview of the Act.

The new subsection explains the new Part V in the context of the Act.

Item 2 Subsection 4(1)

This item inserts a definition of *AFP appointee*. This definition expands the current definition of AFP appointee in the Complaints Act to ensure all persons engaged by the AFP Commissioner, including consultants, independent contractors and persons engaged overseas as employees are covered by the new professional standards regime.

Item 3 Subsection 4(1)

This item inserts a definition of *AFP conduct issue* which is defined in Clause 40RH as being an issue of whether an AFP appointee has engaged in conduct that is either corrupt conduct or conduct that contravenes the AFP Professional standards. Sub-clause 40RJ(1) specifically excludes certain conduct from this definition including conduct relating to an AFP appointee's employment.

The definition makes it clear that the Part will apply to conduct prior to the person becoming an AFP appointee.

The concept of an AFP conduct issue is further discussed in the commentary to clauses 40RH and 40 RJ.

Subdivision E of the Bill (clauses 40RK to 40RQ) defines gradations of AFP conduct issues by way of three categories.

Item 4 Subsection 4(1)

This item inserts a definition of *AFP conduct or practices issue* as being an AFP conduct issue or an AFP practices issue. These terms are defined in clauses 40RH, 40RI and 40RJ.

Item 5 Subsection 4(1)

This item inserts a definition of *AFP practices issue* which is defined in clauses 40RI and 40RJ as being an issue that concerns the practices and procedures of the AFP, both within and outside of Australia. Sub-clause 40RJ(2) specifically excludes certain conduct from this definition including conduct relating to an AFP appointee's employment.

The concept of an AFP practice issue is further discussed in the commentary to clauses 40RI and 40 RJ.

Item 6 Subsection 4(1)

This item inserts a definition of *AFP professional standards* as being those determined under Commissioner's orders made for the purposes of clause 40RC. This clause identifies these orders as those made by the Commissioner under section 38 of the Act. Section 39 of the Act requires AFP employees to comply with such orders.

Item 7 Subsection 4(1)

This item inserts a definition of *category 1 conduct* which is defined in clause 40RN. Clause 40RM provides that the Commissioner and Ombudsman may jointly determine by legislative instrument the kind of conduct that is to be category 1 conduct.

Category 1 is the least serious category. Clause 40RK provides that if a conduct issue potentially belongs to a number of different categories, it will be taken to fall within the highest of the categories. It also provides that a category to which conduct belongs may change as more information is obtained in relation to the conduct.

Category 1 conduct is investigated by a manager and is further discussed in the commentary to Clauses 40RK, 40RM and 40RN.

Item 8 Subsection 4(1)

This item inserts a definition of *category 1 conduct issue* which is an issue of whether an AFP appointee has engaged in category 1 conduct.

Item 9 Subsection 4(1)

This item inserts a definition of *category 2 conduct* which is defined in clause 40RO. Clause 40RM provides that the Commissioner and Ombudsman may jointly determine by legislative instrument the kind of conduct that is to be category 1, 2 or 3 conduct.

Category 2 is more serious than Category 1. Clause 40RK provides that if a conduct issue potentially belongs to a number of different categories, it will be taken to fall within the highest of the categories. It also provides that a category to which conduct belongs may change as more information is obtained in relation to the conduct.

Category 2 conduct is investigated by a manager and is further discussed in the commentary to Clauses 40RK, 40RM and 40RO.

Item 10 Subsection 4(1)

This item inserts a definition of *category 2 conduct issue* which is an issue of whether an AFP appointee has engaged in category 2 conduct.

Item 11 Subsection 4(1)

This item inserts a definition of *category 3 conduct* which is defined in clause 40RP. Category 3 is the most serious category. Clause 40RM provides that the Commissioner and Ombudsman may jointly determine by legislative instrument the kind of conduct that is to be category 3 conduct. The Commissioner and the Ombudsman can only determine that conduct is category 3 conduct if they are satisfied that the conduct does not raise a corruption issue and that the conduct is serious misconduct, raises the issue of whether termination action should be taken against the AFP Appointee or involves a breach of the criminal law.

Clause 40RK provides that if a conduct issue potentially belongs to a number of different categories, it will be taken to fall within the highest of the categories. It also provides that a category to which conduct belongs may change as more information is obtained in relation to the conduct.

Category 3 conduct must be investigated by an investigator.

Category 3 conduct is further discussed in the commentary to Clauses 40RK, 40RM and 40RP.

Item 12 Subsection 4(1)

This item inserts a definition of *category 3 conduct issue* which is an issue of whether an AFP appointee has engaged in category 3 conduct.

Item 13 Subsection 4(1)

This item inserts a definition of *complainant* which is defined in sub-clause 40SA(3) as being a person who either expressly or impliedly indicates that he or she wishes to be kept informed of the action taken in relation an AFP conduct or practices issue.

Item 14 Subsection 4(1)

This item inserts a definition of *corrupt conduct* by reference to the definition of “engages in corrupt conduct” in section 6 of the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act). This provision relates to “staff members” of law enforcement agencies which includes the AFP. A staff member engages in corrupt conduct if the staff member, while a staff member of the agency, engages in:

- (a) conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of the agency; or
- (b) conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or

- (c) conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind.

The definition covers the main elements of significance in corruption issues.

The term “engage in conduct” is separately defined in section 5 of the LEIC Act as meaning doing an act or omitting to do an act.

Item 15 Subsection 4(1)

This item inserts a definition of *corruption issue* by reference to the definition in section 7 of the LEIC Act which defines a corruption issue as an issue whether a person who is, or has been, a staff member of a law enforcement agency:

- (a) has, or may have, engaged in corrupt conduct; or
- (b) is, or may be, engaging in corrupt conduct; or
- (c) will, or may at any time in the future, engage in corrupt conduct.

The definition specifies that an allegation may raise a corruption issue even if the identity of the person is unknown, is uncertain or is not disclosed in the allegation or information.

Item 16 Subsection 4(1)

This item inserts a definition of *engages in corrupt conduct* by reference to the definition of “engages in corrupt conduct” in section 6 of the LEIC Act. This provision relates to “staff members” of law enforcement agencies which includes the AFP. A staff member engages in corrupt conduct if the staff member, while a staff member of the agency, engages in:

- (a) conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of the agency; or
- (b) conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or
- (c) conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind.

The definition covers the main elements of significance in corruption issues.

The term “engage in conduct” is separately defined in section 5 of the LEIC Act as meaning doing an act or omitting to do an act.

Item 17 Subsection 4(1)

This item inserts a definition of *gives information* that raises an AFP conduct or practice issue which makes it clear that the term includes making a complaint or report that raises an AFP conduct or practices issue.

Item 18 Subsection 4(1)

This item inserts a definition of *investigator* as being the person to whom the issue is allocated for investigation under clauses 40TN or 40TO. An investigator investigates category 3 issues or corruption issues and is to be distinguished from a manager who investigates category 1 issues or category 2 issues. Generally an investigator will be a member of the unit constituted within the AFP to undertake investigations or category

3 issues or corruption issues (clause 30RD). An investigator can only be a person other than a member of the unit with the Commissioner's agreement. Clause 40TO sets out the circumstances when the Commissioner must allocate an investigation to an investigator outside of the unit where the issue relates to the conduct of a person who is a member of the unit.

Item 19 Subsection 4(1)

This item inserts a definition of *manager* as being the person to whom the issue is allocated for investigation in accordance with Commissioner's orders issued for the purpose of clause 40TA. A manager investigates category 1 issues or category 2 issues and is to be distinguished from an investigator who investigates category 3 issues or corruption issues.

Item 20 Subsection 4(1)

This item inserts a definition of *member* of the unit constituted under section@40RD which is a unit constituted within the AFP to undertake investigations or category 3 issues or corruption issues. The term "member" includes both the head of that unit as well as any member or special member of the Australian Federal police assigned to that unit under clause 40RF.

Item 21 Subsection 4(1)

This item inserts a definition of *practices or procedures* of the AFP which is broadly defined in sub-clause 40RI(3) as being the rules, orders and instructions including the Commissioner's orders in accordance with which AFP appointees are required to perform their duties, the policies adopted or followed by the AFP and the practices and procedures ordinarily followed by AFP appointees in the performance of their duties.

Item 22 Subsection 4(1)

This item inserts a definition of *remedial action* which is defined in clause 40TD. The definition includes action taken to improve the AFP appointee's behaviour, structured changes to the AFP appointee's employment, the recording of adverse findings against the AFP appointee, either permanently or for a particular period. The definition of remedial action also includes counselling, reprimanding, giving the AFP appointee a formal warning, or requiring the AFP appointee to adopt particular improvement strategies. In the case of counselling, the action may involve the manager providing the counselling, or arranging for AFP appointee to receive counselling. The definition of remedial action also includes changing the AFP appointee's shifts, restricting the AFP appointee's duties, reassigning the AFP appointee to other duties or transferring the AFP appointee to another part of the Australian Federal Police. The action taken can be either done directly by the manager or, if that is inappropriate or impracticable, the manager may arrange for the action to be taken in relation to the AFP appointee.

Item 23 Subsection 4(1)

This item inserts a definition of *termination action* which is defined in clause 40TE which creates a table of different types of action according to the type of AFP appointee involved.

Item 24 Subsection 4(1)

This item inserts a definition of *training and development action* which is defined in clause 40TC to include action taken to improve the AFP appointee's performance through training and development.

The definition of *training and development action* is further discussed in the commentary to Clause 40TC.

Item 25 At the end of section 4

This item provides that reference in new part V to giving information that raises an AFP conduct or practices issue includes making a complaint or report that raises an AFP conduct or practices issue.

Item 26 Section 35

This item reflects the fact that a new sub-section is to be inserted into this provision necessitating the need to turn the existing provision into sub-section (1).

Item 27 At the end of Section 35

This item inserts a new sub-section into section 35 reflecting the new concept of AFP appointee. The subsection permits the Commissioner to determine that a consultant or an independent contractor is to be an AFP appointee.

Item 28 After Part IV

This provision inserts new Part V into the Act.

Part V - Professional Standards and AFP conduct and practices issues

Division 1 — Preliminary

Subdivision A — Objects and simplified outline of Part

Clause 40RA Object of this Part

Section 40RA outlines the objects of the Part, which is to establish the procedures by which AFP conduct issues, and AFP practices issues, and other issues related to the Australian Federal Police are able to be raised and dealt with under the new regime.

Clause 40RB Simplified outline of this Part

Section 40RB provides a simplified outline of the new Part.

Subdivision B — Professional Standards for AFP appointees

Clause 40RC Commissioner may determine professional standards

Section 40RC provides that the Commissioner may determine the professional standards to be complied with by AFP appointees by issuing Commissioner's orders under existing section 38 of the Act.

Subdivision C — Unit within Australian Federal Police to undertake professional standards functions

Clause 40RD Unit to be constituted

Section 40RD provides that a unit must be constituted within the AFP by the Commissioner to undertake investigations of AFP conduct issues and corruption issues that relate to conduct engaged in by AFP appointees. This provision continues the existing arrangement of a dedicated area within the AFP set up to undertake functions related to professional standards and employee management, including the internal investigation of matters under the new system. The name of the unit is not specified in the Bill, and may change from time to time as determined by the Commissioner.

Clause 40RE Head of unit

Section 40RE provides that the head of the unit set up under section 40RD is responsible for the performance by the unit of its functions. The head of the unit is responsible directly to the Commissioner, or a Deputy Commissioner specified by the Commissioner.

Clause 40RF Assignment of members, and special members, to unit

Section 40RF provides the conditions upon which the Commissioner may assign members or special members of the Australian Federal Police to serve within the unit. The time limit provided is a period of 2 years. The section also provides that a member or special member may be re-appointed to the unit following a term of service in the unit if 12 months has elapsed from when the member or special member finished serving in the unit.

Clause 40RG Member or special member in unit maybe directed to perform other duties

Section 40RG provides that a member or a special member of the Australian Federal Police who is serving in the unit constituted under section 40RD may be directed by the Commissioner to perform duties that are not related to the unit's functions, as long as those duties do not unduly interfere with the performance by the unit of its functions.

Subdivision D — AFP conduct issues and AFP practices issues

Clause 40RH AFP conduct issues

Section 40RH defines an *AFP conduct issue*. It provides that an AFP conduct issue is one about whether an AFP appointee has engaged in conduct that breaches the AFP professional standards, or has engaged in corrupt conduct. The definition is broad: it includes conduct by an AFP appointee that occurred before the person was engaged as an AFP appointee, conduct that is off-duty or private, conduct engaged in by an AFP appointee who has since ceased to be an AFP appointee, or conduct that is engaged in by the AFP appointee which also involves or implicates someone who is not an AFP appointee. Conduct that was engaged in before the commencement of this section is included in the definition, as is conduct for which the statute of limitations has passed.

Conduct will be covered by the definition in section 40RH whether it occurs within or outside of Australia, and regardless of whether the identity of the AFP appointee who engaged in the conduct is known, certain or is disclosed in the information. The section is qualified by section 40RJ that limits AFP conduct issues to ones that do not include certain employment action.

Clause 40RI AFP practices issues

Section 40RI defines an *AFP practices issue* as an issue that concerns the practices and procedures of the Australian Federal Police, both within and outside of Australia. This definition is also broad: it encompasses the rules orders and instructions in accordance with which AFP appointees are required to perform their duties, the policies adopted or followed by the AFP and the practices and procedures ordinarily followed by AFP appointees in the performance of their duties. A practices issue includes an issue whether a practice or procedure of the Australian Federal Police is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or inadequate or otherwise wrong or inappropriate.

Clause 40RJ Exclusion of certain employment action

Section 40RJ excludes from the definition of AFP conduct and practices issues employment matters involve no breach of professional standards or corrupt conduct. This rule covers action that is taken in relation to an AFP appointee's employment, including their appointment, terms and conditions of their employment, termination or promotion, discipline of the AFP appointee or payment of remuneration to the AFP appointee.

For example, a person would not be able to make a complaint about the salary paid to AFP appointees, but could raise concerns about corrupt promotion procedures or excessive delay or unreasonable administrative decision making in recruitment practices.

Subdivision E — Categories of AFP conduct issues and managers

Clause 40RK Categories of AFP conduct

This subdivision provides for establishment of categories of conduct that define what behaviour is able to be the subject of a complaint in relation to a professional standards issue.

Section 40RK outlines that there are four categories of conduct for the purposes of the Act, and outlines that the lowest category is category 1, the next highest category is category 2, through to category 3 and the highest category of conduct is conduct giving rise to a corruption issue. The section provides that if a conduct issue potentially belongs to a number of different categories, it will be taken to fall within the highest of the categories. It also provides that a category to which conduct belongs may change as more information is obtained in relation to the conduct. This is where it may become apparent in the course of resolution or investigation of the matter that it is more or less serious than originally classified.

Clause 40RL Categories of AFP conduct issues

Section 40RL defines category 1, 2 and 3 conduct issues to be issues about whether an AFP appointee has engaged in category 1, 2 or 3 conduct, respectively.

Clause 40RM AFP Commissioner and Ombudsman to determine the kinds of conduct that are to be category 1, category 2 or category 3 conduct

Section 40RM provides that the Commissioner and the Ombudsman may jointly determine (in writing) the kind of conduct that is to be category 1 conduct, category 2

conduct and category 3 conduct for the purposes of the Act, subject to sections 40RN, 40RO and 40RP respectively.

Clause 40RN Category 1 conduct

Section 40RN limits the conduct that may form part of the Commissioner and Ombudsman's determination of a category 1 conduct to inappropriate conduct that relates to minor management matters or customer service matters or conduct that reveals a need for improvement in the performance of the AFP appointee concerned, and that does not warrant being treated as category 2 or category 3 conduct for the purposes of this Act. This is the least serious category.

Clause 40RO Category 2 conduct

Section 40RO limits the conduct that may form part of a determination made jointly by the Commissioner and the Ombudsman to conduct that is minor misconduct by an AFP appointee, inappropriate conduct that reveals unsatisfactory behaviour by an AFP appointee or repeated instances of category 1 conduct, in each case being conduct that does not warrant being treated as category 3 conduct for the purposes of this Act.

Clause 40RP Category 3 conduct

Section 40RP limits the conduct that may form part of a determination made jointly by the Commissioner and the Ombudsman defining category 3 conduct to conduct that is serious misconduct by an AFP appointee or raises the question whether termination action should be taken in relation to an AFP appointee, or involves a breach of the criminal law or serious neglect of duty by an AFP appointee, and that is not conduct that raises a corruption issue.

Clause 40RQ Managers for particular categories of AFP conduct issues

Section 40RQ provides that the Commissioner may make orders under section 38 authorising particular kinds of AFP appointees to act as managers for category 1 or category 2 conduct issues. These managers are then able to be allocated category 1 or 2 conduct issues to deal with.

Division 2 — Raising AFP conduct and practices issues with the AFP for action under Division 3

Clause 40SA Giving information that raises an AFP conduct or practices issue

Section 40SA provides that any person may give information that raises an AFP conduct or practices issue either to the Commissioner or any AFP appointee, either in writing or orally. A person only becomes a complainant for the purposes of the Act if the person makes it clear that he or she wishes to be kept informed of the action taken in relation to the issue.

The Commissioner or AFP appointee who receives the information may reduce the information to writing if it is given orally, or may require the person who gave the information to reduce it to writing, and may decline to take any further action in relation to information unless the person reduces it to writing. The person may also give the information anonymously.

This provision also makes clear that any right that is conferred on a complainant by this section is in addition to any other law, and does not affect the operation of any other law and does not prevent the taking of legal action or the operation of laws that are relevant to those legal proceedings. For example, under this provision, a person could give information about an alleged assault by an AFP appointee for the purposes of this new Part. However, this would not prevent the person seeking a criminal charge for the assault or commencing a civil action.

Subsection 40SA(6) provides that the Ombudsman may refer information under subsection 6(21) of the *Ombudsman Act 1976*. The person that gave the information under the *Ombudsman Act 1976* is then deemed to have given the Commissioner information under this section that raises an AFP conduct or practices issue. The person is then able to become a complainant for the purposes of this Act.

Clause 40SB Arrangements for person in custody to give information

Section 40SB provides a mechanism for persons in custody to be able to give information for the purposes of this Part. A person in custody is able to give information by requesting a custodian of the detainee to provide facilities for the detainee to prepare written information and to ensure the information is put into a sealed envelope. The detainee is entitled to make a request of the custodian to ensure that information contained in a sealed envelope is delivered to the Commissioner or the person to whom the relevant AFP conduct or practices issue is allocated without undue delay. The detainee is also entitled to have any information addressed to the detainee by the Commissioner or the relevant AFP appointee to whom the AFP conduct or practices issue is allocated delivered to the detainee by the custodian of the detainee.

The section also provides that a custodian of a detainee is not entitled to open or inspect any document that is prepared for the Commissioner or the AFP appointee allocated to deal with the AFP conduct or practices issue, or any document addressed to the detainee and sent by the Commissioner or the AFP appointee allocated to deal with the AFP conduct or practices issue.

The section also provides that the Commissioner may make arrangements with appropriate authorities of a State or Territory for the identification and delivery of documents for the purposes of this section in relation to persons in custody.

Clause 40SC Recording and dealing with information given under section 40SA

Section 40SC outlines the way information is given to the Commissioner or an AFP appointee that raises an AFP conduct or practices and procedure issue is to be recorded and dealt with. When a person receives information under section 40SA, the person is obliged to record the information and deal with it in accordance with Commissioner's orders issued for the purposes of subsection 40TA(1).

An exception to this requirement is outlined in subsection 40SC(2) which provides that in limited circumstances, where a category 1 conduct issue or an AFP practices issue is raised, the person does not need to record the information or deal with it in accordance with Commissioner's orders for the purposes of this Part. This is only the case where the person who receives the information is satisfied that the issue has arisen as a result of a misunderstanding of the facts, the law or the practices or procedures of the Australian Federal Police, or considers that the matter may be resolved informally, and also considers that an explanation to the person or taking

other action is likely to resolve the issue. The recipient must expect that an explanation can be given to the person, or other action can be taken in relation to the issue, within a reasonable period from when the person gave the information. If the issue is not resolved within a reasonable period, subsection 40SC(3) requires the person to record the information and deal with it according to Commissioner's orders.

Clause 40SD Commissioner may decide that AFP conduct issue should be dealt with under this Part

Section 40SD provides that the Commissioner may also, at his or her initiative, decide that an AFP conduct issue should be dealt with under this Part.

Clause 40SE Recording and dealing with information referred under section 40SD

Section 40SE provides that if the Commissioner has made a decision under section 40SD, the Commissioner must record the details of the information and deal with them according to Commissioner's orders issued for the purposes of subsection 40TA(1).

Division 3 — Dealing with AFP conduct or practices issues

Subdivision A — Preliminary

Clause 40TA Commissioner's orders about how AFP conduct or practices issues are dealt with

Section 40TA provides that the Commissioner may issue orders under section 38 of the Act about how AFP conduct or practices issues and information about AFP conduct or practices issues are to be dealt with by AFP appointees under this Part. The Commissioner's power to issue orders in relation to AFP conduct and practices issues for the purposes of this Part is important because the provisions of this Part set out only key elements of the new regime. Most of the remaining administrative detail to enable the system to function effectively will be provided by the Commissioner's orders.

Subsection 40TA(2) provides that the Commissioner must ensure that complainants in relation to AFP conduct issues are kept informed of progress in relation to, and any action taken in relation to the AFP conduct issue, and any AFP practices issues that may arise in the course of investigating the AFP conduct issue. Subsection 40TA(3) requires the Commissioner to ensure that any complainant in relation to an AFP practices issue is kept informed, as far as is reasonable, of progress in dealing with the practices issue, and any action taken in relation to the issue.

Clause 40TB Dealing with related AFP conduct issues that have different categories

Section 40TB provides that if a number of AFP conduct issues relate to the same AFP appointee, and those AFP conduct issues belong to different categories, then the AFP conduct issues can be dealt with together as if they all belong to the higher or highest of those categories.

Clause 40TC Training and development action

Section 40TC provides a definition of *training and development action* to include action taken to improve the AFP appointee's performance through training and development. The intention of this provision is to allow managers to recommend or arrange for coaching, mentoring, training and development activities, or increasing the level of supervision of the AFP appointee's work. The provision provides that training and development action is either the manager providing the listed actions, or making arrangements for those actions to be taken in relation to the AFP appointee. There may be examples where the manager considers that the employee should undertake specific training in relation to a particular area of the AFP appointee's work, and the manager may not be able to provide that training directly because the manager does not have the requisite skills or training to undertake the training. In that situation, the manager would be able to arrange for the training to be provided by someone else.

Clause 40TD Remedial action

Section 40TD defines *remedial action* for the purposes of the Act. The definition includes action taken to improve the AFP appointee's behaviour, structured changes to the AFP appointee's employment, the recording of adverse findings against the AFP appointee, either permanently or for a particular period. The definition of remedial action also includes counselling, reprimanding, giving the AFP appointee a formal warning, or requiring the AFP appointee to adopt particular improvement strategies. In the case of counselling, the action may involve the manager providing the counselling, or arranging for AFP appointee to receive counselling. The definition of remedial action also includes changing the AFP appointee's shifts, restricting the AFP appointee's duties, reassigning the AFP appointee to other duties or transferring the AFP appointee to another part of the Australian Federal Police. The action taken can be either done directly by the manager, or if the manager does not have the requisite skills or capacity, may arrange for the action to be taken in relation to the AFP appointee.

Clause 40TE Termination action

Section TE provides a definition of *termination action* for the purposes of action that can be taken for a category 3 conduct issue. The section sets out a table that outlines which termination action can be taken by whom.

Subdivision B — Discretion to take no further action in relation to issue

Clause 40TF Discretion to take no further action in relation to AFP conduct issue

Section 40TF provides for the Commissioner to exercise a discretion not to take further action in relation to information that is given that raises an AFP conduct issue, or in relation to a decision by the Commissioner that an AFP conduct issue is to be dealt with under this Part.

Subdivision C — Dealing with category 1 and category 2 conduct issues

Sections 40TG, 40TH, 40TI, 40TJ and 40TK outline how category 1 and 2 conduct issues are to be dealt with by a manager who is allocated a category 1 or 2 conduct issue.

Clause 40TG When Subdivision applies

Clause 40TC provides that this subdivision applies if information is given under section 40SA, the issue is a category 1 or 2 issue and the issue is allocated to an AFP appointee.

This subdivision also applies if the Commissioner decides under section 40SD that an AFP conduct issue is to be dealt with under this Part, the issue is a category 1 or 2 issue and the issue is allocated to an AFP appointee.

Clause 40TH How issue is dealt with

Section 40TH provides the parameters governing a manager's handling of a category 1 or 2 conduct issue. The manager must as a minimum ensure that the AFP appointee and any complainant have an adequate opportunity to be heard in relation to the issue, and also ensure that the AFP appointee is involved as far as is possible in the resolution of the issue. The manager is under an obligation to determine what action (if any) is to be taken in relation to the issue, and also to consider whether the information raises any AFP practices issue.

Section 40TH provides that a manager may, if he or she chooses, attempt to resolve the issue through conciliation. However the outcome of any conciliation, if undertaken, does not limit the action that is available to the manager to take. Also, the manager may take into account the conduct or outcome of conciliation undertaken in deciding what action (if any) is to be taken. Subsection 40TH (4) provides that information that is given in the course of conciliation is not admissible against the AFP appointee in any criminal or civil proceedings.

Clause 40TI Action that may be taken in relation to category 1 conduct

Section 40TI provides that if a manager is satisfied that the AFP appointee has engaged in category 1 conduct, the manager may take training and development action in relation to the AFP appointee.

Clause 40TJ Action that may be taken in relation to category 2 conduct

Section 40TJ provides that if a manager is satisfied on reasonable grounds that the AFP appointee has engaged in category 2 conduct, the manager may take either remedial action in relation to the AFP appointee, or take training and development action in relation to the AFP appointee.

Clause 40TK AFP practices issue identified in course of dealing with AFP conduct issue

Section 40TK provides that a manager must bring any AFP practices issue that arises in the course of dealing with an AFP conduct issue to the attention of an appropriate AFP appointee. The manager may make recommendations in relation to the AFP practices issue, as the manager considers appropriate.

Subdivision D — Dealing with category 3 conduct issues and corruption issues

Sections 40TL, 40TM, 40TN, 40TO, 40TP, 40TQ, 40TR, 40TS, 40TU, 40TV and 40TW outline how category 3 conduct issues and corruption issues are to be dealt with.

Clause 40TL When Subdivision applies

Clause 40TI provides that this subdivision applies if information is given under section 40SA and the issue is a category 3 conduct issue.

This subdivision applies if the Commissioner decides under section 40SD that an AFP conduct issue is to be dealt with under this Part and the issue is a category 3 conduct issue. It also applies if the Commissioner notifies the Integrity Commissioner of a corruption issue and the AFP investigates the issue or it is a corruption issue that the Integrity Commissioner has referred to the AFP or if the Ombudsman arranges for the issue to be dealt with jointly between the Ombudsman and AFP.

Clause 40TM Head of unit constituted under section 40RD to notify Ombudsman of category 3 conduct issues

Section 40TM provides that the head of the unit must notify the Ombudsman of any category 3 conduct issues, except where the Ombudsman has arranged for the issue to be investigated jointly with the Australian Federal Police.

Clause 40TN Head of unit constituted under section 40RD generally allocates issues for investigation

Section 40TN provides that the head of the unit constituted under section 40RD must allocate a category 3 conduct issue to a member or special member, and may allocate the issue to himself or herself. If the head of the unit wishes to allocate the issue to a person who is not a member of the unit, the head of the unit must obtain the Commissioner's agreement.

Clause 40TO Commissioner must allocate issue to someone outside unit constituted under section 40RD in certain circumstances

Section 40TO qualifies section 40TN and provides that if the category 3 conduct issue that is raised relates to the conduct of a member of the unit or if the Commissioner considers that for any other reason it would be inappropriate to allocate the issue to a person who is a member of the unit, then the Commissioner must allocate the issue to a person who is not a member of the unit. The section also provides that a corruption issue must not be allocated to the Ombudsman.

Subsection 40TO (5) provides that the Commissioner may allocate a category 3 conduct issue to the Ombudsman with the Ombudsman's agreement. If the category 3 issue is allocated to someone other than the Ombudsman, then the Commissioner must consult with the Ombudsman about the choice of person to whom the issue will be allocated.

If the issue is a corruption issue, subsection 40TO (7) provides that the Commissioner must consult with the Integrity Commissioner about the choice of person to whom the issue will be allocated.

Clause 40TP Persons eligible to have category 3 conduct issue or corruption issue allocated to them

Section 40TP qualifies sections 40TN and 40TO by providing that the issue may only be allocated to a person who has appropriate qualifications or experience to conduct the investigation of the issue.

Clause 40TQ How category 3 conduct issue or corruption issue is dealt with

Section 40TQ outlines how a person who is allocated a category 3 conduct issue or a corruption issue is to deal with the issue. The investigator must ensure that the AFP

appointee and the complainant (if any) have an adequate opportunity to be heard in relation to the issue. The investigator is also under an obligation to consider whether the information given in relation to the issue or obtained in the course of dealing with the issue raises a practices issue.

Clause 40TR Recommendations that may be made in relation to category 3 conduct or corrupt conduct

Section 40TR outlines the recommendations that may be made by an investigator who is satisfied on reasonable grounds that an AFP appointee has engaged in category 3 conduct or corrupt conduct. The investigator may recommend that termination action, remedial action, training and development action or any other action that the Commissioner can take in relation to the AFP appointee be taken. The provision includes an avoidance of doubt provision that clarifies that despite any recommendations made by an investigator under this section, the Commissioner's termination powers under section 28 of the Act are at all times available to the Commissioner.

Clause 40TS Investigative powers

Investigator is defined in item 18. This clause stipulates which powers are to apply depending on whether the investigator is the Ombudsman or a person other than the Ombudsman.

Clause 40TU Report of Investigation

Under this section the investigator is required to provide a written report, including any recommendations, of the results of the investigation. The report is to be provided to the head of the unit if it is an investigation concerning category 3 conduct or corrupt conduct (clause 40TN), or to the allocated investigator outside of the unit if it is an investigation into the conduct of a person who is a member of the unit (clause 40TO).

This section will not apply if the investigation was conducted jointly with the Ombudsman on the basis that the Ombudsman is leading the investigation.

Clause 40TV Taking action on report

The commissioner is obliged to fully consider any recommendations in reports and take appropriate action.

Clause 40TW AFP practices issue identified in the course of dealing with AFP conduct issue

This section covers a situation where in the course of dealing with a conduct issue, practices issues are raised and requires that the investigator separately identify the practices issues and provide recommendations accordingly.

Subdivision E — Dealing with AFP practices issues

Clause 40TX Commissioner to ensure that appropriate action is taken in relation to AFP practices issues

This section covers a situation where in the course of dealing with practices issues, conduct issues are raised (clause 40TK) or identified under clause 40TW. The Commissioner is required to ensure appropriate action is taken.

Division 4 — Ministerially directed inquiries

Clause 40UA Minister may arrange special inquiries

This clause gives the Minister power, where he or she considers it appropriate to do so, to arrange for an inquiry to be held concerning the conduct of an AFP appointee or any matter relating to the AFP.

Clause 40UB Minister to inform certain persons and bodies of inquiry

If the Minister arranges for an inquiry to be held under Clause 40UA, he or she must inform the Ombudsman, the Integrity Commissioner and other persons or bodies that the Minister deems appropriate. The Minister must inform them of the fact of the inquiry, the conduct or matter into which the inquiry is to be held, the person or persons who are to conduct the inquiry, and the manner in which the inquiry will be held.

Clause 40UC Division 3 investigation may be suspended pending outcome of inquiry

Where the Minister arranges for an inquiry under clause 40UA and the conduct is being dealt with under Division 3 (dealing with AFP conduct or practices issues), the AFP Commissioner may, solely or jointly with the Ombudsman, suspend further action in relation to conduct or matter under Division 3 until the inquiry is completed. The Commissioner may also, solely or jointly with the Ombudsman, terminate the investigation of the conduct or matter under Division 3 if it receives a report in relation to the inquiry and is satisfied that it is appropriate to do so.

Clause 40UD Reports of special inquiries

Where the Minister arranges for an inquiry to be held, the person holding the inquiry must report to the Minister the results of the inquiry and where appropriate make recommendations arising out of the inquiry. On receipt of the report, the Minister may cause action to be taken arising out of the report. The Minister may give a copy of the report and/or make appropriate recommendations to the Commissioner, Ombudsman, the Integrity Commissioner or any other such persons or bodies as the Minister considers appropriate.

Division 5—Investigative powers

Clause 40VA Application of Division

Division 5 applies where a person is investigating a category 3 conduct issue (see clause 40RP for definition), a corruption issue (see item 15 subsection 4.1 for definition) under Division 3, or where a person is conducting an inquiry under Division 4. The powers of investigation in this Division are additional to any other powers the investigator may have.

Clause 40VB Manner of conducting investigation or inquiry

This clause outlines the manner in which the investigation or inquiry is to be conducted. Subject to the Division, the inquiries should be conducted in a manner the investigator thinks fit.

Clause 40VC Obtaining information and making inquiries

Subject to this Division, for the purposes of the investigation or inquiry, the investigator may obtain information and make inquiries as he or she thinks fit.

Clause 40VD Relationship with other laws

Clauses 40VB (manner of conducting investigation or inquiry) and 40VC (obtaining information and making inquiries) do not authorise an AFP appointee to contravene or fail to comply with a law that (if enacted) applies in relation to the investigation or inquiry.

Clause 40VE Directions to AFP appointee

This clause allows an investigator to direct an AFP appointee to provide him or her with information, produce a document record or thing, answer a question or do anything else that is reasonably necessary for the purposes of the investigation or inquiry. Where the AFP appointee fails to comply with the direction, that person will be guilty of an offence. For this clause to be effective, the investigator must be expressly directed to do so and be informed of the subject matter for investigation or inquiry.

The AFP appointee is not excused from complying with the direction on any ground, even where the information may incriminate him or her, that compliance would be contrary to the public interest or would make the appointee liable to a penalty.

The production of information or evidence obtained from the AFP appointee is not admissible in evidence against the AFP appointee in any civil or criminal proceedings, other than: proceedings against subsection 40VH(1), or; proceedings in relation to termination action taken in relation to the AFP appointee, or; proceedings under the *Safety, Rehabilitation and Compensation Act 1988*, or; proceedings in tort that the AFP appointee institutes against the Commonwealth. If the AFP appointee has not been expressly directed to provide the information, its admissibility as evidence in civil or criminal proceedings will not be affected.

For all the purposes of this Bill, and the regulations under this Bill, a direction given by the investigator has effect as if it had been given by the Commissioner.

Clause 40VF Entering and searching AFP premises

This clause allows the investigator to enter and search AFP premises for the purposes of an investigation or inquiry. The investigator is able to examine, take extracts from and retain possession of any document, record or thing as necessary for the purposes of the investigation or inquiry.

Clause 40VG Special powers if investigator conducting inquiry under Division 4

This clause applies to inquiries conducted under Division 4 (a Ministerially directed inquiry). The investigator may give a direction for an AFP appointee to answer questions relevant to the inquiry, administer an oath or affirmation, examine an AFP appointee under oath or affirmation, and record the information provided. Failure to answer questions or to be sworn or make an affirmation is an offence.

For the direction to have effect, the investigator must expressly direct the AFP appointee in the direction and specify the subject matter of the inquiry. The AFP appointee is not excused from complying with the direction on any ground, including that the answer to a question may incriminate him or her, would be contrary to public interest or make him or her liable to a penalty.

The production of information or evidence obtained from the AFP appointee is not admissible in evidence against the AFP appointee in any civil or criminal proceedings, other than: proceedings against subsection 40VH(1), or; proceedings in relation to termination action taken in relation to the AFP appointee, or; proceedings under the *Safety, Rehabilitation and Compensation Act 1988*, or; proceedings in tort that the AFP appointee institutes against the Commonwealth. If the AFP appointee has not been expressly directed to provide the information, its admissibility as evidence in civil or criminal proceedings will not be affected.

For all the purposes of this Bill, and the regulations under this Bill, a direction given by the investigator has effect as if it had been given by the Commissioner.

Clause 40VH Offences

This clause provides for a number of offences regarding the conduct of AFP appointees with a maximum penalty of 6 months imprisonment. An AFP appointee commits an offence if without reasonable excuse the AFP appointee: refuses or fails to comply with a direction of the investigator, or; refuses or fails to be sworn or make an affirmation when required to do so under Clause 40VG(2); or gives information or makes a statement to the investigator knowing that it is false or misleading.

Division 6 — Record keeping

Clause 40WA Record keeping

Section 40WA creates an obligation for the Commissioner to keep adequate records for the purposes of this Part and sets out the mandatory minimum requirements for the records to be kept. Though there is at least one exception where certain types of conduct issues that are resolved without being recorded.

Both the Integrity Commissioner and the Ombudsman are entitled to have access to the records kept under this section for the purposes of performing their functions.

Clause 40WB Records about corruption issues

Section 40WB provides that the Integrity Commissioner may direct the Commissioner that access to information about a corruption issue is to be restricted in the way specified in the direction.

Division 7 — Ombudsman review

Clause 40XA Annual reviews by Ombudsman

Section 40XA provides that a role of the Ombudsman is to review the administration of Part V – Professional standards and AFP conduct and practice issues.

In doing this, the Ombudsman must inspect the records of AFP conduct issues and AFP practice issues that have been, or are being dealt with, under Divisions 3 and 4 of Part V. The Ombudsman *must* inspect the records at least once every 12 months.

AFP conduct issue has the meaning given by sections 40RH and 40RJ.
AFP practice issue has the meaning given by section 40RI and 40RJ.

This clause requires the Ombudsman to access records to adequately review the effective administration of this Part.

Clause 40XB Ad hoc reviews by Ombudsman

Section 40XB provides that the Ombudsman may also conduct an ad hoc inspection at any time of records of AFP conduct issues and practices being dealt with under Divisions 3 and 4.

This clause allows the Ombudsman to access records whenever required, in order to adequately review the effective administration of this Part.

Clause 40XC Commissioner to provide information and access to documents

Section 40XC provides that the Ombudsman may request and require the Commissioner to give him or her information, and access to documents, required for the purpose of conducting a review of the administration of this Part.

Clause 40XD Annual reports by Ombudsman

Section 40XD provides that the Ombudsman must prepare a report of the Ombudsman's work and activities under this Division during the preceding 12 months. The report must include information as to the comprehensiveness and adequacy of the administration of matters under Divisions 3 and 4.

The report must be given to the Senate and House of Representatives as soon as practicable after 30 June each year, for presentation to Parliament.

Division 8 — Offences

Clause 40YA Victimisation

Section 40YA provides that it is an offence to cause, or threaten to cause, detriment to another person on the ground that the person, or another person, gave information for the purposes of this Part. This includes an express or implied threat or a conditional or unconditional threat. It is *not* necessary that the person threatened actually feared that the threat would be carried out.

The maximum penalty for the offence is 6 months imprisonment.

This clause is intended to protect persons who give information under this Part.

Clause 40YB Providing false information about AFP conduct or practices issues

Section 40YB provides that it is an offence to give information that raises a conduct or practice issue where the person knows that the information is false in a material particular.

The maximum penalty for the offence is 20 penalty units.

Clause 40YC AFP appointees to provide name, etc.

Section 40YC provides that it is an offence for an AFP appointee to refuse to give personal details without reasonable excuse, or to give false details, where a person has requested those details for the purpose of making a complaint or raising a conduct issue, and where the AFP appointee was informed (either expressly or by necessary implication) of the reason for requesting the details.

The maximum penalty for the offence is 5 penalty units.

This clause is designed to allow a person to obtain the necessary details required to make a complaint or raise a conduct issue about an AFP appointee.

AFP appointee has the meaning given by item 2 subsection 4(1).

Division 9—Secrecy

Clause 40ZA Secrecy

Section 40ZA applies where a person inappropriately records or communicates information acquired via the investigation or inquiry. A penalty of 30 units is the maximum.

This clause does not prevent this information from being provided for an investigation or for a court proceeding. In certain circumstances, the Minister or the Commissioner can provide their written consent to allow a person to record or communicate the information.

Clause 29 After subsection 67(1)

Section 29 requires that the report must contain prescribed particulars about AFP conduct issues and the action that was taken.

SCHEDULE 2—REPEAL

Complaints (Australian Federal Police) Act 1981

Item 1 The Whole of the Act

This Act locates the new complaints and disciplinary regime within the *Australian Federal Police Act 1979* (AFP Act) where the AFP Commissioner's command and control powers are to be found. This emphasises the Commissioner's primary

responsibility for professional standards in the AFP and removes the need for a separate Complaints Act.

Item 2 Continued Operation of Complaints (Australian Federal Police) Act 1981

This is a transitional provision. It is intended that the *Complaints (Australian Federal Police) Act 1981* continue to apply to complaints made, or referred by the Commonwealth Ombudsman, under that Act before the commencement of this Schedule.

SCHEDULE 3 - CONSEQUENTIAL AMENDMENTS

Administrative Decisions (Judicial Review) Act 1977

Item 1 Paragraph 10(1)(b)

This clause amends the *Administrative Decisions (Judicial Review) Act 1977* to reflect the repeal of the *Complaints (Australian Federal Police) Act 1981* (the Complaints Act) and insertion of the Complaints and Disciplinary process into the *Australian Federal Police Act* (AFP Act).

Australian Crime Commission Act 2002

Item 2 Schedule 1

These clauses amend the *Australian Crime Commission Act 2002* (the ACC Act) to reflect the repeal of the Complaints Act and insertion of the complaints and professional standards process into the AFP Act. There is no longer a separate secrecy provision that should be exempted from section 20 of the ACC Act.

Australian Federal Police Act 1979

Items 5 – 24

These clauses amend the AFP Act to reflect the repeal of the Complaints Act and the insertion of the Complaints and professional standards process into the AFP Act. The most significant change is the repeal of Division 3 of Part VA, which provides for loss of superannuation benefits because of a ‘relevant disciplinary offence’ in the nature of corruption, and associated provisions (Items 10 to 21). Other changes involve the omission of references to discipline and, where appropriate, substitution of references to professional standards. In particular, Item 24 omits express provision for the making of regulations in relation to disciplinary offences and substitutes provision for making regulations about compliance by AFP appointees with AFP professional standards. This will remove the statutory basis for the existing Australian Federal Police (Discipline) Regulations.

Australian Security Intelligence Organisation Act 1979

Items 25 - 27

These clauses amend provisions of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) to reflect the repeal of the Complaints Act and the insertion of the Complaints and professional standards process into the AFP Act.

Item 28 Paragraphs 34F(9)(b) and (c)

This clause amends the ASIO Act to reflect the repeal of the Complaints Act and the insertion of the Complaints and Disciplinary process into the AFP Act. It emphasises that section 34F(8) of the ASIO Act does not affect the entitlement of a person in custody to make a complaint to the Inspector-General of Intelligence and Security, the Ombudsman or to an appropriate person under the AFP Act.

Items 29 - 32

These clauses amend provisions of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) to reflect the repeal of the Complaints Act and the insertion of the Complaints and professional standards process into the AFP Act.

Crimes Act 1914

Items 33 – 35

These clauses update this provision of the *Crimes Act 1914* to reflect the new disciplinary arrangements. The Commissioner must be satisfied that data accessed by operating electronic equipment is no longer necessary for investigating a complaint under the *Ombudsman Act 1976* or the AFP Act as opposed to under the Complaints Act which is repealed.

Item 36 Paragraph 104.29(2)(f) of the Criminal Code

This clause allows a person to disclose information revealed by the carrying out of a forensic procedure for the purposes of dealing with an AFP conduct or practices issue under the AFP Act.

Criminal Code Act 1995

Items 37 – 45

These clauses amend the Criminal Code to reflect the repeal of the Complaints Act and the insertion of the Complaints and professional standards process into the AFP Act.

Ombudsman Act 1976

Items 46 – 51

These clauses amend the Ombudsman Act to reflect the repeal of the Complaints Act and the insertion of the Complaints and professional standards process into the AFP Act.

Item 52 – Subsection 5(4)

This clause allows the Ombudsman to be known as the Law Enforcement Ombudsman when performing functions in relation to the Australian Federal Police. This title refocuses the role of the Ombudsman.

Item 53 – At the end of section 6

Section 5(2)(d) of the Ombudsman Act prohibits the Ombudsman taking action with respect to persons employed in the Australian Public Service or the Service of a prescribed authority if it relates to their employment. This clause updates the exception to this prohibition to reflect the repeal of the Complaints Act and the insertion of the Complaints and professional standards process into the AFP Act.

Item 54 – At the end of section 8

This clause gives the Ombudsman the discretion to decide not to investigate a complaint and transfer responsibility for the investigation of the complaint to the AFP Commissioner. The Ombudsman must provide the AFP Commissioner with information as soon as is reasonably practicable and advise the complainant that the complaint has been transferred to the AFP Commissioner to be dealt with under the Act.

This allows the Ombudsman to focus on system accountability within the AFP and aligns the Ombudsman's role with his or her role in relation to other agencies.

Item 55 After subsection 8A(1)

This clause allows the Ombudsman to use persons with police training to assist investigations of complaint about AFP conduct or practices issues. The Ombudsman may use an AFP appointee who is made available to him or her by the AFP Commissioner or a State Police officer who has been made available under arrangements made by the AFP Commissioner.

Item 56 – Subsection 8A(2)

Under section 8A of the Ombudsman Act, the Ombudsman can make an arrangement with State Ombudsmen in relation to investigations of certain action. This clause

gives the Ombudsman the power to make such arrangements in relation to investigation of certain action specified in subsections 1B, 1C and 1D.

Items 57 – 59

These clauses amend certain provision of the Ombudsman Act to reflect the repeal of the Complaints Act and the insertion of the Complaints and professional standards process into the AFP Act.

Item 60 – At the end of subsection 33(1)

This clause inserts a new section into the Ombudsman Act which allows the Ombudsman to make an arrangement with the AFP Commissioner for certain issues to be dealt with jointly by the Ombudsman and the AFP.

Items 61 - 64

These clauses amend certain provisions of the Ombudsman Act to reflect the repeal of the Complaints Act and the insertion of the Complaints and professional standards process into the AFP Act.

Witness Protection Act 1994

Items 65 – 66

These clauses reflect the repeal of the Complaints Act and the insertion of the Complaints and professional standards process into the AFP Act.

SCHEDULE 4—ALCOHOL SCREENING TESTS

Australian Federal Police Act 1979

Item 1 Subsection 4(1)

This clause inserts a definition of alcohol screening test.

Item 2 Subsection 4(1)

This clause inserts a definition of approved screening device.

Item 3 Before section 40M

Clause 40LA Alcohol screening tests

Gives authority for on duty AFP appointee to undergo a screening test for alcohol.

If the test shows alcohol is not present then the AFP appointee may return to his or her duties.

If the test shows alcohol to be present or the AFP appointee refuses the screening test then a written direction under section 40M to undergo a breath test may be given.

Item 4 Subsection 40M(3) (note)

Repeals the note and alters the heading of the relevant section

Item 5 Subsection 40N(5) (note)

Repeals the note and alters the heading of the relevant section

Item 6 Section 40P

Places the clause relating to giving AFP appointees a screening test for alcohol.

Item 7 Subparagraph 40P(b)(i)

Authorises persons to conduct alcohol screening tests to be conducted under those sections (40M and 40N).

Item 8 Paragraph 40P(e)

Allows alcohol screening tests to be conducted under those sections (40M and 40N).

Item 9 At the end of section 40P

A note is added to direct the reader to the section that provides for the power to give a requirement under section 40LA, see section 40PA.

Item 10 After section 40P

This item inserts clause 40PA which provides that the Commissioner may authorise particular kinds of AFP appointees to act as managers for the purpose of section 40LA.

Item 11 Section 40Q

This item repeals the section and substitutes a new section allowing admissibility of test results in legal proceedings. The new section specifies the types of information gathered under this Part that are admissible and in what legal proceedings.

Item 12 At the end of Division 8 of Part IV

This clause adds new section 40R which provides for approval of screening devices. This clause provides the conditions under which the Minister can approve screening devices.

SCHEDULE 5 – PROVISIONS RELATING TO SUSPENSION OR RESIGNATION FROM, AND TERMINATION OF, EMPLOYMENT

Item 1 Subsection 4(1)

This item inserts a new term, 'collective agreement'.

Item 2 At the end of section 30

This clause makes paragraph (1)(a) subject to section 30A.

Item 3 After section 30

This item inserts a new section 30A which provides for resignation of an AFP employee in anticipation of termination of employment.

Item 4 Section 40J

This clause provides numbers the first subsection of this section as a new subsection is inserted by Item 7.

Item 5 Section 40J

This clause simplifies the wording in the first subsection of this section and allows for future expansion of the section to include more than two options.

Item 6 After paragraph 40J(a)

This item inserts a new subparagraph that provides that while suspended from duty an AFP employee may be required to comply with certain directions.

Item 7 At the end of section 40J

This item inserts a new subsection to provide further directions that an AFP employee may be required to comply with while suspended from duty.

Item 8 Application

This clause provides the point in time when certain provisions apply.