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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

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

**No.     , 2006**

*(Attorney-General)*

**A Bill for an Act to amend the *Australian Federal  
Police Act 1979*, and for related purposes**

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1     **A Bill for an Act to amend the *Australian Federal***  
2     ***Police Act 1979, and for related purposes***

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Law Enforcement (AFP Professional*  
6                     *Standards and Related Measures) Act 2006*.

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
12

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1 to 5	At the same time as section 3 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> commences.	

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by the Parliament and assented to. It will not be expanded to  
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or  
9 repealed as set out in the applicable items in the Schedule  
10 concerned, and any other item in a Schedule to this Act has effect  
11 according to its terms.

1  
2 **Schedule 1—Main amendments**  
3

4 *Australian Federal Police Act 1979*

5 **1 After subsection 3A(6)**

6 Insert:

7 *Professional standards and dealing with AFP conduct or practices*  
8 *issues*

9 (6A) Part V provides for the setting of AFP professional standards and  
10 the way in which AFP conduct or practices issues are raised and  
11 dealt with.

12 **2 Subsection 4(1)**

13 Insert:

14 *AFP appointee* means:

- 15 (a) a Deputy Commissioner; or  
16 (b) an AFP employee; or  
17 (c) a special member; or  
18 (d) a special protective service officer; or  
19 (e) a person engaged overseas under section 69A to perform  
20 duties overseas as an employee of the Australian Federal  
21 Police; or  
22 (f) a person who is:  
23 (i) engaged under section 35 as a consultant, or  
24 independent contractor, to perform services for the  
25 Australian Federal Police; and  
26 (ii) a consultant, or independent contractor, determined by  
27 the Commissioner under subsection 35(2) to be an AFP  
28 appointee for the purposes of this paragraph; or  
29 (g) a person who is assisting the Australian Federal Police in the  
30 performance of its functions under an agreement under  
31 section 69D.

32 **3 Subsection 4(1)**

33 Insert:

1                    *AFP conduct issue* has the meaning given by sections 40RH and  
2                    40RJ.

3                    **4 Subsection 4(1)**

4                    Insert:

5                    *AFP conduct or practices issue* means:

6                    (a) an AFP conduct issue; or

7                    (b) an AFP practices issue.

8                    **5 Subsection 4(1)**

9                    Insert:

10                    *AFP practices issue* has the meaning given by section 40RI and  
11                    40RJ.

12                    **6 Subsection 4(1)**

13                    Insert:

14                    *AFP professional standards* means professional standards  
15                    determined under Commissioner's orders made for the purposes of  
16                    section 40RC.

17                    **7 Subsection 4(1)**

18                    Insert:

19                    *category 1 conduct* has the meaning given by section 40RN.

20                    **8 Subsection 4(1)**

21                    Insert:

22                    *category 1 conduct issue* has the meaning given by subsection  
23                    40RL(1).

24                    **9 Subsection 4(1)**

25                    Insert:

26                    *category 2 conduct* has the meaning given by section 40RO.

27                    **10 Subsection 4(1)**

28                    Insert:

1                    *category 2 conduct issue* has the meaning given by subsection  
2                    40RL(2).

3                    **11 Subsection 4(1)**

4                    Insert:

5                    *category 3 conduct* has the meaning given by section 40RP.

6                    **12 Subsection 4(1)**

7                    Insert:

8                    *category 3 conduct issue* has the meaning given by subsection  
9                    40RL(3).

10                  **13 Subsection 4(1)**

11                  Insert:

12                  *complainant* has the meaning given by subsection 40SA(3).

13                  **14 Subsection 4(1)**

14                  Insert:

15                  *corrupt conduct*: see *engages in corrupt conduct*.

16                  **15 Subsection 4(1)**

17                  Insert:

18                  *corruption issue* has the same meaning as in the *Law Enforcement*  
19                  *Integrity Commissioner Act 2006*.

20                  **16 Subsection 4(1)**

21                  Insert:

22                  *engages in corrupt conduct* has the same meaning as in the *Law*  
23                  *Enforcement Integrity Commissioner Act 2006*.

24                  **17 Subsection 4(1)**

25                  Insert:

26                  *give information* that raises an AFP conduct or practices issue has  
27                  a meaning affected by subsection (3).

1 **18 Subsection 4(1)**

2 Insert:

3 *investigator* for a category 3 conduct issue, or a corruption issue,  
4 means the person to whom the issue is allocated for investigation  
5 under section 40TN or 40TO.

6 **19 Subsection 4(1)**

7 Insert:

8 *manager* for a category 1 conduct issue, or category 2 conduct  
9 issue, means the person to whom the issue is allocated in  
10 accordance with Commissioner's orders issued for the purposes of  
11 subsection 40TA(1).

12 **20 Subsection 4(1)**

13 Insert:

14 *member* of the unit constituted under section 40RD means:  
15 (a) the AFP appointee appointed as the head of that unit under  
16 section 40RE; and  
17 (b) any member, or special member, of the Australian Federal  
18 Police assigned to that unit under section 40RF.

19 **21 Subsection 4(1)**

20 Insert:

21 *practices or procedures* of the Australian Federal Police has the  
22 meaning given by subsection 40RI(3).

23 **22 Subsection 4(1)**

24 Insert:

25 *remedial action* has the meaning given by section 40TD.

26 **23 Subsection 4(1)**

27 Insert:

28 *termination action* has the meaning given by section 40TE.

29 **24 Subsection 4(1)**



1           Insert:

2                    ***training and development action*** has the meaning given by  
3                    section 40TC.

4    **25 At the end of section 4**

5           Add:

6                    (3) A reference in Part V to ***giving information*** that raises an AFP  
7                    conduct or practices issue includes a reference to making a  
8                    complaint or report that raises an AFP conduct or practices issue.

9    **26 Section 35**

10           Omit “The Commissioner”, substitute “(1) The Commissioner”.

11   **27 At the end of section 35**

12           Add:

13                    (2) The Commissioner may determine, in writing, that a consultant, or  
14                    independent contractor, specified in the determination is to be an  
15                    AFP appointee for the purposes of paragraph (f) of the definition of  
16                    ***AFP appointee*** in subsection 4(1).

17                    (3) A determination under subsection (2) is not a legislative  
18                    instrument.

19   **28 After Part IV**

20           Insert:

21   **Part V—Professional standards and AFP conduct**  
22           **and practices issues**

23   **Division 1—Preliminary**

24   **Subdivision A—Objects and simplified outline of Part**

25   **40RA Object of this Part**

26                    The object of this Part is to establish the procedures by which:

27                    (a) AFP conduct issues and AFP practices issues; and

---

1 (b) other issues related to the Australian Federal Police;  
2 may be raised and dealt with.

3 **40RB Simplified outline of this Part**

- 4 (1) This Part deals with the handling of:  
5 (a) AFP conduct issues and AFP practices issues; and  
6 (b) other issues related to the Australian Federal Police.
- 7 (2) These issues may be:  
8 (a) issues that are raised by information given to the Australian  
9 Federal Police (see section 40SA); or  
10 (b) issues that the Commissioner decides, on his or her own  
11 initiative, are to be dealt with under this Part (see  
12 section 40SD); or  
13 (c) issues that are referred to the Australian Federal Police by the  
14 Integrity Commissioner under the *Law Enforcement Integrity*  
15 *Commissioner Act 2006* or by the Ombudsman under the  
16 *Ombudsman Act 1976*; or  
17 (d) issues that the Minister directs are to be inquired into under  
18 Division 4.
- 19 (3) How a particular AFP conduct issue is dealt with depends on the  
20 category to which the issue belongs. Sections 40RK to 40RP deal  
21 with the categorisation of AFP conduct issues.
- 22 (4) AFP conduct issues that belong to the 2 less serious categories  
23 (categories 1 and 2) are dealt with managerially and may be  
24 addressed by training and development action (see section 40TC)  
25 or remedial action (see section 40TD).
- 26 (5) AFP conduct issues that belong to the 2 more serious categories  
27 (category 3 and corruption issues) are dealt with through more  
28 formal investigations and may be addressed not only by training  
29 and development action and remedial action but also by  
30 termination action (see section 40TE) and other action. The  
31 investigation may also give rise to a prosecution for an offence.
- 32 (6) Division 5 confers special investigative powers on people who  
33 conduct:  
34 (a) investigations under Division 3 of category 3 conduct issues  
35 or corruption issues; or

- 1 (b) inquiries under Division 4.
- 2 (7) The Ombudsman plays a number of roles under this Part. The  
3 Ombudsman:
- 4 (a) determines, jointly with the Commissioner, the particular  
5 kinds of conduct that are to belong to the various categories  
6 of conduct (see section 40RM); and
- 7 (b) is consulted by the Commissioner on the appointment of  
8 investigators under section 40TO (see subsection 40TO(6));  
9 and
- 10 (c) is entitled under section 40WA to have access to the records  
11 that are kept in relation to AFP conduct issues and AFP  
12 practices issues under that section; and
- 13 (d) conducts annual reviews and ad hoc reviews of the operation  
14 of this Part under Division 7.

15 **Subdivision B—Professional standards for AFP appointees**

16 **40RC Commissioner may determine professional standards**

- 17 (1) The Commissioner may issue Commissioner's orders under  
18 section 38 determining the professional standards to be complied  
19 with by AFP appointees.
- 20 (2) Without limiting subsection (1), the Commissioner may determine  
21 a professional standard by reference to the requirements specified  
22 in:
- 23 (a) another Commissioner's order; or  
24 (b) another document issued or made by the Commissioner in  
25 the exercise of the Commissioner's powers under section 37.
- 26 (3) Despite section 46AA of the *Acts Interpretation Act 1901*, a  
27 document referred to in paragraph (2)(a) or (b) may be a document:
- 28 (a) as in force at a particular time; or  
29 (b) as in force from time to time.

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

3 **40RD Unit to be constituted**

- 4 (1) The Commissioner must constitute, within the Australian Federal  
5 Police, a unit to undertake investigations of:  
6 (a) AFP conduct issues that are category 3 conduct issues; and  
7 (b) corruption issues that relate to conduct engaged in by AFP  
8 appointees.
- 9 (2) The Commissioner may determine, from time to time, the name by  
10 which the unit is to be known.
- 11 (3) The establishment of the unit is to be such as the Commissioner  
12 determines from time to time.
- 13 (4) In determining and varying the establishment of the unit, the  
14 Commissioner must ensure, so far as it is practicable for the  
15 Commissioner to do so, that the staffing of the unit is adequate to  
16 enable the unit to perform its functions under this Part effectively.

17 **40RE Head of unit**

- 18 (1) The Commissioner may appoint an AFP appointee, in writing, to  
19 be the head of the unit constituted under section 40RD.
- 20 (2) The head of the unit is responsible for the performance by the unit  
21 of its functions.
- 22 (3) The head of the unit is responsible under subsection (2) directly to:  
23 (a) the Commissioner; or  
24 (b) if the Commissioner so directs—the Deputy Commissioner  
25 specified in the direction.

26 **40RF Assignment of members, and special members, to unit**

- 27 (1) The Commissioner may, in writing, assign a member, or special  
28 member, of the Australian Federal Police to the unit constituted  
29 under section 40RD.
- 30 (2) The assignment must:  
31 (a) be in writing; and

- 1 (b) specify the period during which the member, or special  
2 member, is to serve in the unit.
- 3 (3) The period specified under paragraph (2)(b) must not exceed 2  
4 years.
- 5 (4) If the Commissioner is satisfied that there are special reasons for  
6 doing so, the Commissioner may vary, or further vary, the  
7 assignment under subsection (1) by substituting for the period  
8 specified in the assignment a shorter or longer period.
- 9 (5) The period substituted under subsection (4) may exceed 2 years.
- 10 (6) As soon as practicable after the member, or special member, has  
11 served in the unit for the period specified in the assignment, the  
12 Commissioner must arrange for the member, or special member, to  
13 cease serving in the unit.
- 14 (7) If:
- 15 (a) a member, or special member, of the Australian Federal  
16 Police is assigned to the unit constituted under section 40RD;  
17 and
- 18 (b) the member, or special member, ceases to serve in the unit;  
19 and
- 20 (c) the period of 12 months from the time when the member, or  
21 special member, ceased to serve in the unit ends;
- 22 the member, or special member, may again be assigned to the unit.

23 **40RG Member or special member in unit may be directed to**  
24 **perform other duties**

25 The Commissioner may direct a member, or special member, of the  
26 Australian Federal Police serving in the unit constituted under  
27 section 40RD to perform duties that are not related to the unit's  
28 functions but only if those duties do not unduly interfere with the  
29 performance by the unit of its functions.

30 **Subdivision D—AFP conduct issues and AFP practices issues**

31 **40RH AFP conduct issues**

- 32 (1) For the purposes of this Act, an *AFP conduct issue* is an issue of  
33 whether an AFP appointee has:

- 1 (a) engaged in conduct that contravenes the AFP professional  
2 standards; or  
3 (b) engaged in corrupt conduct.
- 4 (2) Subsection (1) applies even if:  
5 (a) the AFP appointee who engaged in the conduct has ceased to  
6 be an AFP appointee; or  
7 (b) the conduct:  
8 (i) was engaged in while the AFP appointee was not on  
9 duty; or  
10 (ii) is conduct of a private character; or  
11 (iii) was engaged in before the AFP appointee became an  
12 AFP appointee; or  
13 (c) the conduct that was engaged in by the AFP appointee also  
14 involves or implicates someone who is not an AFP  
15 appointee; or  
16 (d) the period for bringing a prosecution for an offence, or other  
17 proceedings, in relation to the conduct has ended; or  
18 (e) the conduct was engaged in before the commencement of this  
19 section.
- 20 (3) Subsection (1) applies whether the conduct was engaged in within,  
21 or outside, Australia.
- 22 (4) To avoid doubt, information may raise an **AFP conduct issue** even  
23 if the identity of the AFP appointee who engaged in the conduct is  
24 unknown, is uncertain or is not disclosed in the information.
- 25 (5) This section has effect subject to section 40RJ.
- 26 (6) A reference in this section to **engaging in conduct** includes a  
27 reference to failing, or refusing, to engage in conduct.

28 **40RI AFP practices issues**

- 29 (1) For the purposes of this Act, an **AFP practices issue** is an issue  
30 about the practices or procedures of the Australian Federal Police  
31 (whether those practices or procedures are carried out within, or  
32 outside, Australia).

- 
- 1 (2) Without limiting subsection (1), an *AFP practices issue* includes  
2 an issue of whether a practice or procedure of the Australian  
3 Federal Police is or has been:  
4 (a) contrary to law; or  
5 (b) unreasonable, unjust, oppressive or improperly  
6 discriminatory; or  
7 (c) inadequate; or  
8 (d) otherwise wrong or inappropriate.
- 9 (3) For the purposes of this Act, the *practices or procedures* of the  
10 Australian Federal Police include:  
11 (a) the rules, orders and instructions (including the  
12 Commissioner's Orders) in accordance with which AFP  
13 appointees are required to perform their duties; and  
14 (b) the policies adopted or followed by the Australian Federal  
15 Police; and  
16 (c) the practices and procedures ordinarily followed by AFP  
17 appointees in the performance of their duties.
- 18 (4) This section has effect subject to section 40RJ.

19 **40RJ Exclusion of certain employment action**

- 20 (1) For the purposes of this Act, an *AFP conduct issue* does not  
21 include an issue that relates to conduct of a person that is conduct  
22 that:  
23 (a) consists of action taken in relation to an AFP appointee's  
24 employment; and  
25 (b) involves neither:  
26 (i) a contravention by the person of the AFP professional  
27 standards; nor  
28 (ii) corrupt conduct by the person.
- 29 (2) For the purposes of this Act, an *AFP practices issue* does not  
30 include an issue that relates a practice or procedure of the  
31 Australian Federal Police that is a practice or procedure that:  
32 (a) relates to action taken in relation to AFP appointees'  
33 employment; and  
34 (b) involves neither:  
35 (i) contraventions the AFP professional standards; nor

- 1 (ii) corrupt conduct by AFP appointees.
- 2 (3) Without limiting subsections (1) and (2), action taken in relation to
- 3 an AFP appointee's employment includes action taken in relation
- 4 to:
- 5 (a) the appointment of the AFP appointee; or
- 6 (b) the terms and conditions of employment of the AFP
- 7 appointee; or
- 8 (c) the promotion of the AFP appointee; or
- 9 (d) the termination of the AFP appointee's appointment; or
- 10 (e) the management of performance that does not meet AFP
- 11 professional standards; or
- 12 (f) the payment of remuneration to the AFP appointee.

13 **Subdivision E—Categories of AFP conduct issues and**

14 **managers**

15 **40RK Categories of conduct**

- 16 (1) There are 4 categories of conduct for the purposes of this Act.
- 17 (2) The lowest, and least serious, is category 1.
- 18 (3) The next highest, and next most serious, is category 2.
- 19 (4) The next highest, and next most serious, is category 3.
- 20 (5) The highest, and most serious, is conduct giving rise to a
- 21 corruption issue.
- 22 (6) If conduct would otherwise belong to more than one category, it is
- 23 taken to belong to the higher or highest of those categories.
- 24 (7) The category to which conduct belongs may change as more
- 25 information is obtained in relation to the conduct.

26 **40RL Categories of AFP conduct issues**

- 27 (1) A *category 1 conduct issue* is an issue of whether an AFP
- 28 appointee has engaged in category 1 conduct.
- 29 (2) A *category 2 conduct issue* is an issue of whether an AFP
- 30 appointee has engaged in category 2 conduct.



- 1 (3) A *category 3 conduct issue* is an issue of whether an AFP  
2 appointee has engaged in category 3 conduct.

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

- 6 (1) Subject to sections 40RN, 40RO and 40RP, the Commissioner and  
7 the Ombudsman may jointly determine, by legislative instrument:  
8 (a) the kind of conduct that is to be category 1 conduct for the  
9 purposes of this Act; and  
10 (b) the kind of conduct that is to be category 2 conduct for the  
11 purposes of this Act; and  
12 (c) the kind of conduct that is to be category 3 conduct for the  
13 purposes of this Act.
- 14 (2) If there is no determination under subsection (1) that applies to  
15 particular conduct, the conduct is to be taken to be category 3  
16 conduct for the purposes of this Act.

17 **40RN Category 1 conduct**

- 18 The Commissioner and the Ombudsman may determine under  
19 subsection 40RM(1) that conduct of a particular kind is to be  
20 category 1 conduct for the purposes of this Act only if they are  
21 satisfied that:  
22 (a) conduct of that kind is inappropriate conduct that:  
23 (i) relates to minor management matters or customer  
24 service matters; or  
25 (ii) reveals a need for improvement in the performance of  
26 the AFP appointee concerned; and  
27 (b) conduct of that kind does not warrant being treated as  
28 category 2 or category 3 conduct for the purposes of this Act.

29 **40RO Category 2 conduct**

- 30 The Commissioner and the Ombudsman may determine under  
31 subsection 40RM(1) that conduct of a particular kind is to be  
32 category 2 conduct for the purposes of this Act only if they are  
33 satisfied that:  
34 (a) conduct of that kind is:

- 1 (i) minor misconduct by an AFP appointee; or  
2 (ii) inappropriate conduct that reveals unsatisfactory  
3 behaviour by an AFP appointee; and  
4 (b) conduct of that kind:  
5 (i) would otherwise be category 1 conduct; and  
6 (ii) warrants, because of its repeated nature, being treated as  
7 category 2 conduct for the purposes of this Act; and  
8 (c) conduct of that kind does not warrant being treated as  
9 category 3 conduct for the purposes of this Act.

10 **40RP Category 3 conduct**

- 11 (1) The Commissioner and the Ombudsman may determine under  
12 subsection 40RM(1) that conduct of a particular kind is to be  
13 category 3 conduct for the purposes of this Act only if they are  
14 satisfied that:  
15 (a) conduct of that kind:  
16 (i) is serious misconduct by an AFP appointee; or  
17 (ii) raises the question whether termination action should be  
18 taken in relation to an AFP appointee; or  
19 (iii) involves a breach of the criminal law, or serious neglect  
20 of duty, by an AFP appointee; and  
21 (b) conduct of that kind does not raise a corruption issue.  
22 (2) Subparagraphs (1)(a)(ii) and (iii) do not limit  
23 subparagraph (1)(a)(i).

24 **40RQ Managers for particular categories of AFP conduct issues**

- 25 The Commissioner may issue Commissioner's orders under  
26 section 38:  
27 (a) authorising particular kinds of AFP appointees to act as  
28 managers for category 1 conduct issues; or  
29 (b) authorising particular kinds of AFP appointees to act as  
30 managers for category 2 conduct issues.

---

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

3 **40SA Giving information that raises an AFP conduct or practices**  
4 **issue**

5 (1) A person may give information that raises an AFP conduct or  
6 practices issue to:

- 7 (a) the Commissioner; or  
8 (b) an AFP appointee.

9 (2) The person:

- 10 (a) may give the information orally or in writing; and  
11 (b) may give the information anonymously.

12 (3) For the purposes of this Act, the person is a *complainant* in  
13 relation to the AFP conduct or practices issue, if:

- 14 (a) the person expressly indicates; or  
15 (b) the manner in which the person gives the information  
16 necessarily implies;

17 that he or she wishes to be kept informed of the action taken in  
18 relation to the issue.

19 (4) If the person gives the information orally, the Commissioner, the  
20 AFP appointee to whom the information is given or the AFP  
21 appointee or other person to whom the issue is allocated:

- 22 (a) may reduce the information to writing; and  
23 (b) may, at any time, require the person giving the information to  
24 reduce the information to writing; and  
25 (c) may, if he or she makes a requirement under paragraph (b),  
26 decline to take any further action in relation to the  
27 information until the person giving the information reduces  
28 the information to writing.

29 (5) If the Ombudsman decides to refer information under subsection  
30 6(21) of the *Ombudsman Act 1976*, the person who gave the  
31 information to the Ombudsman is taken to have given the  
32 Commissioner information that raises an AFP conduct or practices  
33 issue under this section.

34 (6) A person's right to give information under this section:

- 1 (a) is in addition to the provisions of any other law; and
- 2 (b) does not affect the operation of any other law; and
- 3 (c) without limiting the generality of paragraphs (a) and (b), does
- 4 not:
- 5 (i) prevent or affect the taking of legal proceedings under
- 6 some other law in respect of conduct engaged in by an
- 7 AFP appointee; or
- 8 (ii) affect the operation of any other law in respect of legal
- 9 proceedings so taken.

10 **40SB Arrangements for person in custody to give information**

- 11 (1) This section applies if a person (the *detainee*) is being detained in
- 12 custody.
- 13 (2) For the purposes of this section, a *custodian* is:
- 14 (a) the person in whose custody the detainee is being detained;
- 15 or
- 16 (b) another person performing duties in connection with the
- 17 detainee's detention.
- 18 (3) The detainee may request a custodian to provide the detainee with:
- 19 (a) facilities for preparing written information to give the
- 20 Commissioner under section 40SA; and
- 21 (b) facilities for giving further information to:
- 22 (i) the Commissioner; or
- 23 (ii) the person to whom the relevant AFP conduct or
- 24 practices issue is allocated; and
- 25 (c) facilities for enclosing the complaint or the further
- 26 information in a sealed envelope.
- 27 (4) If the detainee requests facilities under subsection (3), the detainee
- 28 is entitled to be provided with those facilities.
- 29 (5) The detainee may request a custodian to have sent to the
- 30 Commissioner (or the person to whom the relevant AFP conduct or
- 31 practices issue is allocated) a sealed envelope that is:
- 32 (a) delivered by the detainee to the custodian; and
- 33 (b) addressed to the Commissioner (or the person to whom the
- 34 issue is allocated).

- 1 (6) If the detainee makes a request under subsection (5), the detainee is  
2 entitled to have the envelope delivered to the Commissioner (or the  
3 person to whom the relevant AFP conduct or practices issue is  
4 allocated) without undue delay.
- 5 (7) The detainee is entitled to have delivered to the detainee, without  
6 undue delay, any sealed envelope that:  
7 (a) is addressed to the detainee and sent by the Commissioner (or  
8 the person to whom the relevant AFP conduct or practices  
9 issue is allocated); and  
10 (b) comes into the possession, or under the control, of a  
11 custodian.
- 12 (8) A custodian is not entitled to open, or inspect any document  
13 enclosed in, a sealed envelope that:  
14 (a) either:  
15 (i) is addressed to the Commissioner (or the person to  
16 whom the relevant AFP conduct or practices issue is  
17 allocated) and delivered by the detainee to a custodian  
18 for sending to the Commissioner; or  
19 (ii) is addressed to the detainee and sent by the  
20 Commissioner (or the person to whom the relevant AFP  
21 conduct or practices issue is allocated); and  
22 (b) comes into the possession, or under the control, of a  
23 custodian.
- 24 (9) For the purposes of this section, the Commissioner may make  
25 arrangements with the appropriate authority of a State or a  
26 Territory for the identification and delivery of sealed envelopes  
27 sent by the Commissioner (or the person to whom the relevant AFP  
28 conduct or practices issue is allocated) to persons detained in  
29 custody in that State or Territory.

30 **40SC Recording and dealing with information given under**  
31 **section 40SA**

- 32 (1) If a person gives information to another person (the *recipient*)  
33 under section 40SA, the recipient must:  
34 (a) record the details of the information; and

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(b) deal with the information in accordance with the Commissioner's orders issued for the purposes of subsection 40TA(1).

(2) Subsection (1) does not apply if:

(a) the issue to which the information relates is:

- (i) a category 1 conduct issue; or
- (ii) an AFP practices issue; and

(b) the recipient is satisfied that the issue:

- (i) arises as a result of a misunderstanding of the facts, the law or the practices or procedures of the Australian Federal Police; or
- (ii) is otherwise appropriate for informal resolution; and

(c) the recipient is satisfied that:

- (i) giving an explanation to the person giving the information; or
- (ii) taking other action;

is likely to resolve the issue; and

(d) the recipient is satisfied that the recipient is able to give the person giving the information that explanation, or arrange for that action to be taken, within a reasonable period.

(3) If the issue is not resolved within a reasonable period, the recipient must:

(a) record the details of the information; and

(b) deal with the information in accordance with the Commissioner's orders issued for the purposes of subsection 40TA(1).

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

The Commissioner may decide, on his or her own initiative, that an AFP conduct issue is to be dealt with under this Part.

1 **40SE Recording and dealing with information referred under**  
2 **section 40SD**

3 If the Commissioner decides under section 40SD that an AFP  
4 conduct issue is to be dealt with under this Part, the Commissioner  
5 must:

- 6 (a) record the details of the information; and  
7 (b) deal with the issue in accordance with the Commissioner's  
8 orders issued for the purposes of subsection 40TA(1).

9 **Division 3—Dealing with AFP conduct or practices issues**

10 **Subdivision A—Preliminary**

11 **40TA Commissioner's orders about how AFP conduct or practices**  
12 **issues are dealt with**

- 13 (1) The Commissioner may issue Commissioner's orders under  
14 section 38 in relation to how:  
15 (a) AFP conduct or practices issues; and  
16 (b) information about AFP conduct or practices issues;  
17 are to be dealt with by AFP appointees under this Part.
- 18 (2) Without limiting subsection (1), the Commissioner must, so far as  
19 practicable, ensure that the complainant (if any) in relation to an  
20 AFP conduct issue:  
21 (a) is kept informed, as frequently as is reasonable, and to the  
22 extent that is reasonable, in the circumstances, of progress in  
23 dealing with:  
24 (i) the AFP conduct issue; and  
25 (ii) any AFP practices issue that the person to whom the  
26 issue is allocated identifies in the course of dealing with  
27 the AFP conduct issue; and  
28 (b) is advised of any action taken in relation to an issue referred  
29 to in paragraph (a).
- 30 (3) Without limiting subsection (1), the Commissioner must, so far as  
31 practicable, ensure that the complainant (if any) in relation to an  
32 AFP practices issue:

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- 1 (a) is kept informed, as frequently as is reasonable, and to the  
2 extent that is reasonable, in the circumstances, of progress in  
3 dealing with the AFP practices issue; and  
4 (b) is advised of any action taken in relation to the AFP practices  
5 issue.

6 **40TB Dealing with related AFP conduct issues that have different**  
7 **categories**

- 8 If:
- 9 (a) a number of AFP conduct issues relate to the same AFP  
10 appointee; and  
11 (b) those AFP conduct issues belong to different categories;  
12 those AFP conduct issues may be dealt with together as if they all  
13 belonged to the higher or highest of those categories.

14 **40TC Training and development action**

- 15 (1) For the purposes of this Act, *training and development action* in  
16 relation to an AFP appointee is action taken to improve the  
17 appointee's performance through training and development.
- 18 (2) Without limiting subsection (1), *training and development action*  
19 in relation to the AFP appointee may take one or more of the  
20 following forms:
- 21 (a) coaching the AFP appointee or making arrangements for the  
22 AFP appointee to be coached;  
23 (b) mentoring the AFP appointee or making arrangements for the  
24 AFP appointee to be mentored;  
25 (c) making arrangements for the AFP appointee to undertake  
26 training activities;  
27 (d) making arrangements for the AFP appointee to undertake  
28 development activities;  
29 (e) increasing, or making arrangements for increasing, the level  
30 of supervision of the AFP appointee's work.

31 **40TD Remedial action**

- 32 (1) For the purposes of this Act, *remedial action* in relation to an AFP  
33 appointee is action taken to remedy unsatisfactory performance by  
34 the AFP appointee.



- 1 (2) Without limiting subsection (1), **remedial action** in relation to the  
 2 AFP appointee may include one or more of the following:  
 3 (a) action taken to improve the AFP appointee's behaviour;  
 4 (b) structured changes to the AFP appointee's employment;  
 5 (c) the recording of adverse findings against the AFP appointee  
 6 (whether for a particular period or permanently).
- 7 (3) Without limiting paragraph (2)(a), **remedial action** in relation to  
 8 the AFP appointee may take one or more of the following forms:  
 9 (a) counselling the AFP appointee or arranging for the AFP  
 10 appointee to be counselled;  
 11 (b) reprimanding the AFP appointee;  
 12 (c) giving the AFP appointee a formal warning;  
 13 (d) requiring the AFP appointee to adopt particular improvement  
 14 strategies.
- 15 (4) Without limiting paragraph (2)(b), **remedial action** in relation to  
 16 the AFP appointee may take one or more of the following forms:  
 17 (a) changing the AFP appointee's shifts or arranging for or  
 18 recommending such a change;  
 19 (b) restricting the AFP appointee's duties or arranging for or  
 20 recommending such a restriction;  
 21 (c) reassigning the AFP appointee to other duties or arranging  
 22 for or recommending such a reassignment;  
 23 (d) transferring the AFP appointee to another part of the  
 24 Australian Federal Police or arranging for or recommending  
 25 such a transfer.

#### 26 **40TE Termination action**

27 The following table sets out the action that is **termination action** in  
 28 relation to each kind of AFP appointee for the purposes of this Act:  
 29

<b>Termination action</b>		
<b>Item</b>	<b>For this kind of AFP appointee ...</b>	<b>termination action is ...</b>
1	a Deputy Commissioner	the Governor-General terminating the Deputy Commissioner's appointment

<b>Termination action</b>		
<b>Item</b>	<b>For this kind of AFP appointee ...</b>	<b>termination action is ...</b>
2	an AFP employee	the Commissioner terminating the AFP employee's employment under section 28
3	a special member	the Commissioner terminating the special member's appointment as a special member of the Australian Federal Police
4	a special protective service officer	the Commissioner terminating the special protective service officer's appointment as a special protective service officer of the Australian Federal Police
5	a person engaged overseas under section 69A to perform duties overseas as an employee of the Australian Federal Police	the Commissioner terminating the person's engagement
6	a person (the <i>consultant/contractor</i> ) who is engaged under section 35 as a consultant, or independent contractor, to perform services for the Australian Federal Police	the Commissioner: (a) terminating the consultant/contractor's engagement; or (b) arranging for a person to cease to perform services for the Australian Federal Police on behalf of the consultant/contractor
7	a person assisting the Australian Federal Police in the performance of its functions under an agreement under section 69D	the Commissioner arranging for the person to cease to assist the Australian Federal Police in the performance of its functions

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

3 **40TF Discretion to take no further action in relation to AFP conduct**  
4 **or practices issue**

5 (1) This section applies if:

6 (a) a person gives information under section 40SA that raises:

7 (i) an AFP conduct issue in relation to conduct engaged in  
8 by an AFP appointee; or

9 (ii) an AFP practices issue in relation to a practice or  
10 procedure of the AFP; or

11 (b) the Commissioner decides under section 40SD that an AFP  
12 conduct issue in relation to an AFP appointee is to be dealt  
13 with under this Part.

14 (2) The Commissioner may determine that no further action is to be  
15 taken under this Part in relation to the issue if the Commissioner is  
16 satisfied that:

17 (a) the person became aware of the conduct, or the practice or  
18 procedure, more than 12 months before the person gave the  
19 information under section 40SA; or

20 (b) appropriate action has already been taken:

21 (i) against the AFP appointee in relation to the conduct; or

22 (ii) in relation to the practice or procedure; or

23 (c) the person giving the information has exercised a right to  
24 have the conduct, or the practice or procedure, reviewed by a  
25 court or tribunal constituted by or under a law and there is no  
26 special reason to take further action in relation to the conduct  
27 or the practice or procedure; or

28 (d) the person giving the information has a right to have the  
29 conduct, or the practice or procedure, reviewed by a court or  
30 tribunal constituted by or under a law but has not exercised  
31 that right and, having regard to all the circumstances, it  
32 would be reasonable for the person to have exercised that  
33 right; or

34 (e) the giving of the information is frivolous or vexatious; or

35 (f) the information is trivial; or

36 (g) the person giving the information did not give the  
37 information in good faith; or

- 1 (h) the person giving the information does not have a sufficient  
2 interest in the AFP conduct issue or the AFP practices issue;  
3 or  
4 (i) the conduct:  
5 (i) occurred when the AFP appointee was not on duty; or  
6 (ii) was private conduct of the AFP appointee;  
7 and was lawful and reasonable in the circumstances; or  
8 (j) the person giving the information is an AFP appointee, or has  
9 been an AFP appointee, and the information relates to action  
10 taken in relation to that AFP appointee as a result of  
11 information that was given and dealt with under this Part; or  
12 (k) the investigation, or further investigation, of the issue is not  
13 warranted having regard to all the circumstances; or  
14 (l) any other condition specified in the regulations for the  
15 purposes of this paragraph is satisfied.

16 **Subdivision C—Dealing with category 1 and category 2 conduct**  
17 **issues**

18 **40TG When Subdivision applies**

- 19 (1) This Subdivision applies if:  
20 (a) information that is given under section 40SA raises an AFP  
21 conduct issue in relation to an AFP appointee; and  
22 (b) the issue is a category 1 or category 2 conduct issue; and  
23 (c) the issue is allocated to an AFP appointee (the *manager*).
- 24 (2) This Subdivision also applies if:  
25 (a) the Commissioner decides under section 40SD that an AFP  
26 conduct issue in relation to an AFP appointee is to be dealt  
27 with under this Part; and  
28 (b) the issue is a category 1 or category 2 conduct issue; and  
29 (c) the issue is allocated to an AFP appointee (the *manager*).

30 **40TH How issue is dealt with**

- 31 (1) In dealing with the AFP conduct issue, the manager must:  
32 (a) ensure that:  
33 (i) the AFP appointee; and  
34 (ii) the complainant (if any);



1 take training and development action in relation to the AFP  
2 appointee.

3 Note: For *training and development action*, see section 40TC.

4 **40TJ Action that may be taken in relation to category 2 conduct**

5 If the manager is satisfied, on reasonable grounds, that the AFP  
6 appointee has engaged in category 2 conduct, the manager may do  
7 either or both of the following:

- 8 (a) take remedial action in relation to the AFP appointee;  
9 (b) take training and development action in relation to the AFP  
10 appointee.

11 Note 1: For *remedial action*, see section 40TD.

12 Note 2: For *training and development action*, see section 40TC.

13 **40TK AFP practices issue identified in course of dealing with AFP**  
14 **conduct issue**

15 (1) This section applies if the manager is satisfied that the information:  
16 (a) given under section 40SA in relation to the AFP conduct  
17 issue; or

18 (b) obtained in the course of dealing with the AFP conduct issue;  
19 raises an AFP practices issue.

20 (2) The manager must bring the AFP practices issue to the attention of  
21 an appropriate AFP appointee.

22 (3) The manager may make such recommendations as the manager  
23 considers appropriate to address the AFP practices issue.

24 **Subdivision D—Dealing with category 3 conduct issues and**  
25 **corruption issues**

26 **40TL When Subdivision applies**

27 (1) This Subdivision applies if:

- 28 (a) information that is given under section 40SA raises an AFP  
29 conduct issue in relation to an AFP appointee; and  
30 (b) the issue is a category 3 conduct issue.

31 (2) This Subdivision also applies if:

- 
- 1 (a) the Commissioner decides under section 40SD that an AFP  
2 conduct issue in relation to an AFP appointee is to be dealt  
3 with under this Part; and  
4 (b) the issue is a category 3 conduct issue.
- 5 (3) This Subdivision also applies if:  
6 (a) the Commissioner notifies the Integrity Commissioner of a  
7 corruption issue under section 19 of the *Law Enforcement*  
8 *Integrity Commissioner Act 2006* and the Australian Federal  
9 Police investigates the issue under subsection 22(1) of that  
10 Act; or  
11 (b) a corruption issue relates to the conduct of an AFP appointee  
12 and the Integrity Commissioner refers the issue to the  
13 Australian Federal Police under Division 2 of Part 4 of that  
14 Act.
- 15 (4) This Subdivision also applies if the Ombudsman arranges with the  
16 Commissioner under section 8D of the *Ombudsman Act 1976* for a  
17 category 3 conduct issue to be dealt with jointly by the  
18 Ombudsman and the Australian Federal Police.

19 **40TM Head of unit constituted under section 40RD to notify**  
20 **Ombudsman of category 3 conduct issues**

- 21 (1) The head of the unit constituted under section 40RD must notify  
22 the Ombudsman of the issue if the issue is a category 3 conduct  
23 issue.
- 24 (2) Subsection (1) does not apply if this Subdivision applies to the  
25 issue because of subsection 40TL(4) (Ombudsman arranging for  
26 issue to be dealt with jointly by Ombudsman and Australian  
27 Federal Police).

28 **40TN Head of unit constituted under section 40RD generally**  
29 **allocates issues for investigation**

- 30 (1) Subject to section 40TO, the head of the unit constituted under  
31 section 40RD must allocate the issue to a person who is a member  
32 or special member for investigation.
- 33 (2) Without limiting subsection (1), the head of the unit may allocate  
34 the issue to himself or herself.

1 (3) The head of the unit may allocate the issue to a person who is not a  
2 member of the unit only with the Commissioner's agreement.

3 **40TO Commissioner must allocate issue to someone outside unit**  
4 **constituted under section 40RD in certain circumstances**

- 5 (1) This section applies if:  
6 (a) the issue relates to the conduct of a person who is a member  
7 of the unit constituted under section 40RD; or  
8 (b) the issue does not relate to the conduct of a person who is a  
9 member of the unit but the Commissioner is satisfied that it  
10 would be inappropriate, for any reason, for the issue to be  
11 allocated to a person who is a member of that unit for  
12 investigation.
- 13 (2) The Commissioner must allocate the issue to a person for  
14 investigation.
- 15 (3) The person to whom the issue is allocated must not be a member of  
16 the unit constituted under section 40RD.
- 17 (4) A corruption issue must not be allocated to the Ombudsman.
- 18 (5) Without limiting subsection (2), the Commissioner may, with the  
19 agreement of the Ombudsman, allocate the issue to the  
20 Ombudsman if the issue is a category 3 conduct issue.
- 21 (6) If:  
22 (a) the issue is a category 3 conduct issue; and  
23 (b) the Commissioner allocates the issue under subsection (2) to  
24 someone other than the Ombudsman;  
25 the Commissioner must consult with the Ombudsman about the  
26 choice of the person to whom the issue is to be allocated.
- 27 (7) If the issue is a corruption issue, the Commissioner must consult  
28 with the Integrity Commissioner about the choice of the person to  
29 whom the issue is to be allocated.



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1 **40TP Persons eligible to have category 3 conduct issue or corruption**  
2 **issue allocated to them**

3 The issue may be allocated to a person under section 40TN or  
4 40TO only if the person has appropriate qualifications or  
5 experience to conduct the investigation of the issue.

6 **40TQ How category 3 conduct issue or corruption issue is dealt with**

7 (1) This section applies if the issue is allocated to a person under  
8 section 40TN or 40TO.

9 (2) In investigating the issue, the investigator must:

10 (a) ensure that:

11 (i) the AFP appointee; and

12 (ii) the complainant (if any);

13 have, subject to the requirements of the investigation, an  
14 adequate opportunity to be heard in relation to the issue; and

15 (b) consider whether the information:

16 (i) given under section 40SA in relation to the issue; or

17 (ii) obtained in the course of dealing with the issue;

18 raises an AFP practices issue.

19 **40TR Recommendations that may be made in relation to category 3**  
20 **conduct or corrupt conduct**

21 (1) If the investigator is satisfied, on reasonable grounds, that the AFP  
22 appointee has engaged in category 3 conduct or corrupt conduct,  
23 the investigator may recommend that any one or more of the  
24 following be taken in relation to the AFP appointee:

25 (a) termination action;

26 (b) remedial action;

27 (c) training and development action;

28 (d) any other action that the Commissioner can take in relation to  
29 the AFP appointee.

30 Note 1: For *termination action*, see section 40TE.

31 Note 2: For *remedial action*, see section 40TD.

32 Note 3: For *training and development action*, see section 40TC.

33 Note 4: If evidence emerges, at any stage of the investigation, that the AFP  
34 appointee may have committed an offence, the investigator could also

- 1 arrange for the AFP appointee to be charged with the offence. This  
2 might be done even before the investigation of the issue is completed.  
3 The AFP appointee might be charged with the offence even if the  
4 investigator does not recommend that termination, remedial or  
5 training and development action to be taken in relation to the AFP  
6 appointee.
- 7 (2) To avoid doubt, the Commissioner may take termination action in  
8 relation to an AFP employee whether or not a recommendation has  
9 been made by an investigator that termination action be taken in  
10 relation to the employee.

#### 11 **40TS Investigative powers**

- 12 (1) If the investigator is not the Ombudsman, the investigator has, in  
13 relation to the investigation of the issue, the powers provided for in  
14 Division 5.
- 15 (2) To avoid doubt, subsection (1) applies even if the investigator is  
16 investigating the issue jointly with the Ombudsman.
- 17 (3) If the investigator is the Ombudsman, the Ombudsman has, in  
18 relation to the investigation of the issue, the same powers that the  
19 Ombudsman has under the *Ombudsman Act 1976* in relation to the  
20 investigation of a complaint made under that Act.

#### 21 **40TU Report of investigation**

- 22 (1) On completion of the investigation of the issue, the investigator  
23 must:
- 24 (a) prepare a written report of the results of the investigation;  
25 and
- 26 (b) give the report to:
- 27 (i) the head of the unit constituted under section 40RD if  
28 the issue was allocated to the investigator under  
29 section 40TN; or
- 30 (ii) the Commissioner if the issue was allocated to the  
31 investigator under section 40TO.
- 32 (2) Subsection (1) does not apply if:
- 33 (a) the issue is investigated jointly with the Ombudsman; and  
34 (b) the arrangement under which the joint investigation is  
35 conducted specifies that the Ombudsman is to lead the  
36 investigation.

- 1 (3) Without limiting subsection (1), the report prepared under that  
2 subsection must include any recommendations that the investigator  
3 makes under section 40TR.

4 Note: See also section 40TW.

5 **40TV Taking action on report**

6 The Commissioner must ensure that:

- 7 (a) any recommendations made in the report under section 40TU  
8 are fully considered; and  
9 (b) appropriate action is taken in relation to the issue to which  
10 the report relates.

11 **40TW AFP practices issue identified in course of dealing with AFP**  
12 **conduct issue**

13 (1) This section applies if:

- 14 (a) the investigator is satisfied that the information:  
15 (i) given under section 40SA in relation to the issue; or  
16 (ii) obtained in the course of dealing with the issue;  
17 raises an AFP practices issue; and  
18 (b) the investigator prepares a report under section 40TU in  
19 relation to the investigation.

20 (2) The investigator:

- 21 (a) must identify the AFP practices issue in the report; and  
22 (b) may include in the report such recommendations as the  
23 investigator considers appropriate to address the AFP  
24 practices issue.

25 **Subdivision E—Dealing with AFP practices issues**

26 **40TX Commissioner to ensure that appropriate action is taken in**  
27 **relation to AFP practices issue**

28 (1) This section applies if:

- 29 (a) a person gives information under section 40SA that raises an  
30 AFP practices issue; or  
31 (b) an AFP practices issue is:

- 1 (i) brought, under section 40TK, to the attention of an AFP  
2 appointee; or  
3 (ii) identified, under section 40TW, in a report prepared  
4 under section 40TU;  
5 as a result of an AFP conduct issue being dealt with under  
6 this Part.
- 7 (2) The Commissioner must ensure that appropriate action is taken to  
8 have the issue dealt with.

9 **Division 4—Ministerially directed inquiries**

10 **40UA Minister may arrange special inquiries**

- 11 (1) The Minister may, if he or she thinks it appropriate to do so,  
12 arrange for an inquiry to be held, by such person or persons, and in  
13 such manner, as he or she determines, concerning:  
14 (a) any conduct engaged in by an AFP appointee; or  
15 (b) any matter relating to the practices or procedures of the  
16 Australian Federal Police; or  
17 (c) any other matter relating to the Australian Federal Police.
- 18 (2) Subsection (1) applies even if:  
19 (a) the conduct referred to in paragraph (1)(a) is:  
20 (i) being dealt with under Division 3; or  
21 (ii) the subject of a complaint made to the Ombudsman; or  
22 (b) the matter referred to in paragraph (1)(b) is:  
23 (i) a practice or procedure that is being dealt with under  
24 Division 3; or  
25 (ii) the subject of a complaint made to the Ombudsman.

26 **40UB Minister to inform certain persons and bodies of inquiry**

- 27 (1) If the Minister arranges under section 40UA for an inquiry to be  
28 held into any conduct or other matter, the Minister must inform the  
29 following of the inquiry:  
30 (a) the Ombudsman;  
31 (b) the Integrity Commissioner;  
32 (c) such other persons or bodies as the Minister considers  
33 appropriate.

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- 1 (2) The Minister must inform those people, and those bodies, of:  
2 (a) the fact that the inquiry will be held; and  
3 (b) the conduct or matter into which the inquiry is to be held; and  
4 (c) the person or persons who are to conduct the inquiry; and  
5 (d) the manner in which the inquiry will be held.

6 **40UC Division 3 investigation may be suspended pending outcome**  
7 **of inquiry**

- 8 (1) This section applies if:  
9 (a) the Minister arranges under section 40UA for an inquiry to  
10 be held into conduct or a matter; and  
11 (b) the conduct or matter is being dealt with, or is about to be  
12 dealt with, under Division 3.
- 13 (2) The Commissioner may suspend further action in relation to the  
14 conduct or matter under Division 3 until the inquiry has been  
15 completed.
- 16 (3) If the Commissioner:  
17 (a) receives a report in relation to the inquiry; and  
18 (b) is satisfied, having considered that report, that it is  
19 appropriate to do so;  
20 the Commissioner may terminate the investigation of the conduct  
21 or matter under Division 3.
- 22 (4) If the conduct or matter is being dealt with under Division 3 jointly  
23 by the Ombudsman and the Australian Federal Police, the  
24 Commissioner may take action under subsection (2) or (3) only  
25 after consulting the Ombudsman.

26 **40UD Reports of special inquiries**

- 27 (1) If an inquiry is held in accordance with arrangements made under  
28 section 40UA, the person holding the inquiry:  
29 (a) must report to the Minister the results of the inquiry; and  
30 (b) may make such recommendations (if any) arising out of the  
31 inquiry as the person considers appropriate.
- 32 (2) On receipt of a report of the results of an inquiry held in  
33 accordance with arrangements made under section 40UA, the

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- 1 Minister may cause such action to be taken, arising out of the  
2 Minister's consideration of the report, as he or she thinks fit.
- 3 (3) Without limiting subsection (2), the Minister may do one or more  
4 of the following:
- 5 (a) give a copy of the report to the Commissioner;
  - 6 (b) give a copy of the report to the Ombudsman;
  - 7 (c) give a copy of the report to the Integrity Commissioner;
  - 8 (d) recommend to the Commissioner that the Commissioner  
9 consider directing that training and development action be  
10 taken in relation to an AFP appointee;
  - 11 (e) recommend to the Commissioner that the Commissioner  
12 consider directing that remedial action be taken in relation to  
13 an AFP appointee;
  - 14 (f) recommend to the Commissioner that the Commissioner  
15 consider directing that termination action be taken in relation  
16 to an AFP appointee;
  - 17 (g) recommend that an AFP appointee be charged with a  
18 criminal offence;
  - 19 (h) refer a corruption issue in relation to an AFP appointee to the  
20 Integrity Commissioner.

## 21 **Division 5—Investigative powers**

### 22 **40VA Application of Division**

- 23 (1) This Division applies if a person (the *investigator*):
- 24 (a) is investigating a category 3 conduct issue or a corruption  
25 issue under Division 3; or
  - 26 (b) is conducting an inquiry under Division 4.
- 27 (2) The powers provided for in this Division are in addition to any  
28 other powers the investigator may have.
- 29 Note: For example, if the investigator is a member, or special member, of  
30 the Australian Federal Police and the investigation or inquiry involves  
31 a possible criminal offence against a law of the Commonwealth, the  
32 investigator may have powers in relation to the investigation of  
33 offences against the laws of the Commonwealth.

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**40VB Manner of conducting investigation or inquiry**

- (1) The investigation or inquiry is to be conducted, subject to this Division, in such manner as the investigator thinks fit.
- (2) If the Ombudsman makes an arrangement with the Commissioner under section 8D of the *Ombudsman Act 1976* in relation to the investigation of the issue, the investigator must:
  - (a) investigate the issue jointly with the Ombudsman; and
  - (b) investigate the issue in accordance with the arrangement.
- (3) If:
  - (a) the investigator is investigating a category 3 conduct issue or a corruption issue; and
  - (b) the head of the unit constituted under section 40RD allocated the issue to the investigator;the head of that unit may give the investigator directions as to the manner in which the investigation is to be conducted and the investigator must comply with those directions.
- (4) Subsection (3) has effect subject to subsection (2).
- (5) If:
  - (a) the investigator is investigating a category 3 conduct issue or a corruption issue; and
  - (b) the Commissioner allocated the issue to the investigator;the Commissioner may give the investigator directions as to the manner in which the investigation is to be conducted and the investigator must comply with those directions.
- (6) Subsection (5) has effect subject to subsection (2).
- (7) If the investigator is conducting an inquiry under Division 4, the Minister may give the investigator directions as to the manner in which the investigation is to be conducted and the investigator must comply with those directions.
- (8) A direction given to the investigator under subsection (3), (5) or (7) is not a legislative instrument.

1 **40VC Obtaining information and making inquiries**

2 (1) For the purposes of the investigation or inquiry, the investigator  
3 may obtain information from such persons, and make such  
4 inquiries, as he or she thinks fit.

5 (2) Subsection (1) has effect subject to this Division.

6 **40VD Relationship with other laws**

7 (1) Sections 40VB and 40VC do not authorise an AFP appointee to  
8 contravene, or fail to comply with, a law that would, if those  
9 sections had not been enacted, apply in relation to the investigation  
10 or inquiry.

11 (2) Nothing in subsection (1) affects the operation of any other  
12 provision of this Division.

13 **40VE Directions to AFP appointee**

14 *Investigator may give directions to AFP appointee*

15 (1) The investigator may, for the purposes of the investigation or  
16 inquiry, direct an AFP appointee:

- 17 (a) to give the investigator information (in the manner and form  
18 specified in the direction); or  
19 (b) to produce to the investigator a document, record or thing; or  
20 (c) to answer a question; or  
21 (d) to do anything else that is reasonably necessary for the  
22 purposes of obtaining evidence in relation to the investigation  
23 or inquiry.

24 Note: Failure to comply with the direction is an offence against subsection  
25 40VH(1).

26 (2) A direction under subsection (1) has no effect unless the  
27 investigator:

- 28 (a) states in the direction that the AFP appointee to whom the  
29 direction is given is being expressly directed under that  
30 subsection; and  
31 (b) specifies in the direction the substance of the subject matter  
32 of the investigation or inquiry; and



- 1 (c) if it is practicable to do so—gives the direction in writing;
- 2 and
- 3 (d) if the direction is given in writing—gives the AFP appointee
- 4 a copy of the direction.

5 *Obligation to comply with direction*

- 6 (3) If an AFP appointee is directed under subsection (1) to give
- 7 information, produce a document, record or thing, answer a
- 8 question or do something else for the purposes of obtaining
- 9 evidence, the AFP appointee is not excused from complying with
- 10 the direction:
- 11 (a) on the ground that complying with the direction:
- 12 (i) would be contrary to the public interest; or
- 13 (ii) might make him or her liable to a penalty; or
- 14 (b) on the ground that the information, the production of the
- 15 document, record or thing, the answer to the question or the
- 16 evidence obtained by doing that thing might tend to
- 17 incriminate him or her; or
- 18 (c) on any other ground.

19 *Use to which information etc. may be put*

- 20 (4) The information, the production of the document, record or thing,
- 21 the answer to the question or the evidence obtained by doing that
- 22 thing, is not admissible in evidence against the AFP appointee in
- 23 any civil or criminal proceedings other than:
- 24 (a) proceedings for an offence against subsection 40VH(1); or
- 25 (b) proceedings in relation to termination action taken in relation
- 26 to the AFP appointee; or
- 27 (c) proceedings under the *Safety, Rehabilitation and*
- 28 *Compensation Act 1988*; or
- 29 (d) proceedings in tort that the AFP appointee institutes against
- 30 the Commonwealth.
- 31 (5) Nothing in subsection (4) is taken to affect the admissibility in
- 32 evidence, in any civil or criminal proceedings, of:
- 33 (a) any information given by an AFP appointee to the
- 34 investigator; or
- 35 (b) the production of a document, record or thing by an AFP
- 36 appointee to the investigator; or

- 
- 1 (c) an answer given by an AFP appointee to a question put to  
2 him or her by the investigator; or
- 3 (d) evidence obtained by an AFP appointee doing something for  
4 the purposes of obtaining evidence at the request of the  
5 investigator;
- 6 if the AFP appointee has not been expressly directed, under  
7 subsection (1), to give the information, to produce the document,  
8 record or thing, to answer the question or to do that thing.
- 9 (6) If a document, record or thing is produced to the investigator under  
10 a direction under subsection (1), the investigator may:
- 11 (a) examine the document, record or other thing; and  
12 (b) retain possession of the document, record or other thing for  
13 such period as is necessary for the purposes of the  
14 investigation or inquiry.
- 15 If the investigator retains possession of a document, record or thing  
16 under paragraph (b) during a particular period, the investigator  
17 must allow a person who would be entitled to inspect the  
18 document, record or thing if it was not in the investigator's  
19 possession to inspect the document, record or thing at all  
20 reasonable times.
- 21 (7) If a document or record is produced to the investigator under a  
22 direction under subsection (1), the investigator may take extracts  
23 from, or a copy of, the document or record.
- 24 (8) For all the purposes of this Act, and the regulations in force under  
25 this Act, a direction given by the investigator under subsection (1)  
26 has effect as if it had been given by the Commissioner.
- 27 (9) An AFP appointee is not liable to any penalty (other than a penalty  
28 under this Act) merely because the appointee:
- 29 (a) gives information; or  
30 (b) produces a document, record or thing; or  
31 (c) answers a question; or  
32 (d) does something else;  
33 when directed to do so by the investigator under this section.
- 34 *Direction is not a legislative instrument*
- 35 (10) If a direction given by an investigator under subsection (1) is in  
36 writing, the direction is not a legislative instrument.
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**40VF Entering and searching AFP premises**

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2 (1) For the purposes of the investigation or inquiry, the investigator  
3 may:  
4 (a) enter, at any time, premises occupied by the Australian  
5 Federal Police; and  
6 (b) carry on the investigation or inquiry on those premises; and  
7 (c) search those premises; and  
8 (d) examine any document, record or other thing that is on those  
9 premises and that is relevant to the investigation or inquiry;  
10 and  
11 (e) take extracts from, or a copy of, any document or record that  
12 is on those premises and that is relevant to the investigation  
13 or inquiry; and  
14 (f) retain possession of the document, record or thing for such  
15 period as is necessary for the purposes of the investigation or  
16 inquiry.
- 17 (2) If the investigator retains possession of a document, record or thing  
18 under paragraph (1)(f) during a particular period, the investigator  
19 must allow a person who would be entitled to inspect the  
20 document, record or thing, if it was not in the investigator's  
21 possession, to inspect the document, record or thing at all  
22 reasonable times.
- 23 (3) The document, record or thing referred to in paragraph (1)(d), (e)  
24 or (f) need not be one that is being used by the Australian Federal  
25 Police.
- 26 (4) In this section:  
27 *premises* includes a place, vehicle, vessel and aircraft.

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

30 *Section applies to inquiries*

- 31 (1) This section applies if the investigator is conducting an inquiry  
32 under Division 4.

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*Investigator may give direction*

- (2) For the purposes of the inquiry, the investigator may:
  - (a) direct an AFP appointee to attend before him or her at the time and place specified in the direction and to answer questions relevant to the inquiry when the AFP appointee attends; and
  - (b) administer an oath or affirmation to the AFP appointee; and
  - (c) examine the AFP appointee on oath or affirmation; and
  - (d) 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.

Note: Failure to comply with a direction under paragraph (a), or to be sworn or make an affirmation under paragraph (b), is an offence (see subsection 40VH(1)).

- (3) A direction under subsection (2) has no effect unless the investigator:
  - (a) states in the direction that the AFP appointee to whom the direction is given is being expressly directed under that subsection; and
  - (b) specifies in the direction the substance of the subject matter of the inquiry; and
  - (c) if it is practicable to do so—gives the direction in writing; and
  - (d) if the direction is given in writing—gives the AFP appointee a copy of the direction.

*Obligation to comply with direction*

- (4) If an AFP appointee is directed under subsection (2) to answer a question, the AFP appointee is not excused from complying with the direction:
  - (a) on the ground that answering the question:
    - (i) would be contrary to the public interest; or
    - (ii) might make him or her liable to a penalty; or
  - (b) on the ground that the answer to the question might tend to incriminate him or her; or
  - (c) on any other ground.

1                                    *Use to which answer may be put*

- 2                                    (5) The answer to the question is not admissible in evidence against  
3                                    the AFP appointee in any civil or criminal proceedings other than:  
4                                    (a) proceedings for an offence against subsection 40VH(1); or  
5                                    (b) proceedings in relation to termination action taken in relation  
6                                    to the AFP appointee; or  
7                                    (c) proceedings under the *Safety, Rehabilitation and*  
8                                    *Compensation Act 1988*; or  
9                                    (d) proceedings in tort that the AFP appointee institutes against  
10                                    the Commonwealth.
- 11                                    (6) Nothing in subsection (5) is taken to affect the admissibility in  
12                                    evidence, in any civil or criminal proceedings, of an answer given  
13                                    by an AFP appointee to a question put to him or her by the  
14                                    investigator if the AFP appointee has not been expressly directed,  
15                                    under subsection (2), to answer the question.

16                                    *Direction has same effect as if given by Commissioner*

- 17                                    (7) For all the purposes of this Act, and the regulations in force under  
18                                    this Act, a direction given by the investigator under subsection (2)  
19                                    has effect as if it had been given by the Commissioner.

20                                    *AFP appointee not liable to penalty for answering question*

- 21                                    (8) An AFP appointee is not liable to any penalty (other than a penalty  
22                                    for an offence against subsection 40VH(1)) under the provisions of  
23                                    any other law because the AFP appointee answers a question when  
24                                    directed to do so by the investigator under subsection (2).

25                                    *Direction is not a legislative instrument*

- 26                                    (10) If a direction given by an investigator under subsection (2) is in  
27                                    writing, the direction is not a legislative instrument.

28                                    **40VH Offences**

- 29                                    (1) An AFP appointee commits an offence if the AFP appointee:  
30                                    (a) refuses or fails to comply with a direction given under  
31                                    subsection 40VE(1) or 40VG(2); or  
32                                    (b) refuses or fails to be sworn or make an affirmation, when  
33                                    required to do so under subsection 40VG(2); or

- 
- 1 (c) gives information or makes a statement to the investigator  
2 knowing that it is false or misleading in a material particular.
- 3 Penalty: Imprisonment for 6 months.
- 4 (2) Subsection (1) does not apply if the AFP appointee has a  
5 reasonable excuse.
- 6 Note: A defendant bears an evidential burden in relation to the matter in  
7 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 8 (3) In any proceedings for an offence against subsection (1), the  
9 prosecution bears the onus of proving that:
- 10 (a) the investigator complied with subsection 40VE(2) in  
11 relation to a direction under subsection 40VE(1); or
- 12 (b) the investigator complied with subsection 40VG(3) in  
13 relation to a direction under subsection 40VG(2).

## 14 **Division 6—Record keeping**

### 15 **40WA Record keeping**

- 16 (1) The Commissioner must ensure that adequate records are kept for  
17 the purposes of this Part.
- 18 (2) Without limiting subsection (1), the Commissioner must ensure  
19 that records are kept of:
- 20 (a) information that is given under section 40SA; and
- 21 (b) the action (if any) that is taken in relation to the AFP conduct  
22 or practices issue raised by that information; and
- 23 (c) if the issue is an AFP conduct issue—the action (if any) that  
24 is taken in relation to any AFP practices issue that is:
- 25 (i) brought, under section 40TK, to the attention of an AFP  
26 appointee; or
- 27 (ii) identified, under section 40TW, in a report prepared  
28 under section 40TU;
- 29 as a result of the AFP conduct issue being dealt with under  
30 this Part.
- 31 (3) Subsection (2) does not apply if subsection 40SC(2) (which deals  
32 with category 1 conduct issues that are resolved without being  
33 recorded) applies to the information.

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1 (4) The Integrity Commissioner is entitled to have access to the  
2 records kept under this section for the purposes of performing the  
3 Integrity Commissioner's functions.

4 (5) Without limiting section 40XC, the Ombudsman is entitled to have  
5 access to the records kept under this section for the purposes of  
6 performing the Ombudsman's functions.

#### 7 **40WB Records about corruption issues**

8 (1) The Integrity Commissioner may direct the Commissioner that  
9 access to information about a corruption issue is to be restricted in  
10 the way specified in the direction.

11 Note: For example, the Integrity Commissioner might direct that the  
12 information that would otherwise be entered on a database is not to be  
13 entered on the database or that, if the information is entered on a  
14 database, access to the information on the database is to be restricted  
15 in some way.

16 (2) The Commissioner must comply with the direction.

### 17 **Division 7—Ombudsman review**

#### 18 **40XA Annual reviews by Ombudsman**

19 (1) For the purposes of this section, the *review periods* are:

- 20 (a) the period of 12 months commencing on the day on which  
21 the *Law Enforcement (AFP Professional Standards and*  
22 *Related Measures) Act 2006* commences; and  
23 (b) each succeeding period of 12 months.

24 (2) At least once in each review period, the Ombudsman must, for the  
25 purposes of reviewing the administration of this Part during that  
26 period, inspect the records of AFP conduct issues and AFP  
27 practices issues that have been, or are being, dealt with under  
28 Divisions 3 and 4 during that period.

#### 29 **40XB Ad hoc reviews by Ombudsman**

30 The Ombudsman may, at any time, inspect the records of AFP  
31 conduct issues and AFP practices issues dealt with under  
32 Divisions 3 and 4 for the purposes of reviewing the administration  
33 of this Part.

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1 **40XC Commissioner to provide information and access to**  
2 **documents**

3 For the purposes of a review conducted under section 40XA or  
4 40XB, the Ombudsman may require the Commissioner to give the  
5 Ombudsman the information, and the access to documents, that the  
6 Ombudsman requests.

7 **40XD Annual reports by Ombudsman**

- 8 (1) The Ombudsman must, as soon as practicable after 30 June each  
9 year, prepare a report of the Ombudsman's work and activities  
10 under this Division during the preceding 12 months and give  
11 copies of the report to the President of the Senate and the Speaker  
12 of the House of Representatives for presentation to the Senate and  
13 the House of Representatives, respectively.
- 14 (2) The report must include comments as to the comprehensiveness  
15 and adequacy of the administration of matters under Divisions 3  
16 and 4.

17 **Division 8—Offences**

18 **40YA Victimisation**

- 19 (1) A person commits an offence if the person causes, or threatens to  
20 cause, detriment to another person (the *victim*) on the ground that  
21 the victim, or any other person:  
22 (a) has given, or may give, information under this Part; or  
23 (b) has produced, or may produce, a document, record or thing to  
24 a person under this Part.

25 Penalty: Imprisonment for 6 months.

- 26 (2) For the purposes of subsection (1), a threat may be:  
27 (a) express or implied; or  
28 (b) conditional or unconditional.
- 29 (3) In a prosecution for an offence against subsection (1), it is not  
30 necessary to prove that the person threatened actually feared that  
31 the threat would be carried out.



1 **40YB Providing false information about AFP conduct or practices**  
2 **issues**

3 A person commits an offence if:

- 4 (a) the person:
- 5 (i) gives information under section 40SA that raises an
  - 6 AFP conduct or practices issue; or
  - 7 (ii) otherwise gives an AFP appointee information in
  - 8 relation to an AFP conduct or practices issue; and
- 9 (b) the person knows that the information is false in a material
- 10 particular.

11 Penalty: 20 penalty units.

12 **40YC AFP appointees to provide name, etc.**

13 An AFP appointee commits an offence if:

- 14 (a) a person requests the AFP appointee to give the person any
- 15 of the following:
- 16 (i) his or her name;
  - 17 (ii) the address of his or her place of duty;
  - 18 (iii) his or her identification number if her or she has an
  - 19 identification number; and
- 20 (b) the person informs the AFP appointee, either expressly or by
- 21 necessary implication, that the person:
- 22 (i) is complaining, or proposes to complain, about action
  - 23 taken by that AFP appointee; or
  - 24 (ii) is giving information, or proposed to give information,
  - 25 under section 40SA about an AFP conduct issue that
  - 26 relates to conduct engaged in by that AFP appointee;
  - 27 and
- 28 (c) the AFP appointee:
- 29 (i) refuses or fails, without reasonable excuse, to comply
  - 30 with the request; or
  - 31 (ii) gives the person a name, address or identification
  - 32 number that is false in a material particular.

33 Penalty: 5 penalty units.

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**Division 9—Secrecy****40ZA Secrecy**

- (1) This section applies to a person (other than an AFP appointee or the Ombudsman) who conducts:
- (a) an investigation of a category 3 conduct issue or a corruption issue under Subdivision D of Division 3; or
  - (b) an inquiry under Division 4.

Note 1: AFP appointees are covered by the confidentiality requirements of section 60A.

Note 2: The Ombudsman is covered by the confidentiality requirements of section 35 of the *Ombudsman Act 1976*.

- (2) A person who is, or has been, a person to whom this section applies commits an offence if:
- (a) the person (either directly or indirectly and either while he or she is, or after he or she has ceased to be, a person to whom this section applies):
    - (i) makes a record of information; or
    - (ii) divulges or communicates information; and
  - (b) the information was given to, or obtained by, the person in the course of, or for the purposes of, the investigation or inquiry.

Penalty: 30 penalty units.

- (3) Subsection (2) has effect subject to subsections (4), (5) and (6).

- (4) Subsection (2) does not prevent a person who is, or has been, a person to whom this section applies from making a record of, or divulging or communicating, information for the purposes of the investigation or inquiry.

- (5) Subsection (2) does not prevent a person who is, or has been, a person to whom this section applies from making a record of, or divulging or communicating, information with the written consent of the appropriate person.

- (6) Subsection (2) does not prevent a person from producing a record, or giving information, in evidence before a court.

- (7) For the purposes of this section, the ***appropriate person*** is:

- 1 (a) the Minister in relation to a person who is conducting, or has  
2 conducted, an inquiry under Division 4; and  
3 (b) the Commissioner in relation to any other person to whom  
4 this section applies.

5 **29 After subsection 67(1)**

6 Insert:

- 7 (1A) The report must contain, in respect of the year, prescribed  
8 particulars about:  
9 (a) the AFP conduct issues that were dealt with under Part V  
10 during that year; and  
11 (b) the action that was taken, during that year, in relation to AFP  
12 conduct issues that were dealt with under Division 3 of  
13 Part V.

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## **Schedule 2—Repeal**

### ***Complaints (Australian Federal Police) Act 1981***

#### **1 The whole of the Act**

Repeal the Act.

#### **2 Continued operation of *Complaints (Australian Federal Police) Act 1981***

Despite the repeal of the *Complaints (Australian Federal Police) Act 1981* by item 1 of this Schedule, that Act continues to apply, on and after the commencement of that item, to:

- (a) a complaint to which that Act applied that was made before the commencement of this Schedule; or
- (b) a matter that the Commonwealth Ombudsman referred to the Investigation Division for investigation, under section 21A of that Act, before the commencement of this Schedule.

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## **Schedule 3—Consequential amendments**

4 *Administrative Decisions (Judicial Review) Act 1977*

5 **1 Paragraph 10(1)(b)**

6 Omit “and subsection 24(2A) of the *Complaints (Australian Federal*  
7 *Police) Act 1981*”, substitute “and section 40TF of the *Australian*  
8 *Federal Police Act 1979*”.

9 *Australian Crime Commission Act 2002*

10 **2 Schedule 1**

11 Omit:

12 *Complaints (Australian Federal Police) Act 1981*, sections 41 and  
13 87

14 *Australian Federal Police Act 1979*

15 **3 Subsection 17(4B)**

16 Repeal the subsection.

17 **4 Section 39 (note)**

18 Repeal the note.

19 **5 Section 40 (note)**

20 Repeal the note.

21 **6 Subsection 40A(2)**

22 Omit “, other than proceedings for a disciplinary offence under the  
23 *Australian Federal Police (Discipline) Regulations*”.

24 **7 Subsection 40G(2)**

25 Omit “discipline”, substitute “AFP professional standards”.

26 Note: The heading to subsection 40G(2) is altered by omitting “*Discipline*” and substituting  
27 “*AFP professional standards*”.

28 **8 Subsection 40L(3) (note)**

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1 Repeal the note.

2 **9 Subsection 40L(6)**

3 Omit “, other than proceedings for a disciplinary offence under the  
4 Australian Federal Police (Discipline) Regulations”.

5 **10 Section 41 (definition of *Complaints Act*)**

6 Repeal the definition.

7 **11 Section 41 (definition of *Disciplinary Tribunal*)**

8 Repeal the definition.

9 **12 Section 41 (definition of *Federal Court*)**

10 Repeal the definition.

11 **13 Section 41 (definition of *relevant disciplinary offence*)**

12 Repeal the definition.

13 **14 Division 3 of Part VA**

14 Repeal the Division.

15 **15 Section 52**

16 Repeal the section.

17 **16 Subsection 54(1)**

18 Omit “, or under subsection 49(3),”.

19 Note: The heading to section 54 is altered by omitting “, 49”.

20 **17 Subsection 54(2)**

21 Omit “, or under subsection 49(3),”.

22 **18 Subsection 54(2)**

23 Omit “, or the requirements of subsection 49(3), as the case may be,  
24 are”, substitute “is”.

25 **19 Subsection 54(3)**

26 Omit “, 49(2)”.

27 **20 Subsection 54A(1)**

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1 Omit “, 49(2)”.

2 **21 Subsection 54A(2)**

3 Omit “, 49(2)”.

4 **22 Paragraph 69B(1)(b)**

5 Repeal the paragraph, substitute:

6 (b) a matter covered by Part V or any action taken in relation to a  
7 matter covered by that Part;

8 **23 Paragraph 70(b)**

9 Omit “other than disciplinary offences”.

10 **24 Paragraph 70(i)**

11 Repeal the paragraph, substitute:

12 (i) compliance by AFP appointees with AFP professional  
13 standards; and

14 ***Australian Security Intelligence Organisation Act 1979***

15 **25 Subsection 34D(4) (note 2)**

16 Omit “and the Ombudsman”, substitute “, the Ombudsman, the  
17 Commissioner of the Australian Federal Police and a person referred to  
18 in paragraph 40SB(3)(b) of the *Australian Federal Police Act 1979*”.

19 **26 Subparagraph 34E(1)(e)(ii)**

20 Repeal the subparagraph, substitute:

21 (ii) to the Ombudsman under the *Ombudsman Act 1976* in  
22 relation to the Australian Federal Police;

23 **27 After paragraph 34E(1)(e)**

24 Insert:

25 (ea) the person’s right to give information orally or in writing,  
26 under Part V of the *Australian Federal Police Act 1981*, to a  
27 person referred to in subsection 40SA(1) of that Act in  
28 relation to the Australian Federal Police;

29 **28 Paragraphs 34F(9)(b) and (c)**

30 Repeal the paragraphs, substitute:

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- 1 (b) subsection (8) does not affect the operation of sections 10  
 2 and 13 of the *Inspector-General of Intelligence and Security*  
 3 *Act 1986* in relation to contact between the person and the  
 4 Inspector-General of Intelligence and Security; and  
 5 (c) anyone holding the person in custody or detention under this  
 6 Division must give the person facilities for contacting the  
 7 Inspector-General of Intelligence and Security to make a  
 8 complaint orally under the sections referred to in  
 9 paragraph (b) if the person requests them; and  
 10 (d) subsection (8) does not affect the operation of section 7 of  
 11 the *Ombudsman Act 1976* in relation to contact between the  
 12 person and the Ombudsman; and  
 13 (e) anyone holding the person in custody or detention under this  
 14 Division must give the person facilities for contacting the  
 15 Ombudsman to make a complaint orally under the section  
 16 referred to in paragraph (d) if the person requests them; and  
 17 (f) subsection (8) does not affect the operation of section 40SB  
 18 of the *Australian Federal Police Act 1979* in relation to  
 19 contact between the person and a person referred to in  
 20 paragraph 40SB(3)(b) of that Act; and  
 21 (g) anyone holding the person in custody or detention under this  
 22 Division must give the person facilities for contacting the  
 23 Commissioner of the Australian Federal Police to give  
 24 information orally under the section referred to in  
 25 paragraph (f) if the person requests them.

26 **29 Paragraph 34NB(4)(b)**

27 Omit “paragraph 34(9)(c)”, substitute “paragraph 34(9)(c), (e) or (g)”.

28 **30 Section 34NC**

29 Repeal the section, substitute:

30 **34NC Complaints and information about contravention of**  
 31 **procedural statement**

- 32 (1) Contravention of the written statement of procedures mentioned in  
 33 section 34C of this Act may be the subject of:  
 34 (a) a complaint to the Inspector-General of Intelligence and  
 35 Security under the *Inspector-General of Intelligence and*  
 36 *Security Act 1986*; or



- 1 (b) a complaint to the Ombudsman under the *Ombudsman Act*  
 2 *1976*; or  
 3 (c) information given under Division 2 of Part V of the  
 4 *Australian Federal Police Act 1979* to a person referred to in  
 5 subsection 40SA(1) of that Act.
- 6 (2) This section does not limit:  
 7 (a) the subjects of complaint under:  
 8 (i) the *Inspector-General of Intelligence and Security Act*  
 9 *1986*; or  
 10 (ii) the *Ombudsman Act 1976*; or  
 11 (b) the subject of information given under Division 2 of Part V  
 12 of the *Australian Federal Police Act 1979*.

**31 Subsection 34T(2)**

14 Repeal the subsection, substitute:

- 15 (2) This Division does not affect a function or power of the  
 16 Ombudsman under the *Ombudsman Act 1976* in relation to the  
 17 Australian Federal Police.
- 18 (3) This Division does not affect a function or power of a person under  
 19 Part V of the *Australian Federal Police Act 1979*.

**32 Subsection 34VAA(5) (subparagraph (a)(iv) of the definition of *permitted disclosure*)**

22 Repeal the subparagraph, substitute:

- 23 (iv) exercising a power (including a power to make a  
 24 complaint or to give information), or performing a  
 25 function or duty, under the *Inspector-General of*  
 26 *Intelligence and Security Act 1986*, the *Ombudsman Act*  
 27 *1976* or Part V of the *Australian Federal Police Act*  
 28 *1979*;

***Crimes Act 1914*****33 Subparagraph 3L(1B)(b)(iii)**

31 Omit “the *Complaints (Australian Federal Police) Act 1981*”, substitute  
 32 “the *Ombudsman Act 1976* in relation to the Australian Federal Police”.

**34 At the end of paragraph 3L(1B)(b)**

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1           Add:  
2                   ; or (iv) investigating or resolving an AFP conduct or practices  
3                   issue (within the meaning of the *Australian Federal*  
4                   *Police Act 1979*) under Part V of that Act;

5   **35 After paragraph 23YO(3)(i)**

6           Insert:  
7                   (i) for the purpose of dealing with or investigating, under Part V  
8                   or the *Australian Federal Police Act 1979*, an AFP conduct  
9                   or practices issue (within the meaning of that Act) that relates  
10                  to the way in which the procedure is carried out;

11   ***Criminal Code Act 1995***

12   **36 Paragraph 104.29(2)(f) of the *Criminal Code***

13           Repeal the paragraph, substitute:  
14                   (f) particulars of:  
15                   (i) any complaints made or referred to the Commonwealth  
16                   Ombudsman that related to control orders; and  
17                   (ii) any information given under section 40SA of the  
18                   *Australian Federal Police Act 1979* that related to  
19                   control orders and raised an AFP conduct or practices  
20                   issue (within the meaning of that Act).

21   **37 Paragraph 105.28(2)(e) of the *Criminal Code***

22           Repeal the paragraph, substitute:  
23                   (e) any right the person has to make a complaint to the  
24                   Commonwealth Ombudsman under the *Ombudsman Act*  
25                   *1976* in relation to:  
26                   (i) the application for, or the making of, the preventative  
27                   detention order; or  
28                   (ii) the treatment of the person by an AFP member in  
29                   connection with the person's detention under the order;  
30                   and  
31                   (ea) any right the person has to give information under  
32                   section 40SA of the *Australian Federal Police Act 1979* in  
33                   relation to:  
34                   (i) the application for, or the making of, the preventative  
35                   detention order; or

- 1 (ii) the treatment of the person by an AFP member in  
2 connection with the person's detention under the order;  
3 and

4 **38 Paragraph 105.29(2)(d) of the *Criminal Code***

5 Repeal the paragraph, substitute:

- 6 (d) any right the person has to make a complaint to the  
7 Commonwealth Ombudsman under the *Ombudsman Act*  
8 *1976* in relation to:  
9 (i) the application for the continued order; or  
10 (ii) the treatment of the person by an AFP member in  
11 connection with the person's detention under the  
12 continued order; and  
13 (da) any right the person has to give information under  
14 section 40SA of the *Australian Federal Police Act 1979* in  
15 relation to:  
16 (i) the application for the continued order; or  
17 (ii) the treatment of the person by an AFP member in  
18 connection with the person's detention under the  
19 continued order; and

20 **39 Subsection 105.36(1) of the *Criminal Code***

21 Repeal the subsection, substitute:

- 22 (1) The person being detained is entitled to contact:  
23 (a) the Commonwealth Ombudsman in accordance with  
24 subsections 7(3) to (5) of the *Ombudsman Act 1976*; or  
25 (b) a person referred to in subsection 40SA(1) of the *Australian*  
26 *Federal Police Act 1979* in accordance with section 40SB of  
27 that Act.

28 Note 1: Subsections 7(3) to (5) of the *Ombudsman Act 1976* provide for the  
29 manner in which a person who is in custody may make a complaint to  
30 the Commonwealth Ombudsman under that Act.

31 Note 2: Section 40SB of the *Australian Federal Police Act 1979* provides for  
32 the manner in which a person who is in custody may give information  
33 under section 40SA of that Act.

34 **40 Paragraph 105.37(1)(c) of the *Criminal Code***

35 Repeal the paragraph, substitute:

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- (c) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:
  - (i) the application for, or the making of, the preventative detention order; or
  - (ii) the treatment of the person by an AFP member in connection with the person’s detention under the order; or
- (ca) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to:
  - (i) the application for, or the making of, the preventative detention order; or
  - (ii) the treatment of the person by an AFP member in connection with the person’s detention under the order; or

**41 Subsection 105.38(5) of the *Criminal Code***

After “(c),” insert “(ca),”.

**42 Subparagraph 105.41(2)(d)(ii) of the *Criminal Code***

Repeal the subparagraph, substitute:

- (ii) a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee’s detention under the order; or
- (iia) the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee’s detention under the order; or

**43 Subparagraph 105.41(3)(e)(i) of the *Criminal Code***

Repeal the subparagraph, substitute:

- 1 (i) a complaint to the Commonwealth Ombudsman under  
 2 *the Ombudsman Act 1976* in relation to the application  
 3 for, or the making of, the preventative detention order or  
 4 the treatment of the detainee by an AFP member in  
 5 connection with the detainee’s detention under the  
 6 order; or  
 7 (ia) the giving of information under section 40SA of the  
 8 *Australian Federal Police Act 1979* in relation to the  
 9 application for, or the making of, the preventative  
 10 detention order or the treatment of the detainee by an  
 11 AFP member in connection with the detainee’s  
 12 detention under the order; or

13 **44 Paragraph 105.47(2)(d) of the *Criminal Code***

14 Repeal the paragraph, substitute:

- 15 (d) particulars of:  
 16 (i) any complaints made or referred to the Commonwealth  
 17 Ombudsman during the year that related to the detention  
 18 of a person under a preventative detention order; and  
 19 (ii) any information given under section 40SA of the  
 20 *Australian Federal Police Act 1979* during the year that  
 21 related to the detention of a person under a preventative  
 22 detention order and raised an AFP conduct or practices  
 23 issue (within the meaning of that Act);

24 **45 Section 105.48 of the *Criminal Code***

25 Repeal the section, substitute:

26 **105.48 Certain functions and powers not affected**

27 This Division does not affect:

- 28 (a) a function or power of the Commonwealth Ombudsman  
 29 under the *Ombudsman Act 1976*; or  
 30 (b) a function or power of a person under Part V of the  
 31 *Australian Federal Police Act 1979*.

32 ***Ombudsman Act 1976***

33 **46 Subsection 3(1)**

34 Insert:

1                    *AFP appointee* has the same meaning as in the *Australian Federal*  
2                    *Police Act 1979*.

3                    **47 Subsection 3(1)**

4                    Insert:

5                    *AFP Commissioner* means the Commissioner within the meaning  
6                    of the *Australian Federal Police Act 1979*.

7                    **48 Subsection 3(1)**

8                    Insert:

9                    *AFP conduct issue* has the same meaning as in the *Australian*  
10                    *Federal Police Act 1979*.

11                    **49 Subsection 3(1)**

12                    Insert:

13                    *AFP practices issue* has the same meaning as in the *Australian*  
14                    *Federal Police Act 1979*.

15                    **50 Subsection 3(10)**

16                    Omit “a member or special member of the Australian Federal Police”,  
17                    substitute “an AFP appointee”.

18                    **51 At the end of section 4**

19                    Add:

20                    (5) The Commonwealth Ombudsman, in performing his or her  
21                    functions in relation to the Australian Federal Police, may, if he or  
22                    she so chooses, be called the Law Enforcement Ombudsman.

23                    **52 Subsection 5(4)**

24                    Repeal the subsection, substitute:

25                    (4) Paragraph (2)(d) does not prevent the Ombudsman from  
26                    investigating action taken by an AFP appointee, or by any other  
27                    person, with respect to information that:

- 28                    (a) is given to the AFP appointee; and  
29                    (b) raises an AFP conduct issue or AFP practices issue; and  
30                    (c) relates to action taken by another AFP appointee.

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**53 At the end of section 6**

Add:

(20) If the Ombudsman forms the opinion:

- (a) that a complaint includes information about an AFP conduct issue or an AFP practices issue; and
- (b) that the information could have been given under section 40SA of the *Australian Federal Police Act 1979* and the issue could be more conveniently or effectively dealt with under Part V of that Act;

the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to give the information to the AFP Commissioner under that section of that Act.

(21) If the Ombudsman makes a decision under subsection (20), the Ombudsman must:

- (a) give the information to the AFP Commissioner under section 40SA of the *Australian Federal Police Act 1979* as soon as is reasonably practicable; and
- (b) give the AFP Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
- (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the AFP Commissioner to be dealt with under that Act.

**54 At the end of section 8**

Add:

*Arrangements for having police officers assist Ombudsman in relation to investigation*

(12) Whenever it becomes necessary or desirable for the Ombudsman to use persons with police training in connection with his or her investigation of a complaint about an AFP conduct issue or AFP practices issue, the Ombudsman may, and must in so far as it is practicable to do so, use, in connection with that investigation:

- (a) an AFP appointee who is made available to him or her by the AFP Commissioner for the purposes of the investigation; or

- 1 (b) a member of the police force of a State whom the police  
2 force of the State agrees to make available to the  
3 Ombudsman, for the purposes of the investigation, under  
4 arrangements made by the AFP Commissioner.

5 **55 After subsection 8A(1)**

6 Insert:

- 7 (1A) The Commonwealth Ombudsman may, if he or she thinks fit, make  
8 an arrangement with the Ombudsman of a State, or the  
9 Ombudsmen of 2 or more States, for and in relation to the  
10 investigation, by any one or more of the Ombudsmen, of action to  
11 which subsection (1B), (1C) or (1D) applies.

- 12 (1B) This subsection applies to action that:

- 13 (a) gives rise to an AFP conduct issue or AFP practices issue;  
14 and  
15 (b) involves:  
16 (i) an AFP conduct issue that relates to a member of the  
17 police force of a State; or  
18 (ii) action taken by the police force of a State; or  
19 (iii) action taken by a Department of a State or by an  
20 authority of a State.

- 21 (1C) This subsection applies to action taken by a body if the body:

- 22 (a) is established jointly, or administered jointly, by the  
23 Commonwealth and one or more States; and  
24 (b) includes at least one AFP appointee and a member or  
25 members of the police force of a State or the police forces of  
26 2 or more States.

- 27 (1D) This subsection applies to action taken by a body referred to in  
28 subsection (1C) together with action taken by:

- 29 (a) by an AFP appointee or by the Australian Federal Police; or  
30 (b) by a member of the police force of a State; or  
31 (c) by the police force of a State; or  
32 (d) by a Department of a State or by an authority of a State.

33 **56 Subsection 8A(2)**

34 After “subsection (1)”, insert “or (1B)”.



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**57 Subsection 8A(3)**

After “subsection (1)”, insert “or (1A)”.

**58 Subsection 8A(8)**

After “subsection (1)”, insert “or (1A)”.

**59 Before section 9**

Insert:

**8D Investigations by Ombudsman and Australian Federal Police**

(1) The Ombudsman may, if he or she thinks fit, make an arrangement with the AFP Commissioner for:

- (a) a category 3 conduct issue; or
- (b) an AFP practices issue;

to be dealt with jointly by the Ombudsman and the Australian Federal Police.

(2) The arrangement may relate to:

- (a) a particular category 3 conduct issue or issues; or
- (b) a series of related category 3 conduct issues; or
- (c) a particular AFP practices issue or issues; or
- (d) a series of related AFP practices issues.

(3) The Ombudsman may arrange with the AFP Commissioner for the variation or revocation of the arrangement.

(4) The arrangement, or the variation or revocation of the arrangement, must be in writing.

(5) Nothing in this section affects the powers or duties of the Ombudsman under any other provision of this Act.

(6) In this section:

*category 3 conduct issue* has the same meaning as in the *Australian Federal Police Act 1979*.

**60 At the end of subsection 33(1)**

Add “or Division 7 of Part V of the *Australian Federal Police Act 1979*”.

1 **61 At the end of subsection 34(1)**

2 Add:

3 ; and (c) all or any of his or her powers under Division 7 of Part V of  
4 the *Australian Federal Police Act 1979*.

5 **62 At the end of subsection 35(1)**

6 Add:

7 ; or (e) a person who is made available to the Ombudsman as  
8 mentioned in subsection 8(12).

9 **63 Subsection 35(2)**

10 After “of this Act”, insert “or under Division 7 of Part V of the  
11 *Australian Federal Police Act 1979*”.

12 **64 At the end of subsection 35(8)**

13 Add “or under Division 7 of Part V of the *Australian Federal Police Act*  
14 *1979*”.

15 ***Witness Protection Act 1994***

16 **65 Subsection 12(2)**

17 Omit all the words after “for the purposes”, substitute:

18 of:

19 (a) an investigation by the Ombudsman under the *Ombudsman*  
20 *Act 1976*; or

21 (b) an investigation under Part V of the *Australian Federal*  
22 *Police Act 1979*.

23 **66 Subsection 22(2)**

24 Omit “or the *Complaints (Australian Federal Police) Act 1981*”.

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## Schedule 4—Alcohol screening tests

4

### *Australian Federal Police Act 1979*

5

#### **1 Subsection 4(1)**

6 Insert:

7 *alcohol screening test* in relation to a person, means a test of  
8 sample of the breath of the person carried out by means of an  
9 approved screening device.

10

#### **2 Subsection 4(1)**

11 Insert:

12 *approved screening device* means a device of a type that is  
13 approved by the Minister under section 40R.

14

#### **3 Before section 40M**

15 Insert:

16

#### **40LA Alcohol screening tests**

- 17 (1) An AFP appointee authorised under section 40PA to act as a  
18 manager (the *authorised manager*) may require another AFP  
19 appointee (the *screening test subject*) to undergo an alcohol  
20 screening test if:  
21 (a) the screening test subject is on duty; and  
22 (b) the authorised manager reasonably suspects that the  
23 screening test subject is under the influence of alcohol.

24 *Compliance with direction*

- 25 (2) The screening test subject must comply with the requirement given  
26 to him or her under subsection (1).

27 *Test results*

- 28 (3) If the result of the alcohol screening test shows that alcohol is not  
29 present in the screening test subject's blood, the screening test  
30 subject may return to his or her duties immediately.

- 1 (4) If:  
 2 (a) the result of the alcohol screening test shows that alcohol is  
 3 present in the screening test subject’s blood; or  
 4 (b) the screening test subject refuses to undergo the alcohol  
 5 screening test;  
 6 the screening test subject may be given a written direction under  
 7 section 40M to undergo a breath test if the screening test subject is  
 8 an AFP employee or a special member.
- 9 (5) This section does not limit the operation of section 40M.

10 **4 Subsection 40M(3) (note)**

11 Repeal the note.

12 Note: The heading to section 40M is replaced by the heading “**Alcohol breath tests and**  
 13 **prohibited drug tests**”.

14 **5 Subsection 40N(5) (note)**

15 Repeal the note.

16 Note: The heading to section 40N is replaced by the heading “**Alcohol breath tests and**  
 17 **prohibited drug tests after certain incidents**”.

18 **6 Section 40P**

19 Before “40M”, insert “40LA,”.

20 **7 Subparagraph 40P(b)(i)**

21 After “to conduct”, insert “alcohol screening tests,”.

22 **8 Paragraph 40P(e)**

23 After “the conduct of”, insert “alcohol screening tests,”.

24 **9 At the end of section 40P**

25 Add:

26 Note: Paragraph (a)—persons may give directions under sections 40M and  
 27 40N. However, for a person’s power to give a requirement under  
 28 section 40LA, see section 40PA.

29 **10 After section 40P**

30 Insert:

1 **40PA Managers who may require alcohol screening tests**

2 The Commissioner may issue Commissioner's orders under  
3 section 38 authorising particular kinds of AFP appointees to act as  
4 managers for the purpose of section 40LA.

5 **11 Section 40Q**

6 Repeal the section, substitute:

7 **40Q Admissibility of test results etc. in legal proceedings**

8 The following:

- 9 (a) a certificate or other document recording the results of a test  
10 conducted under section 40M or 40N in relation to an AFP  
11 employee or a special member;
- 12 (b) a certificate or other document recording the results of an  
13 alcohol screening test conducted under section 40LA in  
14 relation to an AFP appointee;
- 15 (c) any other information, answer to a question or document  
16 relevant to conducting such a test (including any information  
17 or answer given or document produced in compliance with  
18 section 40);
- 19 is not admissible in evidence against the employee, special member  
20 or AFP appointee in any proceedings other than the following:
- 21 (d) proceedings in relation to a decision of the Commissioner to  
22 terminate the employment of the employee or the AFP  
23 appointee or to terminate the appointment of the special  
24 member or the AFP appointee;
- 25 (e) proceedings under the *Safety, Rehabilitation and*  
26 *Compensation Act 1988*;
- 27 (f) proceedings in tort against the Commonwealth that are  
28 instituted by the employee, special member or AFP  
29 appointee.

30 **12 At the end of Division 8 of Part IV**

31 Add:

1 **40R Approval of screening devices**

- 2 (1) The Minister may, in writing, approve devices of a type described  
3 in the approval to be approved screening devices if he or she is of  
4 opinion that:
- 5 (a) devices of that type have been designed and made for the  
6 purpose of indicating, when a sample of the breath of a  
7 person is exhaled into the device, whether alcohol is present  
8 in the blood of the person; and
  - 9 (b) devices of that type are suitable devices for use in tests under  
10 section 40LA.
- 11 (2) An approval under this section is a legislative instrument.

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1  
2 **Schedule 5—Provisions relating to**  
3 **suspension or resignation from, and**  
4 **termination of, employment**  
5

6 *Australian Federal Police Act 1979*

7 **1 Subsection 4(1)**

8 Insert:

9 *collective agreement* has the same meaning as in the *Workplace*  
10 *Relations Act 1996*.

11 **2 At the end of section 30**

12 Add:

13 (3) Paragraph (1)(a) is subject to section 30A.

14 **3 After section 30**

15 Insert:

16 **30A Resignation in anticipation of termination of employment**

17 (1) This section applies if:

18 (a) an AFP employee gives the Commissioner written notice of  
19 his or her resignation under paragraph 30(1)(a); and

20 (b) the employee's conduct:

21 (i) has been, or is being, investigated as an AFP conduct  
22 issue that is a category 3 conduct issue; or

23 (ii) has raised a corruption issue that has been investigated;  
24 or

25 (iii) raises a corruption issue that is being investigated; and

26 (c) at least one of the following applies:

27 (i) if the investigation has been completed—the  
28 Commissioner is considering terminating the  
29 employee's employment under section 28 on the basis  
30 of the findings of the investigation;

31 (ii) if the investigation has not been completed—the  
32 Commissioner is not in a position to decide whether to

- 1 terminate the employee's employment under section 28  
2 because the findings of the investigation are not yet  
3 known;  
4 (iii) the Commissioner is satisfied that the employee's  
5 conduct may amount to serious misconduct within the  
6 meaning of subsection 40K(3).
- 7 (2) The Commissioner may, by written notice to the AFP employee,  
8 substitute a day, no later than 90 days after the day specified in the  
9 employee's notice of resignation, as the day on which his or her  
10 resignation is to take effect.
- 11 (3) The Commissioner may give more than one notice under  
12 subsection (2) to the AFP employee in relation to the notice of  
13 resignation.
- 14 (4) To be effective, the first notice given under subsection (2) in  
15 relation to the notice of resignation must be given to the employee  
16 before the day specified in the notice of resignation.
- 17 (5) To be effective, any subsequent notice given under subsection (2)  
18 in relation to the notice of resignation must be given to the  
19 employee before the day specified in the immediately preceding  
20 notice given under that subsection in relation to the notice of  
21 resignation.
- 22 (6) On or before the day specified in the most recent notice given  
23 under subsection (2) in relation to the notice of resignation, the  
24 Commissioner must:  
25 (a) accept the AFP employee's notice of resignation; or  
26 (b) terminate the AFP employee's employment under section 28.
- 27 (7) If the Commissioner accepts the notice of resignation under  
28 paragraph (6)(a), the AFP employee's resignation takes effect on  
29 the day on which the Commissioner communicates acceptance of  
30 the resignation to the employee.

31 **4 Section 40J**

32 Before "The regulations", insert "(1)".

33 **5 Section 40J**

34 Omit "either or both", substitute "any one or more".



1 **6 After paragraph 40J(a)**

2 Insert:

- 3 (aa) provide that, while suspended from duty, an AFP employee  
4 may be required to comply with directions of a kind  
5 mentioned in subsection (2);
- 6 (ab) provide that, while suspended from duty, an AFP employee  
7 may take or be on annual leave if:
- 8 (i) the certified agreement or collective agreement for the  
9 time being in force would otherwise deem or require the  
10 AFP member to be on annual leave for the period  
11 necessary to reduce the balance of annual leave credits  
12 to the level specified in the relevant agreement; or
- 13 (ii) in the case of an AFP employee who is suspended  
14 without remuneration—the AFP employee applies to  
15 take annual leave that he or she would, if approved,  
16 otherwise be able to take;

17 **7 At the end of section 40J**

18 Add:

- 19 (2) The kind of directions that an AFP employee may be required to  
20 comply with while suspended from duty are:
- 21 (a) directions that the AFP employee would be required to  
22 comply with if the AFP employee were not suspended from  
23 duty; and
- 24 (b) directions that are given for the purposes of:
- 25 (i) determining whether the AFP employee or any other  
26 AFP employee has committed a criminal offence or  
27 failed to maintain AFP professional standards; or
- 28 (ii) assessing the continuing employment suitability of the  
29 AFP employee; or
- 30 (iii) ensuring continuity, during the period of suspension, in  
31 the performance of the AFP employee's duties, being a  
32 direction that the employee only is able to comply with.
- 33 (3) To avoid doubt, an AFP employee who takes annual leave while  
34 suspended without remuneration is to be paid as if the employee  
35 were taking annual leave while not suspended.

36 **8 Application**

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- 1 (1) The amendment made by item 3 of this Schedule applies to a notice of  
2 resignation given to the Commissioner on or after the day on which this  
3 Schedule commences.
- 4 (2) The amendments made by items 6 and 7 of this Schedule apply to  
5 annual leave that may be taken on or after the day on which this  
6 Schedule commences.  
7