

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

---

*(As read a first time)*

**AUSTRALIAN FEDERAL POLICE LEGISLATION AMENDMENT  
BILL (No. 2) 1989**

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(Presented and read a first time, 4 October 1989)*

(MINISTER FOR JUSTICE, SENATOR TATE)

## A BILL

FOR

### **An Act to amend certain legislation relating to the Australian Federal Police, and for related purposes**

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

#### **PART 1—INTRODUCTORY**

##### **Short title**

- 5       1. This Act may be cited as the *Australian Federal Police Legislation Amendment Act (No. 2) 1989*.

##### **Commencement**

- 10       2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Section 11 commences on 1 July 1991.

(3) Sections 38 and 69 commence on 1 January 1992.

(4) Subject to subsection (5), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(5) If a provision referred to in subsection (4) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period. 5

## PART 2—AMENDMENTS OF THE AUSTRALIAN FEDERAL POLICE ACT 1979

### *Division 1—Introductory* 10

#### Principal Act

3. In this Part, “Principal Act” means the *Australian Federal Police Act 1979*<sup>1</sup>.

#### Definitions

4. In this Part: 15

“commencing day” means the day on which section 6 of this Act commences;

“prescribed day” means:

(a) in relation to a person mentioned in paragraph 53 (1) (a)—the day immediately after the end of the period of 21 days after the commencing day; and 20

(b) in relation to a person mentioned in paragraph 53 (1) (b):  
 (i) the day immediately after the end of the period of 12 months after the commencing day; or  
 (ii) if the Commissioner specifies, by notice in the *Australian Federal Police Gazette*, an earlier day in relation to such persons—the day so specified; and 25

(c) in relation to a member mentioned in paragraph 55 (1) (a)—the day immediately after the end of the period of 21 days after the commencing day; and 30

(d) in relation to a member mentioned in paragraph 55 (1) (b) or (c):  
 (i) the day immediately after the end of the period of 12 months after the commencing day; or  
 (ii) if the Commissioner specifies, by notice in the *Australian Federal Police Gazette*, an earlier day in relation to such members—the day so specified. 35

**Division 2—Amendments**

**Interpretation**

5. Section 4 of the Principal Act is amended:

- 5 (a) by inserting “re-appoint,” before “promote” in the definition of “appoint” in subsection (1);
- (b) by omitting from subsection (1) the definitions of “Australian Capital Territory”, “fixed term” and “fixed-term senior executive officer”;
- (c) by inserting in subsection (1) the following definitions:

10 “**adjustment payment**’ means a payment of an amount to a person under subsection 30 (2), being a payment made in recognition of the fact that the person’s appointment is for a fixed term;

“**maximum age**’ means:

(a) in relation to a member—60; and

15 (b) in relation to a staff member—65;

“**senior executive commissioned police officer**’ has the meaning given in section 25A;

“**staff member**’ means a staff member of the Australian Federal Police, being a person appointed under section 26B;”.

20 **Establishment**

6. Section 6 of the Principal Act is amended:

- (a) by omitting all the words from and including “following members” and substituting “members mentioned in subsection (2) and the staff members mentioned in subsection (3)”;
- 25 (b) by adding at the end the following subsections:

“(2) The members of the Australian Federal Police are:

(a) the Commissioner of Police; and

(b) a Deputy Commissioner or the Deputy Commissioners of Police; and

30 (c) senior executive commissioned police officers; and

(d) other commissioned police officers; and

(e) non-commissioned police officers.

“(3) The staff members of the Australian Federal Police are senior executive officers, and other officers, who are not police officers.”.

35

**Functions**

7. Section 8 of the Principal Act is amended by inserting after paragraph (1) (a) the following paragraph:

40 “(aa) the provision of police services in relation to the Jervis Bay Territory;”.

### **Powers and duties of members**

8. Section 9 of the Principal Act is amended by inserting after paragraph (1) (b) the following paragraph:

“(ba) when performing functions in the Jervis Bay Territory—the powers and duties conferred or imposed on a constable or an officer of police by or under any law (including the common law) of the Territory; and”.

### **Immunities from certain State and Territory laws**

9. Section 12 of the Principal Act is amended by inserting “or staff member” after “member” (wherever occurring).

### **Delegation by Commissioner**

10. Section 15 of the Principal Act is amended by inserting in paragraph (1) (c) “, or to a staff member,” after “another member”.

11. Section 15 of the Principal Act, as amended by section 10 of this Act, is repealed and the following section is substituted:

#### **Delegation**

“15. The Commissioner may, in writing, delegate to another member, or to a staff member, all or any of the Commissioner’s powers, functions or duties under this Act.”.

### **Repeal of section 16**

12. Section 16 of the Principal Act is repealed.

### **Heading to Part IV**

13. The heading to Part IV of the Principal Act is amended by omitting “OF MEMBERS”.

### **Commissioner and Deputy Commissioner**

14. Section 17 of the Principal Act is amended:

(a) by omitting subsection (3) and substituting the following subsections:

“(3) Subject to this Part, a Deputy Commissioner holds office for the period, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment.

“(3A) Where a person is re-appointed under this section for a term beginning immediately after the end of the person’s last appointment, the person’s service is to be taken to be continuous.”;

(b) by omitting from subsection (4) “A person appointed under this section” and substituting “The Commissioner”;



(c) by inserting after subsection (4) the following subsection:

“(4A) A Deputy Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Commissioner.”.

5 **Remuneration and allowances**

15. Section 20 of the Principal Act is amended:

(a) by omitting from subsections (1) and (2) “or a Deputy Commissioner”;

(b) by inserting after subsection (2) the following subsections:

10 “(2A) A Deputy Commissioner is to be paid such remuneration and allowances as the Commissioner determines in writing.

“(2B) The Commissioner may, in writing, amend or revoke a determination under subsection (2A).”.

**Heading to Division 2 of Part IV**

15 16. The heading to Division 2 of Part IV of the Principal Act is omitted and the following heading is substituted:

***“Division 2—Commissioned and non-commissioned police officers, staff members and special members”.***

**Ranks and levels**

20 17. Section 23 of the Principal Act is amended:

(a) by inserting “of members” after “ranks”;

(b) by adding at the end the following subsections:

“(2) There are to be such levels of staff members of the Australian Federal Police as the Commissioner determines.

25 “(3) A determination must be published in the *Australian Federal Police Gazette*.”.

18. Section 24 of the Principal Act is repealed and the following section is substituted:

**Determination of numbers**

30 “24. The Commissioner may determine, in writing:

(a) the number of members who may be appointed to each rank of the Australian Federal Police; and

(b) the number of staff members who may be appointed to each level of the Australian Federal Police.”.

19. Section 25A of the Principal Act is repealed and the following section is substituted:

**Senior executive commissioned police officers**

“25A. A person appointed under section 25 to a position in a prescribed rank is a senior executive commissioned police officer.”. 5

**Repeal of sections 25B and 25C**

20. Sections 25B and 25C of the Principal Act are repealed.

21. After section 26A of the Principal Act the following sections are inserted:

**Staff members** 10

“26B. Subject to this Act, the Commissioner may, in writing signed by the Commissioner:

(a) appoint a person to be a staff member, being an appointment to a position at a level that the person is, under the regulations, competent and qualified to hold; or 15

(b) promote a staff member to a position of staff member at a higher level, being a position at a level that the person is, under the regulations, competent and qualified to hold.

**Part-time positions**

“26C. (1) Subject to this section, the Commissioner may, in writing, declare a position of member or staff member to be a part-time position. 20

“(2) The Commissioner must not make, amend or revoke a declaration without the consent of the person (if any) occupying the position concerned.

**Term of appointments**

“26D. (1) The term of an appointment under section 25, 26 or 26B is the term specified in the appointment, being a term not longer than the prescribed period. 25

“(2) A person must not be appointed for a term that extends beyond the day on which the person will reach the relevant maximum age.

“(3) A person appointed under section 25, 26 or 26B holds office until his or her appointment ends, but, subject to section 31, is eligible for re-appointment. 30

“(4) Where a person is re-appointed under section 25, 26 or 26B for a term beginning immediately after the end of the person’s last appointment, the person’s service is to be taken to be continuous. 35

**End of appointments**

“26E. (1) At the time of appointing a member or staff member, the person making the appointment may determine, in writing, that, subject to any conditions specified in the determination, if the member or staff member is retired under paragraph (2) (b) before the end of the term of appointment, the member or staff member is entitled to the compensation specified in, or worked out under, the determination.

“(2) Subject to this Act and the regulations, an appointment under section 25, 26 or 26B ends:

- (a) when the term of the appointment ends; or
- (b) if, before the end of the term, the person who made the appointment determines, in writing, that the appointment ends on a day specified in the determination, being a day earlier than the day on which the term ends, but not earlier than the day on which the determination was made—on the specified day.

“(3) A person must not make a determination under subsection (2) merely because:

- (a) of an act or omission of the member or staff member concerned in respect of which a charge has been or could be laid against the member or staff member under the Australian Federal Police (Discipline) Regulations; or
- (b) a court has convicted the member or staff member of a criminal offence within the meaning of those Regulations, or has found the member or staff member guilty of such an offence without recording a conviction.

“(4) When an appointment ends under this section, the member or staff member concerned is to be taken to be retired unless the member or staff member is re-appointed for a term beginning immediately after the end of the appointment.”.

**Undertakings and oaths or affirmations**

22. Section 28 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:

“(5) In this section:

‘appoint’ does not include:

- (a) promote or transfer; or
- (b) re-appoint for a term that begins immediately after the end of the term of the last previous appointment.”.

**Interpretation of Part V**

23. Section 29 of the Principal Act is amended:

- (a) by omitting “paragraph 38A (1) (b) or” from the definition of “retirement notice”;

(b) by omitting the definitions of “redeploy” and “redeployment notice”.

24. Section 30 of the Principal Act is repealed and the following sections are substituted:

**Determinations by Commissioner**

“30. (1) Subject to this Part, the Commissioner may determine, in writing: 5

(a) the terms and conditions of service of members, whether within or outside Australia; and

(b) the terms and conditions of service of staff members, whether within or outside Australia. 10

“(2) A member or a staff member is entitled to an adjustment payment, subject to and in accordance with a written determination by the Commissioner.

“(3) An adjustment payment must not be made to a member or staff member unless he or she elects, in accordance with a written determination by the Commissioner, to receive it. 15

“(4) The Commissioner may, in writing, amend or revoke a determination under subsection (1).

“(5) The Minister may give the Commissioner written general policy guidelines on all or any of the matters about which the Commissioner may make a determination under this section. 20

“(6) The Minister is to consult the Commissioner about the guidelines before giving them to the Commissioner.

“(7) Where the Minister gives guidelines to the Commissioner, the Commissioner must not make, amend or revoke a determination except in accordance with the guidelines. 25

**Effect of election on certain mobility rights**

“31. (1) Where:

(a) Division 3 of Part IV of the Public Service Act applies to a prescribed staff member; and 30

(b) the staff member elects, before the end of his or her first appointment, to receive an adjustment payment under section 30;

that Division ceases to apply to the prescribed staff member when his or her first appointment ends.

“(2) Where a prescribed staff member does not elect, before the end of his or her first appointment, to receive an adjustment payment under section 30, the prescribed staff member is not eligible for re-appointment under this Act when his or her first appointment ends. 35

“(3) Where:

(a) Part IV of the Public Service Act, or the Officers’ Rights Act, applies to a member or staff member (other than a prescribed staff member); and

5 (b) the member or staff member elects to receive an adjustment payment under section 30;

that Part, or the Officers’ Rights Act, as the case may be, ceases to apply to the member or staff member, and the member or staff member is to be taken to have resigned from the Australian Public Service, when his or her  
10 appointment ends.

“(4) In this section:

‘Officers’ Rights Act’ means the *Officers’ Rights Declaration Act 1928*;

15 ‘prescribed staff member’ means a staff member who, immediately before his or her first appointment under section 26B, was a person to whom section 16 of this Act, as in force immediately before the commencement of section 6 of the *Australian Federal Police Legislation Amendment Act (No. 2) 1989*, applied;

‘Public Service Act’ means the *Public Service Act 1922*.

#### **Conditions of occupancy of premises**

20 “32. Where premises owned or occupied by the Commonwealth are occupied for residential purposes by a member or staff member, that occupation is subject to the conditions (if any) determined in writing by the Commissioner.

#### **Advancement and accelerated advancement**

25 “32A. (1) Where a scale of rates of salary applies to a position or positions of member within a particular rank, the Commissioner may advance within that rank, or accelerate the advancement within that rank of, a member occupying that position or one of those positions.

30 “(2) Where a scale of rates of salary applies to a position or positions of staff member at a particular level, the Commissioner may advance at that level, or accelerate the advancement at that level of, a staff member occupying that position or one of those positions.”.

#### **Secondment to other services etc.**

25. Section 33 of the Principal Act is amended:

35 (a) by omitting from subsection (1) “Minister may arrange for a member” and substituting “Commissioner may arrange for a member or staff member”;

(b) by omitting from subsection (1A) “Minister” and substituting “Commissioner”;

- (c) by omitting subsection (2) and substituting the following subsections:

“(2) The Minister may give the Commissioner written guidelines on the secondment of members or staff members to the Police Force of a foreign country, or to any other body or organisation outside Australia. 5

“(2A) The Minister is to consult the Commissioner about the guidelines before giving them to the Commissioner.

“(2B) Where the Minister gives guidelines to the Commissioner, the Commissioner must not arrange for a member or staff member to be seconded to the Police Force of a foreign country, or to any other body or organisation outside Australia, except in accordance with the guidelines.”; 10

- (d) by inserting in subsection (3) “or staff member” after “member”;

- (e) by omitting from paragraph (4) (a) “Board” and substituting “Commissioner”; 15

- (f) by omitting subsection (5) and substituting the following subsections:

“(5) The terms and conditions of service of a seconded member or staff member must be determined, in writing, by the Commissioner.

“(5A) The Commissioner must not determine terms and conditions that are less favourable than the terms and conditions that would apply to the member or staff member but for the secondment.”; 20

- (g) by adding at the end the following subsections:

“(8) During a period of secondment of a staff member, the staff member remains subject to the obligations and liabilities in relation to discipline to which he or she would have been subject as such a staff member but for the secondment. 25

“(9) Subsection (8) does not affect the extent to which the staff member is subject to obligations or liabilities in relation to discipline because of holding the office or position to which he or she has been seconded.”. 30

### **Special leave of absence**

26. Section 34 of the Principal Act is amended by inserting in subsections (1), (2) and (4) “or staff member” after “member” (wherever occurring).

27 After section 34 of the Principal Act the following section is inserted:

### **Maternity leave**

“34A. The appointment of a member or a staff member is to be taken to be suspended during any period when the member or staff member is absent on maternity leave.”. 35

**Re-appointment after secondment or special leave**

28. Section 35 of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) "and";  
(b) by adding at the end of subsection (1) the following word and paragraph:  
"and (d) any other matter the Commissioner thinks is relevant.";  
(c) by omitting subsection (2) and substituting the following subsections:

"(2) Where:

- (a) a staff member is seconded under section 33 or granted leave of absence under section 34; and  
(b) the secondment or leave of absence ends; and  
(c) the staff member is not, or has not been, dismissed; and  
(d) the staff member has not reached 65;

the staff member is entitled to be appointed to a position in the Australian Federal Police at a level determined by the Commissioner.

"(3) In making a determination under subsection (2) the Commissioner must have regard to:

- (a) the level of the position held by the staff member before his or her secondment or absence on leave; and  
(b) the period of the secondment or absence on leave; and  
(c) the duties performed, or studies or research undertaken, by the staff member during that period; and  
(d) any other matter the Commissioner thinks is relevant.

"(4) The term of appointment of a person under this section must be the term:

- (a) that is equal to the unexpired part of the term of the person's appointment immediately before the person's secondment or absence on leave began; or  
(b) that will end on the day on which the person will reach the relevant maximum age;

whichever is the shorter.

"(5) The period during which a person is seconded under section 33, or absent on leave granted under section 34, forms part of his or her service as a member or staff member, as the case may be, for the purposes (if any) determined by the Commissioner."

**Promotion**

29. Section 36 of the Principal Act is amended:

- (a) by inserting in subsection (1) "or staff members" after "members" (wherever occurring);

- (b) by inserting in subsection (2) "or staff member" after "member" (wherever occurring);
- (c) by inserting in subsection (2) "potential for development," after "experience,";
- (d) by adding at the end the following subsection: 5

“(3) Where a person is promoted, the person’s appointment is, on and after the day when the promotion takes effect, to be taken to be an appointment to the position within the rank, or at the level, to which the person is promoted for the term determined by the Commissioner in accordance with the regulations.”. 10

**Reviews by Merit Protection and Review Agency of non-appellable promotion decisions**

**30. Section 36B of the Principal Act is amended:**

- (a) by inserting in subsection (1) "or staff member" after "member";
- (b) by inserting in paragraphs (5) (a) and (b) "or staff member" after "member"; 15
- (c) by inserting in subsection (8) "of a member" after "cancels a promotion";
- (d) by inserting after subsection (8) the following subsection:

“(8A) Where the Commissioner cancels the promotion of a staff member under subsection (6): 20

- (a) the staff member promoted must, for all purposes, be treated as having held the position concerned during the period beginning when the promotion took effect and ending when the promotion is cancelled; and 25
- (b) on the cancellation, the Commissioner must transfer the staff member to a position at a level that is the same as, or equivalent to, the position and level held by the staff member immediately before the promotion took effect, and, if necessary, the Commissioner must create a position, make a new determination under section 24, or do both of those things, for the purpose.”; 30

- (e) by omitting "or 26 to a position within a prescribed rank" from the definition of "non-appellable promotion" in subsection (11) and substituting ", 26 or 26B to a position of member within a prescribed rank, or to a position of staff member at a prescribed level.”. 35

**Resignation**

**31. Section 37 of the Principal Act is amended by inserting before subsection (1) the following subsections:**

“(1A) A staff member may resign from the Australian Federal Police at any time by written notice given to the Commissioner. 40



“(1B) A staff member’s resignation takes effect on the day specified in the notice mentioned in subsection (1A).”.

**Efficient and economical use of members and staff members**

5 **32.** Section 38 of the Principal Act is amended by omitting “its members’ services” and substituting “the services of its members and staff members”.

**Repeal of section 38A**

**33.** Section 38A of the Principal Act is repealed.

**34.** Sections 38B and 38C of the Principal Act are repealed and the following sections are substituted:

10 **Retirement on grounds of invalidity**

“38B. (1) Where the Commissioner is satisfied that a person who is a member or staff member should be retired because of physical or mental incapacity, the Commissioner may retire the person by giving written notice to the person.

15 “(2) Where:

(a) a person’s appointment as a member or staff member ends otherwise than under subsection (1); and

(b) the person is not offered re-appointment; and

20 (c) the Commissioner certifies in writing that the person’s physical or mental incapacity was the only reason why the person was not offered re-appointment;

25 the person is to be taken, for the purposes of the *Commonwealth Employees’ Rehabilitation and Compensation Act 1988* and the *Superannuation Act*, to have been retired under this section on the day on which the appointment ceased.

**Consent to retirement**

“38C. Before being retired under subsection 38B (1), a person may, by giving written notice to the Commissioner, consent to being retired under that subsection.”.

30 **Time when retirement takes effect**

**35.** Section 38D of the Principal Act is amended:

(a) by omitting subsection (1);

(b) by omitting from subsection (2) “member” (wherever occurring) and substituting “person”;

35 (c) by omitting from subsection (2) “subsection 38A (1) or section 38B, the member’s” and substituting “section 38B, the person’s”;

- (d) by omitting subsection (3) and substituting the following subsection:
- “(3) If a person has not consented to being retired under subsection 38B (1):
- (a) a retirement notice given to the person must inform the person to the effect that he or she is entitled to appeal to an Appeal Committee, within the period prescribed for the purposes of subsection 38E (1), against the Commissioner’s decision to retire the person; and
  - (b) subject to the outcome of any appeal by the person under that subsection, the person’s retirement takes effect on a day specified in the notice, not being a day before the end of that period.”.

### **Appeals against retirement**

**36. Section 38E of the Principal Act is amended:**

- (a) by omitting subsection (1) and substituting the following subsection:
 

“(1) A person who has been retired under subsection 38B (1) without his or her consent may, within the prescribed period, appeal to an Appeal Committee against the Commissioner’s decision to retire the person.”;
- (b) by omitting from subsection (2) “redeploy or retire a member” and substituting “retire a person”;
- (c) by omitting from subsection (4) “a member” and substituting “an appellant”;
- (d) by omitting from subsection (4) “the member” (wherever occurring) and substituting “the appellant”;
- (e) by omitting from subsection (4) “the member’s” and substituting “the appellant’s”;
- (f) by omitting from subsection (5) “a member” and “the member” and substituting “an appellant” and “the appellant”, respectively.

### **Commissioner’s final decision**

**37. Section 38F of the Principal Act is amended by omitting “to redeploy or retire a member” and substituting “to retire a person”.**

### **Repeal of section 38G**

**38. Section 38G of the Principal Act is repealed.**

**39. Section 39 of the Principal Act is repealed and the following sections are substituted:**

### **Early retirement**

“39. (1) Where:

- (a) a member or staff member resigns; and
- (b) the resignation takes effect on or after the day on which the member or staff member reaches 55 but before he or she reaches 60;

the member or staff member is to be taken, for the purposes of the Superannuation Act, to have retired voluntarily.

“(2) Where:

5 (a) a member or staff member is taken to be retired under subsection 26E (4); and

(b) the retirement takes effect on or after the day on which the member or staff member reaches 55 but before he or she reaches 60;

the member or staff member is to be taken, for the purposes of the Superannuation Act, to have retired voluntarily.

#### 10 **Temporary employment**

“39A. (1) The Commissioner may employ, under written agreements, such persons as the Commissioner thinks necessary to assist the Australian Federal Police in the performance of its functions, whether within or outside Australia.

15 “(2) The terms and conditions of employment of persons employed under this section are such as the Commissioner determines from time to time.

“(3) The period of employment of a person under this section must not be more than 12 months.

#### 20 **Consultants**

“39B. (1) The Commissioner may engage, under written agreements, persons having suitable qualifications and experience to perform services as consultants to the Australian Federal Police.

25 “(2) The terms and conditions of engagement of persons mentioned in subsection (1) are such as the Commissioner determines from time to time.

#### **Secondment of persons to assist AFP**

“39C. (1) The Commissioner may, by written agreement with a body or organisation, whether within or outside Australia, arrange for a person who:

30 (a) is employed by that body or organisation; and

(b) has suitable qualifications and experience;

to assist the Australian Federal Police in the performance of its functions by performing the functions specified in the agreement.

35 “(2) The terms and conditions (including remuneration and allowances) applicable to a person performing functions under an agreement are those specified in the agreement.

#### **Industrial Relations Act not to apply to certain matters**

“39D. (1) In spite of anything in the *Industrial Relations Act 1988*:

40 (a) the terms and conditions of service of a member mentioned in paragraph 6 (2) (b) or (c) or of a staff member who is a senior executive officer; and

- (b) any matter arising under section 26E, being a matter relating to such a member or staff member; and
- (c) any matter arising under section 26E or subsection 30 (2), being a matter relating to a member mentioned in paragraph 6 (2) (d) or (e) or a staff member who is not a senior executive officer; 5

is not a matter pertaining to the relationship between an employer and employee for the purposes of the definition of 'industrial dispute' in subsection 4 (1) of that Act, nor is it an industrial issue within the meaning of section 5 of that Act.

“(2) The Australian Industrial Relations Commission must not, in exercising any of its powers in relation to an industrial dispute or industrial issue, take into account any entitlement of a member or staff member to an adjustment payment. 10

**Members and staff members to be treated as temporary employees employed under contract 15**

“39E. A person appointed under section 25, 26 or 26B is to be taken, for the purposes of section 13 of the Superannuation Act, to be a temporary employee employed under a contract.”.

**Regulations may provide for certain other terms and conditions**

**40. Section 40 of the Principal Act is amended: 20**

- (a) by inserting in paragraph (1) (b) “, and of staff members under section 26B,” after “26”;
- (b) by inserting in paragraph (1) (c) “to decline promotion, and” after “right of members”;
- (c) by omitting paragraphs (1) (ca) and (d) and substituting the following paragraphs: 25
  - “(d) the promotion of staff members, including the right of staff members to decline promotion and to appeal against the promotion of other staff members to positions at prescribed levels; 30
  - (da) the temporary performance of the whole or a part of the duties of a position of staff member (whether the position is vacant or not), including:
    - (i) the selection of staff members for such temporary performance of duties; and 35
    - (ii) appeals by staff members against such selections;
  - (db) the transfer of staff members, including the right of staff members to decline a transfer;
  - (dc) requiring staff members to take oaths or affirmations of secrecy in the prescribed form in relation to the matters coming to their knowledge in the course of their service as such staff members; 40

(dd) the attachment of the salaries of members and staff members for the satisfaction of judgment debts owing by those members or staff members;

(de) the reduction of the rank of a member or the level of a staff member;”;

(d) by omitting subsection (2).

### **Definitions**

**41.** Section 41 of the Principal Act is amended:

(a) by inserting “or a staff member” after “was a member” in the definition of “corruption offence”;

(b) by omitting “a member” from paragraphs (a) and (b) of the definition of “corruption offence” and substituting “such a member or staff member, as the case may be”;

(c) by inserting “or (4A)” after “46 (4)” in the definition of “recovery order”.

### **Superannuation orders**

**42.** Section 46 of the Principal Act is amended:

(a) by omitting paragraph (1) (b) and substituting the following paragraph:

“(b) this Part applies in relation to:

(i) the rights of, and benefits paid or payable to or in respect of, the person under any superannuation scheme; and

(ii) any entitlement of the person to receive an adjustment payment.”;

(b) by inserting after subsection (4) the following subsection:

“(4A) Where the person has received an adjustment payment, the court must:

(a) work out, and specify in the superannuation order, the amount that it thinks reflects the value of the amount of the payment as at the day on which the order is made; and

(b) include in the superannuation order an order that the person pay the amount so specified to the Commonwealth.”;

(c) by inserting after subsection (5) the following subsection:

“(5A) For the purposes of subsection (4A), the value of an amount of an adjustment payment is its value worked out having regard to any decline in the purchasing power of money between the day on which the amount was paid and the day as at which its value must be worked out.”.

**Effect of superannuation order**

**43.** Section 47 of the Principal Act is amended:

- (a) by inserting after paragraph (1) (a) the following paragraph:
  - “(aa) any entitlement of the person to an adjustment payment ceases on that day and an adjustment payment is not payable to the person on or after that day; and”;
- (b) by omitting from subsection (1B) “or (4)” and substituting “, (4) or (4A)”;
- (c) by inserting in subsection (2) “or a staff member” after “person who is a member”;
- (d) by inserting in paragraph (3) (a) “or staff member” after “member” (wherever occurring).

**Persons found guilty of relevant disciplinary offences**

**44.** Section 49 of the Principal Act is amended:

- (a) by inserting in subsection (1) “or staff member” after “member” (wherever occurring);
- (b) by inserting after paragraph (2) (a) the following paragraph:
  - “(aa) any entitlement of the person to an adjustment payment ceases on that day and an adjustment payment is not payable to the person on or after that day; and”.

**Resignation or retirement: persons charged with corruption offences**

**45.** Section 51 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “member” and substituting “person”;
- (b) by omitting from paragraph (1) (b) “member” and substituting “person”;
- (c) by omitting from paragraph (1) (b) “or retires or is retired” and substituting “or resigns or is retired, from the Australian Federal Police”;
- (d) by omitting from subsection (1) “member’s” (wherever occurring) and substituting “person’s”;
- (e) by omitting from subsection (2) “member” and substituting “person”;
- (f) by omitting from subsection (3) “member” (wherever occurring) and substituting “person”;
- (g) by inserting in paragraph (3) (b) “, or to receive an adjustment payment,” after “under the scheme”.

**Resignation or retirement: persons charged with relevant disciplinary offences**

**46.** Section 52 of the Principal Act is amended:

- (a) by omitting from subsection (1) “member” (wherever occurring) and substituting “person”;

- (b) by omitting from paragraph (1) (b) “or retires or is retired” and substituting “or resigns or is retired, from the Australian Federal Police”;
- (c) by omitting from paragraph (1) (c) “member’s”;
- 5 (d) by omitting from subsection (2) “a member, the member” and substituting “a person, the person”;
- (e) by omitting from subsection (3) “member” (wherever occurring) and substituting “person”;
- 10 (f) by omitting from subsection (4) “member” (wherever occurring) and substituting “person”;
- (g) by omitting from subsection (4) “member’s” (wherever occurring) and substituting “person’s”.

**Repeal of section 53**

47. Section 53 of the Principal Act is repealed.

15 48. After section 60 of the Principal Act the following section is inserted:

**Secrecy**

“60A. (1) This section applies to a person who is, or was at any time:

- (a) a member; or
- (b) a staff member; or
- 20 (c) a person employed under section 39A; or
- (d) a person engaged under section 39B; or
- (e) a person performing functions under an arrangement made under section 39C.

25 “(2) A person to whom this section applies must not, directly or indirectly:

- (a) make a record of any prescribed information; or
- (b) divulge or communicate any prescribed information to any other person;

30 except for the purposes of this Act or the regulations, or for the carrying out, performance or exercise of any of the person’s duties, functions or powers under this Act or the regulations.

Penalty: Imprisonment for 2 years.

“(3) In this section:

35 **‘prescribed information’** means information obtained by a person to whom this section applies in the course of carrying out, performing or exercising any of the person’s duties, functions or powers under this Act or the regulations, or otherwise in the course of the person’s service, employment or engagement under this Act or the regulations.”.

### **Misrepresentation by applicant**

**49.** Section 62 of the Principal Act is amended by inserting in subsections (1) and (2) “or staff member” after “member”.

**50.** After section 64A of the Principal Act the following section is inserted:

5

### **Suspended members and staff members**

“64AA. (1) Where the appointment of a person as a member is suspended, or a member is suspended from duty, under this Act or the regulations, the person must not, while the suspension is in force, exercise any power conferred on a member by this Act or any other law of the Commonwealth or of a Territory.

10

Penalty: Imprisonment for 2 years.

“(2) Where the appointment of a person as a member or staff member is taken to be suspended under section 34A, the period of the suspension forms part of the person’s service as a member or staff member, as the case may be, for the purposes (if any) determined by the Commissioner.”

15

### **Repeal of section 65**

**51.** Section 65 of the Principal Act is repealed.

**52.** Section 66 of the Principal Act is repealed and the following section is substituted:

20

### **Protection of persons in respect of work reports**

“66. (1) An action or proceeding, civil or criminal, does not lie against a person in respect of any oral or written report made in good faith by the person for the purposes of this Act or the regulations, being a report about work done, or proposed to be done, by a member or staff member.

25

“(2) A report is to be taken to have been made in good faith if the person who made it was not actuated by ill will to the member or staff member concerned or by any other improper motive.

“(3) Subsection (1) does not apply unless:

(a) the person who made the report believed on reasonable grounds that it was the function or duty of the person to whom the report was made to receive it; and

30

(b) if the report contained matter that was false or misleading in a material respect—the person who made the report did not know, and could not with reasonable diligence have discovered, that the report contained such matter.”

35



**Division 3—Transitional and savings provisions**

**Staff appointed under section 16 of the Principal Act**

5 53. (1) Despite the repeal of section 16 of the Principal Act, that section continues to apply in relation to the persons mentioned in subsection 16 (1) of that Act who were appointed or employed before the commencing day:

(a) in the case of a person who is a Senior Executive Service Officer—until:

10 (i) the prescribed day in relation to the person; or

(ii) the person is appointed under section 26B of the Principal Act as amended by this Act;

whichever happens first; and

(b) in the case of a person who is not a Senior Executive Service Officer—until:

15 (i) the prescribed day in relation to the person; or

(ii) the person is appointed under section 26B of the Principal Act as amended by this Act;

whichever happens first.

20 (2) Despite anything in the Principal Act, as amended by this Act, where a person to whom subsection (1) applies is appointed under section 26B of the Principal Act, as so amended, before the prescribed day in relation to the person, the terms and conditions determined in relation to the person by the Commissioner under section 30 of the Principal Act, as so amended, must be at least as favourable to the person as the terms and conditions which applied to the person immediately before his or her appointment.

25 (3) Where a person to whom subsection (1) applies is appointed under section 26B of the Principal Act, as amended by this Act, before the prescribed day in relation to the person:

30 (a) the person ceases to be an officer, within the meaning of the *Public Service Act 1922*, on the day on which he or she is so appointed; and

35 (b) the person is, on and after that day, to be taken, for the purposes of the *Public Service Act 1922*, to be employed by the Australian Federal Police and the Australian Federal Police is, for that purpose, to be taken to be a Commonwealth authority within the meaning of that Act; and

40 (c) the *Public Service Act 1922* (other than section 81C) applies in relation to the person as if he or she had been transferred into the employment of the Australian Federal Police under section 81C of that Act; and

(d) for the purpose of facilitating the change in the person's employment, the Commissioner may, despite any other law (other than an

industrial award) determine in writing any special terms or conditions of service that are to apply to the person in addition to the terms and conditions determined under section 30.

### **Deputy Commissioners**

**54. (1)** Subject to this section, a person who was a Deputy Commissioner immediately before the commencing day is, on and after that day, to be taken to have been appointed as a Deputy Commissioner under the Principal Act, as amended by this Act, for a term of 5 years beginning on that day, or until he or she reaches 60, whichever happens first. 5

**(2)** Subject to subsection (3), the Principal Act, as amended by this Act, applies to a person mentioned in subsection (1) on and after the commencing day. 10

**(3)** The remuneration and allowances, and the terms and conditions, determined by the Commissioner under the Principal Act, as amended by this Act, in relation to a person mentioned in subsection (1) must be at least as favourable to the person as those which applied to the person immediately before the commencing day. 15

**(4)** Section 28 of the Principal Act, as amended by this Act, does not apply to a Deputy Commissioner who, because of this section, is taken to have been appointed under that Act as so amended. 20

**(5)** Where a Deputy Commissioner is, because of this section, taken to have been appointed under the Principal Act, as amended by this Act, the service of the Deputy Commissioner under the Principal Act, and under the Principal Act as so amended, is to be taken to be continuous service.

### **Existing members: continued application of Principal Act** 25

**55. (1)** In spite of anything in this Act, the Principal Act, as in force immediately before the commencing day, continues to apply in relation to a member (other than the Commissioner, a Deputy Commissioner or a fixed-term senior executive officer, within the meaning of that Act) appointed before that day: 30

(a) in the case of a prescribed commissioned police officer—until:

- (i) the prescribed day in relation to the member; or
- (ii) if, before the prescribed day in relation to the member, the member notifies the Commissioner in writing that the member wishes to resign from the Australian Federal Police on the day specified in the notice (being a day that occurs before that prescribed day)—the day so specified; and 35

(b) in the case of any other commissioned police officer—until:

- (i) the prescribed day in relation to the member; or
- (ii) if, before the prescribed day in relation to the member, the member notifies the Commissioner in writing that the member wishes to resign from the Australian Federal Police on the 40

day specified in the notice (being a day that occurs before that prescribed day)—the day so specified; and

(c) in the case of a member who is a non-commissioned police officer—until:

- (i) the prescribed day in relation to the member; or
- (ii) if, before the prescribed day in relation to the member, the member notifies the Commissioner in writing that the member wishes to resign from the Australian Federal Police on the day specified in the notice (being a day that occurs before that prescribed day)—the day so specified.

(2) In this section:

**“prescribed commissioned police officer”** means a commissioned police officer appointed under the Principal Act and holding a position within the rank of Assistant Commissioner or Commander.

#### Existing members: position under amended Act

56. (1) Where a member mentioned in paragraph 55 (1) (a) does not give notice to the Commissioner under subparagraph 55 (1) (a) (ii), the member is to be taken, on and after the prescribed day in relation to the member, to have been appointed as a senior executive commissioned police officer under section 25 of the Principal Act, as amended by this Act, to the same position within the same rank as he or she held immediately before that day.

(2) Where a member mentioned in paragraph 55 (1) (b) does not give notice to the Commissioner under subparagraph 55 (1) (b) (ii), the member is to be taken, on and after the prescribed day in relation to the member, to have been appointed under section 25 of the Principal Act, as amended by this Act, to the same position within the same rank as he or she held immediately before that day.

(3) Where a member mentioned in paragraph 55 (1) (c) does not give notice to the Commissioner under subparagraph 55 (1) (c) (ii), the member is to be taken, on and after the prescribed day in relation to the member, to have been appointed under section 26 of the Principal Act, as amended by this Act, to the same position within the same rank as he or she held immediately before that day.

(4) Section 28 of the Principal Act, as amended by this Act, does not apply to a member who, because of this section, is taken to have been appointed under section 25 or 26 of the Principal Act as so amended.

(5) Where a member is, because of this section, taken to have been appointed under section 25 or 26 of the Principal Act, as amended by this Act, the service of the member under the Principal Act, and under the Principal Act as so amended, is to be taken to be continuous service.

**Existing members: terms and conditions**

**57. (1)** Despite anything in the Principal Act, as amended by this Act, a member mentioned in subsection 56 (1) holds his or her position:

- (a) for the term determined in writing by the Commissioner, being a term not longer than the term that the Commissioner could have determined under section 26D of the Principal Act, as amended by this Act, if the member had been appointed under that Act, as so amended; and 5
- (b) subject to the terms and conditions determined in writing by the Commissioner, being terms and conditions that are at least as favourable to the member as the terms and conditions which applied to the member immediately before that prescribed day. 10

**(2)** Despite anything in the Principal Act, as amended by this Act, a member mentioned in subsection 56 (2) or (3) holds his or her position:

- (a) for the term determined in writing by the Commissioner, being a term not longer than the term that the Commissioner could have determined under section 26D of the Principal Act, as amended by this Act, if the member had been appointed under that Act, as so amended; and 15
- (b) subject to terms and conditions that are the same as those which applied to the member immediately before that prescribed day. 20

**(3)** The terms and conditions determined under paragraph (1) (b), or mentioned in paragraph (2) (b), are to be taken to have been determined under section 30 of the Principal Act, as amended by this Act, and that Act, as so amended, applies in relation to the terms and conditions accordingly. 25

**(4)** Section 26E of the Principal Act, as amended by this Act, applies in relation to a member mentioned in subsection (1) or (2) of this section as if the reference in subsection 26E (1) to the making of a determination under that section at the time of appointing the member were a reference to the making of such a determination on the prescribed day in relation to the member. 30

**Existing members: resignation**

**58.** Where a member gives notice to the Commissioner under subparagraph 55 (1) (a) (ii), (1) (b) (ii) or (1) (c) (ii), the member is to be taken to have resigned from the Australian Federal Police on the day specified in the notice. 35

**Fixed-term senior executive appointments**

**59.** The appointment of a person who, immediately before the commencing day, held a position within a rank as a fixed-term senior executive officer, within the meaning of the Principal Act, is to be taken, on and after that day, to have been an appointment of the person as a 40

senior executive commissioned police officer under section 25 of the Principal Act, as amended by this Act, and the Principal Act, as so amended, applies to the person accordingly.

**Members retiring under section 38G of Principal Act**

- 5       **60.** Where a member who has been given a notice under section 38G of the Principal Act retires, whether before or after the repeal of that section, but within the period specified in the notice:
- (a) section 26E and subsection 30 (2) of the Principal Act, as amended by this Act, do not apply to the member; and
  - 10       (b) if the member's retirement takes effect after the repeal of section 38G of the Principal Act—that section, as in force immediately before its repeal, continues to apply to the member in spite of its repeal.

15       **PART 3—AMENDMENTS OF THE COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981**

**Principal Act**

**61.** In this Part, “Principal Act” means the *Complaints (Australian Federal Police) Act 1981*<sup>2</sup>.

**Interpretation**

- 20       **62.** Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:
- “‘staff member’ has the same meaning as in the *Australian Federal Police Act 1979*.”

**Appeal to Disciplinary Tribunal from proceedings before Commissioner**

- 25       **63.** Section 69 of the Principal Act is amended:
- (a) by inserting after subsection (1) the following subsection:

“(1A) Where the Commissioner imposes a penalty on a staff member in respect of a breach of discipline:

    - 30       (a) the Commissioner must cause the staff member to be notified of the finding, and of the reasons for the finding, and of the penalty; and
    - (b) the staff member may appeal to the Disciplinary Tribunal.”;
  - (b) by omitting from subsections (2) and (3) “subsection (1)” and substituting “this section”;
  - 35       (c) by inserting in subsection (4) “or staff member” after “member” (wherever occurring);
  - (d) by omitting from subsection (4) “subsection (1)” and substituting “this section”;

- (e) by inserting in subsection (5) "or staff member" after "member" (wherever occurring);
- (f) by inserting in subsection (6) "or staff member" after "member" (wherever occurring);
- (g) by inserting in subsection (7) "or staff member" after "member" 5 (wherever occurring);
- (h) by omitting from subsection (7) "subsection (1)" and substituting "this section".

### **Representation of parties**

64. Section 75 of the Principal Act is amended by omitting from subsection (3) "member" (wherever occurring) and substituting "person". 10

### **Appeal to Federal Court of Australia from decisions of Disciplinary Tribunal**

65. Section 79 of the Principal Act is amended:
- (a) by omitting from subsection (1A) "member" (wherever occurring) and substituting "person"; 15
  - (b) by omitting from subsection (1B) "member" and substituting "person".

### **Secrecy**

66. Section 87 of the Principal Act is amended by adding at the end of subsection (1) the following paragraph: 20  
 "(f) a staff member of the Australian Federal Police."

## **PART 4—AMENDMENTS OF THE SUPERANNUATION ACT 1976**

### **Principal Act**

67. In this Part, "Principal Act" means the *Superannuation Act 1976*<sup>3</sup>. 25

### **Interpretation**

68. Section 3 of the Principal Act is amended by inserting in subsection (5A) "or staff member" after "member".

### **Early retirement**

69. Section 58 of the Principal Act is amended by omitting paragraph (3) (ba). 30

## **PART 5—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

### **Consequential amendments**

70. The Acts specified in the Schedule are amended as set out in the Schedule. 35

**SCHEDULE**

Section 70

**CONSEQUENTIAL AMENDMENTS**

***Administrative Decisions (Judicial Review) Act 1977***

**Schedule 2:**

Add at the end the following paragraphs:

- “(z) decisions relating to promotions, transfers, temporary performance of duties, or appeals against promotions or selections for temporary performance of duties, of or by individual members or staff members of the Australian Federal Police;
- (za) determinations under section 26E of the *Australian Federal Police Act 1979* relating to individual members or staff members of the Australian Federal Police.”.

***Crimes (Superannuation Benefits) Act 1989***

**Subsection 7 (1):**

Insert “or staff member” after “member”.

***Industrial Relations Act 1988***

**Subsection 4 (10):**

Insert “or staff members” after “members”.

**Paragraph 5 (3) (e):**

Insert “or staff members” after “members”.

**Schedule 1:**

- (a) Insert in paragraph 3 (b) “(including terms for which persons are appointed)” after “appointments”.
- (b) Insert in paragraph 3 (c) “or staff members” after “members”.

***Merit Protection (Australian Government Employees) Act 1984***

**Subsection 3 (1) (definition of “Commonwealth Authority”):**

Add at the end of the definition after paragraph (d) “but does not include the Australian Federal Police”.

**Subparagraph 85 (2) (k)(i):**

Insert “and staff members” after “members”.

**SCHEDULE—continued**

**Public Service Act 1922**

**Paragraph 87 (2) (d):**

Omit the paragraph, substitute the following paragraph:

“(d) service as a member (other than as Commissioner of Police) or staff member of the Australian Federal Police;”.

**Paragraph 87J (2) (b):**

Omit the paragraph, substitute the following paragraph:

“(b) service as a member (other than as Commissioner of Police) or staff member of the Australian Federal Police;”.

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**NOTES**

1. No. 58, 1979, as amended. For previous amendments, see No. 155, 1979; No. 69, 1980; No. 22, 1981; No. 80, 1982; Nos. 39, 91 and 117, 1983; No. 117, 1984; No. 121, 1985; No. 35, 1986; No. 38, 1988; and No. , 1989.
2. No. 21, 1981, as amended. For previous amendments, see No. 62, 1983; Nos. 72 and 165, 1984; No. 122, 1985; No. 168, 1986; and No. 141, 1987.
3. No. 31, 1976, as amended. For previous amendments, see Nos. 37 and 51, 1976; No. 80, 1977; Nos. 17, 134, 169 and 170, 1978; Nos. 52 and 155, 1979; No. 177, 1980; No. 92, 1981; No. 92, 1984; Nos. 80, 93, 151 and 153, 1987; No. 38, 1988; and No. 71, 1989.