

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 17 April 1985

(Special Minister of State)

A BILL

FOR

An Act to amend the *Complaints (Australian Federal Police) Act 1981*, 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:

Short title, &c.

5 **1.** (1) This Act may be cited as the *Complaints (Australian Federal Police) Amendment Act 1985*.

(2) The *Complaints (Australian Federal Police) Act 1981*¹ is in this Act referred to as the Principal Act.

Commencement

10 **2.** This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. Section 3 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “member” and substituting the following definitions:

“ ‘member’ means a member of the Australian Federal Police; 5

‘member of the Australian Federal Police’ includes a person appointed as a special member of the Australian Federal Police under section 27 of the *Australian Federal Police Act 1979*;”;
and

(b) by omitting from sub-section (1) the definition of “special member of the Australian Federal Police”. 10

Powers of Investigation Division

4. Section 7 of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-sections:

“(5) A member of the Investigation Division may, for the purposes of the investigation of a complaint or matter, direct a member of the Australian Federal Police to furnish information, produce a document or other record, or answer a question, that is relevant to the complaint or matter, as the case may be. 15

“(5A) A direction under sub-section (5) has no effect unless the person giving the direction— 20

(a) states in the direction that the member concerned is being expressly directed under sub-section (5) of this section;

(b) specifies in the direction the substance of the complaint or matter being investigated; 25

(c) if it is practicable to do so—gives the direction in writing; and

(d) if the direction is given in writing—causes a copy of the direction to be furnished to the member concerned.

“(5B) In any proceedings for a contravention of sub-section (8), the onus of proving that the person who gave a direction under sub-section (5) complied with sub-section (5A) lies on that person.”. 30

Power of Commissioner to withdraw charges by consent

5. After section 11 of the Principal Act the following section is inserted:

Discontinuance of proceedings by Commissioner

“11A. (1) Subject to sub-section (2), where proceedings to which sub-section 67 (1) or (2) applies have been instituted by the Commissioner, the Commissioner may, at any time before the proceedings have been determined, with the leave of the Disciplinary Tribunal, discontinue the proceedings in whole or in part. 35

“(2) The Commissioner shall not discontinue proceedings under sub-section (1)—

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- (a) in the case of proceedings instituted pursuant to a direction by the Attorney-General under paragraph 11 (7) (a)—without the consent of the Attorney-General;
 - (b) in the case of proceedings instituted pursuant to action by the Minister under paragraph 52 (2) (b)—without the consent of the Minister; or
 - (c) in any other case—without conferring with the Ombudsman.

Conciliation

10 **6.** Section 19 of the Principal Act is amended—

- (a) by omitting sub-sections (1), (2), (3) and (4) and substituting the following sub-sections:

“(1) Where the Commissioner considers that a complaint made under section 6 with respect to action taken by a member—

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- (a) may properly be dealt with by attempting to reconcile the complainant and the member; or
 - (b) is, in substance, a complaint about the practices and procedures of the Australian Federal Police that may properly be dealt with by attempting to conciliate the complainant,

20 the Commissioner may, after having notified the Ombudsman and the officer in charge that he intends to do so—

- (c) in respect of a matter referred to in paragraph (a)—attempt to reconcile the complainant and the member; or
- (d) in respect of a matter referred to in paragraph (b)—direct a senior member (other than the member against whom the complaint has been made) to attempt to conciliate the complainant.

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

“(3) Where the Commissioner becomes satisfied—

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- (a) that a reconciliation or conciliation has been effected; or
 - (b) that, for any reason, it is unlikely that a reconciliation or conciliation will be effected,

40 the Commissioner shall inform the Ombudsman and the officer in charge that he is so satisfied and, in a case where he notifies them that he is satisfied of a matter referred to in paragraph (a), furnish particulars of the basis on which the reconciliation or conciliation, as the case may be, has been effected.

“(4) The officer in charge may, in his discretion, defer the investigation, or further investigation, of the complaint pending the outcome of an attempt under this section to effect a reconciliation or

conciliation, as the case may be, but not after he has been informed that the Commissioner is satisfied of the matter referred to in paragraph (3) (b)”; and

(b) by inserting in sub-section (6) “or conciliation” after “reconciliation”.

Special or additional investigations conducted by Ombudsman under this Part

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7. Section 26 of the Principal Act is amended by omitting sub-section (5) and substituting the following sub-section:

“(5) As soon as practicable after the Commissioner receives a report of an investigation to which this section applies from the Ombudsman under sub-section (3), the Commissioner shall cause to be furnished to the member, or each member concerned, in such manner as the Commissioner thinks fit, particulars of the results of the investigation carried out by the Ombudsman, together with any comments the Commissioner wishes to make concerning the investigation.”.

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Reports by Ombudsman

8. Paragraph 31 (2) (f) of the Principal Act is amended by omitting “thing” (second occurring) and substituting “omission”.

Officers to observe secrecy

9. Section 41 of the Principal Act is amended by omitting from sub-section (7) “satisfy himself” and substituting “not do so unless he is satisfied”.

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Charges in respect of breaches of discipline

10. Section 67 of the Principal Act is amended—

(a) by omitting sub-section (5) and substituting the following sub-section:

“(5) Before imposing a penalty under paragraph (3) (a) in respect of a breach of discipline, the Disciplinary Tribunal shall afford the Commissioner (or another member nominated by the Commissioner) and the member concerned the opportunity to make representations with respect to the penalty that it would be appropriate to impose in respect of that breach of discipline.”; and

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(b) by omitting sub-section (7) and substituting the following sub-section:

“(7) The Commissioner shall not, under sub-section (6), impose on a member a penalty by way of recommending to the Governor-General that the member be reduced to a lower rank or dismissed from the Australian Federal Police or by way of reducing the member to a lower rank or dismissing him from the Australian Federal Police unless the Commissioner—

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

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

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(ii) that the member may, within 7 days after service of the notice, deliver to the Commissioner any written statement that the member wishes to be taken into consideration in deciding the appropriate penalty to be imposed; and

(b) has, before imposing such a penalty, taken into consideration the matters contained in any statements delivered in accordance with the notice,

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

Appeals to Disciplinary Tribunal from proceedings remitted to Commissioner

11. Section 68 of the Principal Act is amended by adding at the end of paragraph (2) (c) “, or within such further time as the Disciplinary Tribunal, constituted by the President or a Deputy President, allows (whether before or after the expiration of that period)”.

Appeals to Disciplinary Tribunal from proceedings before Commissioner

12. Section 69 of the Principal Act is amended—

(a) by adding at the end of paragraph (2) (c) “, or within such further time as the Disciplinary Tribunal, constituted by the President or a Deputy President, allows (whether before or after the expiration of that period)”;

(b) by omitting sub-section (5) and substituting the following sub-section:

“(5) The Disciplinary Tribunal shall not substitute, for a finding that a member is guilty of a breach of discipline, a finding that the member is guilty of another breach of discipline unless it has afforded the Commissioner (or a member nominated by the Commissioner) and the member concerned the opportunity to show cause to the Tribunal why the substituted finding should not be made.”.

Powers of Tribunal

13. Section 71 of the Principal Act is amended by omitting from sub-section (2) “member of the Tribunal” and substituting “the Registrar or a Deputy Registrar”.

Appeals to Federal Court of Australia from decisions of Disciplinary Tribunal

14. Section 79 of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-sections:

“(1A) Where, in pursuance of section 67, 68 or 69, the Disciplinary Tribunal imposes a penalty on a member in respect of a breach of discipline (other than a penalty of admonition or reprimand), the member or the Commissioner may appeal to the Court from the

decision of the Tribunal on the ground that the penalty is unduly severe or is inadequate.

“(1B) On application by a member who wishes to appeal to the Court under sub-section (1A) against a decision of the Tribunal, the Tribunal constituted by the President or by a Deputy President may suspend the operation of the decision for 28 days or such further period as the Tribunal in its discretion directs and on such conditions (if any) as it thinks fit.”; and

- (b) by omitting from paragraph (2) (a) “person” and substituting “appellant”.

Application

15. (1) In this section, “commencing day” means the day on which this Act comes into operation.

(2) The amendment made by section 4 extends to investigations pending immediately before the commencing day.

(3) The amendments made by sections 5 and 10 and paragraph 12 (b) extend to proceedings pending immediately before the commencing day.

(4) The amendments made by section 6 extend to complaints made, but not finally disposed of, before the commencing day.

(5) The amendment made by section 11 extends to an appeal against a penalty notified to the member concerned within 28 days before the commencing day.

(6) The amendment made by paragraph 12 (a) extends to an appeal against a finding notified to the member concerned within 28 days before the commencing day.

(7) The amendments made by section 14 extend to a penalty in respect of which the document setting out the decision of the Disciplinary Tribunal was furnished to the person concerned within 28 days before the commencing day.

NOTE

1. No. 21, 1981. For previous amendments, see No. 62, 1983; and Nos. 72 and 165, 1984.

