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Australian Federal Police Legislation Amendment Bill 1989

Date Introduced: 4 May 1989

House: House of Representatives

Presented by: Hon. Lionel Bowen, M.P., Attorney - General

Digest of Bill

Purpose

To provide that employer superannuation contributions will not be payable in certain circumstances; to allow the Australian Federal Police (AFP) to operate an expanded witness protection scheme; and to replace certain provisions dealing with redundancies and executive appointments.

Background

The AFP was established in 1979 following the amalgamation of the Australian Capital Territory Police and the Commonwealth Police. Consequently, the AFP's main functions largely reflect the functions performed by these bodies, and include : the provision of policing services for the ACT, the protection of Commonwealth property and the enforcement of Commonwealth laws throughout Australia. As part of the latter function, the AFP performs such functions as the investigation of drug trafficking, organised crime and fraud against the Commonwealth. The AFP also protects airports and is part of an international policing force in Cyprus.

The average police staffing level for 1987 - 88 was 2672, compared with 2572 for the previous financial year. On 3 April 1989, the Minister for Justice announced a funding increase of \$500 000 for the AFP. The additional funding arose after claims that, for many of its operations, the AFP was a 9am. to 5pm. police force, as funds were not available for overtime. One of the causes of the funding shortfall was seen to be the amount spent on the investigation of the death of Assistant Commissioner Winchester. In the 1988 - 89 Budget the AFP received \$141 million for operational activities. This was increased by a further \$13.5 million in the additional estimates.

Witness protection was recently discussed by the Joint Committee on the National Crime Authority, which released a report titled *Witness Protection* in May 1988. The New South Wales, Victorian and Federal Police all have witness protection schemes, and a number of different methods have been used to protect witnesses. The original method used was to guard a person at their own home to allow the witness to continue living as normal a life as possible. However, this

proved to be a very costly practice. For example, an operation to protect two witnesses plus the wife and child of one of the witnesses between September 1982 and August 1983 involved, at its peak, 36 personnel and six vehicles. The operation cost the Victorian Police approximately \$4.5 million. Subsequently, the method of protection was changed so that people are now protected at safe locations. Between April 1985 and September 1987, 17 witnesses have been protected for periods of between three days and 18 months at a cost of \$850 000 per year. The Federal and New South Wales Police use a scheme of relocation, where close protection is only provided when the witness returns to the area of potential danger. The AFP program protects approximately 14 witnesses at a cost of \$1.3 million per year, though costs are recovered when the protection is performed on behalf of other agencies, such as the National Crime Authority.

The question of whether government officers convicted for offences that are regarded as serious should still be eligible to receive the employer contributions to their superannuation scheme has recently received much publicity, particularly as a result of allegations before the Fitzgerald inquiry in Queensland. Governments have recently shown a marked interest in depriving criminals and corrupt officials of the proceeds of their activities. This has been exemplified by the *Proceeds of Crime Act 1987* and State legislation which aims to achieve the same ends. Part of the process of depriving people of benefits associated with illegal activity has involved the removal of the employer contributions to their superannuation benefits. This usually results in a substantial loss to the person involved, who receives only their contributions and any interest on those contributions. While this Bill will apply only to members of the AFP, the Minister announced in the second reading speech the intention to introduce further legislation in the Budget session that will extend the sanction to members of the public service, other government employees and statutory office holders.

Main Provisions

The functions of the AFP will be widened by clause 5 to allow the AFP to provide witness protection for a wider range of bodies.

Clause 9 will insert new sections 25A to 25C into the *Australian Federal Police Act 1979* (the Principal Act), which deal with executive appointments. The provisions largely reflect those relating to other executive appointments and provide for five – year appointments. Executives may be reappointed.

New provisions dealing with redeployment will be inserted into the Principal Act by clause 12. If, after taking all reasonable steps to find a suitable position at the person's rank, such a position cannot be found, the Commissioner may appoint the person to a position at a lower rank or retire the person (proposed section 38A). As well, the Commissioner may retire people on the grounds of invalidity (proposed section 38B). Members so affected may appeal to an Appeal Committee, but the decision of such committees will not be binding on the Commissioner (proposed section 38F).

Proposed Part VA deals with the loss of superannuation benefits. 'Corruption offence' is defined in proposed section 41 to be an offence involving an abuse of position as a member of the AFP; an offence committed to pervert, or to attempt to pervert, the course of justice; and offences involving corruption. Where a member is charged with an offence that the Commissioner considers to be a corruption offence, the Commissioner is to notify the Minister of the charge (proposed section 43). Where a person is convicted of an offence and the Minister is of the opinion that it is a corruption offence, the Minister is to authorise the appropriate body (i.e. the Director of Public Prosecutions or the Australian Government Solicitor) to apply for a superannuation order. The appropriate body is to apply for an order if authorised to do so and the person is sentenced to imprisonment for more than 12 months (proposed section 45). Where the court is satisfied that the person was convicted of a corruption offence and that this Part applies, a superannuation order is to be made (proposed section 46). The effect of such an order will be that the person will cease to be a member of the scheme and will not be eligible to receive the employer's contributions to the scheme made in respect of that employee (proposed section 47).

Similarly, employer contributions may be lost where a person is convicted of a relevant disciplinary offence (this is defined in proposed section 41 to be an offence under the Australian Federal Police (Discipline) Regulations; that is declared by those regulations to be a relevant disciplinary offence). Where an officer is convicted of such an offence, is dismissed and chooses not to appeal or loses an appeal, they will not be entitled to employer superannuation contributions (proposed section 49).

Where a person ceases to be eligible to receive employer contributions, those benefits will be payable to the Commonwealth (proposed section 50).

If a member of the AFP is charged with an offence which the Commissioner believes to be a corruption offence and resigns before the offence is determined, the Commissioner is to direct the relevant superannuation body that the member's superannuation rights are to be suspended. In such cases, the member will still be entitled to withdraw their contributions plus interest, but will not be eligible for any other benefit unless: the member is acquitted; is convicted but is either not imprisoned or is sentenced to 12 months imprisonment or less; the Minister refuses permission for a superannuation order; or the court refuses such an order (proposed section 51).

If a person resigns while facing a relevant disciplinary offence, they will be taken to be suspended without pay until the charge is determined. If cleared of the offence, the resignation will be deemed to apply from the original time of resignation (proposed section 52). Similar provisions will apply in respect of executive appointments where the fixed term appointment expires while the executive officer is facing a relevant disciplinary offence (proposed section 53).

Superannuation rights in respect of the Commissioner and Deputy Commissioners, who are appointed by the Governor – General, are dealt with in clause 7. Where an appointment is terminated due to corruption; abuse of office; or for perverting, or attempting to pervert, the course of justice, the Governor – General is to adjust their superannuation rights so that they are equivalent to a person dealt with under proposed section 49.

For further information, if required, contact the Law and Government Group.

15 May 1989

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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