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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN FEDERAL POLICE BILL 1979

EXPLANATORY MEMORANDUM

AND

NOTES ON CLAUSES

(Circulated by the Minister for Administrative
Services, the Hon. John McLeay, M.P.)

AUSTRALIAN FEDERAL POLICE BILL 1979

EXPLANATORY MEMORANDUM

General Outline

The Bill gives effect to the Government's policy to create a single Australian Federal Police and incorporate into it the existing Commonwealth and Australian Capital Territory Police Forces.

This accords with the Government's announced adoption of central recommendation of Sir Robert Mark in his Report on The Organization of Police Resources in the Commonwealth Area and Other Related Matters. Sir Robert Mark has recommended that this was the best way to achieve vital objectives of:

- .. overcoming jurisdictional boundaries between Police Forces
- .. more effective and economical co-ordination of Federal police resources
- .. more effective co-operation with the States in law enforcement matters.

The Bill constitutes the new Federal Police as being of one membership to serve in either of two components - one on general police functions and the other on police protective service functions. It provides an opportunity, subject to the usual principles of competence and qualifications, for members, and a preferential opportunity for existing members, to move between components. Allocation of detailed functions and personnel to the components is for the Commissioner to determine. The broad functions of the new Police are set out in the Bill.

It also provides for all members of both present Forces to become members of the new Federal Police on their present terms and conditions until a new determination is made. A Police Arbitral Tribunal, constituted by a Presidential Member

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of the Conciliation and Arbitration Commission, is to be established under the Bill.

General Purpose

The Bill provides for the creation of the Australian Federal Police and for the incorporation of the members of the existing Commonwealth Police Force and the Australian Capital Territory Police Force into it. The Commonwealth Police Act will be repealed by the Bill. Those sections of the A.C.T. Police Ordinance dealing with the establishment of the A.C.T. Police will also be repealed.

Background

The creation of the Australian Federal Police was the cornerstone recommendation of Sir Robert Mark's Report in April 1978, to the Minister for Administrative Services on The Organization of Police Resources in the Commonwealth Area and Other Related Matters. The Ministers for Administrative Services and the Capital Territory announced on 28 July 1978 the Government's approval "in principle" of this recommendation. Those Ministers also announced on 13 December 1978 that the Government had made its final decision to proceed with the creation of the Australian Federal Police and for legislation to be introduced in the Autumn Sittings of the Parliament.

The Legislation

The Bill provides for as follows:

Part I - Preliminary

Makes provision for citation, commencement of certain provisions from the date of Royal Assent and the remainder to become operative on a date to be fixed by

proclamation; the repeal of the Commonwealth Police Act; the interpretations and reference to other Commonwealth laws. These are the machinery provisions associated with the creation of the Australian Federal Police.

Part II - Establishment, Functions and Powers of the Australian Federal Police

This part provides for the constitution of the organisation, its functions and the powers and duties of its members. These embrace the present powers and duties of members of the Commonwealth and Australian Capital Territory Police Forces.

Part III - Administration

This part outlines the general administrative arrangements of the organisation, including the responsibilities of the Minister, the Commissioner and the Secretary, who, in some limited matters, also advises the Minister. It also provides for the Commissioner to issue General Orders and Instructions for the good management of the organisation; the general power of delegation, and the provision of civil support staff. This part provides for the Commissioner to be responsible for the general administration and operations but to be subject to the written directions of the Minister on matters of general policy including functions and national common police services. In respect of these matters the Minister is to seek the advice of both the Commissioner and the Secretary of his Department. It also provides the necessary legislation for the control of the operations and activities of the organisation by the Commissioner, including the power of

direction of the civil support staff made available to assist the organisation under the Public Service Act. In accordance with standard legislative and administrative practices a general delegation provision is also included.

Part IV - Appointment and Service of Members

This part includes two divisions which provide for: the statutory appointment of the Commissioner and Deputy Commissioner(s) and tenure of office; the appointment of the members (including special members) of the organisation, including the commissioning by the Governor-General of Officers; determination by the Minister, on the advice of the Commissioner and the Public Service Board, of the number of ranks to which persons may be appointed; and the appointment of the Commissioner by the Governor-General for a period of up to seven years, with eligibility for re-appointment up to age 65 years. The provisions relating to the determination of remuneration, dismissal and acting arrangements are in line with normal practice in relation to statutory offices. The other arrangements provided for in this part with regard to the appointment, promotion, mobility, and commissioning of members are in accordance with traditional or accepted police practices.

Part V - Terms and Conditions of Service

This part consists of three Divisions dealing in some detail with:

DIVISION 1 - the determination of terms and conditions of service for the members.

DIVISION 2 - the establishment of a separate arbitral tribunal to hear and determine matters related to terms and conditions of service.

DIVISION 3 - general provisions on the effect of determinations made in accordance with Division 2.

The determination of terms and conditions of service are to be by the Minister on the advice of his Department and the co-ordinating authorities (i.e. the Public Service Board and the Department of Industrial Relations). The provisions governing representation before, and the proceedings of the Federal Police Arbitral Tribunal, to be constituted by a Presidential Member of the Conciliation and Arbitration Commission, are in line with the present Arbitral Tribunal for the A.C.T. Police. The provisions in the Bill draw heavily on the provisions of the Conciliation and Arbitration Act.

Part VI - Miscellaneous

This part provides for the range of miscellaneous house-keeping matters associated with the creation of the Australian Federal Police, the Regulation-making power of the Governor-General, and the prescription of offences relating to members or membership of the organisation. They reflect similar legislation relating to the existing Commonwealth, Territorial and State Police Forces.

Part VII - Transitional

This part provides for:

- 1) the automatic appointment of members of the two existing Federal police forces to the Australian Federal Police; this is the incorporation provision;

- (b) a legal preference for members over non-members for transfer from one component to the other component;
- (c) the preservation of rights and entitlements of members of the existing Federal police forces upon their incorporation into the Australian Federal Police; and
- (d) specific regulation-making powers in respect of promotion appeals and discipline.

The specific regulation-making powers in this part are also required to enable those matters not finalised, before the date of commencement of the Australian Federal Police, associated with promotion and disciplinary matters of the two present Federal Forces, to be completed after the coming into operation of this new legislation.

AUSTRALIAN FEDERAL POLICE BILL

NOTES ON CLAUSES

Part I - Preliminary

Clause 1 Citation of Act.

Clause 2 Provides for certain sections to become operative on the date of Royal Assent and the remainder to become operative on a date to be fixed by Proclamation.

Clause 3 Repeals the Commonwealth Police Act 1957.

Clause 4 Definitions and interpretations.

Clause 5 (i) Requires that references in the laws of the Commonwealth or of the Australian Capital Territory to a Commonwealth Police Officer or a member of the police force of the Australian Capital Territory be read as references to a member of the Australian Federal Police. References to the Commonwealth Police Force or the Police Force of the Australian Capital Territory be read as references to the Australian Federal Police.

(ii) Enables ranks within the AFP to be declared by Regulation to correspond with present ranks in the two forces to be incorporated in the AFP.

Part II - Establishment, Functions and Powers of the

Australian Federal Police

Clause 6 Establishes the AFP and identifies the classes of officers which constitute the AFP.

Clause 7 Defines the components that will comprise members performing general police functions and police protective service functions.

Clause 8 Provides for the broad functions of the AFP to be:

provision of police services in relation to the A.C.T., and in relation to the laws and property of the Commonwealth, and safeguarding of Commonwealth interests. Special provision is made to enable investigation of State made laws applicable in Commonwealth places to be in accordance with arrangements between Commissioner of the AFP, and the Commissioner of a State Police Force. This is aimed at preventing interference with the traditional role of State police.

Clause 9 Provides for the powers and duties of members performing general police functions.

Clause 10 Provides for the powers and duties of members performing police protective service functions. These powers include those in Clause 9 to be exercised as appropriate to their functions.

Clause 11 Provides power for the execution of writs and warrants by members of the AFP.

Clause 12 Provides immunities for members of the AFP from certain State and Territory laws. This has been a long standing provision in the Commonwealth Police Act and Defence legislation.

Part III - Administration

Clause 13 - Provides for the Commissioner to have the general administration of, and control of, the operations of the AFP. The Minister may give written directions, following advice from the Secretary and Commissioner, in respect of general policy in relation to performance of the functions of the AFP. The Minister may request reports from time to time

from the Commissioner on these matters. The Clause also provides for the Minister to make arrangements in certain circumstances with Ministers of the Crown of a State for provision for development of national common services and to give directions to the Commissioner relating to the use of such common services. In addition the Clause lists a range of common services.

Clause 14 Enables the Commissioner to issue: General Orders in respect of the general administration, and determining the respective functions of the two components; and, General Instructions for the effective and efficient conduct of the operations of the AFP.

Clause 15 Permits the Commissioner to delegate his powers under this Act.

Clause 16 Provides that the AFP Public Service support staff shall be under the direction of the Commissioner in respect of the performance of the duties as well as in relation to their absence on leave. It also provides for additional powers to be conferred on the Commissioner by regulations, if this proves necessary from experience. This is to ensure that the Public Service support staff function at all times to achieve the effective operation of the AFP.

Part 7 - Appointment and Service of Members

Clause 17 Provides that the Commissioner of Police and one or more Deputy Commissioner/s of Police are to be appointed by the Governor-General by Commission. It further provides that the Commissioner may be appointed for a period not exceeding

seven years and be eligible for re-appointment. It limits the appointment or re-appointment, to a person who has not attained the age of sixty years unless the Governor-General is satisfied that special circumstances justify him doing otherwise. It also provides that the Governor-General may determine in respect of such persons terms and conditions not otherwise provided by the Act.

Clause 18 Provides that the Minister, may on such terms and conditions as he considers appropriate, appoint a person to act as Commissioner or as a Deputy Commissioner when the office of Commissioner or an office of Deputy Commissioner is or is expected to be vacant. It also provides that the Minister may terminate such an appointment, which is limited to a period of twelve months, and for the person so appointed to have and exercise all the powers and perform all the functions and duties of the Commissioner or of Deputy Commissioner. It further provides that the validity of anything done by a person so appointed shall not be called in question.

Clause 19 Provides that a person determined by the Commissioner to be the next most senior member to automatically exercise all the powers and perform all the functions and duties of the Commissioner or a Deputy Commissioner when absent from duty or from Australia or unable to perform the functions of their office. This relates to absence only as distinct from Clause 18 which relates to vacancies of office.

Clause 20 Provides that the remuneration payable to the Commissioner or Deputy Commissioner is to be that determined by the Remuneration Tribunal.

Clause 21 Enables the Minister to grant leave of absence to the Commissioner or a Deputy Commissioner.

Clause 22 Provides power for the Governor-General to terminate the appointment of the Commissioner or a Deputy Commissioner for reason of misbehaviour or incapacity or in other specified circumstances.

Clause 23 Provides that there be commissioned and non-commissioned ranks as prescribed in the Regulations.

Clause 24 Enables the Minister on the advice of the Commissioner and the Public Service Board to determine the number of persons that may be appointed to each rank of the Australian Federal Police. The Government's general policy on staff ceilings will apply overall.

Clause 25 Provides for the Governor-General or the Commissioner, if he is authorized by the Governor-General, to appoint, by Commission, promote and transfer, commissioned officers of each component to a rank that the person, is, in accordance with the regulations, competent and qualified to hold. It also provides for the Commissioner to direct a non-commissioned officer to act in a commissioned rank, or higher rank, in either component. This provision, together with clause 26, in respect of non-commissioned officers, provides for general mobility within and between components, subject to appropriate competence and qualification to be provided for in the regulations.

Clause 26 Provides for the Commissioner to appoint, by instrument, promote and transfer, non-commissioned officers of each component to a rank that the person is, in accordance with the regulations, competent and qualified to hold.

Clause 27 Enables the Commissioner to appoint Special Members. It also provides that persons so appointed have, during the continuance of their appointment, appropriate powers and duties as specified in the instrument of appointment.

Clause 28 Provides that a person appointed to the A.F.P. will enter into an undertaking relating to the performance of his

duties under the Act and before discharging his powers and duties be required to make and subscribe on Oath or Affirmation in form to be prescribed.

Part V - Terms and Conditions of Service

Clause 29 Provides for definitions and interpretations relating to this Part.

Clause 30 & 31 Enables the Minister to determine terms and conditions of service of members and to make an agreement in writing with an Association relating to such terms and conditions. Such an agreement to be submitted to the Federal Police Arbitral Tribunal who shall certify the agreement and specify the date on which it is to come into effect. There is also provision for such agreements not to exceed five years from that date unless sooner rescinded. An agreement is binding on the parties to the agreement and all members of the Association that is a party to the agreement.

Clause 32 Requires the Minister before making a determination or entering into an agreement, to obtain and consider the advice of the Public Service Board, Department of Industrial Relations and his own Department - the co-ordinating regulatory authorities of the Government.

Clause 33 Permits the Minister, on the advice of the Commissioner, to arrange for a member to be seconded to another Police Force or another organisation in or outside Australia. It also enables the Commissioner to arrange for a member to be seconded to the Australian Public Service or other Government agency. The Clause also provides that any seconded member is not to be disadvantaged as to terms and conditions of his employment.

Clause 34 Enables the Commissioner to grant special leave

of absence for specific purposes as set out in the Clause.

Clause 35 Provides for the re-appointment of a member to a rank to be determined by the Commissioner on criteria set out in the Clause, after the period of secondment or special leave of absence.

Clause 36 Provides the criteria for selection of members for promotion which is relative efficiency and if equal efficiency then seniority - this is the 'promotion on merit' formulation.

Clause 37 This regulates the method and timing of resignation to enable appropriate arrangements to be made by the Commissioner in respect thereof. Any cessation of service by a member other than by proper resignation is to be an offence.

Clause 38 Provides a mandatory retiring age of 60 for members of the Australian Federal Police. This is the present position for the A.C.T. Police Force and the Commonwealth Police Force. Further provides that the Commissioner may retire members who are unfit to discharge their duties and whom he is unable to place elsewhere in the A.F.P.

Clause 39 Provides for the retrenchment of excess members if the Commissioner is unable to place them elsewhere in the A.F.P.

Clause 40 Enables the making of regulations in relation to:

- (a) the formation of an Association or Associations;
- (b) the appointment of persons on probation;
- (c) matters relating to the promotion of members;
- (d) the enabling of early retirement of members at age 55;
- (e) enables a member to resign for purposes of contesting an election and to be reinstated if not elected; and
- (f) matters relating to the discipline of the Police Force including the establishment of a Disciplinary Board.

Clause 41 This is a complementary Clause to Clause 42. Both Clauses provide for jurisdiction, as to arbitration in relation to members of the A.F.P. to be exercised not by the Conciliation and Arbitration Commission, but by a Federal Police Arbitral Tribunal.

Clause 42 Provides for the establishment of the Federal Police Arbitral Tribunal to be constituted by a Presidential Member of the Conciliation and Arbitration Commission designated by the President of the Commission. It also provides for a person to be appointed as secretary of the Tribunal.

Clause 43 Provides for the acting appointment of a Presidential Member by the President of the Commission when the person constituting the Tribunal is absent and matters associated therewith.

Clause 44 Provides for the continuation of the hearing of matters before the Tribunal where the person constituting the Tribunal is unable to continue and another person can constitute the Tribunal.

Clause 45 Provides for the validity of proceedings before the Tribunal.

Clause 46 Provides that the Minister and an Association may submit matters relating to terms and conditions of service of members to the Tribunal and for the Tribunal to hear and determine such matters. These are not to include matters of promotion, transfer, discipline, retirement or dismissals that are dealt with by other machinery.

Clause 47 Provides that a determination by the Tribunal is binding on all parties to the proceedings.

Clause 48 Provides that the Tribunal in making the determination is not limited to matters submitted to it if the Tribunal considers that the public interest or the interests of the AFP justify the inclusion of other matters.

Clause 49 Provides particular powers of the Tribunal.

Clause 50 Provides that procedures before the Tribunal are to be as determined by the Tribunal with as little formality and technicality without being bound by the rules of evidence.

Clause 51 Provides a penalty for witnesses who, without reasonable excuse, fail to attend before the Tribunal.

Clause 52 Provides a penalty for a witness who, without reasonable excuse, refuses to be sworn or refuses to answer questions before, or produce documents to, the Tribunal.

Clause 53 Provides for it to be an offence for a person to be in contempt of the Tribunal.

Clause 54 Provides for an appeal to be made from a determination or a decision of the Tribunal to the Full Bench of the Conciliation and Arbitration Commission provided that the matter is of such importance that the appeal is in the public interest. It further provides the power for the Commission to hear and determine such matters.

Clause 55 Restricts representation in proceedings before the Tribunal to a member or officer of an association or an officer of the Department administered by the Minister. It further provides that, in the case of proceedings before the Commission, and where the parties and the Commission consent, legal representation can be made.

Clause 56 Prevents the allowance of costs in respect of any proceedings before the Tribunal or Commission. This is the longstanding position in arbitration arrangements of this nature.

Clause 57 Provides that decision by the Tribunal or Commission shall be final.

Clause 58 Enables a determination to be varied or rescinded and an agreement to be rescinded.

Clause 59 Enables a person to sue the Commonwealth through the Federal Court of Australia for any amount due to him under a determination or agreement but unpaid to him.

Part VI - Miscellaneous

Clause 60 Definition and interpretation of a member for the purposes of this Part.

Clause 61 Provides that the Commissioner may confer an award on a member for bravery or other conspicuous conduct. Criteria for such awards shall be prescribed.

Clause 62 Creates an offence and provides a penalty for a person to make a false or misleading statement in support of an application for appointment to the Australian Federal Police and enables the Commissioner to dismiss a member who is convicted of such an offence.

Clause 63 Creates an offence and provides a penalty for a person, not being a member, to personate a member, or have in his possession any arms, equipment, uniform, books or documents of the AFP.

Clause 64 Creates an offence to assault, resist, obstruct a member in the execution of his duty, or to incite or assist another person to do these things; and enables the awarding of compensation for damage or injury caused.

Clause 65 Provides that offences against the Act may be prosecuted either summarily or on indictment.

Clause 66 Enables the Minister to delegate his powers under

the Act.

Clause 67 Requires the Commissioner to furnish the Minister with an annual report which shall be tabled in each House of Parliament.

Clause 68 Enables the Commissioner to issue certificates of appointment to members of the AFP, which certificates are conclusive evidence of a valid appointment.

Clause 69 Enables the Minister to establish a Police Liaison Committee for the Australian Capital Territory and for the constitution and functions of the committee to be as prescribed.

Clause 70 Empowers the Governor-General to make regulations generally for carrying out or giving effect to the Act.

Part VII - Transitional

Clause 71 Provides interpretations in respect of persons to whom the transitional provisions in this Part apply.

Clause 72 Provides for the appointment to the Australian Federal Police of all present Members of the Australian Capital Territory Police Force and Commonwealth Police Force. This is the incorporation Clause.

Clause 73 Provides that members, who are applicants for a rank in the Australian Federal Police and who had been members of either existing Police Force and are qualified and suitable, shall have preference over non members. Such preference shall be for a period of at least five years.

Clause 74 Provides for the continuation of existing terms and conditions of service of members of the Australian Capital Territory and Commonwealth Police Forces until a determination is made by the Minister under Section 30.

Clause 75 Protects the accrued long service leave entitlements

of members of the Australian Capital Territory and Commonwealth Police Forces.

Clause 76 Protects the rights and entitlements of officers on leave prior to the commencement of this Act to remain on leave.

Clause 77 Protects the rights to leave of absence accrued prior to the commencement of this Act, for members of the Australian Federal Police.

Clause 78 Protects the provisional promotion of a member prior to the commencing date and provides for the conclusion of any outstanding promotion appeals.

Clause 79 Provides for any disciplinary proceedings started prior to the commencement of this Act under police legislation or under the Public Service Act in respect of a member of the Australian Federal Police to be carried through to finalisation.

Clause 80 Provides for the exercise of existing powers and duties in relation to Commonwealth places in a State to be continued until an arrangement is made between the Commissioner of the AFP and the Commissioner of Police of a State pursuant to Clause 8(2).