



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES
PARLIAMENTARY LIBRARY

Bills Digest
No. 78 2003–04

Australian Federal Police and Other Legislation Amendment Bill 2003

ISSN 1328-8091

© Copyright Commonwealth of Australia 2004

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database.

On the Internet the Department of the Parliamentary Library can be found at:

<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2004

I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 78 2003–04

Australian Federal Police and Other Legislation
Amendment Bill 2003

Morag Donaldson
Law and Bills Digest Group
9 February 2004

Contents

Purpose	1
Background	1
Position of significant interest groups/press commentary	2
Pros and cons	2
ALP/Australian Democrats/Greens policy position/commitments.	3
Main Provisions	3
Schedule 1—Amendment of the AFP Act.	4
Schedule 2—Amendment and repeal of other Acts	7
Schedule 3—Amendments relating to the investigation of State offences that have a federal aspect	8
Amendments to the AFP Act	8
Amendments to the Crimes Act	9
Concluding Comments.	10
Endnotes.	10

Australian Federal Police and Other Legislation Amendment Bill 2003

Date Introduced: 4 December 2003

House: Senate

Portfolio: Justice and Customs

Commencement: **Proposed sections 1 to 4**, and anything not covered elsewhere by the table contained in section 2, commence on the day on which the Act receives Royal Assent. Most items in the table commence on a single day to be fixed by proclamation or 6 months after the Act receives Royal Assent, whichever occurs first. Other items commence on certain dates depending on their subject matter. A detailed list is set out in the table contained in **proposed section 2**.

Purpose

The Bill seeks to amend the *Australian Federal Police Act 1979* ('the AFP Act') and the *Crimes Act 1914* ('the Crimes Act') to complete the integration of the Australian Protective Service ('the APS') into the Australian Federal Police ('the AFP'). While the AFP already has legal and financial responsibility for the APS, the two agencies continue to operate under separate legislative and employment arrangements. The Bill creates a new category of employee in the AFP (ie 'protective service officer') and designates protective service functions as functions of the AFP.

The Bill also makes consequential amendments to other statutes and empowers the AFP to investigate multi-jurisdictional crime.

Background

The APS was established by the *Australian Protective Service Act 1987* ('the APS Act') to provide 'protective and custodial services for or on behalf of the Commonwealth' (subsection 6(1) of the APS Act). Such services relate primarily to the protection of real and personal property, but do not include bodyguard services (subsection 6(4)).¹ Previously, such functions had been provided by a variety of Commonwealth policing agencies, including the AFP and predecessors of that organisation. An informative and

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

detailed history of the provision of protective services in Australia throughout the 20th century is set out in the [Bills Digest](#) for the *Australian Protective Service Amendment Act 2002* (Bills Digest No. 152 of 2001-2002).

The decision of the Government to merge the APS with the AFP is part of its response to terrorism since 11 September 2001. According to the Secretary of the Attorney-General's Department, the Government wished to 'consolidate some activities to achieve a better coordinated governmental response' to terrorism.² The Parliament has now passed several pieces of legislation to achieve this end, particularly (insofar as the APS is concerned) the *Australian Protective Service Amendment Act 2002* (which dealt with the transfer of responsibility for the APS from the Secretary of the Attorney-General's Department to the Commissioner of Police (AFP)) and the *Australian Protective Service Amendment Act 2003* (which increased the powers of protective service officers undertaking protective security functions by granting the power to require a person's name; the power to stop and search; and the power of seizure). Notably, however, a distinction is maintained between police officers (or members) and protective service officers. Consequently a distinction is maintained between traditional policing and investigative functions on the one hand, and protective service functions on the other.

The Bill also contains amendments to the AFP Act and the Crimes Act to give effect to a resolution passed by the Commonwealth Government-State Summit on Transnational Crime and Terrorism in April 2002.³ According to the Explanatory Memorandum to the Bill, the resolution committed the Commonwealth and State Governments:

To legislate and develop administrative arrangements to allow investigation by the Australian Federal Police into State offences incidental to multi-jurisdictional crime.⁴

In November 2003, the Australasian Police Ministers' Council accepted a recommendation by the Standing Committee of Attorneys-General-Australian Police Ministers Council Joint Working Group that Commonwealth legislation be amended 'to allow the AFP to utilise Commonwealth investigative powers to investigate State offences with a federal aspect'.⁵

Position of significant interest groups/press commentary

There has been no press commentary or reports on the Bill.

Pros and cons

The main objectives of the Bill seem largely uncontroversial. Given that the AFP (and its predecessors) has been responsible for protective services at various but intermittent times in the past, the decision to amalgamate the two bodies is not particularly unusual. The merger seems to be a logical step in the Government's decision to mount a determined and concerted campaign involving various State and Federal Government departments, bodies

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

and agencies against the threat of terrorism and multi-jurisdictional crime.⁶ In this regard, the merger seems particularly apposite, given that the places where the APS currently provides protective services are considered to be key targets for possible terrorist attacks (eg Parliament House, airports,⁷ foreign embassies and consulates, defence and nuclear establishments).

Further, the Bill is the *final* step in the merger of the two agencies, not the first. Arguments about the infringement of certain civil liberties (including the right to silence and the right to protest) have already been raised in the context of the *Australian Protective Service Amendment Act 2002* and the *Australian Protective Service Amendment Act 2003*. The latter Act (while still a Bill) was the subject of an inquiry by the Senate Legal and Constitutional Legislation Committee. The Community and Public Sector Union (which is the union to which members of the APS belong)⁸; the Australian Federal Police Association⁹ and the AFP¹⁰ made submissions to the Committee in support of the Bill. Both Acts were passed with the support of the Australian Labor Party and the Australian Democrats.¹¹

ALP/Australian Democrats/Greens policy position/commitments

There is no reference in the media or on the websites of the ALP, Australian Democrats or the Greens to the policy position or commitments of these parties to the Bill.

Main Provisions

Clause 2 contains a table setting out the various dates on which provisions of the Act commence.

Clause 3 provides that each Act set out in a Schedule to the Bill is amended or repealed as set out in the Schedule.

Clause 4 sets out the transitional arrangements for the transfer of APS officers to the AFP. **Proposed subsection 4(1)** states that an APS transferee is taken to have been engaged at the time of transfer as an AFP employee under section 24 of the AFP Act.¹²

Proposed subsection 4(2) provides that each APS transferee is taken to have been declared by the Commissioner of Police ('the Commissioner') to be a protective service officer of the AFP. (This provision relies on the enactment of proposed section 40EA of the AFP Act contained in Schedule 1 to the Bill – see below). **Proposed subsection 4(3)** provides that an APS transferee whom the Commissioner has declared to be a protective service officer is not required to enter into an undertaking relating to the performance of his or her duties. (This provision refers to the requirement contained in proposed

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

paragraph 36(4A)(a) of the AFP Act contained in Schedule 1 to the Bill that protective service officers must enter into such undertakings – see below).

Proposed subsection 4(4) provides that an APS employee is taken to have made such oath or affirmation as a protective service officer is required by the regulations to make. (Again this provision relies on the enactment of proposed paragraph 36(4A)(b) of the AFP Act contained in Schedule 1 to the Bill – see below).

Proposed subsection 4(5) contains definitions of various terms for the purposes of interpreting the provisions of **proposed section 4**.

Schedule 1—Amendment of the AFP Act

It is unnecessary to detail many of the proposed amendments to the AFP Act contained in **Schedule 1**.

Many of the proposed amendments are simply a replication of current provisions in the APS Act concerning the functions of the APS and the powers of APS officers (including new powers recently granted to APS officers as a consequence of the enactment of the *Australian Protective Service Amendment Act 2003*). While the language used in the new provisions is not always entirely the same as the old provisions, the substance remains largely the same. Notably, the numbering of the provisions has changed. Table 1 contains a comparative table to assist cross-referencing.

Many of the other provisions amend the AFP Act to expand existing definitions or to insert new definitions to give practical effect to the merger of the APS and the AFP. For example, **items 10 and 11** insert definitions of ‘protective service officer’ (being a person to whom **proposed section 40EA** applies – see below) and ‘special protective service officer’ (being a person to whom **proposed section 40EC** applies – see below). **Items 23-26 and 29-35** then insert these terms into various provisions of the AFP Act to enable protective service officers to carry out specified AFP functions. Similarly, **items 18 and 19** repeal definitions of ‘police dog’ and ‘police dog handler’, and **items 16, 17 and 20** insert definitions of ‘AFP dog’, ‘AFP dog handler’ and ‘protective service dog’.

Item 27 inserts two new divisions into Part II of the AFP Act. That Part is entitled ‘Part II—Constitution, functions and powers of the Australian Federal Police’. **Proposed Division 3** is entitled ‘Powers and duties of protective service officers’ and inserts provisions which largely replicate those contained in the APS Act (see Table 1). **Proposed Division 4** is entitled ‘Powers and duties of members, special members and protective service officers relating to protective service functions’. While many of the provisions simply replicate current provisions in the APS Act, there are also some new provisions. For example **proposed section 14H** inserts definitions of ‘designated person’, ‘police officer’ and ‘vehicle’ to enable both police officers (as defined) and protective service officers to perform protective service functions. Such functions (eg requiring

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

name) were conferred on both the AFP and the APS by the *Australian Protective Service Amendment Act 2003*. As noted in Table 1, there is little substantive change to the functions previously performed by APS officers and authorised by the APS Act.

Item	Proposed section and brief description	Corresponding provision in the APS Act
4	Subsection 4(1): definition of ‘frisk search’	Subsection 18B(8)
5	Subsection 4(1): definition of ‘ordinary search’	Subsection 18B(8)
7	Subsection 4(1): definition of ‘protective service offence’	Subsection 13(2), plus sections 25A and 28A of the <i>Nuclear Non-Proliferation (Safeguards) Act 1987</i> ¹³
15	Section 8A: Minister may direct which functions are protective service functions	Subsection 6(1)
27	Sections 14A (Powers of arrest); 14B (Use of force in making arrest etc); 14C (Arrested person to be informed of grounds of arrest); 14D (Search of arrested person); 14E (How arrested person to be dealt with); 14F (Release of arrested person); 14I (Requirement to provide name); 14J (Stopping and searching); 14K (Seizure of things found); 14L (How seized things must be dealt with); 14M (Application to magistrate); and 14N (Relationship of Division to other laws)	Subsection 13(1); sections 14; 15; 16; 17; 18; 18A; 18B; 18C; 18D; 18E; and subsection 21(4A)
45	Section 64AAA: Protective service officers in uniform to wear identification numbers	Section 19
58	Section 69E: Commissioner may charge for certain protective services	Section 25A

Table 1: New and old provisions regarding powers and functions of APS officers.

Proposed section 40EA is contained in **item 36** of Schedule 1 and provides that the Commissioner may declare an AFP employee (not being a police officer or member of the AFP) to be a *protective service officer* of the AFP ‘if the Commissioner is satisfied that the employee meets the requirements specified in a determination under section 40EB’.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

Proposed section 40EB (also contained in **item 36**) provides that the Commissioner may determine the competency and qualification requirements for the purposes of **proposed section 40EA**.

Proposed sections 40EC and 40ED are also contained in **item 36**. **Proposed section 40EC** provides that the Commissioner may appoint a person as a *special protective service officer* of the AFP ‘to assist in performing the protective service functions’ of the AFP. **Proposed section 40ED** provides that a special protective service officer has any powers and duties expressly conferred on special protective service officers by the Bill or any other Act and such other powers and duties as may be specified in the person’s instrument of appointment.

Items 37-60 largely extend the miscellaneous provisions of the AFP Act to include reference to protective service officers. These provisions relate to:

- secrecy requirements
- awards for bravery
- the offence of personating a member of the AFP
- the suspension of employees
- liability for wrongful acts
- protection of persons in respect of work reports
- proof of appointment,¹⁴ and
- return of property.

There is a minor typographical-type error in **item 58** of Schedule 1 (being **proposed section 69E**, entitled ‘Commissioner may charge for certain protective services’). In **proposed paragraph 69E(1)(a)** the phrase ‘a Commonwealth authority’ is used. That phrase is purportedly defined in **proposed subsection 69E(3)** but the term ‘authority of the Commonwealth’ is defined instead of the term ‘a Commonwealth authority’. For consistency with the use of the term ‘authority of the Commonwealth’ in **item 1 of Schedule 3** to the Bill (eg proposed subparagraph 4AA(3)(a) and paragraph 4AA(5) of the AFP Act – see below), it may be better to use the term ‘authority of the Commonwealth’ in **proposed paragraph 69E(1)(b)**, with **proposed subsection 69E(3)** then being left in its present form. Nonetheless, it is odd that the term is being defined at all, given that ‘authority of the Commonwealth’ is already defined in subsection 4(1) of the AFP Act, albeit in slightly different language. It may be the case, however, that it is necessary to define ‘authority of the Commonwealth’ for the purposes of **proposed section 69E**, because the functions of the APS differ from those of the AFP. Nonetheless, the

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

Explanatory Memorandum does not explain why the definition in **proposed subsection 69E(3)** is different to that contained in existing subsection 4(1) of the AFP Act.

Schedule 2—Amendment and repeal of other Acts

Schedule 2 contains straightforward, consequential amendments to a number of Acts to give effect to the merger of the APS with the AFP. These Acts are ones under which the APS currently performs functions or possesses certain rights or responsibilities. Schedule 2 proposes amendments to the following Acts:

- the *Air Navigation Act 1920*¹⁵
- the *Complaints (Australian Federal Police Act) 1981*¹⁶
- the Crimes Act¹⁷
- the *Crimes (Aviation Act) 1991*¹⁸
- the *Customs Act 1901*¹⁹
- the *Legislative Instruments Act 2003*²⁰
- the *Migration Act 1958*²¹
- the *Parliamentary Precincts Act 1988*,²² and
- the *Public Order (Protection of Persons and Property) Act 1971*.²³

Item 2 of Schedule 2 repeals the whole of the APS Act.

Item 3 of Schedule 2 seeks to amend paragraphs 82(b) and (c) of the ‘Aviation Transport Security Act 2003’. These paragraphs define ‘law enforcement officer’ to include ‘protective service officer’ and ‘special protective service officer’. However, it is important to note that this statute has not yet been enacted. The Aviation Transport Security Bill 2003 was only passed by the House of Representatives on 3 December 2003.²⁴ It is yet to be introduced in the Senate. Nonetheless, the commencement of **item 3** is contingent on the passage of that Bill (see **clause 2**).

Item 12 of Schedule 2 seeks to amend section 5 of the *Passenger Movement Charge Collection Act 1978* by adding **proposed paragraph 5(n)** to include reference to ‘a protective service officer (as defined in the [AFP Act]) on an aircraft for the purpose of enhancing the security of the aircraft’ (ie a sky marshal) in a list of persons who are exempt from paying a passenger movement charge. However, **paragraph 5(m)** of the

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

Passenger Movement Charge Collection Act 1978 is currently in identical terms to **proposed paragraph 5(n)**, except that it refers to the APS Act instead of the AFP Act.

It is not clear why the drafters of this amendment have chosen to insert **proposed paragraph 5(n)** rather than amending existing paragraph 5(m) along similar lines to other items in **Schedule 2**. It is likely that the reference in **item 12** to **proposed paragraph 5(n)** is a typographical error or a drafting oversight. The Explanatory Memorandum to the Bill states that **item 12** ‘will amend a reference to the APS Act in the Customs Legislation Amendment Bill (No. 2) 2002, which is before Parliament’.²⁵ That Bill became the *Customs Legislation Amendment Act (No. 1) 2003*, which was passed by the House of Representatives on 12 February 2003 and by the Senate on 4 December 2003. Paragraph 5(m) was inserted into the *Customs Legislation Amendment Act (No. 1) 2003* by Schedule 2—Air security officers.

Schedule 3—Amendments relating to the investigation of State offences that have a federal aspect

Schedule 3 contains further amendments to the AFP Act. It also contains mirror amendments to the Crimes Act.

Amendments to the AFP Act

Item 1 of Schedule 3 inserts **proposed section 4AA** into the AFP Act to explain when ‘a State offence has a federal aspect’ for the purposes of **proposed paragraph 8(1)(baa)** of the Act (inserted by **item 2** of Schedule 3 – see below). Essentially, ‘a State offence has a federal aspect’ if the provision creating the offence would have been a valid law if it had been made by the Commonwealth, or if the AFP is investigating a criminal matter relating to a Commonwealth or Territory offence. According to the definition contained in **proposed subsection 4AA(1)**, it is irrelevant whether the State offence is an ancillary or primary offence. The term ‘ancillary offence’ is defined in **proposed subsection 4AA(5)** as conspiracy to commit the primary offence; aiding, abetting or otherwise being knowingly concerned with the commission of the primary offence; and attempting to commit the primary offence.

In **proposed subsection 4AA(5)**, the term ‘authority of the Commonwealth’ is defined by reference to proposed section 3AA of the Crimes Act (see below). As noted earlier in this Bills Digest in the discussion of **item 58 of Schedule 1**, it may be unnecessary to define this term, given that it is already defined in subsection 4(1) of the AFP Act. It is also noteworthy that there is no definition of ‘authority of the Commonwealth’ in proposed section 3AA of the Crimes Act.

Also in **proposed subsection 4AA(5)**, the term ‘Commonwealth place’ is defined by reference to the *Commonwealth Places (Application of Laws) Act 1970*. It is not unusual for terms to be defined by cross-reference to other legislation. For ease of reference,

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

‘Commonwealth place’ is defined in section 3 of that Act as ‘a place (not being the seat of government) with respect to which the Parliament, by virtue of section 52 of the Constitution, has, subject to the Constitution, exclusive power to make laws for the peace, order, and good government of the Commonwealth’.

Proposed subsection 4AA(5) also contains a lengthy definition of the term ‘electronic communication’. This term is defined in simpler language in subsection 476.1(1) of the *Criminal Code Act 1995* to mean ‘a communication of information in any form by means of guided or unguided electromagnetic energy’.

Amendments to the Crimes Act

Items 4 to 16 of Schedule 3 contain amendments to the Crimes Act.

Item 4 amends the definition of ‘thing relevant to an indictable offence’ to include reference to an indictable State offence that has a federal aspect. **Item 5** amends the definition of ‘thing relevant to a summary offence’ to include reference to a summary (or simple) State offence that has a federal aspect.²⁶

Item 6 inserts **proposed section 3AA**. It is in identical terms to proposed section 4AA of the AFP Act, with one difference. While proposed section 4AA of the AFP Act is limited to the investigation of State offences that have a federal aspect, **proposed section 3AA** of the Crimes Act applies to the purposes of the Crimes Act as a whole. Importantly for the purposes of the cross-reference in proposed subsection 4AA(5) of the AFP Act to **proposed section 3AA** of the Crimes Act, the term ‘authority of the Commonwealth’ is missing from the definitions contained in **proposed subsection 3AA(5)**. As the term is used in two other places but is not defined in the Crimes Act²⁷, it may be prudent to define the term, perhaps in the general interpretation provision (section 3) rather than in **proposed subsection 3AA(5)**.

Item 7 adds ‘a State offence that has a federal aspect’ to the definition of ‘offence’ in subsection 3C(1).²⁸

To the explanation of the application of Part IAA—Search warrants and powers of arrest contained in section 3D of the Crimes Act, **item 8** adds reference to the fact that its application in relation to State offences that have a federal aspect ‘is not intended to limit or exclude the concurrent operation of any law of a State’.

Item 9 repeals the definition of ‘Commonwealth offence’ in subsection 3ZQA(1) of the Crimes Act and replaces it with a definition which refers both to offences against Commonwealth law and State offences that have a federal aspect.

Item 10 amends the definition of a ‘controlled operation’ in section 15 of the Crimes Act to include reference to a ‘serious State offence that has a federal aspect’ in paragraph 15(b). Paragraph 15(b) presently provides that a controlled operation ‘is carried

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious Commonwealth offence’.

Item 11 expands section 15HB of the Crimes Act to include reference to a ‘serious State offence that has a federal aspect’. Currently section 15HB defines the circumstances which constitute a ‘serious Commonwealth offence’, *including* theft, fraud, illegal drug dealings, illegal gambling, money laundering, perverting the course of justice, bribery bankruptcy and company violations, harbouring of criminals, illegal importation or exportation of fauna into or out of Australia, espionage, sabotage or threats to national security. **Item 11** defines a ‘serious State offence that has a federal aspect’ as being one which ‘has the characteristics of a serious Commonwealth offence’.

Item 12 amends the definition of ‘Commonwealth offence’ in subsection 23B(1) to include reference to a State offence that has a federal aspect. Likewise, **items 13, 14 and 15** amend the definitions of ‘indictable offence’, ‘prescribed offence’ and ‘serious offence’ in subsection 23WA(1) to include reference to ‘a State offence that has a federal aspect’.

Item 16 inserts **proposed Division 11B—Concurrent operation of State and Territory laws** into Part ID—Forensic Procedures of the Crimes Act. The only provision (**proposed section 23YUL**) provides that the application of the Part in relation to State offences that have a federal aspect ‘is not intended to limit or exclude the concurrent operation of any law of a State’.

Concluding Comments

The Bill does not appear to raise contentious issues, although it contains some oddities, mainly of a drafting nature. The main purposes of the Bill are to make consequential amendments to various statutes to finalise the merger of the APS with the AFP; to repeal the APS Act; and to give effect to the agreement to enhance the powers of law enforcement agencies to investigate multi-jurisdictional crime. The Bill adequately fulfils these objectives.

Endnotes

- 1 For the full text of the Act, see:
<http://scaleplus.law.gov.au/html/pasteact/0/338/0/PA000120.htm> (at 23 January 2004).
- 2 See the speech by the Secretary, Attorney-General's Department, to the ‘Security In Government’ Conference, Canberra, 10 April 2002 at:
<http://www.ag.gov.au/www/agdHome.nsf/Alldocs/RWP50F8F9E1F031EAC9CA256BB6001C0205?OpenDocument&highlight=protective%20services> (at 23 January 2004).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

- 3 See http://www.pmc.gov.au/ar/2001-02/pdf/pmc_annual_report2001-02.pdf (p. 48) (at 4 February 2004).
- 4 Explanatory Memorandum to the Australian Federal Police and Other Legislation Amendment Bill 2003, p. 24.
- 5 Explanatory Memorandum to the Australian Federal Police and Other Legislation Amendment Bill 2003, p. 24.
- 6 See, for example, [http://www.ag.gov.au/www/rwpattach.nsf/viewasattachmentPersonal/F9182AB917673CF2CA256DE5000D1D43/\\$file/0%20Cross%20Border%20Report2read.pdf](http://www.ag.gov.au/www/rwpattach.nsf/viewasattachmentPersonal/F9182AB917673CF2CA256DE5000D1D43/$file/0%20Cross%20Border%20Report2read.pdf) (at 29 January 2004).
See also the Explanatory Memorandum to the Australian Federal Police and Other Legislation Amendment Bill 2003, p. 24.
- 7 APS officers also act as armed sky marshals on international flights: see Belinda Hickman and Samantha Maiden, 'Air marshals to fly on more routes', *The Weekend Australian*, 27 December 2003, p. 5.
- 8 See the submission of the CPSU at: http://www.aph.gov.au/senate/committee/legcon_ctte/aps03/submissions/sub02.doc (at 23 January 2004).
- 9 See the submission of the Australian Federal Police Association at: http://www.aph.gov.au/senate/committee/legcon_ctte/aps03/submissions/sub03.doc (at 23 January 2004).
- 10 See the submission of the AFP at: http://www.aph.gov.au/senate/committee/legcon_ctte/aps03/submissions/sub04.doc (at 23 January 2004).
- 11 [Unnamed author], 'New security Laws passed', *Herald Sun* (Melbourne), 7 November 2003, p. 34.
- 12 Section 24 provides that the Commissioner of Police may engage persons as employees, and that such employment may be made subject to conditions as to probation, health etc.
- 13 Section 25A of the *Nuclear Non-Proliferation (Safeguards) Act 1987* provides that a person commits an offence if the person breaches his or her duty to ensure the security of associated technology; section 28A provides that a person commits an offence if he or she establishes (constructs) or modifies a nuclear facility without holding a permit to carry out the work.
- 14 **Proposed subsection 68(4A)** (item 56 of Schedule 1) provides that the Commissioner may certify that a specified person is declared to be a protective service officer under (proposed) section 40EA. Alternatively, **proposed section 68A** (item 57 of Schedule 1) provides that the Commissioner may certify that a person is a transferred protective service officer.
- 15 To replace reference in the definition of 'protective service officer' to the APS Act with reference to the AFP Act.
- 16 To replace the definition of 'AFP appointee' to include a 'special protective service officer' (but not a 'protective service officer').

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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

- 17 To amend the definition of ‘protective service officer’ in subsection 89(5) – ‘Trespassing on Commonwealth land’ - to refer to the AFP Act instead of the APS Act.
- 18 To amend the reference to a protective service officer in the definition of ‘authorised person’ in subsection 3(1) to refer to the AFP Act instead of the APS Act.
- 19 To amend the definition of ‘protective service officer’ in subsection 234ABA(4) – officers may direct unauthorised persons to leave restricted areas - to refer to the AFP Act instead of the APS Act.
- 20 To remove general orders made under section 12 of the APS Act from a list of instruments which are not legislative instruments for the purposes of the *Legislative Instruments Act 2003*.
- 21 To amend the definition of ‘officer’ in subsection 5(1) to refer to the AFP Act instead of the APS Act.
- 22 To amend the definition of ‘protective service officer’ in subsection 3(1) to refer to the AFP Act instead of the APS Act. Also to amend the reference in section 9 – functions of the APS – to refer to the AFP Act instead of the APS Act.
- 23 To amend the definition of ‘protective service officer’ in subsection 4(1) to refer to the AFP Act instead of the APS Act.
- 24 *Parliamentary Debates*, House of Representatives Hansard, 3 December 2003, p. 23608.
- 25 Explanatory Memorandum to the Australian Federal Police and Other Legislation Amendment Bill 2003, pp. 22–23.
- 26 An indictable offence is triable in any Court (including the Magistrates Court), whereas a summary offence is triable only in the Magistrates Court. The term used to denote the lowest level of courts in Australia varies from State to State. In New South Wales, it is known as ‘the Local Court’.
- 27 The term ‘authority of the Commonwealth’ is used in sections 15XA and 21B. Note that elsewhere in the Crimes Act the term ‘Commonwealth authority’ is also used (but again, it is not defined).
- 28 Section 3C is the interpretation provision for Part IAA of the Crimes Act, which Part is entitled ‘Search warrants and powers of arrest’.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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