

2002-2003

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Australian Federal Police and Other
Legislation Amendment Bill 2003**

No. , 2003

(Justice and Customs)

**A Bill for an Act to integrate the Australian
Protective Service into the Australian Federal
Police, and for other purposes**

Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	4
4	Transitional and application.....	4
Schedule 1—Amendment of the Australian Federal Police Act 1979		6
	<i>Australian Federal Police Act 1979</i>	6
Schedule 2—Amendment and repeal of other Acts		34
	<i>Air Navigation Act 1920</i>	34
	<i>Australian Protective Service Act 1987</i>	34
	<i>Aviation Transport Security Act 2003</i>	34
	<i>Complaints (Australian Federal Police) Act 1981</i>	34
	<i>Crimes Act 1914</i>	34
	<i>Crimes (Aviation) Act 1991</i>	34
	<i>Customs Act 1901</i>	35
	<i>Legislative Instruments Act 2003</i>	35
	<i>Migration Act 1958</i>	35
	<i>Parliamentary Precincts Act 1988</i>	35
	<i>Passenger Movement Charge Collection Act 1978</i>	35
	<i>Public Order (Protection of Persons and Property) Act 1971</i>	36
Schedule 3—Amendments relating to the investigation of State offences that have a federal aspect		37
	<i>Australian Federal Police Act 1979</i>	37
	<i>Crimes Act 1914</i>	40

1 **A Bill for an Act to integrate the Australian**
2 **Protective Service into the Australian Federal**
3 **Police, and for other purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Australian Federal Police and Other*
7 *Legislation Amendment Act 2003*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 7	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, item 8	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) the time Schedule 1 to the <i>Non-Proliferation Legislation Amendment Act 2003</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 1, item 9	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) the time section 3 of the <i>Aviation Transport Security Act 2003</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 1, items 10 to 60	At the same time as the provision(s) covered by table item 2.	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
6. Schedule 2, item 1	At the same time as the provision(s) covered by table item 2. However, the item does not commence at all if the provision(s) covered by table item 2 commence after the commencement of section 3 of the <i>Aviation Transport Security Act 2003</i> .	
7. Schedule 2, item 2	At the same time as the provision(s) covered by table item 2.	
8. Schedule 2, item 3	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of section 3 of the <i>Aviation Transport Security Act 2003</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
9. Schedule 2, items 4 to 7	At the same time as the provision(s) covered by table item 2.	
10. Schedule 2, item 8	The later of: (a) the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of section 3 of the <i>Legislative Instruments Act 2003</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
11. Schedule 2, items 9 to 11	At the same time as the provision(s) covered by table item 2.	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
12. Schedule 2, item 12	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of section 1 of the <i>Customs Legislation Amendment Act (No. 2) 2002</i> .	
13. Schedule 2, item 13	At the same time as the provision(s) covered by table item 2.	
14. Schedule 3	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

12 **4 Transitional and application**

13 (1) Each APS transferee is taken to have been engaged, at the transfer
14 time, under section 24 of the *Australian Federal Police Act 1979*.

15 (2) Each transferred PSO is taken to have been declared, at the transfer
16 time, to be a protective service officer under section 40EA of the
17 amended AFP Act.

18 (3) Paragraph 36(4A)(a) of the amended AFP Act (about entering an
19 undertaking) does not apply to a transferred PSO.

-
- 1 (4) Each transferred PSO who has made and subscribed an oath or
2 affirmation under section 10 of the *Australian Protective Service*
3 *Act 1987* is taken to have satisfied the requirement under paragraph
4 36(4A)(b) of the amended AFP Act.
- 5 (5) In this section:
- 6 ***AFP employee*** has the same meaning as in the *Australian Federal*
7 *Police Act 1979*.
- 8 ***amended AFP Act*** means the *Australian Federal Police Act 1979*
9 as amended by Schedule 1 to this Act.
- 10 ***APS transferee*** means a person who, immediately before the
11 transfer time, was an employee assisting the Commissioner of the
12 Australian Federal Police under subsection 5(2) of the *Australian*
13 *Protective Service Act 1987*.
- 14 ***transferred PSO*** means an APS transferee who, immediately
15 before the transfer time, was a protective service officer within the
16 meaning of the *Australian Protective Service Act 1987*.
- 17 ***transfer time*** means the time specified by the Public Service
18 Commissioner in a determination under paragraph 72(1)(b) of the
19 *Public Service Act 1999* as the time at which the APS transferees
20 become employees of the Australian Federal Police.

1
2 **Schedule 1—Amendment of the Australian**
3 **Federal Police Act 1979**
4

5 *Australian Federal Police Act 1979*

6 **1 Subsection 3A(1)**

7 Omit “and special members”, substitute “, special members and special
8 protective service officers”.

9 **2 After subsection 3A(5)**

10 Insert:

11 *Protective service officers of the Australian Federal Police*

12 (5A) Under Division 3A of Part IV, the Commissioner may declare AFP
13 employees to be protective service officers. Divisions 3 and 4 of
14 Part II deal with the powers of protective service officers.

15 *Special protective service officers of the Australian Federal Police*

16 (5B) Under Division 3B of Part IV, the Commissioner may appoint
17 persons as special protective service officers to assist in performing
18 protective service functions.

19 **3 After paragraph 3A(7)(a)**

20 Insert:

21 (aa) deals with the powers of protective service officers and
22 certain other powers relating to protective service functions
23 (see Divisions 3 and 4 of Part II); and

24 **4 Subsection 4(1)**

25 Insert:

26 *frisk search* means:

- 27 (a) a search of a person conducted by quickly running the hands
28 over the person’s outer garments; and
29 (b) an examination of anything worn or carried by the person
30 that is conveniently and voluntarily removed by the person.

1 **5 Subsection 4(1)**

2 Insert:

3 *ordinary search* means a search of a person or of articles in the
4 possession of a person that may include:

- 5 (a) requiring the person to remove his or her overcoat, coat or
6 jacket and any gloves, shoes and hat; and
7 (b) an examination of those items.

8 **6 Subsection 4(1)**

9 Insert:

10 *protective service functions* means the functions designated by the
11 Minister under section 8A.

12 **7 Subsection 4(1)**

13 Insert:

14 *protective service offence* means any of the following:

- 15 (a) an offence in relation to a person, place or thing in respect of
16 which the Australian Federal Police is performing protective
17 service functions, being an offence under:
18 (i) section 24AB, 29, 46 (other than paragraph (b)), 47,
19 47A, 79, 89 or 89A of the *Crimes Act 1914*; or
20 (ii) the *Crimes (Internationally Protected Persons) Act*
21 *1976* or Part 2 of the *Crimes (Aviation) Act 1991*; or
22 (iii) the *Defence (Special Undertakings) Act 1952* (other
23 than subsection 31(2)); or
24 (iv) the *Public Order (Protection of Persons and Property)*
25 *Act 1971* (other than section 11); or
26 (v) the *Nuclear Non-Proliferation (Safeguards) Act 1987*
27 (other than section 27, subsection 29(2), 30(1), 40(1),
28 58(2) or 65(1) or section 66); or
29 (vi) section 91.1 of the *Criminal Code*;
30 (b) an offence against section 6 of the *Crimes Act 1914*, or
31 section 11.1 or 11.4 of the *Criminal Code*, that relates to an
32 offence mentioned in paragraph (a);
33 (c) an offence against Division 72 of the *Criminal Code* that
34 relates to a person, place or thing in respect of which the

- 1 Australian Federal Police is performing protective service
2 functions;
- 3 (d) an offence against Division 101 of the *Criminal Code* that
4 relates to a person, place or thing in respect of which the
5 Australian Federal Police is performing protective service
6 functions;
- 7 (e) an offence in relation to a person, place or thing in respect of
8 which the Australian Federal Police is performing protective
9 service functions, being an offence against section 131.1,
10 141.1, 142.1, 147.1, 148.1 or 149.1 of the *Criminal Code*.

11 **8 Subsection 4(1) (subparagraph (a)(v) of the definition of**
12 ***protective service offence*)**

13 Omit “27”, substitute “25A, 27 or 28A”.

14 **9 Subsection 4(1) (after subparagraph (a)(v) of the definition**
15 **of *protective service offence*)**

16 Insert:

- 17 (va) the *Aviation Transport Security Act 2003* or regulations
18 made under that Act; or

19 **10 Subsection 4(1)**

20 Insert:

21 *protective service officer* means an AFP employee in respect of
22 whom a declaration under section 40EA is in force.

23 **11 Subsection 4(1)**

24 Insert:

25 *special protective service officer* means a person appointed under
26 section 40EC.

27 **12 Division 1 of Part II (heading)**

28 Repeal the heading, substitute:

29 **Division 1—Constitution, functions and laws conferring**
30 **powers on members etc.**

31 **13 At the end of section 6**

1 Add:
2 ; and (e) special protective service officers.

3 **14 After paragraph 8(1)(bd)**

4 Insert:
5 (be) to perform such protective and custodial functions as the
6 Minister directs by notice in writing in the *Gazette*, being
7 functions that relate to a person, matter or thing with respect
8 to which the Parliament has legislative power; and

9 **15 After section 8**

10 Insert:

11 **8A Minister may direct which functions are protective service**
12 **functions**

13 The Minister may, by notice published in the *Gazette*, direct that
14 certain protective and custodial functions of the Australian Federal
15 Police are protective service functions.

16 **16 Subsection 12A(1)**

17 Insert:

18 *AFP dog* means a police dog or a protective service dog that is
19 used by the Australian Federal Police.

20 **17 Subsection 12A(1)**

21 Insert:

22 *AFP dog handler* means a member or a protective service officer
23 whose duties as a member or a protective service officer include
24 the duties of an AFP dog handler.

25 **18 Subsection 12A(1) (definition of *police dog*)**

26 Repeal the definition.

27 **19 Subsection 12A(1) (definition of *police dog handler*)**

28 Repeal the definition.

29 **20 Subsection 12A(1)**

1 Insert:

2 *protective service dog* means a dog used or trained to assist
3 protective service officers.

4 **21 Subsections 12A(2), (3) and (4)**

5 Omit “a police dog” (wherever occurring), substitute “an AFP dog”.

6 **22 Subsections 12A(2), (3) and (4)**

7 Omit “the police dog” (wherever occurring), substitute “the AFP dog”.

8 **23 Subsection 12A(2)**

9 After “member”, insert “or a protective service officer”.

10 **24 Subsection 12A(3)**

11 Omit “Neither the Commonwealth nor a member is subject”, substitute
12 “The Commonwealth, a member or a protective service officer is not
13 subject”.

14 **25 Paragraph 12A(3)(b)**

15 After “member”, insert “or protective service officer”.

16 **26 Paragraph 12A(4)(a)**

17 After “member”, insert “or specified protective service officer”.

18 **27 At the end of Part II**

19 Add:

20 **Division 3—Powers and duties of protective service officers**

21 **14A Powers of arrest**

22 A protective service officer may, without warrant, arrest a person
23 for a protective service offence if the protective service officer
24 believes on reasonable grounds that:

25 (a) the person has just committed, or is committing, the offence;
26 and

27 (b) the arrest of the person is necessary for the purpose of:

28 (i) ensuring the appearance of the person before a court of
29 competent jurisdiction for the offence; or

- 1 (ii) preventing the continuation of, or a repetition of, the
2 offence or the commission of a further protective
3 service offence; or
4 (iii) preventing the concealment, loss or destruction of
5 evidence of, or relating to, the offence; or
6 (iv) preserving the safety or welfare of the person; and
7 (c) proceedings by way of summons against the person for the
8 offence would not achieve such a purpose.

9 **14B Use of force in making arrest etc.**

- 10 (1) A protective service officer must not, in arresting or attempting to
11 arrest a person for an offence or in preventing a person who has
12 been arrested for an offence from escaping, use more force, or
13 subject the person to greater indignity, than is reasonable and
14 necessary in order to make the arrest or prevent the escape of the
15 person.
- 16 (2) Without limiting the generality of subsection (1), a protective
17 service officer must not, in arresting or attempting to arrest a
18 person for an offence or in preventing a person who has been
19 arrested for an offence from escaping, do an act likely to cause
20 death or grievous bodily harm to the person unless the officer
21 believes on reasonable grounds that the doing of the act is
22 necessary to protect life or prevent serious injury to the officer or
23 any other person.

24 **14C Arrested person to be informed of grounds of arrest**

- 25 (1) A protective service officer who arrests a person for an offence
26 must inform the person, at the time of the arrest, of the offence for
27 which the person is arrested.
- 28 (2) It is sufficient compliance with subsection (1) if the protective
29 service officer informs the person of the substance of the offence,
30 and it is not necessary to do so in language of a precise or technical
31 nature.
- 32 (3) Subsection (1) does not apply to the arrest by a protective service
33 officer of a person for an offence if the person, by his or her own
34 actions, makes it impracticable for the protective service officer to
35 inform the person of the offence.

- 1 (4) Where a protective service officer who arrests a person for an
2 offence believes or has reasonable grounds for believing that the
3 person is unable, by reason of inadequate knowledge of the English
4 language or any physical or mental disability, to understand the
5 substance of the offence for which the person is arrested, the
6 protective service officer must, as soon as practicable, take all
7 reasonable steps to ensure that the person is provided with an
8 explanation of the substance of the offence that the person is able
9 to understand.

10 **14D Search of arrested person**

- 11 (1) A protective service officer may, upon lawfully arresting a person
12 for an offence:
13 (a) conduct an ordinary search or a frisk search of the person;
14 and
15 (b) search the clothing that the person is wearing and any vessel,
16 vehicle or other property under the person's immediate
17 control if the officer believes on reasonable grounds that it is
18 necessary to do so;
19 for the purpose of:
20 (c) ascertaining whether there is concealed on the person, in the
21 clothing or in the property, a weapon or other thing capable
22 of being used to inflict bodily injury or to assist the person to
23 escape from custody; or
24 (d) preventing the concealment, loss or destruction of evidence
25 of, or relating to, the offence.
- 26 (2) If the protective service officer is not of the same sex as the
27 arrested person, an ordinary search or a frisk search of the arrested
28 person for the purposes of subsection (1) may be conducted by:
29 (a) if a protective service officer, a member or a special member
30 of the same sex as the arrested person is reasonably available
31 to conduct the search—that protective service officer,
32 member or special member; or
33 (b) if paragraph (a) does not apply but a police officer or an
34 officer of Customs (within the meaning of subsection 4(1) of
35 the *Customs Act 1901*) who is of the same sex as the arrested
36 person is reasonably available to conduct the search—that
37 police officer or officer of Customs; or

- 1 (c) otherwise—any other person who is of the same sex as the
2 arrested person and who is requested by the protective
3 service officer to conduct the search.
- 4 (3) An action or proceeding, whether civil or criminal, does not lie
5 against a person who, at the request of a protective service officer,
6 conducts a search under this section if the person acts in good faith
7 and does not contravene subsection (4).
- 8 (4) A protective service officer or other person who conducts a search
9 under this section must not use more force, or subject an arrested
10 person to greater indignity, than is reasonable and necessary in
11 order to conduct the search.
- 12 (5) A protective service officer or other person who lawfully conducts
13 a search under this section may seize:
- 14 (a) any weapon or thing mentioned in paragraph (1)(a); or
15 (b) anything that the officer or other person has reasonable
16 grounds to believe is a thing:
- 17 (i) with respect to which an offence has been committed; or
18 (ii) that will afford evidence of the commission of an
19 offence; or
20 (iii) that was used, or intended to be used, for the purpose of
21 committing an offence.

22 **14E How arrested person to be dealt with**

- 23 (1) A protective service officer who arrests a person for an offence
24 must ensure that the person is delivered into the custody of a police
25 officer as soon as practicable to be dealt with according to law.
- 26 (2) Where a weapon or other thing has been seized from the person
27 under subsection 14D(5), the protective service officer must ensure
28 that the weapon or other thing is delivered to the police officer into
29 whose custody the person is delivered.
- 30 (3) In this section:
- 31 ***police officer*** means:
- 32 (a) a member or special member; or
33 (b) a member, however described, of a police force of a State or
34 Territory; or

- 1 (c) a member, however described, of a police force of a foreign
2 country.

3 **14F Release of arrested person**

4 Where:

- 5 (a) a person has been arrested by a protective service officer for
6 an offence; and
7 (b) the person is in the custody of the protective service officer
8 or another protective service officer; and
9 (c) the protective service officer who has the custody of the
10 person:
11 (i) ceases to have reasonable grounds for believing that the
12 person committed, or was committing, an offence; or
13 (ii) ceases to have reasonable grounds for believing that the
14 holding of the person in custody is necessary in order to
15 achieve a purpose mentioned in paragraph 14A(b), and
16 does not have reasonable grounds for believing that the
17 holding of the person in custody is necessary in order to
18 achieve any other purpose mentioned in that paragraph;
19 or
20 (iii) ceases to have reasonable grounds for believing that
21 proceedings by way of summons against the person for
22 the offence would not achieve a purpose mentioned in
23 paragraph 14A(b), and does not have reasonable
24 grounds for believing that proceedings by way of
25 summons against the person for the offence would not
26 achieve any other purpose mentioned in that paragraph;
27 the protective service officer must release the person from custody
28 in respect of the offence as soon as practicable.

29 **14G Relationship of Division to other laws**

- 30 (1) The power of arrest conferred by section 14A on protective service
31 officers is in addition to, and not in derogation of, powers of arrest
32 available to protective service officers under any other law of the
33 Commonwealth or the law of a State or Territory.
34 (2) Subject to subsection (3), where a protective service officer, in the
35 course of his or her duties as a protective service officer, arrests a
36 person for any offence (whether the arrest is made under

1 section 14A, under any other law of the Commonwealth or under
2 the law of a State or Territory), sections 14B to 14F apply in
3 relation to the arrest despite any other law of the Commonwealth
4 or the law of a State or Territory.

5 (3) Subsection (2) has effect subject to sections 252 and 253 of the
6 *Migration Act 1958*.

7 (4) Subject to subsection (2), the powers conferred, and duties
8 imposed, by this Division on protective service officers are in
9 addition to, and not in derogation of, any other powers conferred,
10 or duties imposed, by any other law of the Commonwealth or the
11 law of a State or Territory, and this Division is not intended to
12 exclude or limit the operation of any other law of the
13 Commonwealth or the law of a State or Territory providing for
14 such powers or duties in so far as it is capable of operating
15 concurrently with this Division.

16 (5) This Division, in so far as it protects the individual, is in addition
17 to, and not in derogation of, any rights and freedoms of the
18 individual, whether under the law of the Commonwealth or of a
19 State or Territory, and this Division is not intended to exclude or
20 limit the operation of any law of the Commonwealth or of a State
21 or Territory providing for those rights and freedoms in so far as it
22 is capable of operating concurrently with this Division.

23 **Division 4—Powers and duties of members, special**
24 **members and protective service officers relating**
25 **to protective service functions**

26 **14H Definitions**

27 In this Division:

28 ***designated person*** means:

- 29 (a) a member or special member; or
30 (b) a protective service officer.

31 ***police officer*** means:

- 32 (a) a member or special member; or
33 (b) a member, however described, of a police force of a State or
34 Territory; or
-

1 (c) a member, however described, of a police force of a foreign
2 country.

3 *vehicle* includes any means of transport (and, without limitation,
4 includes a vessel and an aircraft).

5 **14I Requirement to provide name etc.**

6 (1) If:

7 (a) a designated person suspects on reasonable grounds that a
8 person (the *suspect*) might have just committed, might be
9 committing, or might be about to commit, a protective
10 service offence; and

11 (b) the suspect is in a place, or in the vicinity of a place, person
12 or thing, in respect of which the Australian Federal Police is
13 performing protective service functions;

14 the designated person may request the suspect to provide to the
15 designated person:

16 (c) the suspect's name; and

17 (d) the suspect's residential address; and

18 (e) the suspect's reason for being in the place, or in the vicinity
19 of the place, person or thing, in respect of which the
20 Australian Federal Police is performing protective service
21 functions; and

22 (f) evidence of the suspect's identity.

23 (2) If a designated person:

24 (a) makes a request under subsection (1); and

25 (b) informs the suspect of the designated person's authority to
26 make the request; and

27 (c) informs the suspect that it may be an offence not to comply
28 with the request;

29 the suspect must not:

30 (d) fail to comply with the request; or

31 (e) give a name or address that is false in a material particular.

32 Penalty: 20 penalty units.

33 Note: A more serious offence of obstructing a Commonwealth public
34 official may also apply (see section 149.1 of the *Criminal Code*).

1 (3) Subsection (2) does not apply if the suspect has a reasonable
2 excuse.

3 Note: A defendant bears an evidential burden in relation to the matter in
4 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

5 **14J Stopping and searching**

6 *When this section applies*

7 (1) This section applies if a designated person suspects on reasonable
8 grounds that:

- 9 (a) a person (the *suspect*):
10 (i) has a thing under the suspect's immediate control; or
11 (ii) is occupying a thing; or
12 (iii) has a thing in a vehicle operated or occupied by the
13 suspect; or
14 (iv) has brought a thing onto premises at which the
15 Australian Federal Police is performing protective
16 service functions; and

- 17 (b) the thing is likely to cause, or is likely to be used by the
18 suspect or another to cause:
19 (i) substantial damage to a place or a thing in respect of
20 which the Australian Federal Police is performing
21 protective service functions; or
22 (ii) death or serious harm to a person in respect of whom
23 the Australian Federal Police is performing protective
24 service functions;
25 in circumstances that would be likely to involve the
26 commission of a protective service offence.

27 *Designated person may stop and search suspect*

- 28 (2) The designated person may:
29 (a) stop and detain the suspect for the purpose of searching for
30 the thing; and
31 (b) do any or all of the following for the purpose of searching for
32 the thing:
33 (i) if the designated person is of the same sex as the
34 suspect—conduct an ordinary search or a frisk search of
35 the suspect;
-

- 1 (ii) search any thing under the suspect's immediate control;
- 2 (iii) search any vehicle operated or occupied by the suspect.

3 *Conditions relating to conduct of search of suspect*

- 4 (3) If the designated person is not of the same sex as the suspect, an
5 ordinary search or a frisk search of the suspect for the purpose of
6 searching for the thing may be conducted by:
 - 7 (a) if another designated person of the same sex as the suspect is
8 reasonably available to conduct the search—that designated
9 person; or
 - 10 (b) if paragraph (a) does not apply but a police officer or an
11 officer of Customs (within the meaning of subsection 4(1) of
12 the *Customs Act 1901*) who is of the same sex as the suspect
13 is reasonably available to conduct the search—that police
14 officer or officer of Customs; or
 - 15 (c) otherwise—any other person:
 - 16 (i) who is of the same sex as the suspect; and
 - 17 (ii) who is requested by the designated person to conduct
18 the search; and
 - 19 (iii) who consents to conduct the search.
- 20 (4) If a designated person requests an officer of Customs or another
21 person to conduct a search of a suspect, the designated person must
22 explain to the officer of Customs or the other person:
 - 23 (a) if the search requested is an ordinary search—the meaning of
24 an ordinary search; and
 - 25 (b) if the search requested is a frisk search—the meaning of a
26 frisk search; and
 - 27 (c) that the officer of Customs or the other person must not use
28 more force, or subject a suspect to greater indignity, than is
29 reasonable and necessary in order to conduct the search.
- 30 (5) An action or proceeding, whether civil or criminal, does not lie
31 against a person who conducts a search under paragraph (3)(b) or
32 (c) if the person acts in good faith and does not contravene
33 subsection (6).
- 34 (6) A designated person or other person who conducts a search of a
35 suspect under this section must not use more force, or subject a

1 suspect to greater indignity, than is reasonable and necessary in
2 order to conduct the search.

3 (7) A suspect must not be detained under this section for longer than is
4 reasonably necessary for a search to be conducted under this
5 section.

6 *Designated person may search a thing*

7 (8) If subparagraph (1)(a)(iv) applies, the designated person may, for
8 the purpose of searching for the thing mentioned in that
9 subparagraph, search a thing that the designated person suspects on
10 reasonable grounds was brought by the suspect onto premises at
11 which the Australian Federal Police is performing protective
12 service functions.

13 *Other conditions relating to conduct of search of suspect or thing*

14 (9) In searching a thing under subsection (2) or (8), the designated
15 person may use such force as is reasonable and necessary in the
16 circumstances, but must not damage the thing by forcing it, or a
17 part of it, open unless:

18 (a) if the search is under subsection (2)—the suspect has been
19 given a reasonable opportunity to open the thing or part of it;
20 or

21 (b) if the search is under subsection (8)—the person (if any)
22 apparently in charge of the thing has been given a reasonable
23 opportunity to open the thing or part of it; or

24 (c) it is not possible to give that opportunity.

25 **14K Seizure of things found**

26 *Designated person may seize a thing being searched for*

27 (1) If, as a result of conducting a search under section 14J, a
28 designated person, or a person who conducted the search under
29 subsection 14J(3) on behalf of a designated person, finds the thing
30 for which the designated person or person was searching, the
31 designated person may seize the thing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Designated person may seize a dangerous thing

- (2) If, as a result of conducting a search under section 14J, a designated person, or a person who conducted the search under subsection 14J(3) on behalf of a designated person, finds a weapon, or other thing, that the designated person suspects on reasonable grounds is likely to be used by the suspect or another to cause death or serious harm to a person:
 - (a) in respect of whom the Australian Federal Police is performing protective service functions; or
 - (b) who is in a place, or in the vicinity of a person, place or thing, in respect of which the Australian Federal Police is performing protective service functions;the designated person may seize the weapon or thing.

Protective service officer must deliver thing seized to police officer

- (3) If the designated person is a protective service officer, the designated person must ensure that the thing is delivered into the custody of a police officer as soon as practicable.

14L How seized things must be dealt with

Seizure notice to be served

- (1) A police officer who is for the time being responsible for a thing seized under section 14K must, within 7 days after the seizure day, serve a seizure notice on:
 - (a) the owner of the thing; or
 - (b) if the owner of the thing cannot be identified after reasonable inquiries—the person from whom the thing was seized.
 - (2) Subsection (1) does not apply if:
 - (a) both:
 - (i) the owner of the thing cannot be identified after reasonable inquiries; and
 - (ii) the thing was not seized from a person; or
 - (b) it is not possible to serve the person required to be served under subsection (1).
 - (3) A seizure notice must:
 - (a) identify the thing; and
-

- 1 (b) state the date on which the thing was seized; and
- 2 (c) state the ground or grounds on which the thing was seized;
- 3 and
- 4 (d) state that, if the owner does not request the return of the thing
- 5 within 90 days after the date of the notice, the thing is
- 6 forfeited to the Commonwealth.

7 *Return of thing seized*

- 8 (4) The owner of a thing seized under section 14K may request the
- 9 return of the thing.

- 10 (5) A police officer who is for the time being responsible for a thing
- 11 seized under section 14K must return the thing to its owner if:
- 12 (a) the owner requests the return of the thing; and
- 13 (b) in the case of a thing seized under subsection 14K(1)—the
- 14 police officer does not suspect on reasonable grounds that, if
- 15 the thing is returned to the owner, the thing is likely to cause,
- 16 or is likely to be used by the owner or another to cause:
- 17 (i) substantial damage to a place or thing in respect of
- 18 which the Australian Federal Police is performing
- 19 protective service functions; or
- 20 (ii) death or serious harm to a person in respect of whom
- 21 the Australian Federal Police is performing protective
- 22 service functions;
- 23 in circumstances that would be likely to involve the
- 24 commission of a protective service offence; and
- 25 (c) in the case of a thing seized under subsection 14K(2)—the
- 26 police officer does not suspect on reasonable grounds that, if
- 27 the thing is returned to the owner, the thing is likely to be
- 28 used by the owner or another to cause death or serious harm
- 29 to a person:
- 30 (i) in respect of whom the Australian Federal Police is
- 31 performing protective service functions; or
- 32 (ii) who is in a place, or in the vicinity of a person, place or
- 33 thing, in respect of which the Australian Federal Police
- 34 is performing protective service functions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Forfeiture of thing seized

- (6) A thing is forfeited to the Commonwealth if the owner of the thing does not request its return:
 - (a) before the end of the 90th day after the date of the seizure notice in relation to the thing; or
 - (b) if subsection (2) applied in relation to the thing so that a seizure notice was not served—before the end of the 90th day after the seizure day.

Application to magistrate

- (7) If:
 - (a) the owner of a thing requests the return of the thing:
 - (i) within 90 days after the date of the seizure notice in relation to the thing; or
 - (ii) if subsection (2) applied in relation to the thing so that a seizure notice was not served—within 90 days after the seizure day; and
 - (b) the thing has not been returned to the owner by the end of the 90th day;
the police officer who is for the time being responsible for the thing must, before the end of the 95th day:
 - (c) return the thing to the owner; or
 - (d) apply to a magistrate for an order under section 14M.

Seizure day

- (8) In this section:
seizure day means:
 - (a) in relation to a thing seized by a designated person who is a protective service officer—the day on which the thing was delivered into the custody of a police officer under subsection 14K(3); or
 - (b) in relation to a thing seized by a designated person who is a member or a special member—the day on which the thing was seized.

1 **14M Application to magistrate**

- 2 (1) If subsection 14L(7) applies, the police officer may apply to a
3 magistrate for an order in relation to the thing to which that
4 subsection applies.
- 5 (2) The magistrate must, in determining an application by a police
6 officer under subsection (1), allow the owner of the thing to appear
7 and be heard.
- 8 (3) If the magistrate is satisfied that:
- 9 (a) in the case of a thing seized under subsection 14K(1)—there
10 are reasonable grounds to suspect that, if the thing is returned
11 to the owner, the thing is likely to cause, or is likely to be
12 used by the owner or another to cause:
- 13 (i) substantial damage to a place or thing in respect of
14 which the Australian Federal Police is performing
15 protective service functions; or
- 16 (ii) death or serious harm to a person in respect of whom
17 the Australian Federal Police is performing protective
18 service functions;
- 19 in circumstances that would be likely to involve the
20 commission of a protective service offence; or
- 21 (b) in the case of a thing seized under subsection 14K(2)—there
22 are reasonable grounds to suspect that, if the thing is returned
23 to the owner, the thing is likely to be used by the owner or
24 another to cause death or serious harm to a person:
- 25 (i) in respect of whom the Australian Federal Police is
26 performing protective service functions; or
- 27 (ii) who is in a place, or in the vicinity of a person, place or
28 thing, in respect of which the Australian Federal Police
29 is performing protective service functions;
- 30 the magistrate may make any of the following orders:
- 31 (c) that the thing be retained by the police officer for the period
32 specified in the order;
- 33 (d) that the thing is forfeited to the Commonwealth;
- 34 (e) that the thing is to be sold and the proceeds given to the
35 owner;
- 36 (f) that the thing is to be otherwise sold or disposed of.

- 1 (4) If the magistrate is not satisfied as mentioned in subsection (3), the
2 magistrate must order that the thing be returned to the owner.

3 **14N Relationship of Division to other laws**

4 The powers conferred, and duties imposed, by this Division on
5 protective service officers, members and special members are in
6 addition to, and not in derogation of, any other powers conferred,
7 or duties imposed, by any other law of the Commonwealth or the
8 law of a State or Territory, and this Division is not intended to
9 exclude or limit the operation of any other law of the
10 Commonwealth or the law of a State or Territory in so far as it is
11 capable of operating concurrently with this Division.

12 **28 After subsection 36(4)**

13 Insert:

14 *Protective service officers*

- 15 (4A) A person declared to be a protective service officer under
16 section 40EA must, immediately after the declaration:
17 (a) enter into an undertaking, in accordance with the form
18 prescribed by the regulations, relating to the performance of
19 his or her duties; and
20 (b) make and subscribe, before the Commissioner or a person
21 authorised by the Commissioner, such oath or affirmation as
22 is prescribed by the regulations.

23 *Special protective service officers*

- 24 (4B) A person appointed under section 40EC to assist in performing the
25 protective service functions of the Australian Federal Police must,
26 immediately after his or her appointment:
27 (a) enter into an undertaking, in accordance with the form
28 prescribed by the regulations, relating to the performance of
29 his or her duties; and
30 (b) make and subscribe, before the Commissioner or a person
31 authorised by the Commissioner, such oath or affirmation as
32 is prescribed by the regulations.

33 **29 Section 39**

1 Omit “or a special member”, substitute “, a special member or a special
2 protective service officer”.

3 **30 Section 40**

4 Omit “or a special member”, substitute “, a special member or a special
5 protective service officer”.

6 **31 Paragraph 40(e)**

7 Omit “or the special member”, substitute “, the special member or the
8 special protective service officer”.

9 **32 Subsection 40A(1)**

10 Omit “or a special member”, substitute “, a special member or a special
11 protective service officer”.

12 **33 Subsection 40A(2)**

13 Omit “or special member”, substitute “, special member or special
14 protective service officer”.

15 **34 Section 40B**

16 After “AFP employee”, insert “(other than a protective service officer)”.

17 **35 At the end of section 40B**

18 Add:

19 Note 1: A person who is currently a protective service officer may be declared
20 to be a member if the person ceases to be a protective service officer.

21 Note 2: This section does not prevent a protective service officer from being
22 appointed as a special member.

23 **36 After Division 3 of Part IV**

24 Insert:

25 **Division 3A—Conferral of status of protective service**
26 **officer**

27 **40EA AFP employees who are protective service officers**

28 The Commissioner may, by writing, declare an AFP employee
29 (other than a member) to be a protective service officer of the

1 Australian Federal Police if the Commissioner is satisfied that the
2 employee meets the requirements specified in a determination
3 under section 40EB.

4 Note 1: A person who is currently a member may be declared to be a
5 protective service officer if the person ceases to be a member.

6 Note 2: This section does not prevent a member from being appointed as a
7 special protective service officer.

8 **40EB Determination of competency or qualification requirements**

9 The Commissioner may, by written determination, specify either or
10 both of the following for the purposes of section 40EA:

- 11 (a) competency requirements;
12 (b) qualification requirements.

13 **Division 3B—Special protective service officers**

14 **40EC Special protective service officers**

15 The Commissioner may, on such terms and conditions as the
16 Commissioner determines in writing, appoint a person as a special
17 protective service officer of the Australian Federal Police to assist
18 in performing the protective service functions of the Australian
19 Federal Police.

20 **40ED Powers and duties of special protective service officers**

21 A special protective service officer has:

- 22 (a) any powers and duties that are expressly conferred or
23 imposed on special protective service officers under a
24 provision of this Act or any other Act; and
25 (b) such of the powers and duties conferred or imposed on
26 protective service officers as are specified in his or her
27 instrument of appointment.

28 **37 After paragraph 60A(1)(d)**

29 Insert:

- 30 (da) a special protective service officer; or

31 **38 Subsection 61(1)**

1 Omit “or a special member”, substitute “, a special member or a special
2 protective service officer”.

3 **39 Paragraph 63(1)(c)**

4 Omit “member; or”, substitute “member.”.

5 **40 Paragraph 63(1)(d)**

6 Repeal the paragraph.

7 **41 Subsection 63(2)**

8 Omit “, (c) and (d)”, substitute “and (c)”.

9 Note: The heading to section 63 is replaced by the heading “**Personation etc. of member or**
10 **special member**”.

11 **42 After section 63**

12 Insert:

13 **63A Personation etc. of protective service officer or special**
14 **protective service officer**

- 15 (1) A person, not being a protective service officer or a special
16 protective service officer, must not:
- 17 (a) wear or display any uniform or badge of a protective service
18 officer or special protective service officer, any colourable
19 imitation of such a uniform or badge, or any uniform or
20 badge so closely resembling such a uniform or badge as to be
21 likely to deceive; or
 - 22 (b) have in the person’s possession any arms or ammunition, or
23 any article of clothing, accoutrements or equipment, supplied
24 to any protective service officer or special protective service
25 officer.

26 Penalty: Imprisonment for 12 months.

- 27 (2) Subsection (1) does not apply if the person has a reasonable
28 excuse.

29 Note: The defendant bears an evidential burden in relation to the matter in
30 subsection (2). See subsection 13.3(3) of the *Criminal Code*.

1 **63B Possession of documents etc.**

2 (1) A person, not being a member, special member, protective service
3 officer or special protective service officer, must not have in the
4 person's possession any book or document issued by, or purporting
5 to be issued by, the Australian Federal Police.

6 Penalty: Imprisonment for 12 months.

7 (2) Subsection (1) does not apply if the person has a reasonable
8 excuse.

9 Note: The defendant bears an evidential burden in relation to the matter in
10 subsection (2). See subsection 13.3(3) of the *Criminal Code*.

11 **43 Subsection 64(2)**

12 Omit "or special member" (wherever occurring), substitute ", special
13 member, protective service officer or special protective service officer".

14 **44 Subsection 64A(1)**

15 Omit "on, or attached to, the front of his or her uniform", substitute
16 "clearly visible on the uniform".

17 **45 After section 64A**

18 Insert:

19 **64AAA Protective service officers in uniform to wear identification**
20 **numbers**

21 (1) A protective service officer must, at all times when he or she is
22 wearing his or her protective service officer uniform, wear his or
23 her identification number clearly visible on the uniform.

24 Penalty: 5 penalty units.

25 (2) Subsection (1) is an offence of strict liability.

26 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

27 (3) It is a defence to a prosecution for an offence against subsection (1)
28 if the defendant proves that his or her identification number was
29 not clearly visible on the uniform as a consequence of:

30 (a) the act of another person (not being a protective service
31 officer) done without the consent of the defendant; or

1 (b) an unintentional omission of the defendant.

2 Note: The defendant bears a legal burden in relation to the matter in
3 subsection (3). See section 13.4 of the *Criminal Code*.

4 (4) The Commissioner must take such steps as are necessary to enable
5 protective service officers to whom subsection (1) applies to
6 comply with that subsection.

7 **46 After section 64AA**

8 Insert:

9 **64AAB Suspended AFP employees who are protective service**
10 **officers**

11 If an AFP employee who is a protective service officer is
12 suspended from duties under the regulations, the protective service
13 officer must not, while the suspension is in force, exercise any
14 power conferred on a protective service officer by this Act or any
15 other law of the Commonwealth or of a Territory.

16 Penalty: Imprisonment for 2 years.

17 **47 Subsection 64B(1)**

18 After “a member” (wherever occurring), insert “or a protective service
19 officer”.

20 **48 At the end of subsection 64B(1)**

21 Insert “or the protective service officer”.

22 **49 Subsection 64B(2)**

23 After “a member” (wherever occurring), insert “or a protective service
24 officer”.

25 **50 Subsection 64B(4)**

26 After “a member” (wherever occurring), insert “or a protective service
27 officer”.

28 **51 Subsection 64B(4)**

29 After “the member” (wherever occurring), insert “or the protective
30 service officer”.

1 **52 At the end of paragraph 64B(5)(a)**

2 Add “and”.

3 **53 At the end of subsection 64B(5)**

4 Add:

5 ; and (d) a reference to a protective service officer includes a reference
6 to a special protective service officer.

7 **54 Subsection 66(1)**

8 Omit “or a special member”, substitute “, a special member or a special
9 protective service officer”.

10 **55 Subsection 66(2)**

11 Omit “or special member”, substitute “, special member or special
12 protective service officer”.

13 **56 After subsection 68(4)**

14 Insert:

15 *AFP employees who are protective service officers*

16 (4A) The Commissioner may, by writing signed by the Commissioner,
17 certify that a specified person has been declared to be a protective
18 service officer under section 40EA and may also certify all or any
19 of the following in relation to the person:

- 20 (a) that he or she entered into the undertaking mentioned in
21 subsection 36(4A) immediately after the declaration under
22 section 40EA;
- 23 (b) that, on a specified date, he or she made and subscribed the
24 oath or affirmation mentioned in the certificate before the
25 Commissioner or a specified person authorised by the
26 Commissioner for the purposes of subsection 36(4A);
- 27 (c) that he or she is, on the date on which the certificate is
28 signed, a protective service officer and has been such a
29 protective service officer continuously since the declaration
30 under section 40EA.

1 *Special protective service officers*

- 2 (4B) The Commissioner may, by writing signed by the Commissioner,
3 certify that a specified person has been appointed as a special
4 protective service officer under section 40EC and may also certify
5 all or any of the following in relation to the person:
6 (a) that he or she entered into the undertaking mentioned in
7 subsection 36(4B) immediately after his or her appointment;
8 (b) that, on a specified date, he or she made and subscribed the
9 oath or affirmation mentioned in the certificate before the
10 Commissioner or a specified person authorised by the
11 Commissioner for the purposes of subsection 36(4B);
12 (c) that he or she is, on the date on which the certificate is
13 signed, a special member and has been such a special
14 member continuously since he or she was so appointed.

15 *Certification that a person is or is not a protective service officer*
16 *or special protective service officer*

- 17 (4C) The Commissioner may, by writing signed by the Commissioner,
18 certify that a specified person:
19 (a) is, or is not, a protective service officer or a special protective
20 service officer; or
21 (b) was, or was not, on a specified day, or during a specified
22 period, a protective service officer or a special protective
23 service officer.

24 **57 After section 68**

25 Insert:

26 **68A Certificates in relation to transferred PSOs**

- 27 (1) This section applies in relation to a person who is a transferred
28 PSO, instead of subsection 68(4A).
29 (2) The Commissioner may, by writing signed by the Commissioner,
30 certify that a specified person is a transferred PSO.
31 (3) The Commissioner may also certify either or both of the following
32 in relation to the person:

- 1 (a) that the person made and subscribed an oath or affirmation
2 under section 10 of the *Australian Protective Service Act*
3 *1987*;
- 4 (b) that the person is, on the date on which the certificate is
5 signed, a protective service officer and has been such a
6 protective service officer continuously since being appointed
7 under section 9 of the *Australian Protective Service Act*
8 *1987*.
- 9 (4) Unless the contrary is proved, a document purporting to be a
10 certificate given under this section is taken to be such a certificate
11 and to have been duly given.
- 12 (5) A certificate under this section is prima facie evidence of the
13 matters stated in the certificate.
- 14 (6) In this section:
- 15 *APS transferee* means a person who, immediately before the
16 transfer time, was an employee assisting the Commissioner of the
17 Australian Federal Police under subsection 5(2) of the *Australian*
18 *Protective Service Act 1987*.
- 19 *transferred PSO* means an APS transferee who, immediately
20 before the transfer time, was a protective service officer within the
21 meaning of the *Australian Protective Service Act 1987*.
- 22 *transfer time* means the time specified by the Public Service
23 Commissioner in a determination under paragraph 72(1)(b) of the
24 *Public Service Act 1999* as the time at which the APS transferees
25 become employees of the Australian Federal Police.

26 **58 After section 69D**

27 Insert:

28 **69E Commissioner may charge for certain protective services**

- 29 (1) If services are provided by a protective service officer or a special
30 protective service officer at the request of a person other than:
31 (a) a person holding office under the Commonwealth; or
32 (b) a Commonwealth authority;
33 the Commissioner may charge for the services.

1 (2) A charge made under subsection (1) must be an amount reasonably
2 related to the cost of providing the services.

3 (3) In this section:

4 ***authority of the Commonwealth*** means:

5 (a) a body, whether incorporated or unincorporated, established
6 for a public purpose:

7 (i) by or under a law of the Commonwealth or a law of a
8 Territory other than the Australian Capital Territory or
9 the Northern Territory; or

10 (ii) by the Governor-General or a Minister; or

11 (b) an incorporated company in which the Commonwealth or a
12 body described in paragraph (a) has a controlling interest; or

13 (c) any other agency or instrumentality of the Commonwealth.

14 **59 Paragraph 70(a)**

15 Omit “a member or special member” (wherever occurring), substitute
16 “an AFP employee, a special member or a special protective service
17 officer”.

18 **60 Paragraph 70(aa)**

19 Omit “a member or special member”, substitute “an AFP employee, a
20 special member or a special protective service officer”.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Schedule 2—Amendment and repeal of other Acts

Air Navigation Act 1920

1 Subsection 3(1) (definition of *protective service officer*)

Omit “*Australian Protective Service Act 1987*”, substitute “*Australian Federal Police Act 1979*”.

Australian Protective Service Act 1987

2 The whole of the Act

Repeal the Act.

Aviation Transport Security Act 2003

3 Paragraphs 82(b) and (c)

Omit “*Australian Protective Service Act 1987*”, substitute “*Australian Federal Police Act 1979*”.

Complaints (Australian Federal Police) Act 1981

4 Subsection 3(1) (definition of *AFP appointee*)

Omit “or a special member”, substitute “, a special member or a special protective service officer”.

Crimes Act 1914

5 Subsection 89(5) (definition of *protective service officer*)

Omit “*Australian Protective Service Act 1987*”, substitute “*Australian Federal Police Act 1979*”.

Crimes (Aviation) Act 1991

6 Subsection 3(1) (subparagraph (a)(i) of the definition of *authorised person*)

1 Omit “*Australian Protective Service Act 1987*”, substitute “*Australian*
2 *Federal Police Act 1979*”.

3 ***Customs Act 1901***

4 **7 Subsection 234ABA(4) (definition of *protective service***
5 ***officer*)**

6 Omit “*Australian Protective Service Act 1987*”, substitute “*Australian*
7 *Federal Police Act 1979*”.

8 ***Legislative Instruments Act 2003***

9 **8 Subsection 7(1) (item 3 of the table)**

10 Repeal the item.

11 ***Migration Act 1958***

12 **9 Subsection 5(1) (paragraph (c) of the definition of *officer*)**

13 Omit “*Australian Protective Service Act 1987*”, substitute “*Australian*
14 *Federal Police Act 1979*”.

15 ***Parliamentary Precincts Act 1988***

16 **10 Subsection 3(1) (definition of *protective service officer*)**

17 Omit “*Australian Protective Service Act 1987*”, substitute “*Australian*
18 *Federal Police Act 1979*”.

19 **11 Section 9**

20 Omit “*Australian Protective Service Act 1987*”, substitute “*Australian*
21 *Federal Police Act 1979*”.

22 ***Passenger Movement Charge Collection Act 1978***

23 **12 At the end of section 5**

24 Add:

25 ; or (n) is a protective service officer (as defined in the *Australian*
26 *Federal Police Act 1979*) on an aircraft for the purpose of
27 enhancing the security of the aircraft.

1 ***Public Order (Protection of Persons and Property) Act 1971***

2 **13 Subsection 4(1) (definition of *protective service officer*)**

3 Omit “*Australian Protective Service Act 1987*”, substitute “*Australian*
4 *Federal Police Act 1979*”.

1
2 **Schedule 3—Amendments relating to the**
3 **investigation of State offences that**
4 **have a federal aspect**
5

6 *Australian Federal Police Act 1979*

7 **1 After section 4**

8 Insert:

9 **4AA State offences that have a federal aspect**

10 *State offences that have a federal aspect*

11 (1) For the purposes of paragraph 8(1)(baa), a State offence has a
12 ***federal aspect*** if, and only if:

13 (a) both:

14 (i) the State offence is not an ancillary offence; and

15 (ii) assuming that the provision creating the State offence
16 had been enacted by the Parliament of the
17 Commonwealth instead of by the Parliament of the
18 State—the provision would have been a valid law of the
19 Commonwealth; or

20 (b) both:

21 (i) the State offence is an ancillary offence that relates to a
22 particular primary offence; and

23 (ii) assuming that the provision creating the primary offence
24 had been enacted by the Parliament of the
25 Commonwealth instead of by the Parliament of the
26 State—the provision would have been a valid law of the
27 Commonwealth; or

28 (c) assuming that the Parliament of the Commonwealth had
29 enacted a provision that created an offence penalising the
30 specific acts or omissions involved in committing the State
31 offence—that provision would have been a valid law of the
32 Commonwealth; or

33 (d) both:

- 1 (i) the Australian Federal Police is investigating a matter
2 relating to a relevant criminal activity that relates to an
3 offence against a law of the Commonwealth or a
4 Territory; and
5 (ii) if the Australian Federal Police is investigating, or were
6 to investigate, a matter relating to a relevant criminal
7 activity that relates to the State offence—that
8 investigation is, or would be, incidental to the
9 investigation mentioned in subparagraph (i).

10 *Specificity of acts or omissions*

- 11 (2) For the purposes of paragraph (1)(c), the specificity of the acts or
12 omissions involved in committing a State offence is to be
13 determined having regard to the circumstances in which the
14 offence was committed (whether or not those circumstances are
15 expressed to be elements of the offence).

16 *State offences covered by paragraph (1)(c)*

- 17 (3) A State offence is taken to be covered by paragraph (1)(c) if:
18 (a) the State offence affects the interests of:
19 (i) the Commonwealth; or
20 (ii) an authority of the Commonwealth; or
21 (iii) a constitutional corporation; or
22 (b) the State offence was committed by a constitutional
23 corporation; or
24 (c) the State offence was committed in a Commonwealth place;
25 or
26 (d) the State offence involved the use of a postal service or other
27 like service; or
28 (e) the State offence involved an electronic communication; or
29 (f) the State offence involved trade or commerce:
30 (i) between Australia and places outside Australia; or
31 (ii) among the States; or
32 (iii) within a Territory, between a State and a Territory or
33 between 2 Territories; or
34 (g) the State offence involved:
35 (i) banking (other than State banking not extending beyond
36 the limits of the State concerned); or
-

-
- 1 (ii) insurance (other than State insurance not extending
2 beyond the limits of the State concerned); or
3 (h) the State offence relates to a matter outside Australia.

4 (4) Subsection (3) does not limit paragraph (1)(c).

5 *Definitions*

6 (5) In this section:

7 ***ancillary offence***, in relation to an offence (the ***primary offence***),
8 means:

- 9 (a) an offence of conspiring to commit the primary offence; or
10 (b) an offence of aiding, abetting, counselling or procuring, or
11 being in any way knowingly concerned in, the commission of
12 the primary offence; or
13 (c) an offence of attempting to commit the primary offence.

14 ***authority of the Commonwealth*** has the same meaning as in
15 section 3AA of the *Crimes Act 1914*.

16 ***Commonwealth place*** has the same meaning as in the
17 *Commonwealth Places (Application of Laws) Act 1970*.

18 ***constitutional corporation*** means a corporation to which
19 paragraph 51(xx) of the Constitution applies.

20 ***electronic communication*** means a communication of information:

- 21 (a) whether in the form of text; or
22 (b) whether in the form of data; or
23 (c) whether in the form of speech, music or other sounds; or
24 (d) whether in the form of visual images (animated or
25 otherwise); or
26 (e) whether in any other form; or
27 (f) whether in any combination of forms;
28 by means of guided and/or unguided electromagnetic energy.

29 ***State offence*** means an offence against a law of a State.

30 **2 After paragraph 8(1)(b)**

31 Insert:

1 (baa) the investigation of State offences that have a federal aspect;
2 and

3 **3 At the end of subsection 8(1)**

4 Add:

5 Note: For State offences that have a federal aspect, see section 4AA.

6 ***Crimes Act 1914***

7 **4 Subsection 3(1) (paragraph (a) of the definition of *thing***
8 ***relevant to an indictable offence*)**

9 Repeal the paragraph, substitute:

10 (a) either of the following:

11 (i) anything with respect to which an indictable offence
12 against any law of the Commonwealth or of a Territory
13 has been committed or is suspected, on reasonable
14 grounds, to have been committed;

15 (ii) anything with respect to which a State offence that has a
16 federal aspect, and that is an indictable offence against
17 the law of that State, has been committed or is
18 suspected, on reasonable grounds, to have been
19 committed; or

20 **5 Subsection 3(1) (paragraph (a) of the definition of *thing***
21 ***relevant to a summary offence*)**

22 Repeal the paragraph, substitute:

23 (a) either of the following:

24 (i) anything with respect to which a summary offence
25 against any law of the Commonwealth or of a Territory
26 has been committed or is suspected, on reasonable
27 grounds, to have been committed;

28 (ii) anything with respect to which a State offence that has a
29 federal aspect, and that is a summary or simple offence
30 against the law of that State, has been committed or is
31 suspected, on reasonable grounds, to have been
32 committed; or

33 **6 After section 3**

34 Insert:

1 **3AA State offences that have a federal aspect**

2 *State offences that have a federal aspect*

3 (1) For the purposes of this Act, a State offence has a *federal aspect* if,
4 and only if:

5 (a) both:

6 (i) the State offence is not an ancillary offence; and

7 (ii) assuming that the provision creating the State offence
8 had been enacted by the Parliament of the
9 Commonwealth instead of by the Parliament of the
10 State—the provision would have been a valid law of the
11 Commonwealth; or

12 (b) both:

13 (i) the State offence is an ancillary offence that relates to a
14 particular primary offence; and

15 (ii) assuming that the provision creating the primary offence
16 had been enacted by the Parliament of the
17 Commonwealth instead of by the Parliament of the
18 State—the provision would have been a valid law of the
19 Commonwealth; or

20 (c) assuming that the Parliament of the Commonwealth had
21 enacted a provision that created an offence penalising the
22 specific acts or omissions involved in committing the State
23 offence—that provision would have been a valid law of the
24 Commonwealth; or

25 (d) both:

26 (i) the Australian Federal Police is investigating a matter
27 relating to a relevant criminal activity that relates to an
28 offence against a law of the Commonwealth or a
29 Territory; and

30 (ii) if the Australian Federal Police is investigating, or were
31 to investigate, a matter relating to a relevant criminal
32 activity that relates to the State offence—that
33 investigation is, or would be, incidental to the
34 investigation mentioned in subparagraph (i).

35 *Specificity of acts or omissions*

36 (2) For the purposes of paragraph (1)(c), the specificity of the acts or
37 omissions involved in committing a State offence is to be

1 determined having regard to the circumstances in which the
2 offence was committed (whether or not those circumstances are
3 expressed to be elements of the offence).

4 *State offences covered by paragraph (1)(c)*

- 5 (3) A State offence is taken to be covered by paragraph (1)(c) if:
6 (a) the State offence affects the interests of:
7 (i) the Commonwealth; or
8 (ii) an authority of the Commonwealth; or
9 (iii) a constitutional corporation; or
10 (b) the State offence was committed by a constitutional
11 corporation; or
12 (c) the State offence was committed in a Commonwealth place;
13 or
14 (d) the State offence involved the use of a postal service or other
15 like service; or
16 (e) the State offence involved an electronic communication; or
17 (f) the State offence involved trade or commerce:
18 (i) between Australia and places outside Australia; or
19 (ii) among the States; or
20 (iii) within a Territory, between a State and a Territory or
21 between 2 Territories; or
22 (g) the State offence involved:
23 (i) banking (other than State banking not extending beyond
24 the limits of the State concerned); or
25 (ii) insurance (other than State insurance not extending
26 beyond the limits of the State concerned); or
27 (h) the State offence relates to a matter outside Australia.
- 28 (4) Subsection (3) does not limit paragraph (1)(c).

29 *Definitions*

- 30 (5) In this section:

31 ***ancillary offence***, in relation to an offence (the ***primary offence***),
32 means:
33 (a) an offence of conspiring to commit the primary offence; or

1 (b) an offence of aiding, abetting, counselling or procuring, or
2 being in any way knowingly concerned in, the commission of
3 the primary offence; or

4 (c) an offence of attempting to commit the primary offence.

5 ***Commonwealth place*** has the same meaning as in the
6 *Commonwealth Places (Application of Laws) Act 1970*.

7 ***constitutional corporation*** means a corporation to which
8 paragraph 51(xx) of the Constitution applies.

9 ***electronic communication*** means a communication of information:

10 (a) whether in the form of text; or

11 (b) whether in the form of data; or

12 (c) whether in the form of speech, music or other sounds; or

13 (d) whether in the form of visual images (animated or
14 otherwise); or

15 (e) whether in any other form; or

16 (f) whether in any combination of forms;

17 by means of guided and/or unguided electromagnetic energy.

18 ***State offence*** means an offence against a law of a State.

19 **7 Subsection 3C(1) (at the end of the definition of offence)**

20 Add:

21 ; or (c) a State offence that has a federal aspect.

22 **8 At the end of section 3D**

23 Add:

24 (6) The application of this Part in relation to State offences that have a
25 federal aspect is not intended to limit or exclude the concurrent
26 operation of any law of a State.

27 **9 Subsection 3ZQA(1) (definition of Commonwealth offence)**

28 Repeal the definition, substitute:

29 ***Commonwealth offence*** means:

30 (a) an offence against a law of the Commonwealth, other than an
31 offence that is a service offence for the purposes of the
32 *Defence Force Discipline Act 1982*; or

1 (b) a State offence that has a federal aspect.

2 **10 Paragraph 15H(b)**

3 After “serious Commonwealth offence”, insert “or a serious State
4 offence that has a federal aspect”.

5 **11 At the end of section 15HB**

6 Add:

7 (2) For the purposes of this Part, *serious State offence that has a*
8 *federal aspect* means a State offence that has a federal aspect and
9 that has the characteristics of a serious Commonwealth offence.

10 Note: The heading to section 15HB is replaced by the heading “*What is a serious*
11 *Commonwealth offence or a serious State offence that has a federal aspect?*”.

12 **12 Subsection 23B(1) (definition of *Commonwealth offence*)**

13 Repeal the definition, substitute:

14 *Commonwealth offence* means:

- 15 (a) an offence against a law of the Commonwealth, other than an
16 offence that is a service offence for the purposes of the
17 *Defence Force Discipline Act 1982*; or
18 (b) a State offence that has a federal aspect.

19 **13 Subsection 23WA(1) (definition of *indictable offence*)**

20 Repeal the definition, substitute:

21 *indictable offence* means:

- 22 (a) an indictable offence against a law of the Commonwealth; or
23 (b) a State offence that has a federal aspect and that is an
24 indictable offence against the law of that State.

25 **14 Subsection 23WA(1) (definition of *prescribed offence*)**

26 After “Commonwealth”, insert “, or a State offence that has a federal
27 aspect,”.

28 **15 Subsection 23WA(1) (definition of *serious offence*)**

29 After “Commonwealth”, insert “, or a State offence that has a federal
30 aspect,”.

1 **16 After Division 11A of Part 1D**

2 Insert:

3 **Division 11B—Concurrent operation of State and Territory**
4 **laws**

5 **23YUL Concurrent operation of State and Territory laws**

6 The application of this Part in relation to State offences that have a
7 federal aspect is not intended to limit or exclude the concurrent
8 operation of any law of a State.