

2002-2003

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Australian Protective Service  
Amendment Bill 2003**

**No.     , 2003**

*(Justice and Customs)*

**A Bill for an Act to amend the *Australian Protective  
Service Act 1987*, and for related purposes**



---

## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedule(s) .....	2
<b>Schedule 1—Amendments</b>		<b>3</b>
	<i>Australian Protective Service Act 1987</i>	3



1     **A Bill for an Act to amend the *Australian Protective***  
2     ***Service Act 1987, and for related purposes***

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Australian Protective Service*  
6                     *Amendment Act 2003*.

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, on the day or at the  
10                    time specified in column 2 of the table.  
11

---

---

**Commencement information**

---

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	
2. Schedule 1	The 28th day after 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 is for additional information that is not part  
5 of this Act. This information may be included in any published  
6 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9 repealed as set out in the applicable items in the Schedule  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.

---

1  
2  
3

## Schedule 1—Amendments

4

### *Australian Protective Service Act 1987*

5

#### **1 After section 18**

6 Insert:

7

#### **18A Requirement to provide name etc.**

8 (1) If:

9 (a) a protective service officer suspects on reasonable grounds  
10 that a person might have just committed, might be  
11 committing, or might be about to commit, an offence to  
12 which section 13 applies; and

13 (b) the person is in a place, or in the vicinity of a place, person or  
14 thing, in respect of which the Protective Service is  
15 performing functions under this Act;

16 the officer may request the person to provide to the officer:

17 (c) the person's name; and

18 (d) the person's residential address; and

19 (e) the person's reason for being in the place, or in the vicinity of  
20 the place, person or thing, in respect of which the Protective  
21 Service is performing functions under this Act; and

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

23 (2) If a protective service officer:

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

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

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

29 (d) complies with subsection 19(3) or 20(2);

30 the person must not:

31 (e) fail to comply with the request; or

32 (f) give a name or address that is false in a material particular.

33 Penalty: 20 penalty units.

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

3 (3) Subsection (2) does not apply if the person has a reasonable  
4 excuse.

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

7 **18B Stopping and searching**

8 (1) This section applies if a protective service officer suspects on  
9 reasonable grounds that:

10 (a) a person:

11 (i) has a thing under the person's immediate control; or

12 (ii) is occupying a thing; or

13 (iii) has a thing in a vehicle operated or occupied by the  
14 person; or

15 (iv) has brought a thing on to premises at which the  
16 Protective Service is performing functions under this  
17 Act; and

18 (b) the thing is likely to cause, or is likely to be used by the  
19 person or another to cause:

20 (i) substantial damage to a place or a thing in respect of  
21 which the Protective Service is performing functions  
22 under this Act; or

23 (ii) death or serious harm to a person in respect of whom  
24 the Protective Service is performing functions under this  
25 Act;

26 in circumstances that would be likely to involve the  
27 commission of an offence to which section 13 applies.

28 (2) The protective service officer may:

29 (a) stop and detain the person 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 protective service officer is of the same sex as the  
34 person—conduct an ordinary search or a frisk search of  
35 the person;

36 (ii) search any thing under the person's immediate control;

37 (iii) search any vehicle operated or occupied by the person.



- 
- 1 (3) If the protective service officer is not of the same sex as the person,  
2 an ordinary search or a frisk search of the person for the purpose of  
3 searching for the thing may be conducted by:
- 4 (a) if a protective service officer of the same sex is reasonably  
5 available to conduct the search—a protective service officer  
6 of the same sex as the person; or
- 7 (b) if a protective service officer of the same sex is not  
8 reasonably available to conduct the search:
- 9 (i) a police officer; or
- 10 (ii) an officer of Customs (within the meaning of subsection  
11 4(1) of the *Customs Act 1901*);
- 12 who is of the same sex as the person and who is reasonably  
13 available to conduct the search; or
- 14 (c) otherwise—any other person who is of the same sex as the  
15 person and who is requested by the protective service officer  
16 to conduct the search.
- 17 (4) An action or proceeding, whether civil or criminal, does not lie  
18 against a person who conducts a search under paragraph (3)(b) or  
19 (c) if the person acts in good faith and does not contravene  
20 subsection (5).
- 21 (5) A protective service officer or other person who conducts a search  
22 of a person under this section must not use more force, or subject a  
23 person to greater indignity, than is reasonable and necessary in  
24 order to conduct the search.
- 25 (6) If subparagraph (1)(a)(iv) applies, the protective service officer  
26 may, for the purpose of searching for the thing mentioned in that  
27 subparagraph, search a thing that the officer suspects on reasonable  
28 grounds was brought by the person on to premises at which the  
29 Protective Service is performing functions under this Act.
- 30 (7) In searching a thing under subsection (2) or (6), the protective  
31 service officer may use such force as is necessary and reasonable in  
32 the circumstances, but must not damage the thing by forcing it, or a  
33 part of it, open unless:
- 34 (a) if the search is under subsection (2)—the person mentioned  
35 in that subsection has been given a reasonable opportunity to  
36 open the thing or part of it; or
-

- 1 (b) if the search is under subsection (6)—the person (if any)  
2 apparently in charge of the thing has been given a reasonable  
3 opportunity to open the thing or part of it; or  
4 (c) it is not possible to give that opportunity.

5 (8) In this section:

6 *frisk search* means:

- 7 (a) a search of a person conducted by quickly running the hands  
8 over the person's outer garments; and  
9 (b) an examination of anything worn or carried by the person  
10 that is conveniently and voluntarily removed by the person.

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

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

16 **18C Seizure of things found**

17 (1) If, as a result of conducting a search under section 18B, a  
18 protective service officer, or a person who conducted the search  
19 under subsection 18B(3) on behalf of the officer, finds the thing for  
20 which the officer or person was searching, the officer may seize the  
21 thing.

22 (2) If, as a result of conducting a search under section 18B, a  
23 protective service officer, or a person who conducted the search  
24 under subsection 18B(3) on behalf of the officer, finds a weapon,  
25 or other thing, that the officer suspects on reasonable grounds is  
26 likely to be used by the person or another to cause death or serious  
27 harm to a person:

- 28 (a) in respect of whom the Protective Service is performing  
29 functions under this Act; or  
30 (b) who is in a place, or in the vicinity of a person, place or  
31 thing, in respect of which the Protective Service is  
32 performing functions under this Act;  
33 the officer may seize the weapon or thing.

- 1 (3) A protective service officer must ensure that a thing seized by the  
2 officer is delivered into the custody of a police officer as soon as  
3 practicable.

4 **18D How seized things must be dealt with**

- 5 (1) A police officer who is for the time being responsible for a thing  
6 seized under section 18C must, within 7 days after the day on  
7 which the thing was delivered into the custody of a police officer  
8 under subsection 18C(3), serve a seizure notice on:  
9 (a) the owner of the thing; or  
10 (b) if the owner of the thing cannot be identified after reasonable  
11 inquiries—the person from whom the thing was seized.
- 12 (2) Subsection (1) does not apply if:  
13 (a) both:  
14 (i) the owner of the thing cannot be identified after  
15 reasonable inquiries; and  
16 (ii) the thing was not seized from a person; or  
17 (b) it is not possible to serve the person required to be served  
18 under subsection (1).
- 19 (3) A seizure notice must:  
20 (a) identify the thing; and  
21 (b) state the date on which the thing was seized; and  
22 (c) state the ground or grounds on which the thing was seized;  
23 and  
24 (d) state that, if the owner does not request the return of the thing  
25 within 90 days after the date of the notice, the thing is  
26 forfeited to the Commonwealth.
- 27 (4) The owner of a thing seized under section 18C may request the  
28 return of the thing.
- 29 (5) A police officer who is for the time being responsible for a thing  
30 seized under section 18C must return the thing to its owner if:  
31 (a) the owner requests the return of the thing; and  
32 (b) in the case of a thing seized under subsection 18C(1)—the  
33 officer does not suspect on reasonable grounds that, if the  
34 thing is returned to the owner, the thing is likely to cause, or  
35 is likely to be used by the owner or another to cause:

- 1 (i) substantial damage to a place or thing in respect of  
2 which the Protective Service is performing functions  
3 under this Act; or  
4 (ii) death or serious harm to a person in respect of whom  
5 the Protective Service is performing functions under this  
6 Act;  
7 in circumstances that would be likely to involve the  
8 commission of an offence to which section 13 applies; and  
9 (c) in the case of a thing seized under subsection 18C(2)—the  
10 officer does not suspect on reasonable grounds that, if the  
11 thing is returned to the owner, the thing is likely to be used  
12 by the owner or another to cause death or serious harm to a  
13 person:  
14 (i) in respect of whom the Protective Service is performing  
15 functions under this Act; or  
16 (ii) who is in a place, or in the vicinity of a person, place or  
17 thing, in respect of which the Protective Service is  
18 performing functions under this Act.
- 19 (6) A thing is forfeited to the Commonwealth if the owner of the thing  
20 does not request its return:  
21 (a) before the end of the 90th day after the date of the seizure  
22 notice in relation to the thing; or  
23 (b) if subsection (2) applied in relation to the thing so that a  
24 seizure notice was not served—before the end of the 90th day  
25 after the day on which the thing was delivered into the  
26 custody of a police officer under subsection 18C(3).
- 27 (7) If:  
28 (a) the owner of a thing requests the return of the thing:  
29 (i) within 90 days after the date of the seizure notice in  
30 relation to the thing; or  
31 (ii) if subsection (2) applied in relation to the thing so that a  
32 seizure notice was not served—within 90 days after the  
33 day on which the thing was delivered into the custody of  
34 a police officer under subsection 18C(3); and  
35 (b) the thing has not been returned to the owner by the end of the  
36 90th day;  
37 the police officer who is for the time being responsible for the  
38 thing must, before the end of the 95th day:
-

- 1 (c) return the thing to the owner; or
- 2 (d) apply to a magistrate under section 18E.

3 **18E Application to magistrate**

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

**Schedule 1** Amendments

---

- 1 (f) that the thing is to be otherwise sold or disposed of.
- 2 (4) If the magistrate is not satisfied as required by subsection (3), the
- 3 magistrate must order that the thing be returned to the owner.