

# **Law Enforcement (AFP Professional Standards and Related Measures) Act 2006**

**No. 84, 2006**

**An Act to amend the *Australian Federal Police Act 1979*, and for related purposes**

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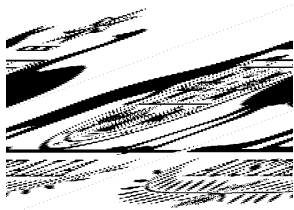


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## **An Act to amend the *Australian Federal Police Act 1979*, and for related purposes**

[Assented to 30 June 2006]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006*.

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## 2 Commencement

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

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<b>Commencement information</b>		
<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.	30 June 2006
2. Schedules 1 to 3	At the same time as section 3 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> commences.	
3. Schedule 3A, Part 1	At the same time as section 3 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> commences.  However, the provision(s) do not commence at all if Schedule 1 to the <i>ASIO Legislation Amendment Act 2006</i> commences before, or at the same time as, the time at which section 3 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> commences.	Do not commence
4. Schedule 3A, Part 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of Schedule 2 to the <i>ASIO Legislation Amendment Act 2006</i> .	(paragraph (a) applies)
5. Schedules 4 and 5	At the same time as section 3 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> commences.	
Note:	This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.	

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

### **3 Schedule(s)**

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

## Schedule 1—Main amendments

### *Australian Federal Police Act 1979*

#### **1 After subsection 3A(6)**

Insert:

*Professional standards and dealing with AFP conduct or practices issues*

- (6A) Part V provides for the setting of AFP professional standards and the way in which AFP conduct or practices issues are raised and dealt with.

#### **2 Subsection 4(1)**

Insert:

**AFP appointee** means:

- (a) a Deputy Commissioner; or
- (b) an AFP employee; or
- (c) a special member; or
- (d) a special protective service officer; or
- (e) a person engaged overseas under section 69A to perform duties overseas as an employee of the Australian Federal Police; or
- (f) a person who is:
  - (i) engaged under section 35 as a consultant, or independent contractor, to perform services for the Australian Federal Police; and
  - (ii) a consultant, or independent contractor, determined by the Commissioner under subsection 35(2) to be an AFP appointee for the purposes of this paragraph; or
- (g) a person who is assisting the Australian Federal Police in the performance of its functions under an agreement under section 69D.

#### **3 Subsection 4(1)**

Insert:

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*AFP conduct issue* has the meaning given by sections 40RH and 40RJ.

**4 Subsection 4(1)**

Insert:

*AFP conduct or practices issue* means:

- (a) an AFP conduct issue; or
- (b) an AFP practices issue.

**5 Subsection 4(1)**

Insert:

*AFP practices issue* has the meaning given by section 40RI and 40RJ.

**6 Subsection 4(1)**

Insert:

*AFP professional standards* means professional standards determined under Commissioner's orders made for the purposes of section 40RC.

**7 Subsection 4(1)**

Insert:

*category 1 conduct* has the meaning given by section 40RN.

**8 Subsection 4(1)**

Insert:

*category 1 conduct issue* has the meaning given by subsection 40RL(1).

**9 Subsection 4(1)**

Insert:

*category 2 conduct* has the meaning given by section 40RO.

**10 Subsection 4(1)**

Insert:

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*category 2 conduct issue* has the meaning given by subsection 40RL(2).

**11 Subsection 4(1)**

Insert:

*category 3 conduct* has the meaning given by section 40RP.

**12 Subsection 4(1)**

Insert:

*category 3 conduct issue* has the meaning given by subsection 40RL(3).

**13 Subsection 4(1)**

Insert:

*complainant* has the meaning given by subsection 40SA(3).

**14 Subsection 4(1)**

Insert:

*corrupt conduct*: see *engages in corrupt conduct*.

**15 Subsection 4(1)**

Insert:

*corruption issue* has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

**16 Subsection 4(1)**

Insert:

*engages in corrupt conduct* has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

**17 Subsection 4(1)**

Insert:

*give information* that raises an AFP conduct or practices issue has a meaning affected by subsection (3).

**18 Subsection 4(1)**

Insert:

*investigator* for a category 3 conduct issue, or a corruption issue, means the person to whom the issue is allocated for investigation under section 40TN or 40TO.

**19 Subsection 4(1)**

Insert:

*manager* for a category 1 conduct issue, or category 2 conduct issue, means the person to whom the issue is allocated in accordance with Commissioner's orders issued for the purposes of subsection 40TA(1).

**20 Subsection 4(1)**

Insert:

*member* of the unit constituted under section 40RD means:

- (a) the AFP appointee appointed as the head of that unit under section 40RE; and
- (b) any member, or special member, of the Australian Federal Police assigned to that unit under section 40RF.

**21 Subsection 4(1)**

Insert:

*practices or procedures* of the Australian Federal Police has the meaning given by subsection 40RI(3).

**22 Subsection 4(1)**

Insert:

*remedial action* has the meaning given by section 40TD.

**23 Subsection 4(1)**

Insert:

*termination action* has the meaning given by section 40TE.

**24 Subsection 4(1)**

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Insert:

*training and development action* has the meaning given by section 40TC.

**25 At the end of section 4**

Add:

- (3) A reference in Part V to *giving information* that raises an AFP conduct or practices issue includes a reference to making a complaint or report that raises an AFP conduct or practices issue.

**26 Section 35**

Omit “The Commissioner”, substitute “(1) The Commissioner”.

**27 At the end of section 35**

Add:

- (2) The Commissioner may determine, in writing, that a consultant, or independent contractor, specified in the determination is to be an AFP appointee for the purposes of paragraph (f) of the definition of *AFP appointee* in subsection 4(1).
- (3) A determination under subsection (2) is not a legislative instrument.

**27A Section 39**

Repeal the section, substitute:

**39 Compliance with Commissioner’s Orders**

An AFP appointee must comply with Commissioner’s Orders.

**27B Section 40**

Repeal the section, substitute:

**40 Compliance with specific directions, instructions or orders**

An AFP appointee must not:

- (a) disobey; or  
(b) fail to carry out;

a lawful direction, instruction or order, whether written or oral, given to him or her by:

- (c) the Commissioner; or
- (d) the AFP appointee under whose control, direction or supervision he or she performs his or her duties.

**27C Subsection 40A(1)**

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

**27D Subsection 40A(2)**

Omit “the employee, special member or special protective service officer”, substitute “the AFP appointee”.

**27E At the end of section 40H**

Add:

- (4) Without limiting subsection 33(3) of the *Acts Interpretation Act 1901*, the Commissioner may at any time revoke in writing a determination made under subsection (1).

**28 After Part IV**

Insert:

**Part V—Professional standards and AFP conduct and practices issues**

**Division 1—Preliminary**

**Subdivision A—Objects and simplified outline of Part**

**40RA Object of this Part**

The object of this Part is to establish the procedures by which:

- (a) AFP conduct issues and AFP practices issues; and
- (b) other issues related to the Australian Federal Police; may be raised and dealt with.

#### **40RB Simplified outline of this Part**

- (1) This Part deals with the handling of:
    - (a) AFP conduct issues and AFP practices issues; and
    - (b) other issues related to the Australian Federal Police.
  - (2) These issues may be:
    - (a) issues that are raised by information given to the Australian Federal Police (see section 40SA); or
    - (b) issues that the Commissioner decides, on his or her own initiative, are to be dealt with under this Part (see section 40SD); or
    - (c) issues that are referred to the Australian Federal Police by the Integrity Commissioner under the *Law Enforcement Integrity Commissioner Act 2006* or by the Ombudsman under the *Ombudsman Act 1976*; or
    - (d) issues that the Minister directs are to be inquired into under Division 4.
  - (3) How a particular AFP conduct issue is dealt with depends on the category to which the issue belongs. Sections 40RK to 40RP deal with the categorisation of AFP conduct issues.
  - (4) AFP conduct issues that belong to the 2 less serious categories (categories 1 and 2) are dealt with managerially and may be addressed by training and development action (see section 40TC) or remedial action (see section 40TD).
  - (5) AFP conduct issues that belong to the 2 more serious categories (category 3 and corruption issues) are dealt with through more formal investigations and may be addressed not only by training and development action and remedial action but also by termination action (see section 40TE) and other action. The investigation may also give rise to a prosecution for an offence.
  - (6) Division 5 confers special investigative powers on people who conduct:
    - (a) investigations under Division 3 of category 3 conduct issues or corruption issues; or
    - (b) inquiries under Division 4.
  - (7) The Ombudsman plays a number of roles under this Part. The Ombudsman:
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- (a) determines, jointly with the Commissioner, the particular kinds of conduct that are to belong to the various categories of conduct (see section 40RM); and
- (b) is consulted by the Commissioner on the appointment of investigators under section 40TO (see subsection 40TO(6)); and
- (c) is entitled under section 40WA to have access to the records that are kept in relation to AFP conduct issues and AFP practices issues under that section; and
- (d) conducts annual reviews and ad hoc reviews of the operation of this Part under Division 7.

### **Subdivision B—Professional standards for AFP appointees**

#### **40RC Commissioner may determine professional standards**

- (1) The Commissioner may issue Commissioner's orders under section 38 determining the professional standards to be complied with by AFP appointees.
- (2) Without limiting subsection (1), the Commissioner may determine a professional standard by reference to the requirements specified in:
  - (a) another Commissioner's order; or
  - (b) another document issued or made by the Commissioner in the exercise of the Commissioner's powers under section 37.
- (3) Despite section 46AA of the *Acts Interpretation Act 1901*, a document referred to in paragraph (2)(a) or (b) may be a document:
  - (a) as in force at a particular time; or
  - (b) as in force from time to time.

### **Subdivision C—Unit within Australian Federal Police to undertake professional standards functions**

#### **40RD Unit to be constituted**

- (1) The Commissioner must constitute, within the Australian Federal Police, a unit to undertake investigations of:
  - (a) AFP conduct issues that are category 3 conduct issues; and

- (b) corruption issues that relate to conduct engaged in by AFP appointees.
- (2) The Commissioner may determine, from time to time, the name by which the unit is to be known.
- (3) The establishment of the unit is to be such as the Commissioner determines from time to time.
- (4) In determining and varying the establishment of the unit, the Commissioner must ensure, so far as it is practicable for the Commissioner to do so, that the staffing of the unit is adequate to enable the unit to perform its functions under this Part effectively.

**40RE Head of unit**

- (1) The Commissioner may appoint an AFP appointee, in writing, to be the head of the unit constituted under section 40RD.
- (2) The head of the unit is responsible for the performance by the unit of its functions.
- (3) The head of the unit is responsible under subsection (2) directly to:
  - (a) the Commissioner; or
  - (b) if the Commissioner so directs—the Deputy Commissioner, or senior executive AFP employee who is at a level equivalent to that of a Deputy Commissioner, specified in the direction.

**40RF Assignment of members, and special members, to unit**

- (1) The Commissioner may, in writing, assign a member, or special member, of the Australian Federal Police to the unit constituted under section 40RD.
- (2) The assignment must:
  - (a) be in writing; and
  - (b) specify the period during which the member, or special member, is to serve in the unit.
- (3) The period specified under paragraph (2)(b) must not exceed 2 years.

- (4) If the Commissioner is satisfied that there are special reasons for doing so, the Commissioner may vary, or further vary, the assignment under subsection (1) by substituting for the period specified in the assignment a shorter or longer period.
- (5) The period substituted under subsection (4) may exceed 2 years.
- (6) As soon as practicable after the member, or special member, has served in the unit for the period specified in the assignment, the Commissioner must arrange for the member, or special member, to cease serving in the unit.
- (7) If:
  - (a) a member, or special member, of the Australian Federal Police is assigned to the unit constituted under section 40RD; and
  - (b) the member, or special member, ceases to serve in the unit; and
  - (c) the period of 12 months from the time when the member, or special member, ceased to serve in the unit ends;the member, or special member, may again be assigned to the unit.

#### **40RG Member or special member in unit may be directed to perform other duties**

The Commissioner may direct a member, or special member, of the Australian Federal Police serving in the unit constituted under section 40RD to perform duties that are not related to the unit's functions but only if those duties do not unduly interfere with the performance by the unit of its functions.

#### **Subdivision D—AFP conduct issues and AFP practices issues**

##### **40RH AFP conduct issues**

- (1) For the purposes of this Act, an **AFP conduct issue** is an issue of whether an AFP appointee has:
  - (a) engaged in conduct that contravenes the AFP professional standards; or
  - (b) engaged in corrupt conduct.
- (2) Subsection (1) applies even if:

- (a) the AFP appointee who engaged in the conduct has ceased to be an AFP appointee; or
  - (b) the conduct:
    - (i) was engaged in while the AFP appointee was not on duty; or
    - (ii) is conduct of a private character; or
    - (iii) was engaged in before the AFP appointee became an AFP appointee; or
  - (c) the conduct that was engaged in by the AFP appointee also involves or implicates someone who is not an AFP appointee; or
  - (d) the period for bringing a prosecution for an offence, or other proceedings, in relation to the conduct has ended; or
  - (e) the conduct was engaged in before the commencement of this section.
- (3) Subsection (1) applies whether the conduct was engaged in within, or outside, Australia.
- (4) To avoid doubt, information may raise an *AFP conduct issue* even if the identity of the AFP appointee who engaged in the conduct is unknown, is uncertain or is not disclosed in the information.
- (5) This section has effect subject to section 40RJ.
- (6) A reference in this section to *engaging in conduct* includes a reference to failing, or refusing, to engage in conduct.

#### **40RI AFP practices issues**

- (1) For the purposes of this Act, an *AFP practices issue* is an issue about the practices or procedures of the Australian Federal Police (whether those practices or procedures are carried out within, or outside, Australia).
  - (2) Without limiting subsection (1), an *AFP practices issue* includes an issue of whether a practice or procedure of the Australian Federal Police is or has been:
    - (a) contrary to law; or
    - (b) unreasonable, unjust, oppressive or improperly discriminatory; or
    - (c) inadequate; or
-

- (d) otherwise wrong or inappropriate.
- (3) For the purposes of this Act, the *practices or procedures* of the Australian Federal Police include:
  - (a) the rules, orders and instructions (including the Commissioner's Orders) in accordance with which AFP appointees are required to perform their duties; and
  - (b) the policies adopted or followed by the Australian Federal Police; and
  - (c) the practices and procedures ordinarily followed by AFP appointees in the performance of their duties.
- (4) This section has effect subject to section 40RJ.

#### **40RJ Exclusion of certain employment action**

- (1) For the purposes of this Act, an *AFP conduct issue* does not include an issue that relates to conduct of a person that is conduct that:
  - (a) consists of action taken in relation to an AFP appointee's employment; and
  - (b) involves neither:
    - (i) a contravention by the person of the AFP professional standards; nor
    - (ii) corrupt conduct by the person.
- (2) For the purposes of this Act, an *AFP practices issue* does not include an issue that relates a practice or procedure of the Australian Federal Police that is a practice or procedure that:
  - (a) relates to action taken in relation to AFP appointees' employment; and
  - (b) involves neither:
    - (i) contraventions the AFP professional standards; nor
    - (ii) corrupt conduct by AFP appointees.
- (3) Without limiting subsections (1) and (2), action taken in relation to an AFP appointee's employment includes action taken in relation to:
  - (a) the appointment of the AFP appointee; or
  - (b) the terms and conditions of employment of the AFP appointee; or

- (c) the promotion of the AFP appointee; or
- (d) the termination of the AFP appointee's appointment; or
- (e) the management of performance that does not meet AFP professional standards; or
- (f) the payment of remuneration to the AFP appointee.

### **Subdivision E—Categories of AFP conduct issues and managers**

#### **40RK Categories of conduct**

- (1) There are 4 categories of conduct for the purposes of this Act.
- (2) The lowest, and least serious, is category 1.
- (3) The next highest, and next most serious, is category 2.
- (4) The next highest, and next most serious, is category 3.
- (5) The highest, and most serious, is conduct giving rise to a corruption issue.
- (6) If conduct would otherwise belong to more than one category, it is taken to belong to the higher or highest of those categories.
- (7) The category to which conduct belongs may change as more information is obtained in relation to the conduct.

#### **40RL Categories of AFP conduct issues**

- (1) A *category 1 conduct issue* is an issue of whether an AFP appointee has engaged in category 1 conduct.
- (2) A *category 2 conduct issue* is an issue of whether an AFP appointee has engaged in category 2 conduct.
- (3) A *category 3 conduct issue* is an issue of whether an AFP appointee has engaged in category 3 conduct.

**40RM AFP Commissioner and Ombudsman to determine the kinds of conduct that are to be category 1, category 2 or category 3 conduct**

- (1) Subject to sections 40RN, 40RO and 40RP, the Commissioner and the Ombudsman may jointly determine, by legislative instrument:
  - (a) the kind of conduct that is to be category 1 conduct for the purposes of this Act; and
  - (b) the kind of conduct that is to be category 2 conduct for the purposes of this Act; and
  - (c) the kind of conduct that is to be category 3 conduct for the purposes of this Act.
- (2) If there is no determination under subsection (1) that applies to particular conduct, the conduct is to be taken to be category 3 conduct for the purposes of this Act.

**40RN Category 1 conduct**

The Commissioner and the Ombudsman may determine under subsection 40RM(1) that conduct of a particular kind is to be category 1 conduct for the purposes of this Act only if they are satisfied that:

- (a) conduct of that kind is inappropriate conduct that:
  - (i) relates to minor management matters or customer service matters; or
  - (ii) reveals a need for improvement in the performance of the AFP appointee concerned; and
- (b) conduct of that kind does not warrant being treated as category 2 or category 3 conduct for the purposes of this Act.

**40RO Category 2 conduct**

The Commissioner and the Ombudsman may determine under subsection 40RM(1) that conduct of a particular kind is to be category 2 conduct for the purposes of this Act only if they are satisfied that:

- (a) conduct of that kind is:
    - (i) minor misconduct by an AFP appointee; or
    - (ii) inappropriate conduct that reveals unsatisfactory behaviour by an AFP appointee; and
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- (b) conduct of that kind:
  - (i) would otherwise be category 1 conduct; and
  - (ii) warrants, because of its repeated nature, being treated as category 2 conduct for the purposes of this Act; and
- (c) conduct of that kind does not warrant being treated as category 3 conduct for the purposes of this Act.

#### **40RP Category 3 conduct**

- (1) The Commissioner and the Ombudsman may determine under subsection 40RM(1) that conduct of a particular kind is to be category 3 conduct for the purposes of this Act only if they are satisfied that:
  - (a) conduct of that kind:
    - (i) is serious misconduct by an AFP appointee; or
    - (ii) raises the question whether termination action should be taken in relation to an AFP appointee; or
    - (iii) involves a breach of the criminal law, or serious neglect of duty, by an AFP appointee; and
  - (b) conduct of that kind does not raise a corruption issue.
- (2) Subparagraphs (1)(a)(ii) and (iii) do not limit subparagraph (1)(a)(i).

#### **40RQ Managers for particular categories of AFP conduct issues**

The Commissioner may issue Commissioner's orders under section 38:

- (a) authorising particular kinds of AFP appointees to act as managers for category 1 conduct issues; or
- (b) authorising particular kinds of AFP appointees to act as managers for category 2 conduct issues.

## **Division 2—Raising AFP conduct and practices issues with the AFP for action under Division 3**

### **40SA Giving information that raises an AFP conduct or practices issue**

- (1) A person may give information that raises an AFP conduct or practices issue to:
  - (a) the Commissioner; or
  - (b) an AFP appointee.
- (2) The person:
  - (a) may give the information orally or in writing; and
  - (b) may give the information anonymously.
- (3) For the purposes of this Act, the person is a *complainant* in relation to the AFP conduct or practices issue, if:
  - (a) the person expressly indicates; or
  - (b) the manner in which the person gives the information necessarily implies;that he or she wishes to be kept informed of the action taken in relation to the issue.
- (4) If the person gives the information orally, the Commissioner, the AFP appointee to whom the information is given or the AFP appointee or other person to whom the issue is allocated:
  - (a) may reduce the information to writing; and
  - (b) may, at any time, require the person giving the information to reduce the information to writing; and
  - (c) may, if he or she makes a requirement under paragraph (b), decline to take any further action in relation to the information until the person giving the information reduces the information to writing.
- (5) If the Ombudsman decides to refer information under subsection 6(21) of the *Ombudsman Act 1976*, the person who gave the information to the Ombudsman is taken to have given the Commissioner information that raises an AFP conduct or practices issue under this section.
- (6) A person's right to give information under this section:

- (a) is in addition to the provisions of any other law; and
- (b) does not affect the operation of any other law; and
- (c) without limiting the generality of paragraphs (a) and (b), does not:
  - (i) prevent or affect the taking of legal proceedings under some other law in respect of conduct engaged in by an AFP appointee; or
  - (ii) affect the operation of any other law in respect of legal proceedings so taken.

#### **40SB Arrangements for person in custody to give information**

- (1) This section applies if a person (the *detainee*) is being detained in custody.
- (2) For the purposes of this section, a *custodian* is:
  - (a) the person in whose custody the detainee is being detained; or
  - (b) another person performing duties in connection with the detainee's detention.
- (3) The detainee may request a custodian to provide the detainee with:
  - (a) facilities for preparing written information to give the Commissioner under section 40SA; and
  - (b) facilities for giving further information to:
    - (i) the Commissioner; or
    - (ii) the person to whom the relevant AFP conduct or practices issue is allocated; and
  - (c) facilities for enclosing the complaint or the further information in a sealed envelope.
- (4) If the detainee requests facilities under subsection (3), the detainee is entitled to be provided with those facilities.
- (5) The detainee may request a custodian to have sent to the Commissioner (or the person to whom the relevant AFP conduct or practices issue is allocated) a sealed envelope that is:
  - (a) delivered by the detainee to the custodian; and
  - (b) addressed to the Commissioner (or the person to whom the issue is allocated).

- (6) If the detainee makes a request under subsection (5), the detainee is entitled to have the envelope delivered to the Commissioner (or the person to whom the relevant AFP conduct or practices issue is allocated) without undue delay.
- (7) The detainee is entitled to have delivered to the detainee, without undue delay, any sealed envelope that:
  - (a) is addressed to the detainee and sent by the Commissioner (or the person to whom the relevant AFP conduct or practices issue is allocated); and
  - (b) comes into the possession, or under the control, of a custodian.
- (8) A custodian is not entitled to open, or inspect any document enclosed in, a sealed envelope that:
  - (a) either:
    - (i) is addressed to the Commissioner (or the person to whom the relevant AFP conduct or practices issue is allocated) and delivered by the detainee to a custodian for sending to the Commissioner; or
    - (ii) is addressed to the detainee and sent by the Commissioner (or the person to whom the relevant AFP conduct or practices issue is allocated); and
  - (b) comes into the possession, or under the control, of a custodian.
- (9) For the purposes of this section, the Commissioner may make arrangements with the appropriate authority of a State or a Territory for the identification and delivery of sealed envelopes sent by the Commissioner (or the person to whom the relevant AFP conduct or practices issue is allocated) to persons detained in custody in that State or Territory.

**40SC Recording and dealing with information given under section 40SA**

- (1) If a person gives information to another person (the *recipient*) under section 40SA, the recipient must:
  - (a) record the details of the information; and

- (b) deal with the information in accordance with the Commissioner's orders issued for the purposes of subsection 40TA(1).
- (2) Subsection (1) does not apply if:
  - (a) the issue to which the information relates is:
    - (i) a category 1 conduct issue; or
    - (ii) an AFP practices issue; and
  - (b) the recipient is satisfied that the issue:
    - (i) arises as a result of a misunderstanding of the facts, the law or the practices or procedures of the Australian Federal Police; or
    - (ii) is otherwise appropriate for informal resolution; and
  - (c) the recipient is satisfied that:
    - (i) giving an explanation to the person giving the information; or
    - (ii) taking other action; is likely to resolve the issue; and
  - (d) the recipient is satisfied that the recipient is able to give the person giving the information that explanation, or arrange for that action to be taken, within a reasonable period.
- (3) If the issue is not resolved within a reasonable period, the recipient must:
  - (a) record the details of the information; and
  - (b) deal with the information in accordance with the Commissioner's orders issued for the purposes of subsection 40TA(1).

**40SD Commissioner may decide that AFP conduct issue should be dealt with under this Part**

The Commissioner may decide, on his or her own initiative, that an AFP conduct issue is to be dealt with under this Part.

**40SE Recording and dealing with information referred under section 40SD**

If the Commissioner decides under section 40SD that an AFP conduct issue is to be dealt with under this Part, the Commissioner must:

- (a) record the details of the information; and
- (b) deal with the issue in accordance with the Commissioner's orders issued for the purposes of subsection 40TA(1).

**Division 3—Dealing with AFP conduct or practices issues**

**Subdivision A—Preliminary**

**40TA Commissioner's orders about how AFP conduct or practices issues are dealt with**

- (1) The Commissioner may issue Commissioner's orders under section 38 in relation to how:
  - (a) AFP conduct or practices issues; and
  - (b) information about AFP conduct or practices issues;are to be dealt with by AFP appointees under this Part.
- (2) Without limiting subsection (1), the Commissioner must, so far as practicable, ensure that the complainant (if any) in relation to an AFP conduct issue:
  - (a) is kept informed, as frequently as is reasonable, and to the extent that is reasonable, in the circumstances, of progress in dealing with:
    - (i) the AFP conduct issue; and
    - (ii) any AFP practices issue that the person to whom the issue is allocated identifies in the course of dealing with the AFP conduct issue; and
  - (b) is advised of any action taken in relation to an issue referred to in paragraph (a).
- (3) Without limiting subsection (1), the Commissioner must, so far as practicable, ensure that the complainant (if any) in relation to an AFP practices issue:

- (a) is kept informed, as frequently as is reasonable, and to the extent that is reasonable, in the circumstances, of progress in dealing with the AFP practices issue; and
- (b) is advised of any action taken in relation to the AFP practices issue.

**40TB Dealing with related AFP conduct issues that have different categories**

If:

- (a) a number of AFP conduct issues relate to the same AFP appointee; and
  - (b) those AFP conduct issues belong to different categories;
- those AFP conduct issues may be dealt with together as if they all belonged to the higher or highest of those categories.

**40TC Training and development action**

- (1) For the purposes of this Act, *training and development action* in relation to an AFP appointee is action taken to improve the appointee's performance through training and development.
- (2) Without limiting subsection (1), *training and development action* in relation to the AFP appointee may take one or more of the following forms:
  - (a) coaching the AFP appointee or making arrangements for the AFP appointee to be coached;
  - (b) mentoring the AFP appointee or making arrangements for the AFP appointee to be mentored;
  - (c) making arrangements for the AFP appointee to undertake training activities;
  - (d) making arrangements for the AFP appointee to undertake development activities;
  - (e) increasing, or making arrangements for increasing, the level of supervision of the AFP appointee's work.

**40TD Remedial action**

- (1) For the purposes of this Act, *remedial action* in relation to an AFP appointee is action taken to remedy unsatisfactory performance by the AFP appointee.

- (2) Without limiting subsection (1), **remedial action** in relation to the AFP appointee may include one or more of the following:
- (a) action taken to improve the AFP appointee's behaviour;
  - (b) structured changes to the AFP appointee's employment;
  - (c) the recording of adverse findings against the AFP appointee (whether for a particular period or permanently).
- (3) Without limiting paragraph (2)(a), **remedial action** in relation to the AFP appointee may take one or more of the following forms:
- (a) counselling the AFP appointee or arranging for the AFP appointee to be counselled;
  - (b) reprimanding the AFP appointee;
  - (c) giving the AFP appointee a formal warning;
  - (d) requiring the AFP appointee to adopt particular improvement strategies.
- (4) Without limiting paragraph (2)(b), **remedial action** in relation to the AFP appointee may take one or more of the following forms:
- (a) changing the AFP appointee's shifts or arranging for or recommending such a change;
  - (b) restricting the AFP appointee's duties or arranging for or recommending such a restriction;
  - (c) reassigning the AFP appointee to other duties or arranging for or recommending such a reassignment;
  - (d) transferring the AFP appointee to another part of the Australian Federal Police or arranging for or recommending such a transfer.

#### **40TE Termination action**

The following table sets out the action that is **termination action** in relation to each kind of AFP appointee for the purposes of this Act:

<b>Termination action</b>		
<b>Item</b>	<b>For this kind of AFP appointee ...</b>	<b>termination action is ...</b>
1	a Deputy Commissioner	the Governor-General terminating the Deputy Commissioner's appointment

Schedule 1 Main amendments

<b>Termination action</b>		
<b>Item</b>	<b>For this kind of AFP appointee ...</b>	<b>termination action is ...</b>
2	an AFP employee	the Commissioner terminating the AFP employee's employment under section 28
3	a special member	the Commissioner terminating the special member's appointment as a special member of the Australian Federal Police
4	a special protective service officer	the Commissioner terminating the special protective service officer's appointment as a special protective service officer of the Australian Federal Police
5	a person engaged overseas under section 69A to perform duties overseas as an employee of the Australian Federal Police	the Commissioner terminating the person's engagement
6	a person (the <i>consultant/contractor</i> ) who is engaged under section 35 as a consultant, or independent contractor, to perform services for the Australian Federal Police	the Commissioner: (a) terminating the consultant/contractor's engagement; or (b) arranging for a person to cease to perform services for the Australian Federal Police on behalf of the consultant/contractor
7	a person assisting the Australian Federal Police in the performance of its functions under an agreement under section 69D	the Commissioner arranging for the person to cease to assist the Australian Federal Police in the performance of its functions

**Subdivision B—Discretion to take no further action in relation to issue**

**40TF Discretion to take no further action in relation to AFP conduct or practices issue**

- (1) This section applies if:
    - (a) a person gives information under section 40SA that raises:
      - (i) an AFP conduct issue in relation to conduct engaged in by an AFP appointee; or
      - (ii) an AFP practices issue in relation to a practice or procedure of the AFP; or
    - (b) the Commissioner decides under section 40SD that an AFP conduct issue in relation to an AFP appointee is to be dealt with under this Part.
  - (2) The Commissioner may determine that no further action is to be taken under this Part in relation to the issue if the Commissioner is satisfied that:
    - (a) the person became aware of the conduct, or the practice or procedure, more than 12 months before the person gave the information under section 40SA; or
    - (b) appropriate action has already been taken:
      - (i) against the AFP appointee in relation to the conduct; or
      - (ii) in relation to the practice or procedure; or
    - (c) the person giving the information has exercised a right to have the conduct, or the practice or procedure, reviewed by a court or tribunal constituted by or under a law and there is no special reason to take further action in relation to the conduct or the practice or procedure; or
    - (d) the person giving the information has a right to have the conduct, or the practice or procedure, reviewed by a court or tribunal constituted by or under a law but has not exercised that right and, having regard to all the circumstances, it would be reasonable for the person to have exercised that right; or
    - (e) the giving of the information is frivolous or vexatious; or
    - (f) the information is trivial; or
    - (g) the person giving the information did not give the information in good faith; or
-

- (h) the person giving the information does not have a sufficient interest in the AFP conduct issue or the AFP practices issue; or
- or
- (i) the conduct:
  - (i) occurred when the AFP appointee was not on duty; or
  - (ii) was private conduct of the AFP appointee; and was lawful and reasonable in the circumstances; or
- (j) the person giving the information is an AFP appointee, or has been an AFP appointee, and the information relates to action taken in relation to that AFP appointee as a result of information that was given and dealt with under this Part; or
- (k) the investigation, or further investigation, of the issue is not warranted having regard to all the circumstances; or
- (l) any other condition specified in the regulations for the purposes of this paragraph is satisfied.

### **Subdivision C—Dealing with category 1 and category 2 conduct issues**

#### **40TG When Subdivision applies**

- (1) This Subdivision applies if:
  - (a) information that is given under section 40SA raises an AFP conduct issue in relation to an AFP appointee; and
  - (b) the issue is a category 1 or category 2 conduct issue; and
  - (c) the issue is allocated to an AFP appointee (the *manager*).
- (2) This Subdivision also applies if:
  - (a) the Commissioner decides under section 40SD that an AFP conduct issue in relation to an AFP appointee is to be dealt with under this Part; and
  - (b) the issue is a category 1 or category 2 conduct issue; and
  - (c) the issue is allocated to an AFP appointee (the *manager*).

#### **40TH How issue is dealt with**

- (1) In dealing with the AFP conduct issue, the manager must:
    - (a) ensure that:
      - (i) the AFP appointee; and
      - (ii) the complainant (if any);
-

have an adequate opportunity to be heard in relation to the issue; and

- (b) ensure that the AFP appointee is involved, as far as practicable, in the resolution of the issue; and
- (c) determine what action (if any) is to be taken under section 40TI or 40TJ in relation to the issue; and
- (d) consider whether the information:
  - (i) given under section 40SA in relation to the issue; or
  - (ii) obtained in the course of dealing with the issue;raises an AFP practices issue.

Note: Paragraph (d)—see also section 40TK.

- (2) Without limiting the ways in which the manager may deal with the AFP conduct issue, the manager may:
  - (a) attempt to resolve the issue by conciliation; or
  - (b) authorise another AFP appointee to attempt to resolve the issue by conciliation.
- (3) To avoid doubt:
  - (a) the conduct or outcome of conciliation undertaken under subsection (2) does not limit the action that the manager may take under section 40TI or 40TJ; and
  - (b) the manager may take into account the conduct or outcome of conciliation undertaken under subsection (2) in deciding what action (if any) to take under section 40TI or 40TJ.
- (4) Any information that the AFP appointee gives, in the course of conciliation undertaken under subsection (2), to:
  - (a) the manager; or
  - (b) the person authorised by the manager to attempt to resolve the AFP conduct issue by conciliation; or
  - (c) the complainant;is not admissible against the AFP appointee in any criminal or civil proceedings.

#### **40TI Action that may be taken in relation to category 1 conduct**

If the manager is satisfied, on reasonable grounds, that the AFP appointee has engaged in category 1 conduct, the manager may

take training and development action in relation to the AFP appointee.

Note: For *training and development action*, see section 40TC.

#### **40TJ Action that may be taken in relation to category 2 conduct**

If the manager is satisfied, on reasonable grounds, that the AFP appointee has engaged in category 2 conduct, the manager may do either or both of the following:

- (a) take remedial action in relation to the AFP appointee;
- (b) take training and development action in relation to the AFP appointee.

Note 1: For *remedial action*, see section 40TD.

Note 2: For *training and development action*, see section 40TC.

#### **40TK AFP practices issue identified in course of dealing with AFP conduct issue**

- (1) This section applies if the manager is satisfied that the information:
  - (a) given under section 40SA in relation to the AFP conduct issue; or
  - (b) obtained in the course of dealing with the AFP conduct issue; raises an AFP practices issue.
- (2) The manager must bring the AFP practices issue to the attention of an appropriate AFP appointee.
- (3) The manager may make such recommendations as the manager considers appropriate to address the AFP practices issue.

#### **Subdivision D—Dealing with category 3 conduct issues and corruption issues**

##### **40TL When Subdivision applies**

- (1) This Subdivision applies if:
    - (a) information that is given under section 40SA raises an AFP conduct issue in relation to an AFP appointee; and
    - (b) the issue is a category 3 conduct issue.
  - (2) This Subdivision also applies if:
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- (a) the Commissioner decides under section 40SD that an AFP conduct issue in relation to an AFP appointee is to be dealt with under this Part; and
  - (b) the issue is a category 3 conduct issue.
- (3) This Subdivision also applies if:
- (a) the Commissioner notifies the Integrity Commissioner of a corruption issue under section 19 of the *Law Enforcement Integrity Commissioner Act 2006* and the Australian Federal Police investigates the issue under subsection 22(1) of that Act; or
  - (b) a corruption issue relates to the conduct of an AFP appointee and the Integrity Commissioner refers the issue to the Australian Federal Police under Division 2 of Part 4 of that Act.
- (4) This Subdivision also applies if the Ombudsman arranges with the Commissioner under section 8D of the *Ombudsman Act 1976* for a category 3 conduct issue to be dealt with jointly by the Ombudsman and the Australian Federal Police.

**40TM Head of unit constituted under section 40RD to notify Ombudsman of category 3 conduct issues**

- (1) The head of the unit constituted under section 40RD must notify the Ombudsman of the issue if the issue is a category 3 conduct issue.
- (2) Subsection (1) does not apply if this Subdivision applies to the issue because of subsection 40TL(4) (Ombudsman arranging for issue to be dealt with jointly by Ombudsman and Australian Federal Police).

**40TN Head of unit constituted under section 40RD generally allocates issues for investigation**

- (1) Subject to section 40TO, the head of the unit constituted under section 40RD must allocate the issue to a person who is a member or special member for investigation.
- (2) Without limiting subsection (1), the head of the unit may allocate the issue to himself or herself.

- (3) The head of the unit may allocate the issue to a person who is not a member of the unit only with the Commissioner's agreement.

**40TO Commissioner must allocate issue to someone outside unit constituted under section 40RD in certain circumstances**

- (1) This section applies if:
- (a) the issue relates to the conduct of a person who is a member of the unit constituted under section 40RD; or
  - (b) the issue does not relate to the conduct of a person who is a member of the unit but the Commissioner is satisfied that it would be inappropriate, for any reason, for the issue to be allocated to a person who is a member of that unit for investigation.
- (2) The Commissioner must allocate the issue to a person for investigation.
- (3) The person to whom the issue is allocated must not be a member of the unit constituted under section 40RD.
- (4) A corruption issue must not be allocated to the Ombudsman.
- (5) Without limiting subsection (2), the Commissioner may, with the agreement of the Ombudsman, allocate the issue to the Ombudsman if the issue is a category 3 conduct issue.
- (6) If:
- (a) the issue is a category 3 conduct issue; and
  - (b) the Commissioner allocates the issue under subsection (2) to someone other than the Ombudsman;
- the Commissioner must consult with the Ombudsman about the choice of the person to whom the issue is to be allocated.
- (7) If the issue is a corruption issue, the Commissioner must consult with the Integrity Commissioner about the choice of the person to whom the issue is to be allocated.

**40TP Persons eligible to have category 3 conduct issue or corruption issue allocated to them**

The issue may be allocated to a person under section 40TN or 40TO only if the person has appropriate qualifications or experience to conduct the investigation of the issue.

**40TQ How category 3 conduct issue or corruption issue is dealt with**

- (1) This section applies if the issue is allocated to a person under section 40TN or 40TO.
- (2) In investigating the issue, the investigator must:
  - (a) ensure that:
    - (i) the AFP appointee; and
    - (ii) the complainant (if any);have, subject to the requirements of the investigation, an adequate opportunity to be heard in relation to the issue; and
  - (b) consider whether the information:
    - (i) given under section 40SA in relation to the issue; or
    - (ii) obtained in the course of dealing with the issue;raises an AFP practices issue.

**40TR Recommendations that may be made in relation to category 3 conduct or corrupt conduct**

- (1) If the investigator is satisfied, on reasonable grounds, that the AFP appointee has engaged in category 3 conduct or corrupt conduct, the investigator may recommend that any one or more of the following be taken in relation to the AFP appointee:
  - (a) termination action;
  - (b) remedial action;
  - (c) training and development action;
  - (d) any other action that the Commissioner can take in relation to the AFP appointee.

Note 1: For *termination action*, see section 40TE.

Note 2: For *remedial action*, see section 40TD.

Note 3: For *training and development action*, see section 40TC.

Note 4: If evidence emerges, at any stage of the investigation, that the AFP appointee may have committed an offence, the investigator could also

arrange for the AFP appointee to be charged with the offence. This might be done even before the investigation of the issue is completed. The AFP appointee might be charged with the offence even if the investigator does not recommend that termination, remedial or training and development action to be taken in relation to the AFP appointee.

- (2) To avoid doubt, the Commissioner may take termination action in relation to an AFP employee whether or not a recommendation has been made by an investigator that termination action be taken in relation to the employee.

#### **40TS Investigative powers**

- (1) If the investigator is not the Ombudsman, the investigator has, in relation to the investigation of the issue, the powers provided for in Division 5.
- (2) To avoid doubt, subsection (1) applies even if the investigator is investigating the issue jointly with the Ombudsman.
- (3) If the investigator is the Ombudsman, the Ombudsman has, in relation to the investigation of the issue, the same powers that the Ombudsman has under the *Ombudsman Act 1976* in relation to the investigation of a complaint made under that Act.

#### **40TU Report of investigation**

- (1) On completion of the investigation of the issue, the investigator must:
    - (a) prepare a written report of the results of the investigation; and
    - (b) give the report to:
      - (i) the head of the unit constituted under section 40RD if the issue was allocated to the investigator under section 40TN; or
      - (ii) the Commissioner if the issue was allocated to the investigator under section 40TO.
  - (2) Subsection (1) does not apply if:
    - (a) the issue is investigated jointly with the Ombudsman; and
    - (b) the arrangement under which the joint investigation is conducted specifies that the Ombudsman is to lead the investigation.
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- (3) Without limiting subsection (1), the report prepared under that subsection must include any recommendations that the investigator makes under section 40TR.

Note: See also section 40TW.

#### **40TV Taking action on report**

The Commissioner must ensure that:

- (a) any recommendations made in the report under section 40TU are fully considered; and
- (b) appropriate action is taken in relation to the issue to which the report relates.

#### **40TW AFP practices issue identified in course of dealing with AFP conduct issue**

- (1) This section applies if:
  - (a) the investigator is satisfied that the information:
    - (i) given under section 40SA in relation to the issue; or
    - (ii) obtained in the course of dealing with the issue;raises an AFP practices issue; and
  - (b) the investigator prepares a report under section 40TU in relation to the investigation.
- (2) The investigator:
  - (a) must identify the AFP practices issue in the report; and
  - (b) may include in the report such recommendations as the investigator considers appropriate to address the AFP practices issue.

### **Subdivision E—Dealing with AFP practices issues**

#### **40TX Commissioner to ensure that appropriate action is taken in relation to AFP practices issue**

- (1) This section applies if:
  - (a) a person gives information under section 40SA that raises an AFP practices issue; or
  - (b) an AFP practices issue is:

- (i) brought, under section 40TK, to the attention of an AFP appointee; or
  - (ii) identified, under section 40TW, in a report prepared under section 40TU;
- as a result of an AFP conduct issue being dealt with under this Part.
- (2) The Commissioner must ensure that appropriate action is taken to have the issue dealt with.

## **Division 4—Ministerially directed inquiries**

### **40UA Minister may arrange special inquiries**

- (1) The Minister may, if he or she thinks it appropriate to do so, arrange for an inquiry to be held, by such person or persons, and in such manner, as he or she determines, concerning:
- (a) any conduct engaged in by an AFP appointee; or
  - (b) any matter relating to the practices or procedures of the Australian Federal Police; or
  - (c) any other matter relating to the Australian Federal Police.
- (2) Subsection (1) applies even if:
- (a) the conduct referred to in paragraph (1)(a) is:
    - (i) being dealt with under Division 3; or
    - (ii) the subject of a complaint made to the Ombudsman; or
  - (b) the matter referred to in paragraph (1)(b) is:
    - (i) a practice or procedure that is being dealt with under Division 3; or
    - (ii) the subject of a complaint made to the Ombudsman.

### **40UB Minister to inform certain persons and bodies of inquiry**

- (1) If the Minister arranges under section 40UA for an inquiry to be held into any conduct or other matter, the Minister must inform the following of the inquiry:
- (a) the Ombudsman;
  - (b) the Integrity Commissioner;
  - (c) such other persons or bodies as the Minister considers appropriate.

- (2) The Minister must inform those people, and those bodies, of:
  - (a) the fact that the inquiry will be held; and
  - (b) the conduct or matter into which the inquiry is to be held; and
  - (c) the person or persons who are to conduct the inquiry; and
  - (d) the manner in which the inquiry will be held.

**40UC Division 3 investigation may be suspended pending outcome of inquiry**

- (1) This section applies if:
  - (a) the Minister arranges under section 40UA for an inquiry to be held into conduct or a matter; and
  - (b) the conduct or matter is being dealt with, or is about to be dealt with, under Division 3.
- (2) The Commissioner may suspend further action in relation to the conduct or matter under Division 3 until the inquiry has been completed.
- (3) If the Commissioner:
  - (a) receives a report in relation to the inquiry; and
  - (b) is satisfied, having considered that report, that it is appropriate to do so;the Commissioner may terminate the investigation of the conduct or matter under Division 3.
- (4) If the conduct or matter is being dealt with under Division 3 jointly by the Ombudsman and the Australian Federal Police, the Commissioner may take action under subsection (2) or (3) only after consulting the Ombudsman.

**40UD Reports of special inquiries**

- (1) If an inquiry is held in accordance with arrangements made under section 40UA, the person holding the inquiry:
    - (a) must report to the Minister the results of the inquiry; and
    - (b) may make such recommendations (if any) arising out of the inquiry as the person considers appropriate.
  - (2) On receipt of a report of the results of an inquiry held in accordance with arrangements made under section 40UA, the
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Minister may cause such action to be taken, arising out of the Minister's consideration of the report, as he or she thinks fit.

- (3) Without limiting subsection (2), the Minister may do one or more of the following:
- (a) give a copy of the report to the Commissioner;
  - (b) give a copy of the report to the Ombudsman;
  - (c) give a copy of the report to the Integrity Commissioner;
  - (d) recommend to the Commissioner that the Commissioner consider directing that training and development action be taken in relation to an AFP appointee;
  - (e) recommend to the Commissioner that the Commissioner consider directing that remedial action be taken in relation to an AFP appointee;
  - (f) recommend to the Commissioner that the Commissioner consider directing that termination action be taken in relation to an AFP appointee;
  - (g) recommend that an AFP appointee be charged with a criminal offence;
  - (h) refer a corruption issue in relation to an AFP appointee to the Integrity Commissioner.

## **Division 5—Investigative powers**

### **40VA Application of Division**

- (1) This Division applies if a person (the *investigator*):
- (a) is investigating a category 3 conduct issue or a corruption issue under Division 3; or
  - (b) is conducting an inquiry under Division 4.
- (2) The powers provided for in this Division are in addition to any other powers the investigator may have.

Note: For example, if the investigator is a member, or special member, of the Australian Federal Police and the investigation or inquiry involves a possible criminal offence against a law of the Commonwealth, the investigator may have powers in relation to the investigation of offences against the laws of the Commonwealth.

**40VB Manner of conducting investigation or inquiry**

- (1) The investigation or inquiry is to be conducted, subject to this Division, in such manner as the investigator thinks fit.
- (2) If the Ombudsman makes an arrangement with the Commissioner under section 8D of the *Ombudsman Act 1976* in relation to the investigation of the issue, the investigator must:
  - (a) investigate the issue jointly with the Ombudsman; and
  - (b) investigate the issue in accordance with the arrangement.
- (3) If:
  - (a) the investigator is investigating a category 3 conduct issue or a corruption issue; and
  - (b) the head of the unit constituted under section 40RD allocated the issue to the investigator;the head of that unit may give the investigator directions as to the manner in which the investigation is to be conducted and the investigator must comply with those directions.
- (4) Subsection (3) has effect subject to subsection (2).
- (5) If:
  - (a) the investigator is investigating a category 3 conduct issue or a corruption issue; and
  - (b) the Commissioner allocated the issue to the investigator;the Commissioner may give the investigator directions as to the manner in which the investigation is to be conducted and the investigator must comply with those directions.
- (6) Subsection (5) has effect subject to subsection (2).
- (7) If the investigator is conducting an inquiry under Division 4, the Minister may give the investigator directions as to the manner in which the investigation is to be conducted and the investigator must comply with those directions.
- (8) A direction given to the investigator under subsection (3), (5) or (7) is not a legislative instrument.

#### **40VC Obtaining information and making inquiries**

- (1) For the purposes of the investigation or inquiry, the investigator may obtain information from such persons, and make such inquiries, as he or she thinks fit.
- (2) Subsection (1) has effect subject to this Division.

#### **40VD Relationship with other laws**

- (1) Sections 40VB and 40VC do not authorise an AFP appointee to contravene, or fail to comply with, a law that would, if those sections had not been enacted, apply in relation to the investigation or inquiry.
- (2) Nothing in subsection (1) affects the operation of any other provision of this Division.

#### **40VE Directions to AFP appointee**

*Investigator may give directions to AFP appointee*

- (1) The investigator may, for the purposes of the investigation or inquiry, direct an AFP appointee:
  - (a) to give the investigator information (in the manner and form specified in the direction); or
  - (b) to produce to the investigator a document, record or thing; or
  - (c) to answer a question; or
  - (d) to do anything else that is reasonably necessary for the purposes of obtaining evidence in relation to the investigation or inquiry.

Note: Failure to comply with the direction is an offence against subsection 40VH(1).

- (2) A direction under subsection (1) has no effect unless the investigator:
  - (a) states in the direction that the AFP appointee to whom the direction is given is being expressly directed under that subsection; and
  - (b) specifies in the direction the substance of the subject matter of the investigation or inquiry; and

- (c) if it is practicable to do so—gives the direction in writing;  
and
- (d) if the direction is given in writing—gives the AFP appointee a copy of the direction.

*Obligation to comply with direction*

- (3) If an AFP appointee is directed under subsection (1) to give information, produce a document, record or thing, answer a question or do something else for the purposes of obtaining evidence, the AFP appointee is not excused from complying with the direction:
  - (a) on the ground that complying with the direction:
    - (i) would be contrary to the public interest; or
    - (ii) might make him or her liable to a penalty; or
  - (b) on the ground that the information, the production of the document, record or thing, the answer to the question or the evidence obtained by doing that thing might tend to incriminate him or her; or
  - (c) on any other ground.

*Use to which information etc. may be put*

- (4) The information, the production of the document, record or thing, the answer to the question or the evidence obtained by doing that thing, is not admissible in evidence against the AFP appointee in any civil or criminal proceedings other than:
  - (a) proceedings for an offence against subsection 40VH(1); or
  - (b) proceedings in relation to termination action taken in relation to the AFP appointee; or
  - (c) proceedings under the *Safety, Rehabilitation and Compensation Act 1988*; or
  - (d) proceedings in tort that the AFP appointee institutes against the Commonwealth.
- (5) Nothing in subsection (4) is taken to affect the admissibility in evidence, in any civil or criminal proceedings, of:
  - (a) any information given by an AFP appointee to the investigator; or
  - (b) the production of a document, record or thing by an AFP appointee to the investigator; or

- (c) an answer given by an AFP appointee to a question put to him or her by the investigator; or
- (d) evidence obtained by an AFP appointee doing something for the purposes of obtaining evidence at the request of the investigator;

if the AFP appointee has not been expressly directed, under subsection (1), to give the information, to produce the document, record or thing, to answer the question or to do that thing.

- (6) If a document, record or thing is produced to the investigator under a direction under subsection (1), the investigator may:
  - (a) examine the document, record or other thing; and
  - (b) retain possession of the document, record or other thing for such period as is necessary for the purposes of the investigation or inquiry.

If the investigator retains possession of a document, record or thing under paragraph (b) during a particular period, the investigator must allow a person who would be entitled to inspect the document, record or thing if it was not in the investigator's possession to inspect the document, record or thing at all reasonable times.

- (7) If a document or record is produced to the investigator under a direction under subsection (1), the investigator may take extracts from, or a copy of, the document or record.
- (8) For all the purposes of this Act, and the regulations in force under this Act, a direction given by the investigator under subsection (1) has effect as if it had been given by the Commissioner.
- (9) An AFP appointee is not liable to any penalty (other than a penalty under this Act) merely because the appointee:
  - (a) gives information; or
  - (b) produces a document, record or thing; or
  - (c) answers a question; or
  - (d) does something else;when directed to do so by the investigator under this section.

*Direction is not a legislative instrument*

- (10) If a direction given by an investigator under subsection (1) is in writing, the direction is not a legislative instrument.
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#### **40VF Entering and searching AFP premises**

- (1) For the purposes of the investigation or inquiry, the investigator may:
  - (a) enter, at any time, premises occupied by the Australian Federal Police; and
  - (b) carry on the investigation or inquiry on those premises; and
  - (c) search those premises; and
  - (d) examine any document, record or other thing that is on those premises and that is relevant to the investigation or inquiry; and
  - (e) take extracts from, or a copy of, any document or record that is on those premises and that is relevant to the investigation or inquiry; and
  - (f) retain possession of the document, record or thing for such period as is necessary for the purposes of the investigation or inquiry.
- (2) If the investigator retains possession of a document, record or thing under paragraph (1)(f) during a particular period, the investigator must allow a person who would be entitled to inspect the document, record or thing, if it was not in the investigator's possession, to inspect the document, record or thing at all reasonable times.
- (3) The document, record or thing referred to in paragraph (1)(d), (e) or (f) need not be one that is being used by the Australian Federal Police.
- (4) In this section:

*premises* includes a place, vehicle, vessel and aircraft.

#### **40VG Special powers if investigator conducting inquiry under Division 4**

*Section applies to inquiries*

- (1) This section applies if the investigator is conducting an inquiry under Division 4.

*Investigator may give direction*

- (2) For the purposes of the inquiry, the investigator may:
- (a) direct an AFP appointee to attend before him or her at the time and place specified in the direction and to answer questions relevant to the inquiry when the AFP appointee attends; and
  - (b) administer an oath or affirmation to the AFP appointee; and
  - (c) examine the AFP appointee on oath or affirmation; and
  - (d) by means of sound recording apparatus or otherwise, make a record of any information furnished, or answer given, in compliance with such a direction or cause such a record to be made.

Note: Failure to comply with a direction under paragraph (a), or to be sworn or make an affirmation under paragraph (b), is an offence (see subsection 40VH(1)).

- (3) A direction under subsection (2) has no effect unless the investigator:
- (a) states in the direction that the AFP appointee to whom the direction is given is being expressly directed under that subsection; and
  - (b) specifies in the direction the substance of the subject matter of the inquiry; and
  - (c) if it is practicable to do so—gives the direction in writing; and
  - (d) if the direction is given in writing—gives the AFP appointee a copy of the direction.

*Obligation to comply with direction*

- (4) If an AFP appointee is directed under subsection (2) to answer a question, the AFP appointee is not excused from complying with the direction:
- (a) on the ground that answering the question:
    - (i) would be contrary to the public interest; or
    - (ii) might make him or her liable to a penalty; or
  - (b) on the ground that the answer to the question might tend to incriminate him or her; or
  - (c) on any other ground.

*Use to which answer may be put*

- (5) The answer to the question is not admissible in evidence against the AFP appointee in any civil or criminal proceedings other than:
  - (a) proceedings for an offence against subsection 40VH(1); or
  - (b) proceedings in relation to termination action taken in relation to the AFP appointee; or
  - (c) proceedings under the *Safety, Rehabilitation and Compensation Act 1988*; or
  - (d) proceedings in tort that the AFP appointee institutes against the Commonwealth.
- (6) Nothing in subsection (5) is taken to affect the admissibility in evidence, in any civil or criminal proceedings, of an answer given by an AFP appointee to a question put to him or her by the investigator if the AFP appointee has not been expressly directed, under subsection (2), to answer the question.

*Direction has same effect as if given by Commissioner*

- (7) For all the purposes of this Act, and the regulations in force under this Act, a direction given by the investigator under subsection (2) has effect as if it had been given by the Commissioner.

*AFP appointee not liable to penalty for answering question*

- (8) An AFP appointee is not liable to any penalty (other than a penalty for an offence against subsection 40VH(1)) under the provisions of any other law because the AFP appointee answers a question when directed to do so by the investigator under subsection (2).

*Direction is not a legislative instrument*

- (10) If a direction given by an investigator under subsection (2) is in writing, the direction is not a legislative instrument.

## **40VH Offences**

- (1) An AFP appointee commits an offence if the AFP appointee:
    - (a) refuses or fails to comply with a direction given under subsection 40VE(1) or 40VG(2); or
    - (b) refuses or fails to be sworn or make an affirmation, when required to do so under subsection 40VG(2); or
-

- (c) gives information or makes a statement to the investigator knowing that it is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the AFP appointee has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) In any proceedings for an offence against subsection (1), the prosecution bears the onus of proving that:
  - (a) the investigator complied with subsection 40VE(2) in relation to a direction under subsection 40VE(1); or
  - (b) the investigator complied with subsection 40VG(3) in relation to a direction under subsection 40VG(2).

## Division 6—Record keeping

### 40WA Record keeping

- (1) The Commissioner must ensure that adequate records are kept for the purposes of this Part.
- (2) Without limiting subsection (1), the Commissioner must ensure that records are kept of:
  - (a) information that is given under section 40SA; and
  - (b) the action (if any) that is taken in relation to the AFP conduct or practices issue raised by that information; and
  - (c) if the issue is an AFP conduct issue—the action (if any) that is taken in relation to any AFP practices issue that is:
    - (i) brought, under section 40TK, to the attention of an AFP appointee; or
    - (ii) identified, under section 40TW, in a report prepared under section 40TU;as a result of the AFP conduct issue being dealt with under this Part.
- (3) Subsection (2) does not apply if subsection 40SC(2) (which deals with category 1 conduct issues that are resolved without being recorded) applies to the information.

- (4) The Integrity Commissioner is entitled to have access to the records kept under this section for the purposes of performing the Integrity Commissioner's functions.
- (5) Without limiting section 40XC, the Ombudsman is entitled to have access to the records kept under this section for the purposes of performing the Ombudsman's functions.

#### **40WB Records about corruption issues**

- (1) The Integrity Commissioner may direct the Commissioner that access to information about a corruption issue is to be restricted in the way specified in the direction.

Note: For example, the Integrity Commissioner might direct that the information that would otherwise be entered on a database is not to be entered on the database or that, if the information is entered on a database, access to the information on the database is to be restricted in some way.

- (2) The Commissioner must comply with the direction.

### **Division 7—Ombudsman review**

#### **40XA Annual reviews by Ombudsman**

- (1) For the purposes of this section, the *review periods* are:
  - (a) the period of 12 months commencing on the day on which the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* commences; and
  - (b) each succeeding period of 12 months.
- (2) At least once in each review period, the Ombudsman must, for the purposes of reviewing the administration of this Part during that period, inspect the records of AFP conduct issues and AFP practices issues that have been, or are being, dealt with under Divisions 3 and 4 during that period.

#### **40XB Ad hoc reviews by Ombudsman**

The Ombudsman may, at any time, inspect the records of AFP conduct issues and AFP practices issues dealt with under Divisions 3 and 4 for the purposes of reviewing the administration of this Part.

**40XC Commissioner to provide information and access to documents**

For the purposes of a review conducted under section 40XA or 40XB, the Ombudsman may require the Commissioner to give the Ombudsman the information, and the access to documents, that the Ombudsman requests.

**40XD Annual reports by Ombudsman**

- (1) The Ombudsman must, as soon as practicable after 30 June each year, prepare a report of the Ombudsman's work and activities under this Division during the preceding 12 months and give copies of the report to the President of the Senate and the Speaker of the House of Representatives for presentation to the Senate and the House of Representatives, respectively.
- (2) The report must include comments as to the comprehensiveness and adequacy of the administration of matters under Divisions 3 and 4.

**Division 8—Offences**

**40YA Victimisation**

- (1) A person commits an offence if the person causes, or threatens to cause, detriment to another person (the *victim*) on the ground that the victim, or any other person:
  - (a) has given, or may give, information under this Part; or
  - (b) has produced, or may produce, a document, record or thing to a person under this Part.

Penalty: Imprisonment for 6 months.

- (2) For the purposes of subsection (1), a threat may be:
  - (a) express or implied; or
  - (b) conditional or unconditional.
- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

**40YB Providing false information about AFP conduct or practices issues**

A person commits an offence if:

- (a) the person:
  - (i) gives information under section 40SA that raises an AFP conduct or practices issue; or
  - (ii) otherwise gives an AFP appointee information in relation to an AFP conduct or practices issue; and
- (b) the person knows that the information is false in a material particular.

Penalty: 20 penalty units.

**40YC AFP appointees to provide name, etc.**

An AFP appointee commits an offence if:

- (a) a person requests the AFP appointee to give the person any of the following:
  - (i) his or her name;
  - (ii) the address of his or her place of duty;
  - (iii) his or her identification number if her or she has an identification number; and
- (b) the person informs the AFP appointee, either expressly or by necessary implication, that the person:
  - (i) is complaining, or proposes to complain, about action taken by that AFP appointee; or
  - (ii) is giving information, or proposed to give information, under section 40SA about an AFP conduct issue that relates to conduct engaged in by that AFP appointee; and
- (c) the AFP appointee:
  - (i) refuses or fails, without reasonable excuse, to comply with the request; or
  - (ii) gives the person a name, address or identification number that is false in a material particular.

Penalty: 5 penalty units.

## Division 9—Secrecy

### 40ZA Secrecy

- (1) This section applies to a person (other than an AFP appointee or the Ombudsman) who conducts:
- (a) an investigation of a category 3 conduct issue or a corruption issue under Subdivision D of Division 3; or
  - (b) an inquiry under Division 4.

Note 1: AFP appointees are covered by the confidentiality requirements of section 60A.

Note 2: The Ombudsman is covered by the confidentiality requirements of section 35 of the *Ombudsman Act 1976*.

- (2) A person who is, or has been, a person to whom this section applies commits an offence if:
- (a) the person (either directly or indirectly and either while he or she is, or after he or she has ceased to be, a person to whom this section applies):
    - (i) makes a record of information; or
    - (ii) divulges or communicates information; and
  - (b) the information was given to, or obtained by, the person in the course of, or for the purposes of, the investigation or inquiry.

Penalty: 30 penalty units.

- (3) Subsection (2) has effect subject to subsections (4), (5) and (6).
- (4) Subsection (2) does not prevent a person who is, or has been, a person to whom this section applies from making a record of, or divulging or communicating, information for the purposes of the investigation or inquiry.
- (5) Subsection (2) does not prevent a person who is, or has been, a person to whom this section applies from making a record of, or divulging or communicating, information with the written consent of the appropriate person.
- (6) Subsection (2) does not prevent a person from producing a record, or giving information, in evidence before a court.
- (7) For the purposes of this section, the *appropriate person* is:
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- (a) the Minister in relation to a person who is conducting, or has conducted, an inquiry under Division 4; and
- (b) the Commissioner in relation to any other person to whom this section applies.

## **29 After subsection 67(1)**

Insert:

- (1A) The report must contain, in respect of the year, prescribed particulars about:
  - (a) the AFP conduct issues that were dealt with under Part V during that year; and
  - (b) the action that was taken, during that year, in relation to AFP conduct issues that were dealt with under Division 3 of Part V.

## **30 Determining categories of AFP conduct issues**

For the purpose of subsection 40RM(1) of the *Australian Federal Police Act 1979* (as inserted by this Schedule), the Commissioner and the Ombudsman must try to jointly determine, within 3 months after the commencement of this Schedule, that conduct of a particular kind is to be:

- (a) category 1 conduct; or
- (b) category 2 conduct; or
- (c) category 3 conduct;

for the purposes of that Act.

## Schedule 2—Repeal

### *Complaints (Australian Federal Police) Act 1981*

#### **1 The whole of the Act**

Repeal the Act.

#### **2 Continued operation of *Complaints (Australian Federal Police) Act 1981***

Despite the repeal of the *Complaints (Australian Federal Police) Act 1981* by item 1 of this Schedule, that Act continues to apply, on and after the commencement of that item, to:

- (a) a complaint to which that Act applied that was made before the commencement of this Schedule; or
- (b) a matter that the Commonwealth Ombudsman referred to the Investigation Division for investigation, under section 21A of that Act, before the commencement of this Schedule.

## **Schedule 3—Consequential amendments**

### ***Administrative Decisions (Judicial Review) Act 1977***

#### **1 Paragraph 10(1)(b)**

Omit “and subsection 24(2A) of the *Complaints (Australian Federal Police) Act 1981*”, substitute “and section 40TF of the *Australian Federal Police Act 1979*”.

### ***Australian Crime Commission Act 2002***

#### **2 Schedule 1**

Omit:

*Complaints (Australian Federal Police) Act 1981*, sections 41 and 87

### ***Australian Federal Police Act 1979***

#### **3 Subsection 17(4B)**

Repeal the subsection.

#### **6 Subsection 40A(2)**

Omit “, other than proceedings for a disciplinary offence under the Australian Federal Police (Discipline) Regulations”.

#### **7 Subsection 40G(2)**

Omit “discipline”, substitute “AFP professional standards”.

Note: The heading to subsection 40G(2) is altered by omitting “*Discipline*” and substituting “*AFP professional standards*”.

#### **8 Subsection 40L(3) (note)**

Repeal the note.

#### **9 Subsection 40L(6)**

Omit “, other than proceedings for a disciplinary offence under the Australian Federal Police (Discipline) Regulations”.

**10 Section 41 (definition of *Complaints Act*)**

Repeal the definition.

**11 Section 41 (definition of *Disciplinary Tribunal*)**

Repeal the definition.

**12 Section 41 (definition of *Federal Court*)**

Repeal the definition.

**13 Section 41 (definition of *relevant disciplinary offence*)**

Repeal the definition.

**14 Division 3 of Part VA**

Repeal the Division.

**15 Section 52**

Repeal the section.

**16 Subsection 54(1)**

Omit “, or under subsection 49(3),”.

Note: The heading to section 54 is altered by omitting “, 49”.

**17 Subsection 54(2)**

Omit “, or under subsection 49(3),”.

**18 Subsection 54(2)**

Omit “, or the requirements of subsection 49(3), as the case may be, are”, substitute “is”.

**19 Subsection 54(3)**

Omit “, 49(2)”.

**20 Subsection 54A(1)**

Omit “, 49(2)”.

**21 Subsection 54A(2)**

Omit “, 49(2)”.

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**22 Paragraph 69B(1)(b)**

Repeal the paragraph, substitute:

- (b) a matter covered by Part V or any action (other than action to terminate employment under section 28 of this Act to which the *Workplace Relations Act 1996* would otherwise apply) taken in relation to a matter covered by that Part;

**23 Paragraph 70(b)**

Omit “other than disciplinary offences”.

**24 Paragraph 70(i)**

Repeal the paragraph, substitute:

- (i) compliance by AFP appointees with AFP professional standards; and

***Crimes Act 1914***

**33 Subparagraph 3L(1B)(b)(iii)**

Omit “the *Complaints (Australian Federal Police) Act 1981*”, substitute “the *Ombudsman Act 1976* in relation to the Australian Federal Police”.

**34 At the end of paragraph 3L(1B)(b)**

Add:

- ; or (iv) investigating or resolving an AFP conduct or practices issue (within the meaning of the *Australian Federal Police Act 1979*) under Part V of that Act;

**35 After paragraph 23YO(3)(i)**

Insert:

- (ia) for the purpose of dealing with or investigating, under Part V or the *Australian Federal Police Act 1979*, an AFP conduct or practices issue (within the meaning of that Act) that relates to the way in which the procedure is carried out;

***Criminal Code Act 1995***

**36 Paragraph 104.29(2)(f) of the *Criminal Code***

Repeal the paragraph, substitute:

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- (f) particulars of:
  - (i) any complaints made or referred to the Commonwealth Ombudsman that related to control orders; and
  - (ii) any information given under section 40SA of the *Australian Federal Police Act 1979* that related to control orders and raised an AFP conduct or practices issue (within the meaning of that Act).

**37 Paragraph 105.28(2)(e) of the *Criminal Code***

Repeal the paragraph, substitute:

- (e) any right the person has to make a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:
  - (i) the application for, or the making of, the preventative detention order; or
  - (ii) the treatment of the person by an AFP member in connection with the person's detention under the order; and
- (ea) any right the person has to give information under section 40SA of the *Australian Federal Police Act 1979* in relation to:
  - (i) the application for, or the making of, the preventative detention order; or
  - (ii) the treatment of the person by an AFP member in connection with the person's detention under the order; and

**38 Paragraph 105.29(2)(d) of the *Criminal Code***

Repeal the paragraph, substitute:

- (d) any right the person has to make a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:
  - (i) the application for the continued order; or
  - (ii) the treatment of the person by an AFP member in connection with the person's detention under the continued order; and
- (da) any right the person has to give information under section 40SA of the *Australian Federal Police Act 1979* in relation to:

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- (i) the application for the continued order; or
  - (ii) the treatment of the person by an AFP member in connection with the person's detention under the continued order; and

### **39 Subsection 105.36(1) of the *Criminal Code***

Repeal the subsection, substitute:

- (1) The person being detained is entitled to contact:
  - (a) the Commonwealth Ombudsman in accordance with subsections 7(3) to (5) of the *Ombudsman Act 1976*; or
  - (b) a person referred to in subsection 40SA(1) of the *Australian Federal Police Act 1979* in accordance with section 40SB of that Act.

Note 1: Subsections 7(3) to (5) of the *Ombudsman Act 1976* provide for the manner in which a person who is in custody may make a complaint to the Commonwealth Ombudsman under that Act.

Note 2: Section 40SB of the *Australian Federal Police Act 1979* provides for the manner in which a person who is in custody may give information under section 40SA of that Act.

### **40 Paragraph 105.37(1)(c) of the *Criminal Code***

Repeal the paragraph, substitute:

- (c) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to:
  - (i) the application for, or the making of, the preventative detention order; or
  - (ii) the treatment of the person by an AFP member in connection with the person's detention under the order; or
- (ca) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to:
  - (i) the application for, or the making of, the preventative detention order; or
  - (ii) the treatment of the person by an AFP member in connection with the person's detention under the order; or

**41 Subsection 105.38(5) of the *Criminal Code***

After “(c),”, insert “(ca),”.

**42 Subparagraph 105.41(2)(d)(ii) of the *Criminal Code***

Repeal the subparagraph, substitute:

- (ii) a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee’s detention under the order; or
- (ia) the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee’s detention under the order; or

**43 Subparagraph 105.41(3)(e)(i) of the *Criminal Code***

Repeal the subparagraph, substitute:

- (i) a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976* in relation to the application for, or the making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee’s detention under the order; or
- (ia) the giving of information under section 40SA of the *Australian Federal Police Act 1979* in relation to the application for, or the making of, the preventative detention order or the treatment of the detainee by an AFP member in connection with the detainee’s detention under the order; or

**44 Paragraph 105.47(2)(d) of the *Criminal Code***

Repeal the paragraph, substitute:

- (d) particulars of:
  - (i) any complaints made or referred to the Commonwealth Ombudsman during the year that related to the detention of a person under a preventative detention order; and

- (ii) any information given under section 40SA of the *Australian Federal Police Act 1979* during the year that related to the detention of a person under a preventative detention order and raised an AFP conduct or practices issue (within the meaning of that Act);

**45 Section 105.48 of the *Criminal Code***

Repeal the section, substitute:

**105.48 Certain functions and powers not affected**

This Division does not affect:

- (a) a function or power of the Commonwealth Ombudsman under the *Ombudsman Act 1976*; or
- (b) a function or power of a person under Part V of the *Australian Federal Police Act 1979*.

***Ombudsman Act 1976***

**46 Subsection 3(1)**

Insert:

*AFP appointee* has the same meaning as in the *Australian Federal Police Act 1979*.

**47 Subsection 3(1)**

Insert:

*AFP Commissioner* means the Commissioner within the meaning of the *Australian Federal Police Act 1979*.

**48 Subsection 3(1)**

Insert:

*AFP conduct issue* has the same meaning as in the *Australian Federal Police Act 1979*.

**49 Subsection 3(1)**

Insert:

*AFP practices issue* has the same meaning as in the *Australian Federal Police Act 1979*.

**50 Subsection 3(10)**

Omit “a member or special member of the Australian Federal Police”, substitute “an AFP appointee”.

**51 At the end of section 4**

Add:

- (5) The Commonwealth Ombudsman, in performing his or her functions in relation to the Australian Federal Police, may, if he or she so chooses, be called the Law Enforcement Ombudsman.

**52 Subsection 5(4)**

Repeal the subsection, substitute:

- (4) Paragraph (2)(d) does not prevent the Ombudsman from investigating action taken by an AFP appointee, or by any other person, with respect to information that:
- (a) is given to the AFP appointee; and
  - (b) raises an AFP conduct issue or AFP practices issue; and
  - (c) relates to action taken by another AFP appointee.

**53 At the end of section 6**

Add:

- (20) If the Ombudsman forms the opinion:
- (a) that a complaint includes information about an AFP conduct issue or an AFP practices issue; and
  - (b) that the information could have been given under section 40SA of the *Australian Federal Police Act 1979* and the issue could be more conveniently or effectively dealt with under Part V of that Act;
- the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to give the information to the AFP Commissioner under that section of that Act.
- (21) If the Ombudsman makes a decision under subsection (20), the Ombudsman must:
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- 
- (a) give the information to the AFP Commissioner under section 40SA of the *Australian Federal Police Act 1979* as soon as is reasonably practicable; and
  - (b) give the AFP Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
  - (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the AFP Commissioner to be dealt with under that Act.

#### **54 At the end of section 8**

Add:

*Arrangements for having police officers assist Ombudsman in relation to investigation*

- (12) Whenever it becomes necessary or desirable for the Ombudsman to use persons with police training in connection with his or her investigation of a complaint about an AFP conduct issue or AFP practices issue, the Ombudsman may, and must in so far as it is practicable to do so, use, in connection with that investigation:
  - (a) an AFP appointee who is made available to him or her by the AFP Commissioner for the purposes of the investigation; or
  - (b) a member of the police force of a State whom the police force of the State agrees to make available to the Ombudsman, for the purposes of the investigation, under arrangements made by the AFP Commissioner.

#### **55 After subsection 8A(1)**

Insert:

- (1A) The Commonwealth Ombudsman may, if he or she thinks fit, make an arrangement with the Ombudsman of a State, or the Ombudsmen of 2 or more States, for and in relation to the investigation, by any one or more of the Ombudsmen, of action to which subsection (1B), (1C) or (1D) applies.
- (1B) This subsection applies to action that:
  - (a) gives rise to an AFP conduct issue or AFP practices issue; and
  - (b) involves:

- (i) an AFP conduct issue that relates to a member of the police force of a State; or
- (ii) action taken by the police force of a State; or
- (iii) action taken by a Department of a State or by an authority of a State.

(1C) This subsection applies to action taken by a body if the body:

- (a) is established jointly, or administered jointly, by the Commonwealth and one or more States; and
- (b) includes at least one AFP appointee and a member or members of the police force of a State or the police forces of 2 or more States.

(1D) This subsection applies to action taken by a body referred to in subsection (1C) together with action taken by:

- (a) by an AFP appointee or by the Australian Federal Police; or
- (b) by a member of the police force of a State; or
- (c) by the police force of a State; or
- (d) by a Department of a State or by an authority of a State.

#### **56 Subsection 8A(2)**

After “subsection (1)”, insert “or (1B)”.

#### **57 Subsection 8A(3)**

After “subsection (1)”, insert “or (1A)”.

#### **58 Subsection 8A(8)**

After “subsection (1)”, insert “or (1A)”.

#### **59 Before section 9**

Insert:

#### **8D Investigations by Ombudsman and Australian Federal Police**

- (1) The Ombudsman may, if he or she thinks fit, make an arrangement with the AFP Commissioner for:
    - (a) a category 3 conduct issue; or
    - (b) an AFP practices issue;to be dealt with jointly by the Ombudsman and the Australian Federal Police.
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- (2) The arrangement may relate to:
  - (a) a particular category 3 conduct issue or issues; or
  - (b) a series of related category 3 conduct issues; or
  - (c) a particular AFP practices issue or issues; or
  - (d) a series of related AFP practices issues.
- (3) The Ombudsman may arrange with the AFP Commissioner for the variation or revocation of the arrangement.
- (4) The arrangement, or the variation or revocation of the arrangement, must be in writing.
- (5) Nothing in this section affects the powers or duties of the Ombudsman under any other provision of this Act.
- (6) In this section:
 

*category 3 conduct issue* has the same meaning as in the *Australian Federal Police Act 1979*.

**60 At the end of subsection 33(1)**

Add “or Division 7 of Part V of the *Australian Federal Police Act 1979*”.

**61 At the end of subsection 34(1)**

Add:  
; and (c) all or any of his or her powers under Division 7 of Part V of the *Australian Federal Police Act 1979*.

**62 At the end of subsection 35(1)**

Add:  
; or (e) a person who is made available to the Ombudsman as mentioned in subsection 8(12).

**63 Subsection 35(2)**

After “of this Act”, insert “or under Division 7 of Part V of the *Australian Federal Police Act 1979*”.

**64 At the end of subsection 35(8)**

Add “or under Division 7 of Part V of the *Australian Federal Police Act 1979*”.

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***Witness Protection Act 1994***

**65 Subsection 12(2)**

Omit all the words after “for the purposes”, substitute:

of:

- (a) an investigation by the Ombudsman under the *Ombudsman Act 1976*; or
- (b) an investigation under Part V of the *Australian Federal Police Act 1979*.

**66 Subsection 22(2)**

Omit “or the *Complaints (Australian Federal Police) Act 1981*”.

## **Schedule 3A—Consequential amendments to the Australian Security Intelligence Organisation Act 1979**

### **Part 1—Amendments that may not commence**

#### *Australian Security Intelligence Organisation Act 1979*

##### **1 Subsection 34D(4) (note 2)**

Omit “and the Ombudsman”, substitute “, the Ombudsman and a person referred to in paragraph 40SB(3)(b) of the *Australian Federal Police Act 1979*”.

##### **2 Subparagraph 34E(1)(e)(ii)**

Repeal the subparagraph, substitute:

- (ii) to the Ombudsman under the *Ombudsman Act 1976* in relation to the Australian Federal Police;

##### **3 After paragraph 34E(1)(e)**

Insert:

- (ea) the person’s right to give information orally or in writing, under Division 2 of Part V of the *Australian Federal Police Act 1979*, to a person referred to in subsection 40SA(1) of that Act in relation to the Australian Federal Police;

##### **4 Paragraphs 34F(9)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) subsection (8) does not affect the operation of sections 10 and 13 of the *Inspector-General of Intelligence and Security Act 1986* in relation to contact between the person and the Inspector-General of Intelligence and Security; and
- (c) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Inspector-General of Intelligence and Security to make a complaint orally under section 10 of the *Inspector-General of*

*Intelligence and Security Act 1986* if the person requests them; and

- (d) subsection (8) does not affect the operation of section 7 of the *Ombudsman Act 1976* in relation to contact between the person and the Ombudsman in respect of a complaint, or proposed complaint, about the Australian Federal Police; and
- (e) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Ombudsman to make a complaint orally under section 7 of the *Ombudsman Act 1976* if the person requests them; and
- (f) subsection (8) does not affect the operation of section 40SB of the *Australian Federal Police Act 1979* in relation to contact between the person and a person referred to in paragraph 40SB(3)(b) of that Act; and
- (g) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Commissioner of the Australian Federal Police to give information orally under section 40SA of the *Australian Federal Police Act 1979* if the person requests them.

#### **5 Subsection 34F(9) (note)**

Repeal the note, substitute:

Note: The sections mentioned in paragraphs (9)(b), (d) and (f) give the person an entitlement to facilities for making a written complaint or for giving written information.

#### **6 Paragraph 34NB(4)(b)**

Omit “paragraph 34F(9)(c)”, substitute “paragraph 34F(9)(c), (e) or (g)”.

#### **7 Section 34NC**

Repeal the section, substitute:

#### **34NC Complaints and information about contravention of procedural statement**

- (1) Contravention of the written statement of procedures mentioned in section 34C of this Act may be the subject of:

- (a) a complaint to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*; or
  - (b) a complaint to the Ombudsman under the *Ombudsman Act 1976*; or
  - (c) information given under Division 2 of Part V of the *Australian Federal Police Act 1979* to a person referred to in subsection 40SA(1) of that Act.
- (2) This section does not limit:
- (a) the subjects of complaint under:
    - (i) the *Inspector-General of Intelligence and Security Act 1986*; or
    - (ii) the *Ombudsman Act 1976*; or
  - (b) the subject of information given under Division 2 of Part V of the *Australian Federal Police Act 1979*.

### **8 Subsection 34T(2)**

Repeal the subsection, substitute:

- (2) This Division does not affect a function or power of the Ombudsman under the *Ombudsman Act 1976* in relation to the Australian Federal Police.
- (3) This Division does not affect a function or power of a person under Part V of the *Australian Federal Police Act 1979*.

### **9 Subsection 34VAA(5) (subparagraph (a)(iv) of the definition of *permitted disclosure*)**

Repeal the subparagraph, substitute:

- (iv) exercising a power (including a power to make a complaint or to give information), or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*, the *Ombudsman Act 1976* or Part V of the *Australian Federal Police Act 1979*;

## Part 2—Amendments contingent on the ASIO Legislation Amendment Act 2006

### *Australian Security Intelligence Organisation Act 1979*

#### **10 Subsection 34G(5) (note 2)**

Omit “and the Commonwealth Ombudsman”, substitute “, the Ombudsman and a person referred to in paragraph 40SB(3)(b) of the *Australian Federal Police Act 1979*”.

#### **11 Subparagraph 34J(1)(e)(ii)**

Repeal the subparagraph, substitute:

- (ii) to the Ombudsman under the *Ombudsman Act 1976* in relation to the Australian Federal Police;

#### **12 After paragraph 34J(1)(e)**

Insert:

- (ea) the person’s right to give information orally or in writing, under Division 2 of Part V of the *Australian Federal Police Act 1979*, to a person referred to in subsection 40SA(1) of that Act in relation to the Australian Federal Police;

#### **13 Paragraph 34K(9)(b)**

Repeal the paragraph, substitute:

- (b) the person informs the prescribed authority that the person wants:
  - (i) to make an oral or written complaint of the kind referred to in paragraph 34J(1)(e); or
  - (ii) to give oral or written information of the kind referred to in paragraph 34J(1)(ea); and

#### **14 Paragraph 34K(9)(c)**

After “the complaint”, insert “or give the information”.

#### **15 At the end of subsection 34K(9)**

Add “or giving the information”.

#### **16 Paragraphs 34K(11)(b) to (e)**

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Repeal the paragraphs, substitute:

- (b) subsection (10) does not affect the operation of sections 10 and 13 of the *Inspector-General of Intelligence and Security Act 1986* in relation to contact between the person and the Inspector-General of Intelligence and Security; and
- (c) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Inspector-General of Intelligence and Security to make a complaint orally under section 10 of the *Inspector-General of Intelligence and Security Act 1986* if the person requests them; and
- (d) subsection (10) does not affect the operation of section 7 of the *Ombudsman Act 1976* in relation to contact between the person and the Ombudsman in respect of a complaint, or proposed complaint, about the Australian Federal Police; and
- (e) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Ombudsman to make a complaint orally under section 7 of the *Ombudsman Act 1976* if the person requests them; and
- (f) subsection (10) does not affect the operation of section 40SB of the *Australian Federal Police Act 1979* in relation to contact between the person and a person referred to in paragraph 40SB(3)(b) of that Act; and
- (g) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Commissioner of the Australian Federal Police to give information orally under section 40SA of the *Australian Federal Police Act 1979* if the person requests them; and
- (h) subsection (10) does not affect the person's right to make a complaint to a complaints agency in relation to the police force or police service of the State or Territory concerned; and
- (i) anyone holding the person in custody or detention under this Division must give the person facilities for contacting a complaints agency to make an oral or written complaint of the kind mentioned in paragraph (h) if the person requests them.

Note: The sections mentioned in paragraphs (11)(b), (d) and (f) give the person an entitlement to facilities for making a written complaint or for giving written information.

**17 After subparagraph 34R(13)(b)(ii)**

Insert:

- (iia) the person to give information of the kind referred to in paragraph 34J(1)(ea); or

**18 Paragraph 34ZF(4)(b)**

Omit “paragraph 34K(11)(d) or (e)”, substitute “paragraph 34K(11)(c), (e), (g) or (i)”.

**19 Section 34ZG**

Repeal the section, substitute:

**34ZG Complaints and information about contravention of procedural statement**

- (1) Contravention of the written statement of procedures in force under section 34C may be the subject of:
  - (a) a complaint to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*; or
  - (b) a complaint to the Ombudsman under the *Ombudsman Act 1976*; or
  - (c) information given under Division 2 of Part V of the *Australian Federal Police Act 1979* to a person referred to in subsection 40SA(1) of that Act.
- (2) This section does not limit:
  - (a) the subjects of complaint under:
    - (i) the *Inspector-General of Intelligence and Security Act 1986*; or
    - (ii) the *Ombudsman Act 1976*; or
  - (b) the subject of information given under Division 2 of Part V of the *Australian Federal Police Act 1979*.

**20 Subsection 34ZN(2)**

Repeal the subsection, substitute:

- (2) This Division does not affect a function or power of the Ombudsman under the *Ombudsman Act 1976* in relation to the Australian Federal Police.
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- (3) This Division does not affect a function or power of a person under Part V of the *Australian Federal Police Act 1979*.

**21 Subsection 34ZS(5) (subparagraph (a)(iv) of the definition of *permitted disclosure*)**

Repeal the subparagraph, substitute:

- (iv) exercising a power (including a power to make a complaint or to give information), or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*, the *Ombudsman Act 1976* or Part V of the *Australian Federal Police Act 1979*;

**22 After paragraph 34ZX(5)(a)**

Insert:

- (aa) any information the person gives that is of a kind mentioned in paragraph 34J(1)(ea); or

## Schedule 4—Alcohol screening tests

### *Australian Federal Police Act 1979*

#### **1 Subsection 4(1)**

Insert:

*alcohol screening test* in relation to a person, means a test of sample of the breath of the person carried out by means of an approved screening device.

#### **2 Subsection 4(1)**

Insert:

*approved screening device* means a device of a type that is approved by the Minister under section 40R.

#### **3 Before section 40M**

Insert:

#### **40LA Alcohol screening tests**

- (1) An AFP appointee authorised under section 40PA to act as a manager (the *authorised manager*) may require another AFP appointee (the *screening test subject*) to undergo an alcohol screening test if:
  - (a) the screening test subject is on duty; and
  - (b) the authorised manager reasonably suspects that the screening test subject is under the influence of alcohol.

*Compliance with direction*

- (2) The screening test subject must comply with the requirement given to him or her under subsection (1).

*Test results*

- (3) If the result of the alcohol screening test shows that alcohol is not present in the screening test subject's blood, the screening test subject may return to his or her duties immediately.

(4) If:

(a) the result of the alcohol screening test shows that alcohol is present in the screening test subject's blood; or

(b) the screening test subject refuses to undergo the alcohol screening test;

the screening test subject may be given a written direction under section 40M to undergo a breath test if the screening test subject is an AFP employee or a special member.

(5) This section does not limit the operation of section 40M.

#### **4 Subsection 40M(3) (note)**

Repeal the note.

Note: The heading to section 40M is replaced by the heading "**Alcohol breath tests and prohibited drug tests**".

#### **5 Subsection 40N(5) (note)**

Repeal the note.

Note: The heading to section 40N is replaced by the heading "**Alcohol breath tests and prohibited drug tests after certain incidents**".

#### **6 Section 40P**

Before "40M", insert "40LA,".

#### **7 Subparagraph 40P(b)(i)**

After "to conduct", insert "alcohol screening tests,".

#### **8 Paragraph 40P(e)**

After "the conduct of", insert "alcohol screening tests,".

#### **9 At the end of section 40P**

Add:

Note: Paragraph (a)—persons may give directions under sections 40M and 40N. However, for a person's power to give a requirement under section 40LA, see section 40PA.

#### **10 After section 40P**

Insert:

#### **40PA Managers who may require alcohol screening tests**

The Commissioner may issue Commissioner's orders under section 38 authorising particular kinds of AFP appointees to act as managers for the purpose of section 40LA.

#### **11 Section 40Q**

Repeal the section, substitute:

#### **40Q Admissibility of test results etc. in legal proceedings**

The following:

- (a) a certificate or other document recording the results of a test conducted under section 40M or 40N in relation to an AFP employee or a special member;
- (b) a certificate or other document recording the results of an alcohol screening test conducted under section 40LA in relation to an AFP appointee;
- (c) any other information, answer to a question or document relevant to conducting such a test (including any information or answer given or document produced in compliance with section 40);

is not admissible in evidence against the employee, special member or AFP appointee in any proceedings other than the following:

- (d) proceedings in relation to a decision of the Commissioner to terminate the employment of the employee or the AFP appointee or to terminate the appointment of the special member or the AFP appointee;
- (e) proceedings under the *Safety, Rehabilitation and Compensation Act 1988*;
- (f) proceedings in tort against the Commonwealth that are instituted by the employee, special member or AFP appointee.

#### **12 At the end of Division 8 of Part IV**

Add:

**40R Approval of screening devices**

- (1) The Minister may, in writing, approve devices of a type described in the approval to be approved screening devices if he or she is of opinion that:
  - (a) devices of that type have been designed and made for the purpose of indicating, when a sample of the breath of a person is exhaled into the device, whether alcohol is present in the blood of the person; and
  - (b) devices of that type are suitable devices for use in tests under section 40LA.
- (2) An approval under this section is a legislative instrument.

## **Schedule 5—Provisions relating to suspension or resignation from, and termination of, employment**

### *Australian Federal Police Act 1979*

#### **1 Subsection 4(1)**

Insert:

*collective agreement* has the same meaning as in the *Workplace Relations Act 1996*.

#### **2 At the end of section 30**

Add:

(3) Paragraph (1)(a) is subject to section 30A.

#### **3 After section 30**

Insert:

#### **30A Resignation in anticipation of termination of employment**

- (1) This section applies if:
- (a) an AFP employee gives the Commissioner written notice of his or her resignation under paragraph 30(1)(a); and
  - (b) the employee's conduct:
    - (i) has been, or is being, investigated as an AFP conduct issue that is a category 3 conduct issue; or
    - (ii) has raised a corruption issue that has been investigated; or
    - (iii) raises a corruption issue that is being investigated; and
  - (c) at least one of the following applies:
    - (i) if the investigation has been completed—the Commissioner is considering terminating the employee's employment under section 28 on the basis of the findings of the investigation;
    - (ii) if the investigation has not been completed—the Commissioner is not in a position to decide whether to
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terminate the employee's employment under section 28 because the findings of the investigation are not yet known;

- (iii) the Commissioner is satisfied that the employee's conduct may amount to serious misconduct within the meaning of subsection 40K(3).
- (2) The Commissioner may, by written notice to the AFP employee, substitute a day, no later than 90 days after the day specified in the employee's notice of resignation, as the day on which his or her resignation is to take effect.
- (3) The Commissioner may give more than one notice under subsection (2) to the AFP employee in relation to the notice of resignation.
- (4) To be effective, the first notice given under subsection (2) in relation to the notice of resignation must be given to the employee before the day specified in the notice of resignation.
- (5) To be effective, any subsequent notice given under subsection (2) in relation to the notice of resignation must be given to the employee before the day specified in the immediately preceding notice given under that subsection in relation to the notice of resignation.
- (6) On or before the day specified in the most recent notice given under subsection (2) in relation to the notice of resignation, the Commissioner must:
  - (a) accept the AFP employee's notice of resignation; or
  - (b) terminate the AFP employee's employment under section 28.
- (7) If the Commissioner accepts the notice of resignation under paragraph (6)(a), the AFP employee's resignation takes effect on the day on which the Commissioner communicates acceptance of the resignation to the employee.

#### **4 Section 40J**

Before "The regulations", insert "(1)".

#### **5 Section 40J**

Omit "either or both", substitute "any one or more".

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## **6 After paragraph 40J(a)**

Insert:

- (aa) provide that, while suspended from duty, an AFP employee may be required to comply with directions of a kind mentioned in subsection (2);
- (ab) provide that, while suspended from duty, an AFP employee may take or be on annual leave if:
  - (i) the certified agreement or collective agreement for the time being in force would otherwise deem or require the AFP member to be on annual leave for the period necessary to reduce the balance of annual leave credits to the level specified in the relevant agreement; or
  - (ii) in the case of an AFP employee who is suspended without remuneration—the AFP employee applies to take annual leave that he or she would, if approved, otherwise be able to take;

## **7 At the end of section 40J**

Add:

- (2) The kind of directions that an AFP employee may be required to comply with while suspended from duty are:
  - (a) directions that the AFP employee would be required to comply with if the AFP employee were not suspended from duty; and
  - (b) directions that are given for the purposes of:
    - (i) determining whether the AFP employee or any other AFP employee has committed a criminal offence or failed to maintain AFP professional standards; or
    - (ii) assessing the continuing employment suitability of the AFP employee; or
    - (iii) ensuring continuity, during the period of suspension, in the performance of the AFP employee's duties, being a direction that the employee only is able to comply with.
- (3) To avoid doubt, an AFP employee who takes annual leave while suspended without remuneration is to be paid as if the employee were taking annual leave while not suspended.

## **8 Application**

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- (1) The amendment made by item 3 of this Schedule applies to a notice of resignation given to the Commissioner on or after the day on which this Schedule commences.
  - (2) The amendments made by items 6 and 7 of this Schedule apply to annual leave that may be taken on or after the day on which this Schedule commences.
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*[Minister's second reading speech made in—  
House of Representatives on 29 March 2006  
Senate on 22 June 2006]*

(34/06)

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