





# **Australian Federal Police and Other Legislation Amendment Act 2004**

**No. 64, 2004**

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

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# **Australian Federal Police and Other Legislation Amendment Act 2004**

**No. 64, 2004**

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## **An Act to integrate the Australian Protective Service into the Australian Federal Police, and for other purposes**

*[Assented to 22 June 2004]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Australian Federal Police and Other  
Legislation Amendment Act 2004*.

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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.

<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 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	22 June 2004
2. Schedule 1, items 1 to 7	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, item 8	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) the time Schedule 1 to the <i>Non-Proliferation Legislation Amendment Act 2003</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

<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>
4. Schedule 1, item 9	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) the time section 3 of the <i>Aviation Transport Security Act 2004</i> commences. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 1, items 10 to 60	At the same time as the provision(s) covered by table item 2.	
6. Schedule 2, item 1	At the same time as the provision(s) covered by table item 2. However, the item does not commence at all if the provision(s) covered by table item 2 commence after the commencement of section 3 of the <i>Aviation Transport Security Act 2004</i> .	
7. Schedule 2, item 2	At the same time as the provision(s) covered by table item 2.	
8. Schedule 2, item 3	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of section 3 of the <i>Aviation Transport Security Act 2004</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
9. Schedule 2, items 4 to 7	At the same time as the provision(s) covered by table item 2.	

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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>
10. Schedule 2, item 8	The later of: (a) the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of section 3 of the <i>Legislative Instruments Act 2003</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
11. Schedule 2, items 9 to 13	At the same time as the provision(s) covered by table item 2.	
14. Schedule 3	On the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	

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.

- (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.

### **4 Transitional and application**

- (1) Each APS transferee is taken to have been engaged, at the transfer time, under section 24 of the *Australian Federal Police Act 1979*.
- (2) Each transferred PSO is taken to have been declared, at the transfer time, to be a protective service officer under section 40EA of the amended AFP Act.

- (3) Paragraph 36(4A)(a) of the amended AFP Act (about entering an undertaking) does not apply to a transferred PSO.
- (4) Each transferred PSO who has made and subscribed an oath or affirmation under section 10 of the *Australian Protective Service Act 1987* is taken to have satisfied the requirement under paragraph 36(4A)(b) of the amended AFP Act.
- (5) In this section:

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

**amended AFP Act** means the *Australian Federal Police Act 1979* as amended by Schedule 1 to this Act.

**APS transferee** means a person who, immediately before the transfer time, was an employee assisting the Commissioner of the Australian Federal Police under subsection 5(2) of the *Australian Protective Service Act 1987*.

**transferred PSO** means an APS transferee who, immediately before the transfer time, was a protective service officer within the meaning of the *Australian Protective Service Act 1987*.

**transfer time** means the time specified by the Public Service Commissioner in a determination under paragraph 72(1)(b) of the *Public Service Act 1999* as the time at which the APS transferees become employees of the Australian Federal Police.

## Schedule 1—Amendment of the Australian Federal Police Act 1979

### *Australian Federal Police Act 1979*

#### **1 Subsection 3A(1)**

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

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

Insert:

*Protective service officers of the Australian Federal Police*

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

*Special protective service officers of the Australian Federal Police*

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

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

Insert:

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

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

Insert:

*frisk search* means:

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

## 5 Subsection 4(1)

Insert:

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

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

## 6 Subsection 4(1)

Insert:

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

## 7 Subsection 4(1)

Insert:

*protective service offence* means any of the following:

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

Australian Federal Police is performing protective service functions;

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

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

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

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

Insert:

- (va) the *Aviation Transport Security Act 2004* or regulations made under that Act; or

**10 Subsection 4(1)**

Insert:

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

**11 Subsection 4(1)**

Insert:

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

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

Repeal the heading, substitute:

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

**13 At the end of section 6**

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

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

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

**15 After section 8**

Insert:

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

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

**16 Subsection 12A(1)**

Insert:

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

**17 Subsection 12A(1)**

Insert:

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

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

Repeal the definition.

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

Repeal the definition.

**20 Subsection 12A(1)**

Insert:

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

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

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

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

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

**23 Subsection 12A(2)**

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

**24 Subsection 12A(3)**

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

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

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

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

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

**27 At the end of Part II**

Add:

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

**14A Powers of arrest**

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

- (a) the person has just committed, or is committing, the offence;  
and
- (b) the arrest of the person is necessary for the purpose of:

- (i) ensuring the appearance of the person before a court of competent jurisdiction for the offence; or
  - (ii) preventing the continuation of, or a repetition of, the offence or the commission of a further protective service offence; or
  - (iii) preventing the concealment, loss or destruction of evidence of, or relating to, the offence; or
  - (iv) preserving the safety or welfare of the person; and
- (c) proceedings by way of summons against the person for the offence would not achieve such a purpose.

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

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

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

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

actions, makes it impracticable for the protective service officer to inform the person of the offence.

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

#### **14D Search of arrested person**

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

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

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

- (1) A protective service officer who arrests a person for an offence must ensure that the person is delivered into the custody of a police officer as soon as practicable to be dealt with according to law.
- (2) Where a weapon or other thing has been seized from the person under subsection 14D(5), the protective service officer must ensure that the weapon or other thing is delivered to the police officer into whose custody the person is delivered.
- (3) In this section:
- police officer*** means:
- (a) a member or special member; or

- (b) a member, however described, of a police force of a State or Territory; or
- (c) a member, however described, of a police force of a foreign country.

#### **14F Release of arrested person**

Where:

- (a) a person has been arrested by a protective service officer for an offence; and
- (b) the person is in the custody of the protective service officer or another protective service officer; and
- (c) the protective service officer who has the custody of the person:
  - (i) ceases to have reasonable grounds for believing that the person committed, or was committing, an offence; or
  - (ii) ceases to have reasonable grounds for believing that the holding of the person in custody is necessary in order to achieve a purpose mentioned in paragraph 14A(b), and does not have reasonable grounds for believing that the holding of the person in custody is necessary in order to achieve any other purpose mentioned in that paragraph; or
  - (iii) ceases to have reasonable grounds for believing that proceedings by way of summons against the person for the offence would not achieve a purpose mentioned in paragraph 14A(b), and does not have reasonable grounds for believing that proceedings by way of summons against the person for the offence would not achieve any other purpose mentioned in that paragraph;

the protective service officer must release the person from custody in respect of the offence as soon as practicable.

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

- (1) The power of arrest conferred by section 14A on protective service officers is in addition to, and not in derogation of, powers of arrest available to protective service officers under any other law of the Commonwealth or the law of a State or Territory.

- (2) Subject to subsection (3), where a protective service officer, in the course of his or her duties as a protective service officer, arrests a person for any offence (whether the arrest is made under section 14A, under any other law of the Commonwealth or under the law of a State or Territory), sections 14B to 14F apply in relation to the arrest despite any other law of the Commonwealth or the law of a State or Territory.
- (3) Subsection (2) has effect subject to sections 252 and 253 of the *Migration Act 1958*.
- (4) Subject to subsection (2), the powers conferred, and duties imposed, by this Division on protective service officers are in addition to, and not in derogation of, any other powers conferred, or duties imposed, by any other law of the Commonwealth or the law of a State or Territory, and this Division is not intended to exclude or limit the operation of any other law of the Commonwealth or the law of a State or Territory providing for such powers or duties in so far as it is capable of operating concurrently with this Division.
- (5) This Division, in so far as it protects the individual, is in addition to, and not in derogation of, any rights and freedoms of the individual, whether under the law of the Commonwealth or of a State or Territory, and this Division is not intended to exclude or limit the operation of any law of the Commonwealth or of a State or Territory providing for those rights and freedoms in so far as it is capable of operating concurrently with this Division.

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

### **14H Definitions**

In this Division:

***designated person*** means:

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

***police officer*** means:

- (a) a member or special member; or
- (b) a member, however described, of a police force of a State or Territory; or
- (c) a member, however described, of a police force of a foreign country.

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

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

(1) If:

- (a) a designated person suspects on reasonable grounds that a person (the *suspect*) might have just committed, might be committing, or might be about to commit, a protective service offence; and
- (b) the suspect is in a place, or in the vicinity of a place, person or thing, in respect of which the Australian Federal Police is performing protective service functions;

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

- (c) the suspect's name; and
- (d) the suspect's residential address; and
- (e) the suspect's reason for being in the place, or in the vicinity of the place, person or thing, in respect of which the Australian Federal Police is performing protective service functions; and
- (f) evidence of the suspect's identity.

(2) If a designated person:

- (a) makes a request under subsection (1); and
- (b) informs the suspect of the designated person's authority to make the request; and
- (c) informs the suspect that it may be an offence not to comply with the request;

the suspect must not:

- (d) fail to comply with the request; or
- (e) give a name or address that is false in a material particular.

Penalty: 20 penalty units.

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

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

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

## **14J Stopping and searching**

*When this section applies*

- (1) This section applies if a designated person suspects on reasonable grounds that:
- (a) a person (the *suspect*):
    - (i) has a thing under the suspect's immediate control; or
    - (ii) is occupying a thing; or
    - (iii) has a thing in a vehicle operated or occupied by the suspect; or
    - (iv) has brought a thing onto premises at which the Australian Federal Police is performing protective service functions; and
  - (b) the thing is likely to cause, or is likely to be used by the suspect or another to cause:
    - (i) substantial damage to a place or a thing in respect of which the Australian Federal Police is performing protective service functions; or
    - (ii) death or serious harm to a person in respect of whom the Australian Federal Police is performing protective service functions;
- in circumstances that would be likely to involve the commission of a protective service offence.

*Designated person may stop and search suspect*

- (2) The designated person may:
- (a) stop and detain the suspect for the purpose of searching for the thing; and
  - (b) do any or all of the following for the purpose of searching for the thing:

- (i) if the designated person is of the same sex as the suspect—conduct an ordinary search or a frisk search of the suspect;
- (ii) search any thing under the suspect’s immediate control;
- (iii) search any vehicle operated or occupied by the suspect.

*Conditions relating to conduct of search of suspect*

- (3) If the designated person is not of the same sex as the suspect, an ordinary search or a frisk search of the suspect for the purpose of searching for the thing may be conducted by:
    - (a) if another designated person of the same sex as the suspect is reasonably available to conduct the search—that designated person; or
    - (b) if paragraph (a) does not apply but a police officer or an officer of Customs (within the meaning of subsection 4(1) of the *Customs Act 1901*) who is of the same sex as the suspect is reasonably available to conduct the search—that police officer or officer of Customs; or
    - (c) otherwise—any other person:
      - (i) who is of the same sex as the suspect; and
      - (ii) who is requested by the designated person to conduct the search; and
      - (iii) who consents to conduct the search.
  - (4) If a designated person requests an officer of Customs or another person to conduct a search of a suspect, the designated person must explain to the officer of Customs or the other person:
    - (a) if the search requested is an ordinary search—the meaning of an ordinary search; and
    - (b) if the search requested is a frisk search—the meaning of a frisk search; and
    - (c) that the officer of Customs or the other person must not use more force, or subject a suspect to greater indignity, than is reasonable and necessary in order to conduct the search.
  - (5) An action or proceeding, whether civil or criminal, does not lie against a person who conducts a search under paragraph (3)(b) or (c) if the person acts in good faith and does not contravene subsection (6).
-

- (6) A designated person or other person who conducts a search of a suspect under this section must not use more force, or subject a suspect to greater indignity, than is reasonable and necessary in order to conduct the search.
- (7) A suspect must not be detained under this section for longer than is reasonably necessary for a search to be conducted under this section.

*Designated person may search a thing*

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

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

- (9) In searching a thing under subsection (2) or (8), the designated person may use such force as is reasonable and necessary in the circumstances, but must not damage the thing by forcing it, or a part of it, open unless:
  - (a) if the search is under subsection (2)—the suspect has been given a reasonable opportunity to open the thing or part of it; or
  - (b) if the search is under subsection (8)—the person (if any) apparently in charge of the thing has been given a reasonable opportunity to open the thing or part of it; or
  - (c) it is not possible to give that opportunity.

## **14K Seizure of things found**

*Designated person may seize a thing being searched for*

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

*Designated person may seize a dangerous thing*

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

*Protective service officer must deliver thing seized to police officer*

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

## **14L How seized things must be dealt with**

*Seizure notice to be served*

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

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

*Return of thing seized*

- (4) The owner of a thing seized under section 14K may request the return of the thing.
- (5) A police officer who is for the time being responsible for a thing seized under section 14K must return the thing to its owner if:
  - (a) the owner requests the return of the thing; and
  - (b) in the case of a thing seized under subsection 14K(1)—the police officer does not suspect on reasonable grounds that, if the thing is returned to the owner, the thing is likely to cause, or is likely to be used by the owner or another to cause:
    - (i) substantial damage to a place or thing in respect of which the Australian Federal Police is performing protective service functions; or
    - (ii) death or serious harm to a person in respect of whom the Australian Federal Police is performing protective service functions;in circumstances that would be likely to involve the commission of a protective service offence; and
  - (c) in the case of a thing seized under subsection 14K(2)—the police officer does not suspect on reasonable grounds that, if the thing is returned to the owner, the thing is likely to be used by the owner or another to cause death or serious harm to a person:
    - (i) in respect of whom the Australian Federal Police is performing protective service functions; or
    - (ii) who is in a place, or in the vicinity of a person, place or thing, in respect of which the Australian Federal Police is performing protective service functions.

*Forfeiture of thing seized*

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

*Application to magistrate*

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

*Seizure day*

- (8) In this section:

***seizure day*** means:

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

### **14M Application to magistrate**

- (1) If subsection 14L(7) applies, the police officer may apply to a magistrate for an order in relation to the thing to which that subsection applies.
- (2) The magistrate must, in determining an application by a police officer under subsection (1), allow the owner of the thing to appear and be heard.
- (3) If the magistrate is satisfied that:
  - (a) in the case of a thing seized under subsection 14K(1)—there are reasonable grounds to suspect that, if the thing is returned to the owner, the thing is likely to cause, or is likely to be used by the owner or another to cause:
    - (i) substantial damage to a place or thing in respect of which the Australian Federal Police is performing protective service functions; or
    - (ii) death or serious harm to a person in respect of whom the Australian Federal Police is performing protective service functions;in circumstances that would be likely to involve the commission of a protective service offence; or
  - (b) in the case of a thing seized under subsection 14K(2)—there are reasonable grounds to suspect that, if the thing is returned to the owner, the thing is likely to be used by the owner or another to cause death or serious harm to a person:
    - (i) in respect of whom the Australian Federal Police is performing protective service functions; or
    - (ii) who is in a place, or in the vicinity of a person, place or thing, in respect of which the Australian Federal Police is performing protective service functions;the magistrate may make any of the following orders:
    - (c) that the thing be retained by the police officer for the period specified in the order;
    - (d) that the thing is forfeited to the Commonwealth;
    - (e) that the thing is to be sold and the proceeds given to the owner;
    - (f) that the thing is to be otherwise sold or disposed of.

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

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

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

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

Insert:

##### *Protective service officers*

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

##### *Special protective service officers*

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

#### **29 Section 39**

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

**30 Section 40**

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

**31 Paragraph 40(e)**

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

**32 Subsection 40A(1)**

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

**33 Subsection 40A(2)**

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

**34 Section 40B**

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

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

Add:

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

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

**36 After Division 3 of Part IV**

Insert:

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

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

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

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

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

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

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

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

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

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

#### **40EC Special protective service officers**

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

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

A special protective service officer has:

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

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

Insert:

- (da) a special protective service officer; or

#### **38 Subsection 61(1)**

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

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

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

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

Repeal the paragraph.

**41 Subsection 63(2)**

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

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

**42 After section 63**

Insert:

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

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

Penalty: Imprisonment for 12 months.

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

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

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

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

Penalty: Imprisonment for 12 months.

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

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

### **43 Subsection 64(2)**

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

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

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

### **45 After section 64A**

Insert:

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

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

Penalty: 5 penalty units.

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

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

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

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

(b) an unintentional omission of the defendant.

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

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

#### **46 After section 64AA**

Insert:

#### **64AAB Suspended AFP employees who are protective service officers**

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

Penalty: Imprisonment for 2 years.

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

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

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

Insert “or the protective service officer”.

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

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

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

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

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

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

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

Add “and”.

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

Add:

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

**54 Subsection 66(1)**

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

**55 Subsection 66(2)**

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

**56 After subsection 68(4)**

Insert:

*AFP employees who are protective service officers*

- (4A) The Commissioner may, by writing signed by the Commissioner, certify that a specified person has been declared to be a protective service officer under section 40EA and may also certify all or any of the following in relation to the person:
- (a) that he or she entered into the undertaking mentioned in subsection 36(4A) immediately after the declaration under section 40EA;
  - (b) that, on a specified date, he or she made and subscribed the oath or affirmation mentioned in the certificate before the Commissioner or a specified person authorised by the Commissioner for the purposes of subsection 36(4A);
  - (c) that he or she is, on the date on which the certificate is signed, a protective service officer and has been such a protective service officer continuously since the declaration under section 40EA.

*Special protective service officers*

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

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

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

**57 After section 68**

Insert:

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

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

- (a) that the person made and subscribed an oath or affirmation under section 10 of the *Australian Protective Service Act 1987*;
  - (b) that the person is, on the date on which the certificate is signed, a protective service officer and has been such a protective service officer continuously since being appointed under section 9 of the *Australian Protective Service Act 1987*.
- (4) Unless the contrary is proved, a document purporting to be a certificate given under this section is taken to be such a certificate and to have been duly given.
- (5) A certificate under this section is prima facie evidence of the matters stated in the certificate.
- (6) In this section:

*APS transferee* means a person who, immediately before the transfer time, was an employee assisting the Commissioner of the Australian Federal Police under subsection 5(2) of the *Australian Protective Service Act 1987*.

*transferred PSO* means an APS transferee who, immediately before the transfer time, was a protective service officer within the meaning of the *Australian Protective Service Act 1987*.

*transfer time* means the time specified by the Public Service Commissioner in a determination under paragraph 72(1)(b) of the *Public Service Act 1999* as the time at which the APS transferees become employees of the Australian Federal Police.

## **58 After section 69D**

Insert:

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

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

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

(3) In this section:

***Commonwealth authority*** means:

- (a) a body, whether incorporated or unincorporated, established for a public purpose:
  - (i) by or under a law of the Commonwealth or a law of a Territory other than the Australian Capital Territory or the Northern Territory; or
  - (ii) by the Governor-General or a Minister; or
- (b) an incorporated company in which the Commonwealth or a body described in paragraph (a) has a controlling interest; or
- (c) any other agency or instrumentality of the Commonwealth.

**59 Paragraph 70(a)**

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

**60 Paragraph 70(aa)**

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

## **Schedule 2—Amendment and repeal of other Acts**

### *Air Navigation Act 1920*

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

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

### *Australian Protective Service Act 1987*

#### **2 The whole of the Act**

Repeal the Act.

### *Aviation Transport Security Act 2004*

#### **3 Paragraphs 82(b) and (c)**

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

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

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

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

### *Crimes Act 1914*

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

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

### *Crimes (Aviation) Act 1991*

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

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

### ***Customs Act 1901***

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

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

### ***Legislative Instruments Act 2003***

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

Repeal the item.

### ***Migration Act 1958***

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

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

### ***Parliamentary Precincts Act 1988***

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

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

#### **11 Section 9**

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

### ***Passenger Movement Charge Collection Act 1978***

#### **12 Paragraph 5(m)**

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

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

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

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

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

### *Australian Federal Police Act 1979*

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

Insert:

*federal aspect*, in relation to an offence against a law of a State or of the Australian Capital Territory, has the meaning given by subsection 4AA(1).

Note: This subsection defines *State* to include the Northern Territory.

#### **1 After section 4**

Insert:

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

##### *Object*

- (1A) The object of this section is to identify State offences that have a federal aspect because:
- (a) they potentially fall within Commonwealth legislative power because of the elements of the State offence; or
  - (b) they potentially fall within Commonwealth legislative power because of the circumstances in which the State offence was committed (whether or not those circumstances are expressed to be acts or omissions involved in committing the offence); or
  - (c) the Australian Federal Police investigating them is incidental to the Australian Federal Police investigating an offence against a law of the Commonwealth or a Territory.

##### *State offences that have a federal aspect*

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

- (a) both:
  - (i) the State offence is not an ancillary offence; and
  - (ii) assuming that the provision creating the State offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
- (b) both:
  - (i) the State offence is an ancillary offence that relates to a particular primary offence; and
  - (ii) assuming that the provision creating the primary offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
- (c) assuming that the Parliament of the Commonwealth had enacted a provision that created an offence penalising the specific acts or omissions involved in committing the State offence—that provision would have been a valid law of the Commonwealth; or
- (d) both:
  - (i) the Australian Federal Police is investigating a matter relating to a relevant criminal activity that relates to an offence against a law of the Commonwealth or a Territory; and
  - (ii) if the Australian Federal Police is investigating, or were to investigate, a matter relating to a relevant criminal activity that relates to the State offence—that investigation is, or would be, incidental to the investigation mentioned in subparagraph (i).

*Specificity of acts or omissions*

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

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

- (3) A State offence is taken to be covered by paragraph (1)(c) if the conduct constituting the State offence:
- (a) affects the interests of:
    - (i) the Commonwealth; or
    - (ii) an authority of the Commonwealth; or
    - (iii) a constitutional corporation; or
  - (b) was engaged in by a constitutional corporation; or
  - (c) was engaged in in a Commonwealth place; or
  - (d) involved the use of a postal service or other like service; or
  - (e) involved an electronic communication; or
  - (f) involved trade or commerce:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States; or
    - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
  - (g) involved:
    - (i) banking (other than State banking not extending beyond the limits of the State concerned); or
    - (ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or
  - (h) relates to a matter outside Australia; or
  - (i) relates to a matter in respect of which an international agreement to which Australia is a party imposes obligations to which effect could be given by the creation of an offence against the domestic laws of the parties to the agreement; or
  - (j) relates to a matter that affects the relations between Australia and another country or countries or is otherwise a subject of international concern.
- (4) Subsection (3) does not limit paragraph (1)(c).

*Definitions*

- (5) In this section:

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

- (a) an offence of conspiring to commit the primary offence; or

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

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

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

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

**conduct** has the same meaning as in the *Criminal Code*.

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

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

(a) whether in the form of text; or

(b) whether in the form of data; or

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

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

(e) whether in any other form; or

(f) whether in any combination of forms;

by means of guided and/or unguided electromagnetic energy.

**engage in conduct** has the same meaning as in the *Criminal Code*.

**State** includes the Australian Capital Territory and the Northern Territory.

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

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

Insert:

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

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

Add:

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

**3A After subparagraph 9(1)(c)(iv)**

Insert:

(iva) the investigation of State offences that have a federal aspect;

**3B Section 12B (at the end of the definition of *general offence*)**

Add:

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

**3C At the end of Division 2 of Part II**

Add:

**12M Concurrent operation of State and Territory laws**

The application of this Division in relation to State offences that have a federal aspect is not intended to limit or exclude the concurrent operation of any law of a State or of the Australian Capital Territory.

Note 1: Subsection 4(1) defines *State* to include the Northern Territory.

Note 2: Section 4AA has the effect that an offence against a law of the Australian Capital Territory is a State offence that has a federal aspect.

***Crimes Act 1914***

**3D Subsection 3(1)**

Insert:

*federal aspect*, in relation to an offence against a law of a State or of the Australian Capital Territory, has the meaning given by subsection 3AA(1).

Note: This subsection defines *State* to include the Northern Territory.

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

Repeal the paragraph, substitute:

(a) either of the following:

- (i) anything with respect to which an indictable offence against any law of the Commonwealth or of a Territory has been committed or is suspected, on reasonable grounds, to have been committed;
- (ii) anything with respect to which a State offence that has a federal aspect, and that is an indictable offence against the law of that State, has been committed or is suspected, on reasonable grounds, to have been committed; or

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

Repeal the paragraph, substitute:

- (a) either of the following:
  - (i) anything with respect to which a summary offence against any law of the Commonwealth or of a Territory has been committed or is suspected, on reasonable grounds, to have been committed;
  - (ii) anything with respect to which a State offence that has a federal aspect, and that is a summary or simple offence against the law of that State, has been committed or is suspected, on reasonable grounds, to have been committed; or

**6 After section 3**

Insert:

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

*Object*

- (1A) The object of this section is to identify State offences that have a federal aspect because:
- (a) they potentially fall within Commonwealth legislative power because of the elements of the State offence; or
  - (b) they potentially fall within Commonwealth legislative power because of the circumstances in which the State offence was committed (whether or not those circumstances are expressed to be acts or omissions involved in committing the offence); or

- 
- (c) the Australian Federal Police investigating them is incidental to the Australian Federal Police investigating an offence against a law of the Commonwealth or a Territory.

*State offences that have a federal aspect*

- (1) For the purposes of this Act, a State offence has a *federal aspect* if, and only if:
- (a) both:
    - (i) the State offence is not an ancillary offence; and
    - (ii) assuming that the provision creating the State offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
  - (b) both:
    - (i) the State offence is an ancillary offence that relates to a particular primary offence; and
    - (ii) assuming that the provision creating the primary offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
  - (c) assuming that the Parliament of the Commonwealth had enacted a provision that created an offence penalising the specific acts or omissions involved in committing the State offence—that provision would have been a valid law of the Commonwealth; or
  - (d) both:
    - (i) the Australian Federal Police is investigating a matter relating to a relevant criminal activity that relates to an offence against a law of the Commonwealth or a Territory; and
    - (ii) if the Australian Federal Police is investigating, or were to investigate, a matter relating to a relevant criminal activity that relates to the State offence—that investigation is, or would be, incidental to the investigation mentioned in subparagraph (i).

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*Specificity of acts or omissions*

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

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

- (3) A State offence is taken to be covered by paragraph (1)(c) if the conduct constituting the State offence:
- (a) affects the interests of:
    - (i) the Commonwealth; or
    - (ii) an authority of the Commonwealth; or
    - (iii) a constitutional corporation; or
  - (b) was engaged in by a constitutional corporation; or
  - (c) was engaged in in a Commonwealth place; or
  - (d) involved the use of a postal service or other like service; or
  - (e) involved an electronic communication; or
  - (f) involved trade or commerce:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States; or
    - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
  - (g) involved:
    - (i) banking (other than State banking not extending beyond the limits of the State concerned); or
    - (ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or
  - (h) relates to a matter outside Australia; or
  - (i) relates to a matter in respect of which an international agreement to which Australia is a party imposes obligations to which effect could be given by the creation of an offence against the domestic laws of the parties to the agreement; or
  - (j) relates to a matter that affects the relations between Australia and another country or countries or is otherwise a subject of international concern.

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

*Definitions*

(5) In this section:

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

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

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

***conduct*** has the same meaning as in the *Criminal Code*.

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

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

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms;

by means of guided and/or unguided electromagnetic energy.

***engage in conduct*** has the same meaning as in the *Criminal Code*.

***State*** includes the Australian Capital Territory and the Northern Territory.

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

Note: Subsection 3(1) defines ***State*** to include the Northern Territory.

**6A Subsection 3C(1) (paragraph (b) of the definition of offence)**

Omit “other than the Australian Capital Territory”.

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

Add:

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

**7A Subsection 3D(3)**

Repeal the subsection.

**7B Subsection 3D(4)**

Omit “another”, substitute “a”.

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

Add:

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

Note 1: Subsection 3(1) defines *State* to include the Northern Territory.

Note 2: Section 3AA has the effect that an offence against the law of the Australian Capital Territory is a State offence that has a federal aspect.

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

Repeal the definition, substitute:

*Commonwealth offence* means:

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

**10 Paragraph 15H(b)**

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

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

Add:

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

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

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

Repeal the definition, substitute:

*Commonwealth offence* means:

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

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

Repeal the definition, substitute:

*indictable offence* means:

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

## **13A Subsection 23WA(1) (definition of offence)**

Omit “the Australian Capital Territory or any other Territory”, substitute “a Territory other than the Australian Capital Territory”.

## **13B Subsection 23WA(1) (at the end of the definition of offence)**

Add:

Note: Subsection 3(1) provides that *Territory* does not include the Northern Territory.

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

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

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

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

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**TSchedule 3T** Amendments relating to the investigation of State offences that have a federal aspectT

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

Insert:

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

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

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

Note 1: Subsection 3(1) defines *State* to include the Northern Territory.

Note 2: Section 3AA has the effect that an offence against a law of the Australian Capital Territory is a State offence that has a federal aspect.

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*[Minister's second reading speech made in—  
Senate on 4 December 2003  
House of Representatives on 27 May 2004]*

(197/03)