Digest of Bill

Purpose
This is an omnibus Bill that will make a number of non-contentious amendments to Acts administered by the Attorney-General’s portfolio.

Background
Bills similar to this will replace the previous method of introducing non-contentious amendments. Previously, all such amendments where introduced in Statute Law (Miscellaneous Provisions) Bills. The new method will allow greater scrutiny of the minor amendments of each ministerial portfolio.

Main Provisions

Amendments to the Administrative Appeals Tribunal Act 1975

Clause 8 will provide for term appointments (not exceeding 7 years) for full-time Deputy Presidents and full-time senior members of the Administrative Appeals Tribunal (the AAT). The Act presently restricts temporary appointments to part-time Deputy Presidents, senior members and members of the AAT.

State Attorney-Generals may prevent information being made available, either in document form or in answer to questions, in proceedings before the AAT where disclosure of information would be contrary to the public interest by disclosing State Cabinet deliberations or decisions; or for any other reason that could form the basis of a claim on public interest grounds in court proceedings (clause 12).

Amendments to the Australian Federal Police Act 1979

Clause 19 will provide that the Commissioner of Police may determine the number of persons that may be appointed to each rank of the Australian Federal Police (the AFP).

Clause 20 will insert new sections 36A and 36B into the Act. Proposed section 36A will provide that all persons who are eligible for appointment to the AFP have a reasonable opportunity to apply for appointment, and that any appointment is made on the basis of merit (i.e. abilities, qualifications, experience, and personal qualities relevant to performance of those duties).
Appointments will be made without patronage, favouritism, and discrimination on grounds of political affiliation, race, religion, sex, colour, ethnic origin, social origin, sexual preference, and marital status or pregnancy.

An AFP member who has applied unsuccessfully for a non-appellable promotion may apply to the Merit Protection and Review Agency for review of the decision on grounds of either a breach of proposed section 36A or a serious defect in the selection process (proposed section 36B).

Amendments to the *Customs Act 1901*

The Court may order the Official Trustee in Bankruptcy to take control of the property of a person suspected of narcotics dealing in order to recover pecuniary penalties that have been imposed on them. The Court may also make orders for the examination of a person before the Court, to ascertain the nature and location of property, and to direct a person to furnish the Official Trustee with a statement setting out particulars of the property. Where a person is examined before the Court in pursuance of such an order, a statement or disclosure made in answer to a question is not admissible as evidence in any proceedings. Clause 29 will remove this privilege against self-incrimination. However, any evidence obtained as a direct or indirect consequence of a person furnishing a statement or answering a question will not be admissible against that person in any civil or criminal proceedings, except in proceedings for giving false testimony or proceedings for the recovery of a pecuniary penalty.

Amendments to the *Family Law Act 1975*

Clause 37 will remove jurisdiction from the Family Court in matters arising under a law of the Northern Territory. The Supreme Court of the Northern Territory will have the same jurisdiction in relation to adoption of children, the property of parties to a marriage (where the matter is not a 'matrimonial cause'), and the rights and status of ex-nuptial children and their relationship to their parents, as State Supreme Courts have under State law.

The Family Court can appoint a separate representative in respect of any proceedings in which the welfare of a child of a marriage is relevant. The separate representative has a duty to place before the court the wishes of the child where these are known. Some of the functions and responsibilities of the separate representative include: to cross-examine the parties and their witnesses; to present direct evidence to the court about the child and matters relative to the child's welfare; and to present in appropriate cases evidence of the child’s wishes. Clause 38 will allow the separate representative to obtain a court order requiring a custodian of a child to make the child available for a psychiatric or psychological examination for the purpose of preparing a report about the child for use by the separate representative in proceedings.
Section 78 of the Act allows the Family Court to declare interests in existing property rights of parties to a marriage. Clause 39 will repeal section 78 (3). This will allow the Family Court to make binding determinations about the existence and extent of the rights and liabilities of third parties with respect to matrimonial property.

Amendments to the *Proceeds of Crimes Act Act* 1984

The Act provides for the confiscation/forfeiture of the proceeds of crime. Clause 52 will allow an application by a third party, who was not involved in a crime, for the recovery of property which has been made the subject of a forfeiture order.

Clause 55 will insert a new section 23A into the Act. Proposed section 23A will provide protection to third parties whose property interests are affected by a foreign forfeiture order. A person (other than a person convicted of a foreign crime in respect of which a foreign forfeiture order was made) may apply for return of the property or for compensation. The court can revoke the foreign forfeiture order if it is satisfied the applicant was not involved in a serious crime, the property was acquired at or after the commission of the crime, and the property was acquired without knowledge or suspicion of it being tainted property.

Clause 57 will allow the court to make an order declaring the whole or part of a property available to satisfy a pecuniary penalty order, if in its opinion, the property is subject to the effective control of a person against whom the court has made a pecuniary penalty order.

Clause 60 will allow the court to issue a restraining order in respect of part or all the property of a defendant, including property acquired by a defendant after the making of the order. In addition, where the Official Trustee in Bankruptcy is given a direction by the court in respect of a defendants shares in a company, it may exercise all the rights attaching to those shares.

Persons who are the subject of a court order to furnish the Official Trustee in Bankruptcy with a statement, will not be excused from doing so on the ground that the statement may incriminate them. However, evidence obtained as a direct or indirect consequence of furnishing a statement will not be admissible in civil or criminal proceedings, except in proceedings for giving false testimony (clause 62).

Where a defendants property is under a restraining order, and the order has made provision for the defendants legal expenses to be met from the restrained property, the Official Trustee in Bankruptcy may apply to the court for the legal expenses of the defendant to be taxed (clause 63).

The regulations may provide for the remuneration of costs, charges, and expenses of the Official Trustee in Bankruptcy (clause 67).
Before issuing a production order or a search warrant for documents identifying or locating property of a person who has committed an offence, a Judge has to be satisfied that a person derived a benefit from the commission of an offence, and property specified in the information sought is subject to the effective control of the person. Clauses 69 and 70 will provide that, in relation to a serious offence, a Judge may issue a production order or a search warrant if the Judge has grounds to believe that property is under the effective control of the person.

For further information, if required, contact the Law and Government Group.

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Bills Digest Service
Legislative Research Service

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

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