AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1981

Date Introduced: 26 February 1981
House: Senate
Presented by: Hon. P.D. Durack, Q.C., Attorney-General

Short Digest of Bill

Purpose

To implement recommendations of the Law Reform Commission that the Commonwealth should be vicariously liable for the wrongful acts of its police officers in the course of their duties; and to facilitate the lodging of complaints against Australian Federal Police, by requiring members of certain ranks of the police force to wear identification numbers when wearing police uniform.

Background

The Law Reform Commission in its 1975 Report on Complaints Against Police considered, that in view of the modern statutory nature of the appointment of police constables, the common law rule that a police constable is personally responsible for his tortious acts, and that no vicarious liability attaches to his superiors or those who appoint him, is no longer warranted. This view is reaffirmed in the Commission's Supplementary Report of 1978:

As far as Commonwealth constables are concerned the only statutory inroad into the common law position to date is section 5 of the Commonwealth Motor Vehicles (Liability) Act 1959 which provides, that in respect of motor vehicles owned by the Commonwealth, the driver (including a Commonwealth police officer) shall for the purpose of any claims be conclusively presumed to have been at all relevant times driving as the agent of the Commonwealth and acting within the scope of his authority.

The Commission recommended that members of the public should be given a statutory right to recover from the Government in respect of the tortious acts of Commonwealth police officers as if the relationship of master and servant existed.
Whilst recommending that the Commonwealth should be vicariously liable for the tortious acts of Commonwealth police officers the Law Reform Commission also adverted to the powers of Australian courts to award exemplary damages in actions against police officers for wrongful arrest, malicious prosecution and the like. The commission thought it proper that the legislation should provide that punitive or exemplary damages should not be borne by the Commonwealth and should only be recoverable from the individual police officer personally.

The Law Reform Commission also expressed the view that it was desirable that legislation should provide a specific entitlement for the Commonwealth to recover from a police officer such damages as may have been paid on his behalf.

The issue of identification of police was dealt with by the Law Reform Commission in its Supplementary Report of 1978. The Commission considered that uniformed members of the Commonwealth Police forces, at least up to the rank of inspector, should be required to wear identification numbers. The Commission expressed the view that in the long run it might be preferable that numbers should be sewn onto the uniform to prevent removal or abuse.

Main Provisions

Clause 3(1) of the Bill removes from the regulation-making powers conferred by section 40(f) of the Australian Federal Police Act 1979 the power to make regulations in respect of the hearing and disposal of charges of disciplinary offences against members of the Australian Federal Police. These provisions are now contained in Part VI of the Complaints (Australian Federal Police) Bill 1981. Clause 3(2) of the Bill provides for the continuance of the Australian Federal Police Regulations which relate to personnel and administration matters and the Australian Federal Police (Discipline) Regulations insofar as those regulations are not inconsistent with the Principal Act as amended by this Bill.

Clause 4 of the Bill inserts a new section 64A in the Principal Act relating to the wearing of identification numbers by members of the Australian Federal Police. The section provides for the fixing by regulation of the rank of members required to wear identification numbers and contains a proviso that "unintentional omission" shall be a defence to a charge of contravening the section.

Clause 4 of the Bill also inserts section 64B in the Principal Act implementing the recommendations of the
Law Reform Commission in respect of vicarious liability attaching to the Commonwealth for the tortious acts of its police officers and specifically excluding punitive damages. The Bill does not incorporate the recommended provisions to create a specific entitlement for the Commonwealth to recover from a police officer monies paid on his behalf, consequently the ordinary common law principles of a master's right to indemnity from his servant will continue to apply.

For further information, if required, contact:

Law Reform Commission

4 March 1981

Law & Government Group
LEGISLATIVE RESEARCH SERVICE