COMPLAINTS (AUSTRALIAN FEDERAL POLICE) 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 establish a formal system for investigation of complaints against the Australian Federal Police.

Background

On 7 August 1975 in response to a reference dated 16 May 1975 from the then Attorney-General Kep Enderby the Law Reform Commission presented to Parliament Report No. 1 on Complaints Against Police. Appendix A to that report set out proposed legislation drafted on the basis of an intended amalgamation of federal law enforcement agencies. An Australian Police Bill was introduced into Parliament on 30 October 1975 to effect this amalgamation and Parts V and VI of that Bill sought to establish a system of dealing with complaints against the police. The Bill had not been passed when Parliament was dissolved on 11 November 1975 and the arrangements for the Australia Police were disbanded by the Liberal-Country Party Government following the December 1975 election.

On 9 March 1977 following a request from the then Attorney-General R. Ellicott Q.C. the Law Reform Commission commenced further hearings for the purpose of reviewing its earlier report in the light of the decision to retain separate police forces of the Commonwealth, the Australian Capital Territory and the Northern Territory of Australia. This supplementary report was presented to Parliament on 14 April 1978.

However, reconsideration of the establishment of a national police force followed the Hilton Bombing in Sydney on 13 February 1978. Following the report of Sir Robert Mark Q.B.R., Q.P.M., the Australian Federal Police Act 1979 was enacted bringing about the amalgamation of the A.C.T. Police and the Commonwealth Police.
The present Bill, except where specifically noted, implements the recommendations contained in the 1978 report of the Law Reform Commission subject to variations in detail necessitated by the establishment of the Australian Federal Police Force.

Main Provisions

The establishment and procedures of the "Internal Investigation Division" are formalised by provisions contained in Part II of the Bill. A unit of this nature was established by the Commissioner of the Australian Federal Police Force by administrative action on the 19th of October 1979 and has operated without adverse comment since that date.

Clause 7 of the Bill sets out the powers of the Investigation Division and provides that refusal to furnish information or the furnishing of false information by a member of the Australian Federal Police to a member of the Investigation Division shall be an offence punishable by a fine of $1,000 or imprisonment for 6 months.

Under clause 18 of the Bill the Commissioner is required to incorporate in his annual report details of the activities of the Investigation Division for the preceding year.

Part III of the Bill deals with the responsibilities of the Ombudsman in the investigation of complaints against the Australian Federal Police. However, a number of important provisions relating to the role of the Ombudsman are also contained in Part II.

Clause 6(3) of the Bill provides that the Ombudsman is to be advised the details of all complaints received by the Internal Investigation Division and clause 10(1) requires that copies of all reports of the Investigating Division, together with any comments of the Commissioner, are to be forwarded to the Ombudsman as soon as practicable.

The Bill does not adopt the Law Reform Commission's proposal that the Ombudsman should have a statutory right to ensure that a charge is brought before the Disciplinary Tribunal even if the Commissioner does not consider such action warranted. Clause 11(3) provides that in cases of conflict the Ombudsman and the Commissioner shall confer and clause 11(5) provides that where they cannot agree the matter is to be referred to the Attorney-General who, pursuant to clause 11(7) will direct what action is to be taken.
The Law Reform Commission's Supplementary Report proceeded on the basis that the Ombudsman in exercising his powers under this legislation would also be able to exercise his powers under the Ombudsman Act 1976, e.g. to investigate complaints about the police force's handling of complaints. However, clause 22(5) of the Bill precludes the operation of the Ombudsman Act 1976 from application to actions of the Australian Federal Police and members of that force. In view of the range of powers conferred on the Ombudsman by the Bill this exclusion would not seem to restrict the role of the Ombudsman.

All complaints relating to the practices and procedures of the Australian Federal Police Force are required by clause 23(1)(a) to be investigated by the Ombudsman. However, clause 23(1)(b) provides that complaints made initially to the Ombudsman in respect of the actions of individual members of the police force are to be referred to the Commissioner for investigation by the investigation division.

Under clause 32(1) of the Bill the Ombudsman may report to the Prime Minister if he is of the opinion that the Commissioner has not within a reasonable time taken adequate and appropriate action in respect of a report made by him following an investigation under Part III of the Bill. Following a report to the Prime Minister the Ombudsman may under clause 33 forward to the President of the Senate and the Speaker of the House of Representatives copies of his report for presentation to both Houses of Parliament.

Where the Ombudsman is not satisfied that a complaint has been adequately investigated by the Investigation Division clause 36(1) provides that he may either request the Commissioner to arrange a further investigation by the Investigation Division or he may advise the Commissioner that he intends to investigate the complaint himself.

Part IV of the Bill deals with Special Investigations in respect of senior officers, members of the Investigation Division and other matters not appropriate for investigation by the Investigation Division. This basically accords with the recommendations of the Law Reform Commission that the Ombudsman should have primary jurisdiction in these matters. However, clause 46 contains provisions under which a person specified by the Minister may conduct such investigations in lieu of the Ombudsman.

Part V of the Bill contains provisions enabling the Minister to arrange special enquiries and sets out the
powers conferred on persons carrying out such enquiries.

The Federal Police Disciplinary Tribunal is established by Part VI of the Bill. Clause 55 provides that the President and any Deputy President shall be the holder of a judicial office and any other member of the Tribunal shall either be a Magistrate of a State or Territory or shall have been a legal practitioner for not less than 5 years.

The principal matter in which the provisions relating to the Tribunal differ from the recommendations of the Law Reform Commission appears in clause 67. The Commission considered that in all cases the Tribunal should determine penalty as well as the guilt of the defendant, clause 67 provides that in cases other than those heard by the President or a Deputy President the Tribunal shall only determine the issue of guilt and penalty shall be fixed by the Commissioner.

The regulations referred to in this part are the Australian Federal Police (Discipline) Regulations, Part II of which sets out a disciplinary code governing the conduct of members.

For further information, if required, contact:

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