



Australian Protective Service Amendment Act 2003

No. 128, 2003

**An Act to amend the *Australian Protective Service
Act 1987*, and for related purposes**

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

Contents

| | | |
|---|--------------------|----------|
| 1 | Short title | 1 |
| 2 | Commencement | 2 |
| 3 | Schedule(s) | 2 |
| Schedule 1—Amendments | | 3 |
| <i>Australian Protective Service Act 1987</i> | | <i>3</i> |



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No. 128, 2003

An Act to amend the *Australian Protective Service Act 1987*, and for related purposes

[Assented to 8 December 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australian Protective Service Amendment Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

| Commencement information | | |
|---|--|-----------------|
| Column 1 | Column 2 | Column 3 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent | 8 December 2003 |
| 2. Schedule 1 | The 28th day after the day on which this Act receives the Royal Assent | 5 January 2004 |

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 is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Australian Protective Service Act 1987

1 After section 18

Insert:

18A Requirement to provide name etc.

(1) If:

- (a) a protective service officer suspects on reasonable grounds that a person might have just committed, might be committing, or might be about to commit, an offence to which section 13 applies; and
- (b) the person is in a place, or in the vicinity of a place, person or thing, in respect of which the Protective Service is performing functions under this Act;

the officer may request the person to provide to the officer:

- (c) the person's name; and
- (d) the person's residential address; and
- (e) the person's reason for being in the place, or in the vicinity of the place, person or thing, in respect of which the Protective Service is performing functions under this Act; and
- (f) evidence of the person's identity.

(2) If a protective service officer:

- (a) makes a request under subsection (1); and
- (b) informs the person of the officer's authority to make the request; and
- (c) informs the person that it may be an offence not to comply with the request; and
- (d) complies with subsection 19(3) or 20(2);

the person must not:

- (e) fail to comply with the request; or
- (f) 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 person 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*).

18B Stopping and searching

- (1) This section applies if a protective service officer suspects on reasonable grounds that:

- (a) a person:

- (i) has a thing under the person's immediate control; or
- (ii) is occupying a thing; or
- (iii) has a thing in a vehicle operated or occupied by the person; or
- (iv) has brought a thing on to premises at which the Protective Service is performing functions under this Act; and

- (b) the thing is likely to cause, or is likely to be used by the person or another to cause:

- (i) substantial damage to a place or a thing in respect of which the Protective Service is performing functions under this Act; or
- (ii) death or serious harm to a person in respect of whom the Protective Service is performing functions under this Act;

in circumstances that would be likely to involve the commission of an offence to which section 13 applies.

- (2) The protective service officer may:

- (a) stop and detain the person 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 protective service officer is of the same sex as the person—conduct an ordinary search or a frisk search of the person;

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- (ii) search any thing under the person's immediate control;
 - (iii) search any vehicle operated or occupied by the person.
 - (3) If the protective service officer is not of the same sex as the person, an ordinary search or a frisk search of the person for the purpose of searching for the thing may be conducted by:
 - (a) if a protective service officer of the same sex is reasonably available to conduct the search—a protective service officer of the same sex as the person; or
 - (b) if a protective service officer of the same sex is not reasonably available to conduct the search:
 - (i) a police officer; or
 - (ii) an officer of Customs (within the meaning of subsection 4(1) of the *Customs Act 1901*);
 who is of the same sex as the person and who is reasonably available to conduct the search; or
 - (c) otherwise—any other person:
 - (i) who is of the same sex as the person to be searched; and
 - (ii) who is requested by the protective service officer to conduct the search; and
 - (iii) who freely consents to conduct the search.
 - (3A) If the protective service officer makes a request of an officer of Customs pursuant to paragraph (3)(b), or of another person pursuant to paragraph (3)(c), to conduct the search, the protective service officer must explain to the officer of Customs or other person:
 - (a) if the officer of Customs or other person has been requested to conduct an ordinary search, the meaning of an ordinary search pursuant to subsection (8);
 - (b) if the officer of Customs or other person has been requested to conduct a frisk search, the meaning of a frisk search pursuant to subsection (8);
 - (c) that, when conducting the search, the officer of Customs or other person must not use more force, or subject a person to greater indignity, than is reasonable and necessary in order to conduct the search.
 - (4) An action or proceeding, whether civil or criminal, does not lie against a person who conducts a search under paragraph (3)(b) or
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(c) if the person acts in good faith and does not contravene subsection (5).

(5) A protective service officer or other person who conducts a search of a person under this section must not use more force, or subject a person to greater indignity, than is reasonable and necessary in order to conduct the search.

(5A) A person must not be detained under this section for longer than is reasonably necessary for a search to be conducted in accordance with this section.

(6) If subparagraph (1)(a)(iv) applies, the protective service officer may, for the purpose of searching for the thing mentioned in that subparagraph, search a thing that the officer suspects on reasonable grounds was brought by the person on to premises at which the Protective Service is performing functions under this Act.

(7) In searching a thing under subsection (2) or (6), the protective service officer may use such force as is necessary and reasonable 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 person mentioned in that subsection has been given a reasonable opportunity to open the thing or part of it; or
- (b) if the search is under subsection (6)—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.

(8) In this section:

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.

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

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- (b) an examination of those items.

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

18C Seizure of things found

- (1) If, as a result of conducting a search under section 18B, a protective service officer, or a person who conducted the search under subsection 18B(3) on behalf of the officer, finds the thing for which the officer or person was searching, the officer may seize the thing.
- (2) If, as a result of conducting a search under section 18B, a protective service officer, or a person who conducted the search under subsection 18B(3) on behalf of the officer, finds a weapon, or other thing, that the officer suspects on reasonable grounds is likely to be used by the person or another to cause death or serious harm to a person:
 - (a) in respect of whom the Protective Service is performing functions under this Act; or
 - (b) who is in a place, or in the vicinity of a person, place or thing, in respect of which the Protective Service is performing functions under this Act;
 the officer may seize the weapon or thing.
- (3) A protective service officer must ensure that a thing seized by the officer is delivered into the custody of a police officer as soon as practicable.

18D How seized things must be dealt with

- (1) A police officer who is for the time being responsible for a thing seized under section 18C must, within 7 days after the day on which the thing was delivered into the custody of a police officer under subsection 18C(3), 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.
- (4) The owner of a thing seized under section 18C may request the return of the thing.
- (5) A police officer who is for the time being responsible for a thing seized under section 18C 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 18C(1)—the 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 Protective Service is performing functions under this Act; or
 - (ii) death or serious harm to a person in respect of whom the Protective Service is performing functions under this Act;in circumstances that would be likely to involve the commission of an offence to which section 13 applies; and
 - (c) in the case of a thing seized under subsection 18C(2)—the 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:

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- (i) in respect of whom the Protective Service is performing functions under this Act; or
 - (ii) who is in a place, or in the vicinity of a person, place or thing, in respect of which the Protective Service is performing functions under this Act.
 - (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 day on which the thing was delivered into the custody of a police officer under subsection 18C(3).
 - (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 day on which the thing was delivered into the custody of a police officer under subsection 18C(3); 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 under section 18E.

18E Application to magistrate

- (1) If subsection 18D(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 18C(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 Protective Service is performing functions under this Act; or
 - (ii) death or serious harm to a person in respect of whom the Protective Service is performing functions under this Act;in circumstances that would be likely to involve the commission of an offence to which section 13 applies; and
- (b) in the case of a thing seized under subsection 18C(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 Protective Service is performing functions under this Act; or
 - (ii) who is in a place, or in the vicinity of a person, place or thing, in respect of which the Protective Service is performing functions under this Act;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 required by subsection (3), the magistrate must order that the thing be returned to the owner.

18F Modification of sections 18A, 18B, 18C, 18D and 18E to confer powers on the Australian Federal Police

References to a protective service officer

- (1) A reference in:
 - (a) section 18A; and

- (b) section 18B; and
 - (c) section 18C (other than subsection 18C(3));
- to a protective service officer includes a reference to a member or a special member of the Australian Federal Police.

References to a person, place or thing in respect of which the Protective Service is performing functions

- (2) In relation to the exercise of a power under section 18A, 18B or 18C by a member or a special member of the Australian Federal Police, a reference in sections 18A, 18B, 18C, 18D and 18E to a person, place or thing in respect of which the Protective Service is performing functions includes a reference to a person, place or thing in respect of which the Protective Service has functions.

References to an offence to which section 13 applies

- (3) In relation to the exercise of a power under section 18A, 18B or 18C by a member or a special member of the Australian Federal Police, a reference in:
 - (a) paragraph 18A(1)(a); and
 - (b) subsection 18B(1); and
 - (c) paragraph 18D(5)(b); and
 - (d) paragraph 18E(3)(a);
 to an offence to which section 13 applies includes a reference to an offence to which section 13 would apply if references in subsection 13(2) to a person, place or thing in respect of which the Protective Service is performing its functions were references to a person, place or thing in respect of which the Protective Service has functions.

Modification of paragraph 18A(2)(d)

- (4) In relation to the exercise of a power under section 18A by a member or a special member of the Australian Federal Police, paragraph 18A(2)(d) is modified in the following way:
 - (a) if a member exercises the power—the reference in paragraph 18A(2)(d) to subsection 19(3) or 20(2) of this Act is taken to be a reference to subsection 64A(1) of the *Australian Federal Police Act 1979*; and

- (b) if a special member exercises the power—paragraph 18A(2)(d) is taken to be omitted.

References to the day on which a thing was delivered into the custody of a police officer

- (5) In relation to a thing seized under section 18C by a member or special member of the Australian Federal Police, a reference in subsections 18D(1), (6) and (7) to the day on which the thing was delivered into the custody of a police officer is taken to be a reference to the day on which the thing was seized.

2 After subsection 21(4)

Insert:

- (4A) The powers conferred, and duties imposed, by this Part on members and special members of the Australian Federal Police 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 Part 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 Part.

*[Minister's second reading speech made in—
Senate on 26 June 2003
House of Representatives on 6 November 2003]*