



# **Australian Protective Service Act 1987**

## **Act No. 7 of 1987 as amended**

This compilation was prepared on 19 July 2002  
taking into account amendments up to Act No. 65 of 2002

The text of any of those amendments not in force  
on that date is appended in the Notes section

Prepared by the Office of Legislative Drafting,  
Attorney-General's Department, Canberra



---

# Contents

<b>Part I—Preliminary</b>	1
1 Short title [see Note 1].....	1
2 Commencement [see Note 1].....	1
3 Interpretation .....	1
4 Extension to external Territories .....	2
4A Application of the <i>Criminal Code</i> .....	2
<b>Part II—Australian Protective Service</b>	3
5 Establishment of Protective Service .....	3
6 Functions of Protective Service .....	3
7 Director of Protective Service .....	6
8 Protective service officers other than Director.....	6
9 Special protective service officers .....	6
10 Oath or affirmation of office .....	7
11 General administration and control of Protective Service.....	7
12 General Orders .....	7
<b>Part III—Powers and duties of protective service officers</b>	8
13 Powers of arrest.....	8
14 Use of force in making arrest etc.....	9
15 Arrested person to be informed of grounds of arrest.....	9
16 Search of arrested person.....	10
17 How arrested person to be dealt with.....	11
18 Release of arrested person .....	11
19 Uniforms and identification numbers .....	12
20 Identity cards .....	13
21 Relationship of Part to other laws.....	14
22 Immunity from certain State and Territory laws.....	15
<b>Part IV—Miscellaneous</b>	16
23 Certificates .....	16
24 Delegation by Director .....	16
25 Delegation by Commissioner .....	16
25A Director may charge for certain services .....	17
26 Regulations.....	17
27 Annual report.....	17
<b>Notes</b>	19



---

# An Act to establish an Australian Protective Service

## Part I—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Australian Protective Service Act 1987*.

### 2 Commencement [see Note 1]

This Act shall come into operation on a day to be fixed by Proclamation.

### 3 Interpretation

- (1) In this Act, unless the contrary intention appears:

*APS employee* has the same meaning as in the *Public Service Act 1999*.

*Commissioner* means the Commissioner of Police referred to in section 6 of the *Australian Federal Police Act 1979*.

*Director* means the Director of the Protective Service, being the person occupying the position in the Protective Service created under section 7.

*police officer* means:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member, however described, of a police force of a State or Territory.

*Protective Service* means the Australian Protective Service established by this Act.

*protective service officer* means the Director or a person occupying a position in the Protective Service created under section 8.

Section 4

---

*special protective service officer* means a person holding an appointment under subsection 9(1) as a special protective service officer.

- (2) A reference in this Act (other than in subsection (1) of this section, section 8 and subsection 9(3)) to a protective service officer includes a reference to a special protective service officer.

**4 Extension to external Territories**

This Act extends to every external Territory.

**4A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## Part II—Australian Protective Service

### 5 Establishment of Protective Service

- (1) The Australian Protective Service is established.
- (2) For the purposes of the *Public Service Act 1999*, the Protective Service is a Statutory Agency constituted by:
  - (a) the Commissioner as Head of the Agency; and
  - (b) the APS employees assisting the Commissioner under this Act.
- (3) The reference to APS employees in paragraph (2)(b) does not include a reference to special protective service officers who are APS employees in another Agency.
- (4) In this section:

*Agency* has the same meaning as in the *Public Service Act 1999*.

### 6 Functions of Protective Service

- (1) Subject to subsection (4), the functions of the Protective Service are to provide such protective and custodial services for or on behalf of the Commonwealth as the Minister, by notice in writing published in the *Gazette*, directs.
- (2) Without limiting the generality of subsection (1), but subject to subsection (4), the functions of the Protective Service may include:
  - (a) the protection of property in which:
    - (i) the Commonwealth, a foreign country or an international organisation has an interest; or
    - (ii) an authority of the Commonwealth, of a foreign country or of an international organisation has an interest;
  - (ab) the protection of property in which a designated overseas mission has an interest;

Section 6

---

- (b) the protection of, and of members of the family and household of, persons holding office under the Commonwealth;
  - (c) the protection of internationally protected persons;
  - (d) the keeping of persons in custody under the *Migration Act 1958*; and
  - (e) functions incidental or conducive to a function referred to in paragraph (a), (ab), (b), (c) or (d).
- (3) Without limiting the generality of paragraph (2)(a), the Commonwealth, a foreign country or an international organisation, or an authority of the Commonwealth, of a foreign country or of an international organisation, as the case requires, shall be taken, for the purposes of that paragraph, to have an interest in any property that it owns, occupies or uses or that is in its possession or under its control.
- (3A) Without limiting the generality of paragraph (2)(ab), a designated overseas mission is taken, for the purposes of that paragraph, to have an interest in any property:
  - (a) that it owns, occupies or uses; or
  - (b) that is in its possession or under its control.
- (4) The functions of the Protective Service do not include the provision of bodyguard services.
- (5) In this section:
  - authority:**
    - (a) in relation to the Commonwealth, means:
      - (i) a body, whether incorporated or unincorporated, established for a public purpose:
        - (A) by or under a law of the Commonwealth or a law of a Territory other than the Northern Territory; or
        - (B) by the Governor-General or a Minister;
      - (ii) an incorporated company in which the Commonwealth or a body described in subparagraph (i) has a controlling interest; or



- (iii) any other agency or instrumentality of the Commonwealth;
- (b) in relation to a foreign country, means:
  - (i) a body, whether incorporated or unincorporated, established for a public purpose:
    - (A) by or under a law of the foreign country;
    - (B) by the head of the foreign country in his or her public capacity; or
    - (C) by the executive government of the foreign country, including by a department or organ of the executive government of the foreign country;
  - (ii) an incorporated company in which the foreign country or a body described in subparagraph (i) has a controlling interest; or
  - (iii) any other agency or instrumentality of the foreign country; and
- (c) in relation to an international organisation, includes an agency or instrumentality of the organisation.

***designated overseas mission*** has the same meaning as in the *Overseas Missions (Privileges and Immunities) Act 1995*.

***foreign country*** means any country outside Australia (whether or not an independent sovereign State), and includes a province, state, self-governing territory or other political sub-division (by whatever name known) of such a country.

***international organisation*** has the same meaning as the term international organization in section 5A of the *Diplomatic Privileges and Immunities Act 1967*.

***internationally protected person*** has the same meaning as in the *Crimes (Internationally Protected Persons) Act 1976*.

***office under the Commonwealth*** includes:

- (a) office as Governor-General;
- (b) office as a Minister;
- (c) office as a Senator or member of the House of Representatives;

## Section 7

---

- (d) office as a Justice of the High Court;
- (e) an office established by, or an appointment made under, a law of the Commonwealth or a law of a Territory other than the Northern Territory; or
- (f) an appointment made by the Governor-General or a Minister otherwise than under such a law.

*property* means real and personal property of every description.

### 7 Director of Protective Service

The Commissioner may, by notice in writing published in the *Gazette*, create a position in the Protective Service the occupant of which is the Director of the Protective Service.

### 8 Protective service officers other than Director

The Commissioner may, by notice in writing published in the *Gazette*, create positions in the Protective Service the occupants of which are protective service officers.

### 9 Special protective service officers

- (1) Subject to subsection (2), the Director may, by instrument signed by him or her, appoint as a special protective service officer a person who is appointed or engaged under the *Public Service Act 1999*.
- (2) The Director shall not appoint a person as a special protective service officer unless the Director has previously obtained the written consent of the person's Agency Head within the meaning of the *Public Service Act 1999*.
- (3) A special protective service officer has all the powers and duties of a protective service officer except in so far as any of those powers or duties are excluded or limited in the instrument of his or her appointment, and any such exclusion or limitation may be expressed either generally or in relation to persons, places or things.

**10 Oath or affirmation of office**

A protective service officer shall not perform the duties, or exercise the powers, of a protective service officer unless he or she has made and subscribed an oath or affirmation in the prescribed form before a person authorised, in writing, by the Commissioner.

**11 General administration and control of Protective Service**

The Director has, under the Commissioner, responsibility for the general administration of, and the control of the operations of, the Protective Service.

**12 General Orders**

- (1) The Director may, with the written approval of the Commissioner, issue directions (to be known as General Orders):
  - (a) with respect to the general administration of the Protective Service; or
  - (b) for the effective and efficient conduct of the operations of the Protective Service.
- (2) It is the duty of a protective service officer to comply with the General Orders.
- (3) Where a provision of the General Orders is inconsistent with:
  - (a) a provision of this Act or any other Act; or
  - (b) a provision of regulations made under this Act or any other Act; or
  - (c) a determination made under section 24 of the *Public Service Act 1999*; or
  - (d) a direction issued by the Public Service Commissioner under section 11, 15 or 36 of the *Public Service Act 1999*; or
  - (e) a direction issued by the Prime Minister under section 21 of the *Public Service Act 1999*; or
  - (f) the Classification Rules made under section 23 of the *Public Service Act 1999*;the latter prevails and the former, to the extent of the inconsistency, is invalid.

Section 13

---

## **Part III—Powers and duties of protective service officers**

### **13 Powers of arrest**

- (1) A protective service officer may, without warrant, arrest a person for an offence to which this section applies if the protective service officer believes on reasonable grounds that:
  - (a) the person has just committed, or is committing, the offence;
  - (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;
    - (ii) preventing the continuation of, or a repetition of, the offence or the commission of a further offence to which this section applies;
    - (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.
- (2) This section applies to:
  - (a) an offence in relation to a person, place or thing in respect of which the Protective Service is performing its functions, being an offence under:
    - (i) section 24AB, 29, 46 (other than paragraph (b)), 47, 47A, 78, 79, 83A, 89 or 89A of the *Crimes Act 1914*;
    - (ii) the *Crimes (Internationally Protected Persons) Act 1976* or Part 2 of the *Crimes (Aviation) Act 1991*;
    - (iii) the *Defence (Special Undertakings) Act 1952* (other than subsection 31(2));
    - (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

- (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 referred to in paragraph (a); or
- (bb) an offence against Division 101 of the *Criminal Code* that relates to a person, place or thing in respect of which the Protective Service is performing its functions; or
- (c) an offence in relation to a person, place or thing in respect of which the Protective Service is performing its functions, being an offence against section 131.1, 141.1, 142.1, 148.1, 147.1 or 149.1 of the *Criminal Code*.

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

- (1) A protective service officer shall 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 shall 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.

#### **15 Arrested person to be informed of grounds of arrest**

- (1) A protective service officer who arrests a person for an offence shall 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.

## Section 16

---

- (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 shall forthwith 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.

### **16 Search of arrested person**

- (1) A protective service officer may, upon lawfully arresting a person for an offence, search the person, 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:
  - (a) to ascertain 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
  - (b) to prevent the concealment, loss or destruction of evidence of, or relating to, the offence.
- (2) A search under this section of a person or the clothing that a person is wearing shall be conducted by:
  - (a) a protective service officer of the same sex as the person; or
  - (b) in a case where a protective service officer of the same sex as the person is not available to conduct the search—any other person who is of the same sex and is requested by a 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 shall not use more force, or subject a 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 referred to 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;
    - (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.

### **17 How arrested person to be dealt with**

- (1) A protective service officer who arrests a person for an offence shall ensure that the person is forthwith delivered into the custody of a police officer to be dealt with according to law.
- (2) Where a weapon or other thing has been seized from the person under subsection 16(5), the protective service officer shall ensure that the weapon or other thing is delivered to the police officer into whose custody the person is delivered.

### **18 Release of arrested person**

Where:

- (a) a person has been arrested for an offence by a protective service officer;
- (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;
  - (ii) ceases to have reasonable grounds for believing that the holding of the person in custody is necessary in order to

## Section 19

---

achieve a purpose referred to in paragraph 13(1)(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 referred to 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 referred to in paragraph 13(1)(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 referred to in that paragraph;

the protective service officer shall forthwith release the person from custody in respect of the offence.

### **19 Uniforms and identification numbers**

- (1) A protective service officer shall, at all times when on duty, wear a uniform of the kind that the protective service officer is, under the General Orders, required to wear when on duty.
- (2) Subsection (1) does not apply to a protective service officer during periods when the protective service officer is required or permitted by the Director not to wear uniform.
- (3) A protective service officer shall, at all times when in uniform, wear his or her identification number on, or attached to, the front of the uniform.

Penalty: \$500.

- (3A) Subsection (3) is an offence of strict liability.

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

- (4) It is a defence to a prosecution for an offence against subsection (3) if the defendant proves that the contravention of the subsection resulted from:
  - (a) an 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.



- (5) The Director shall take such steps as are necessary to enable protective service officers to comply with subsections (1) and (3).
- (6) Where a person in possession of a protective service officer's uniform ceases to be a protective service officer, the person shall forthwith return the uniform to the APS employee in the Protective Service who is designated, in writing, by the Director.

Penalty: \$100.

- (7) Subsection (6) is an offence of strict liability.

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

## **20 Identity cards**

- (1) The Director may cause an identity card, in a form approved in writing by the Director, to be issued to a protective service officer.
- (2) A protective service officer who is not in uniform shall not, in the course of his or her duties as a protective service officer, arrest a person or exercise any other power in relation to a person unless the protective service officer produces his or her identity card for the person's inspection and, if the protective service officer fails to do so, the person is not obliged to comply with any request made by, or any requirement of, the protective service officer.
- (3) Subsection (2) does not apply if the person, by his or her own actions, makes it impracticable for the protective service officer to produce his or her identity card for the person's inspection.
- (4) Where a person in possession of an identity card issued under subsection (1) ceases to be a protective service officer, the person shall forthwith return the identity card to the APS employee in the Protective Service who is designated, in writing, by the Director.

Penalty: \$100.

- (4A) Subsection (4) is an offence of strict liability.

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

- (5) The Director may, in writing, direct that identity cards issued before the commencement of this Act to persons who are, after that commencement, protective service officers shall be taken,

## Section 21

---

after that commencement, to have been issued under subsection (1).

### **21 Relationship of Part to other laws**

- (1) The power of arrest conferred by section 13 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 13, under any other law of the Commonwealth or under the law of a State or Territory), sections 14 to 18 (inclusive) and subsections 20(2) and (3) apply in relation to the arrest notwithstanding any other law of the Commonwealth or the law of a State or Territory.
- (3) Subsection (2) has effect subject to:
  - (a) subsections 84(2), (3) and (4) of the *Crimes Act 1914*; and
  - (b) sections 37A, 38 and 39 of the *Migration Act 1958*.
- (4) Subject to subsection (2), the powers conferred, and duties imposed, by this Part 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 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 providing for such powers or duties in so far as it is capable of operating concurrently with this Part.
- (5) This Part 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 Part 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 Part.

## **22 Immunity from certain State and Territory laws**

A protective service officer is not bound by any law of a State or Territory that would require the officer to have permission (whether in the form of a licence or otherwise) to use or to have in his or her possession, or would require the officer to register, a vehicle, vessel, animal, firearm or other thing belonging to the Commonwealth.

## Part IV—Miscellaneous

### 23 Certificates

In any action or proceeding in a court (including a court of a State or Territory), a certificate signed by the Commissioner certifying that a person specified in the certificate was, at a specified time or during a specified period, the Director or another protective service officer, or an APS employee in the Protective Service, is *prima facie* evidence of the facts certified.

### 24 Delegation by Director

- (1) The Director may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Director, delegate to another APS employee in the Protective Service all or any of the powers of the Director under this Act, other than:
  - (a) this power of delegation; or
  - (b) the power to issue General Orders; or
  - (c) the powers the Director has because he or she is a protective service officer.
- (2) A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Director.
- (3) A delegation of a power by the Director under subsection (1) does not prevent the exercise of the power by the Director.

### 25 Delegation by Commissioner

- (1) The Commissioner may, either generally or as otherwise provided in the instrument of delegation, by writing signed by the Commissioner, delegate to the Director or another APS employee in the Protective Service the power of the Commissioner to authorise persons under section 10.
- (2) The power shall, when exercised by the delegate, be deemed to have been exercised by the Commissioner.

- (3) A delegation by the Commissioner under subsection (1) does not prevent the exercise of the power by the Commissioner.

### **25A Director may charge for certain services**

- (1) If services are provided by the Protective Service at the request of a person other than:
- (a) a person holding office under the Commonwealth; or
  - (b) an authority (as defined by subsection 6(5)) of the Commonwealth or a member or officer of such an authority;
- the Director may charge for the services.
- (2) A charge made under subsection (1) must be an amount reasonably related to the cost of providing the relevant services.

### **26 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing fines not exceeding \$500 for offences against the regulations.

### **27 Annual report**

- (1) As soon as practicable after each 30 June, the Commissioner must prepare and give to the Minister a report on the administration and operations of the Protective Service during the year that ended on that date.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sittings days of that House after the Minister receives the report.
- (3) The report may be combined with the report prepared by the Commissioner for that year under section 67 of the *Australian Federal Police Act 1979*.



**Table of Acts****Notes to the *Australian Protective Service Act 1987*****Note 1**

The *Australian Protective Service Act 1987* as shown in this compilation comprises Act No. 7, 1987 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 24 November 2000 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Protective Service Act 1987</i>	7, 1987	13 Mar 1987	25 Sept 1987 ( <i>see Gazette</i> 1987, No. S249)	—
<i>Administrative Services Legislation Amendment Act 1989</i>	5, 1989	13 Mar 1989	S. 7: Royal Assent (a)	—
<i>Migration Legislation Amendment Act 1989</i>	59, 1989	19 June 1989	Ss. 1 and 2: Royal Assent S. 27: 1 July 1989 ( <i>see Gazette</i> 1989, No. S218) S. 35: 20 Dec 1989 ( <i>see s. 2(6)</i> ) Part 3 (ss. 36, 37): 19 June 1990 Remainder: 19 Dec 1989 ( <i>see s. 2(5)</i> )	—
<i>Australian Federal Police Legislation Amendment Act (No. 2) 1989</i>	153, 1989	17 Dec 1989	Ss. 1, 2 and Part 3 (ss. 61, 62): Royal Assent S. 11: 1 July 1991 Ss. 38 and 71: 1 Jan 1991 Remainder: 1 Jan 1990 ( <i>see Gazette</i> 1989, No. S397)	—
<b>as amended by</b>				
<i>Crimes Legislation Amendment Act 1991</i>	28, 1991	4 Mar 1991	S. 74(1): Royal Assent (b)	—
<i>Crimes (Aviation) Act 1991</i>	139, 1991	27 Sept 1991	16 Mar 1992 ( <i>see Gazette</i> 1992, No. S65)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Qantas Sale Act 1992</i>	196, 1992	21 Dec 1992	Schedule (Part 1): 10 Mar 1992 ( <i>see Gazette</i> 1993, No. GN17) (c) Schedule (Part 5): 30 Aug 1995 ( <i>see Gazette</i> 1995, No. S324) (c)	S. 2(6) (am. by 60, 1993, s. 4; 168, 1994, s. 3)
<b>as amended by</b>				
<i>Qantas Sale Amendment Act 1993</i>	60, 1993	3 Nov 1993	10 Mar 1993	—
<i>Qantas Sale Amendment Act 1994</i>	168, 1994	16 Dec 1994	S. 3 (item 17): Royal Assent (d)	—
<i>Overseas Missions (Privileges and Immunities) (Consequential Amendments) Act 1995</i>	58, 1995	28 June 1995	28 June 1995	—
<i>Law and Justice Legislation Amendment Act 1999</i>	125, 1999	13 Oct 1999	Schedule 3: Royal Assent (e)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 233-235): 5 Dec 1999 ( <i>see Gazette</i> 1999, No. S584) (f)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1-3 and Schedule 1 (items 1, 4, 6, 7, 9-11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 3: (g)	S. 4(1), (2) [see Table A]
<i>Australian Protective Service Amendment Act 2002</i>	55, 2002	29 June 2002	29 June 2002	Sch. 1 (items 26-29) [see Table A]
<i>Security Legislation Amendment (Terrorism) Act 2002</i>	65, 2002	5 July 2002	S. 4: Royal Assent Schedule 2 (item 1): [see (h) and Note 2] Schedule 2 (item 2): 6 July 2002 (h)	S. 4 [see Table A]



**Act Notes**

- 
- (a) The *Australian Protective Service Act 1987* was amended by section 7 only of the *Administrative Services Legislation Amendment Act 1989*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (b) The *Australian Federal Police Legislation Amendment Act (No. 2) 1989* was amended by subsection 74(1) only of the *Crimes Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *Australian Protective Service Act 1987* was amended by the Schedule (Parts 1 and 5) of the *Qantas Sale Act 1992*, subsections 2(2), (3)(a) and (c) of which provide as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
  - (3) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the *Gazette* but only if:
    - (a) in the case of sections 30, 31, 35, 37, 39, 43 and 50 and Parts 1 and 2 of the Schedule—the day is not earlier than the substantial minority sale day; and
    - (c) in the case of sections 25, 36, 38, 44 and 51 and Parts 5, 6 and 7 of the Schedule—the day is not earlier than the 100% sale day.
- (d) The *Qantas Sale Act 1992* was amended by section 3 (item 17) only of the *Qantas Sale Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (e) The *Australian Protective Service Act 1987* was amended by Schedule 3 only of the *Law and Justice Legislation Amendment Act 1999*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (f) The *Australian Protective Service Act 1987* was amended by Schedule 1 (items 233-235) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (g) The *Australian Protective Service Act 1987* was amended by Schedule 3 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
    - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
 Item 15 commenced on 24 May 2001.
- (h) The *Australian Protective Service Act 1987* was amended by Schedule 2 (items 1 and 2) only of the *Security Legislation Amendment (Terrorism) Act 2002*, subsection 2(1) (items 9(a) and 10) of which provides as follows:
- (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.
-

## Act Notes

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
9. Schedule 2, item 1	The later of: (a) the commencement of Division 72 of the <i>Criminal Code</i> ; and	[see Note 2]
10. Schedule 2, item 2	At the same time as Division 101 of the <i>Criminal Code</i> commences	6 July 2002

---

**Table of Amendments**
**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 3 .....	am. No. 55, 2002
S. 4A.....	ad. No. 24, 2001
S. 5 .....	rs. No. 55, 2002
S. 6 .....	am. No. 196, 1992; No. 58, 1995
Ss. 7, 8 .....	rs. No. 55, 2002
S. 9 .....	am. No. 146, 1999
Ss. 10, 11.....	am. No. 55, 2002
S. 12 .....	am. No. 146, 1999; No. 55, 2002
S. 13 .....	am. Nos. 5 and 153, 1989; No. 139, 1991; No. 137, 2000; No. 24, 2001; No. 65, 2002
Ss. 19, 20.....	am. No. 24, 2001; No. 55, 2002
S. 21 .....	am. No. 59, 1989
Ss. 23, 24.....	am. No. 55, 2002
Heading to s. 25.....	am. No. 55, 2002
S. 25 .....	am. No. 55, 2002
S. 25A.....	ad. No. 125, 1999
S. 27 .....	ad. No. 55, 2002

## **Note 2**

---

## **Note 2**

*Security Legislation Amendment (Terrorism) Act 2002* (No. 65, 2002)

The following amendment commences 6 months after the International Convention for the Suppression of Terrorist Bombings enters into force for Australia if not proclaimed within that period:

## **Schedule 2**

### **1 After paragraph 13(2)(b)**

Insert:

- (ba) an offence against Division 72 of the *Criminal Code* that relates to a person, place or thing in respect of which the Protective Service is performing its functions; or

As at 19 July 2002 the amendment is not incorporated in this compilation.

---

**Table A****Table A****Application, saving or transitional provisions**

*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences)*  
*Act 2000 (No. 137, 2000)*

**Schedule 2****418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
-

## **Table A**

---

*Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001* (No. 24, 2001)

### **4 Application of amendments**

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

---

*Australian Protective Service Amendment Act 2002* (No. 55, 2002)

## **Schedule 1**

### **26 Transitional—positions**

- (1) An office designated by the Secretary under section 7 or 8 of the *Australian Protective Service Act 1987* as in force immediately before the commencement of this Act continues in existence under the *Australian Protective Service Act 1987* as amended by this Act as if it were a position created by the Commissioner under that section as amended.
- (2) To avoid doubt:
  - (a) the person who was the Director of the Protective Service immediately before the commencement of this Act continues to be the Director of the Protective Service under the *Australian Protective Service Act 1987* as amended by this Act; and
  - (b) a person who was a protective service officer or a special protective service officer immediately before the commencement of this Act continues to be a protective service officer or a special protective service officer, as the

**Table A**

case may be, under the *Australian Protective Service Act 1987* as amended by this Act; and

- (c) identity cards issued under section 20 of the *Australian Protective Service Act 1987* that were valid immediately before the commencement of this Act continue to be valid under the *Australian Protective Service Act 1987* as amended by this Act; and
- (d) delegations under section 24 of the *Australian Protective Service Act 1987* that were in force immediately before the commencement of this Act continue to be in force under the *Australian Protective Service Act 1987* as amended by this Act.

**27 Transitional—oaths and affirmations**

An oath or affirmation made and subscribed under section 10 of the *Australian Protective Service Act 1987* as in force immediately before the commencement of this Act is also taken to be an oath or affirmation made and subscribed under that section as amended by this Act.

**28 Transitional—general orders**

General orders in force under section 12 of the *Australian Protective Service Act 1987* immediately before the commencement of this Act continue to be in force under that section as amended by this Act as if they were issued with the written approval of the Commissioner.

**29 Transitional—section 23 certificates**

A certificate signed by the Secretary for the purposes of section 23 of the *Australian Protective Service Act 1987* as in force immediately before the commencement of this Act, has effect on and after the commencement of this Act as if it were signed by the Commissioner.

---

*Security Legislation Amendment (Terrorism) Act 2002* (No. 65, 2002)

**4 Public and independent review of operation of Security Acts relating to terrorism**

- (1) The Attorney-General must cause a review of the operation, effectiveness and implications of amendments made by the

**Table A**

---

*Security Legislation Amendment (Terrorism) Act 2002, Suppression of the Financing of Terrorism Act 2002, Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002, Border Security Legislation Amendment Act 2002 and Telecommunications Interception Legislation Amendment Act 2002.*

- (2) The review must be undertaken as soon as practicable after the third anniversary of the commencement of the amendments.
- (3) The review is to be undertaken by a committee consisting of:
  - (a) up to two persons appointed by the Attorney-General, one of whom must be a retired judicial officer who shall be the Chair of the Committee; and
  - (b) the Inspector-General of Intelligence and Security; and
  - (c) the Privacy Commissioner; and
  - (d) the Human Rights Commissioner; and
  - (e) the Commonwealth Ombudsman; and
  - (f) two persons (who must hold a legal practising certificate in an Australian jurisdiction) appointed by the Attorney-General on the nomination of the Law Council of Australia.
- (4) The Attorney-General may reject a nomination made under subsection (3)(f). If the Attorney-General rejects a nomination, the Law Council of Australia may nominate another person.
- (5) The committee must provide for public submissions and public hearings as part of the review.
- (6) The committee must, within six months of commencing the review, give the Attorney-General and the Parliamentary Joint Committee on ASIO, ASIS and DSD a written report of the review which includes an assessment of matters in subsection (1), and alternative approaches or mechanisms as appropriate.
- (7) The Attorney-General must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Attorney-General.
- (8) Before the copy of the report is tabled in Parliament, the Attorney-General may remove information from the copy of the report if the



**Table A**

---

Attorney-General is satisfied on advice from the Director-General of Security or the Commissioner of the Australian Federal Police that its inclusion may:

- (a) endanger a person's safety; or
  - (b) prejudice an investigation or prosecution; or
  - (c) compromise the operational activities or methodologies of the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service, the Defence Signals Directorate or the Australian Federal Police.
- (9) The Parliamentary Joint Committee on ASIO, ASIS and DSD must take account of the report of the review given to the Committee, when the Committee conducts its review under paragraph 29(1)(ba) of the *Intelligence Services Act 2001*.