



FEDERAL POLICE DISCIPLINARY TRIBUNAL

**ANNUAL REPORT
2003-2004**

Federal Police
Disciplinary Tribunal

Annual Report
2003-2004

© Commonwealth of Australia 2004

ISSN 0812-0838

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without written permission from the Commonwealth available from AusInfo. Requests and inquiries concerning reproduction and rights should be addressed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.



Telephone: (02) 9230 8567
Facsimile: (02) 9230 8535

FEDERAL POLICE DISCIPLINARY TRIBUNAL

LEVEL 16
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

2 August 2004

The Honourable Philip Ruddock
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General,

Pursuant to s 86 of the *Complaints (Australian Federal Police) Act 1981*, I submit to you a report of the operations of the Federal Police Disciplinary Tribunal for the year 1 July 2003 to 30 June 2004.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "S. M. Kiefel".

S. M. Kiefel
President

CONTENTS

		Page Number
Section 1	The Tribunal	1
1.1	Establishment and Constitution	1
1.2	Functions and Powers	1
1.3	Practice and Procedure	2
1.4	Developments	2
Section 2	Membership and Staff	3
Section 3	Activities	3
Section 4	Finance	4
Section 5	Appeals to the Federal Court of Australia	4
Appendix I	Enquiries and contact officer for Annual Report	5
	Document lodgement locations for the Tribunal	5
Appendix II	Registrar and Deputy Registrars of the Tribunal	6
Appendix III	Expenditure	6
Appendix IV	Reporting requirements under other legislation	
	1. Statement under Section 8 of the <i>Freedom of Information Act 1982</i>	7
	2. Information under Section 74 of the <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i>	8
	3. Reporting under Section 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i>	8

Section 1

THE TRIBUNAL

This report deals with the operations of the Federal Police Disciplinary Tribunal (the Tribunal) for the year 1 July 2003 to 30 June 2004.

1.1 ESTABLISHMENT AND CONSTITUTION

The Tribunal is established by the *Complaints (Australian Federal Police) Act 1981* (the Complaints Act). The responsible Minister is the Attorney-General. The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. To be appointed as President or as a Deputy President a person must be, or have the same status as, a Judge of the Federal Court of Australia or of the Supreme Court of a State or Territory. A member other than the President or a Deputy President must hold office as a Magistrate or be a legal practitioner of not less than five years standing. A member holds office for such period, not exceeding seven years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

For the purposes of the exercise of its powers in relation to a particular proceeding, the Tribunal is constituted by one member. The President gives directions as to the person who is to constitute the Tribunal.

1.2 FUNCTIONS AND POWERS

The Tribunal deals with disciplinary offences under the Australian Federal Police (Discipline) Regulations 1979. In addition, the Minister may refer to the Tribunal for inquiry and report a matter relating to the Australian Federal Police (AFP).

Disciplinary proceedings against AFP appointees are begun by the Commissioner of Police (the Commissioner). The Complaints Act requires certain of those proceedings to be heard and determined by the Tribunal. Other disciplinary proceedings may also be heard and determined by the Tribunal in circumstances prescribed by the Complaints Act, otherwise they are dealt with by the Commissioner.

If the Tribunal finds an AFP appointee guilty of a breach of discipline and the Tribunal is not constituted by the President or a Deputy President, it must remit the proceedings to the Commissioner for the imposition of a penalty. An appeal lies against the penalty imposed by the Commissioner to the Tribunal constituted by the President or a Deputy President, which may affirm the penalty or substitute another penalty.

Where the Commissioner determines that an AFP appointee is guilty of a disciplinary offence and he or she imposes a penalty, an appeal lies to the Tribunal constituted by the President or a Deputy President. The Tribunal may set aside the finding of the Commissioner and either substitute another finding or dismiss the proceeding, impose a penalty in respect of a breach of discipline different from that with which the AFP appointee concerned was charged, affirm the penalty imposed by the Commissioner, or set aside that penalty and substitute another penalty.

1.3 PRACTICE AND PROCEDURE

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. Proceedings are to be conducted with as little formality and technicality and with as much expedition as a proper consideration of the matter before the Tribunal permits. The Tribunal is not bound by the rules of evidence. The standard of proof required in proceedings before the Tribunal is proof on the balance of probabilities.

In exercising its discretion as to procedure, the Tribunal has regard to the philosophy embodied in the reports of the Australian Law Reform Commission that led to the enactment of the Complaints Act. The Tribunal does not have an inquisitorial role in hearing and determining disciplinary proceedings. Such proceedings are adversarial in nature and necessarily require a degree of formality. They approximate curial proceedings.

1.4 DEVELOPMENTS

A “Review of Professional Standards in the Australian Federal Police” was undertaken and in 2003 presented to the AFP Commissioner by The Hon. William Kenneth Fisher AO, QC (the Fisher Review). The Terms of Reference of the Review included an assessment of the desirability of adopting a managerial or administrative approach to professional standards in the AFP, rather than a disciplinary approach. The Review

includes a recommendation that the *Complaints (Australian Federal Police) Act 1981* be repealed and the Tribunal abolished.

Section 2

MEMBERSHIP AND STAFF

The members of the Tribunal holding office during 2003-2004 were:

President

The Honourable Justice Antony Philip Whitlam Term expired 16 March 2004

The Honourable Justice Susan Mary Kiefel Appointed as President on 22 April
2004 for a term of 2 years

Deputy Presidents

The Honourable Justice Susan Mary Kiefel Deputy President until appointment as
President on 22 April 2004.

The Honourable Justice Mark Samuel Weinberg Term expires 7 October 2006

The Registrar of the Tribunal and the Deputy Registrars of the Tribunal are listed in Appendix II. They are all officers of the Federal Court of Australia.

Section 3

ACTIVITIES

No disciplinary proceedings were lodged with the Tribunal from 1 July 2003 to 30 June 2004 and the Minister did not refer any matters for inquiry and report.

The Tribunal has no premises of its own. Hearing rooms and chambers are made available by the Federal Court of Australia as required.

The records of the Tribunal are kept by the Registrar in Sydney. Facilities for lodging documents with the Tribunal are provided at the District Registries of the Federal Court of Australia. Addresses and contact details for the Tribunal are shown in Appendix I.

Section 4

FINANCE

Resources for the Tribunal are appropriated to the Federal Court of Australia as part of the budget process and come within:

- Federal Court of Australia Business – Output 1.1

This output is set out in the Commonwealth Parliament Portfolio Budget Statements for the Attorney-General's Portfolio.

These resources are managed by the Federal Court on behalf of the Tribunal and are audited as part of the process for monitoring financial management in the Federal Court.

Expenditure during the year, which is specifically attributable to the Tribunal, is set out in Appendix III to this report.

Section 5

APPEALS TO THE FEDERAL COURT OF AUSTRALIA

The Complaints Act and *Australian Federal Police Act 1979* provide for appeals to the Federal Court of Australia from decisions of the Tribunal in disciplinary proceedings. There were no appeals from decisions of the Tribunal to the Federal Court of Australia during 2003-2004.

Appendix I

Enquiries (and contact officer for Annual Report):-

Registrar: Jennifer Hedge
Address: Level 16 Law Courts Building
Queens Square
Sydney NSW 2001
Phone: (02) 9230 8567
Fax: (02) 9230 8535
Email: jennifer.hedge@fedcourt.gov.au

Information on the Tribunal is available at:

www.fpdtd.gov.au

Document lodgement locations for the Tribunal

New South Wales

Level 16
Law Courts Building
Queens Square
Sydney NSW 2000

Victoria

Level 7
Commonwealth Law Courts
305 William Street
Melbourne VIC 3000

Queensland

Level 6
Commonwealth Law Courts
119 North Quay
Brisbane QLD 4000

South Australia

8th Floor
Grenfell Centre
25 Grenfell St
Adelaide SA 5000

Western Australia

Level 6
Commonwealth Law Courts
1 Victoria Avenue
Perth WA 6000

Tasmania

Ground Floor
Commonwealth Law Courts Building
39-41 Davey Street
Hobart TAS 7000

Northern Territory

Level 3
Supreme Court Building
State Square
Darwin NT 0800

Australian Capital Territory

First Floor
Federal Court Building
Childers Street
Canberra ACT 2601

Appendix II

REGISTRAR AND DEPUTY REGISTRARS OF THE TRIBUNAL

As at 30 June 2004

Location:

Registrar

Jennifer Hedge

Sydney

Deputy Registrars

Patricia Christie

Adelaide

Graham Ramsey

Brisbane

Jamie Wood

Melbourne

Martin Jan PSM

Perth

Kim Lackenby

Sydney

Appendix III

EXPENDITURE

Specific expenditure in respect of the Federal Police Disciplinary Tribunal for the financial year ended 30 June 2004:

Description of Expenditure	Amount
General Office Expenditure – printing & delivery costs for the last Tribunal Annual Report (2002-03) (excluding GST)	\$1030.00
Total	\$1030.00

The Federal Court of Australia attends to the administration of the finances of the Tribunal. The expenditure is audited as part of the annual audit of the Federal Court of Australia.

Appendix IV

REPORTING REQUIREMENTS UNDER OTHER LEGISLATION

1. Statement under Section 8 of the *Freedom of Information Act 1982*

- I. Information on the organisation, functions and the decision-making powers of the Federal Police Disciplinary Tribunal is found on pages 1 and 2 of this Report.

Powers affecting members of the public who are involved in the functions of the Tribunal are:

- (a) The power to summon a person to appear before the Tribunal to give evidence and produce documents. (s 71(2) of the *Complaints (Australian Federal Police) Act 1981* (the Complaints Act).)
- (b) The power to issue a warrant for the apprehension of a person who, having been so required by summons, fails to attend as a witness. (s 73(1) of the Complaints Act.)
- (c) The power to direct that a hearing, or a part of a hearing, shall take place in private. (s 74(2)(a) of the Complaints Act.)
- (d) The power to give directions restricting or prohibiting the publication or disclosure of certain evidence, matters, findings or decisions. (s 74(2)(b) of the Complaints Act.)
- (e) The power to permit certain persons to appear before the Tribunal and to permit their representation by a legal practitioner or by some other person. (s 75(5) of the Complaints Act.)
- (f) The power to make orders in respect of costs of proceedings. (s 76(4)(c) of the Complaints Act and Regulation 7(1) of the Complaints (Australian Federal Police) Regulations.)

- II. There are no arrangements existing for bodies or persons outside the Commonwealth administration to participate either through consultative procedures, the making of representations, or otherwise in the formulation of policy by the Tribunal.

To the extent that the Tribunal can be said to be administering the Complaints Act by dealing with proceedings before it, the bodies or persons outside the Commonwealth administration who participate in the functioning of the Tribunal are members of the Australian Federal Police and other persons and their legal representatives concerned in individual proceedings. Members of the Tribunal who hold part-time appointments are considered to be within the Commonwealth administration when acting pursuant to their appointment to the Tribunal.

- III. The Tribunal maintains no documents open to public access under an Act (other than the *Freedom of Information Act 1982*) where access is subject to a fee or other charge.

The Tribunal maintains no documents available for purchase by the public in accordance with any arrangement made by the Tribunal, other than decisions of the Tribunal that have not been the subject of a confidentiality order.

The Tribunal customarily makes copies of its annual report available to the public (other than under the *Freedom of Information Act 1982*) free of charge upon request. It is also available on the Tribunal website at: www.fpdt.gov.au

- IV. The Tribunal uses the registry facilities of the Federal Court of Australia, whenever required, to permit physical access by members of the public to its documents. These registries are located in all Australian capital cities and are listed in Appendix I at page 5 of this Report.
- V. The Registrar and Deputy Registrars of the Tribunal are available to assist any applicant for access under the *Freedom of Information Act 1982*. Initial inquiries concerning access to documents may be directed to the Registrar in Sydney on (02) 9230 8567.

The Registrar of the Tribunal is the only officer authorised to deny access to documents.

The Tribunal maintains no documents that are required to be available for inspection or purchase under s 9 of the *Freedom of Information Act 1982*.

During the year the subject of this Report, the Tribunal did not receive any requests for access to documents under the *Freedom of Information Act 1982*.

2. Information under Section 74 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*

The President and Deputy President of the Tribunal are Judges of the Federal Court of Australia and the Registrar and Deputy Registrars of the Tribunal are employees of that Court. Therefore, the Tribunal does not have its own Occupational Health and Safety Policy. Any administrative matters relating to Occupational Health and Safety are dealt with through the Federal Court.

3. Reporting under Section 516A of the *Environment Protection and Biodiversity Conservation Act 1999*

The Tribunal made no decisions during this reporting year involving consideration of the principles of ecologically sustainable development or the impact on the environment. In addition, the Tribunal is staffed by and conducts its business using the facilities of the Federal Court of Australia. Any administrative matters involving environmental issues are dealt with through Federal Court administrative policies.

FEDERAL POLICE DISCIPLINARY TRIBUNAL ANNUAL REPORT 2003-2004