



New South Wales

# Police Amendment (Death and Disability) Act 2011 No 73

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New South Wales

## **Police Amendment (Death and Disability) Act 2011 No 73**

Act No 73, 2011

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An Act to amend the *Police Act 1990* with respect to the death or disability of police officers; to amend consequentially the *State Authorities Superannuation Act 1987* and the *Industrial Relations Act 1996*; to rescind consequentially industrial award provisions relating to payments for the death or disability of police officers; and for other purposes. [Assented to 30 November 2011]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Police Amendment (Death and Disability) Act 2011*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

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## Schedule 1 Amendment of Police Act 1990 No 47

### [1] Part 9B

Insert before Part 10:

## Part 9B Police officers—death and disability

### 199A Definitions

In this Part:

*approved death and disability insurance policy*—see section 199D.

*death and disability payments* means payments (whether periodic or lump sum) to or in respect of a police officer who dies or who becomes permanently or temporarily incapacitated for work:

- (a) as a result of being injured at work, or
- (b) as a result of being injured while employed as a police officer (whether or not on duty),

and, without limiting the generality of the foregoing, includes payments to or in respect of a police officer by way of the top-up of workers compensation payments.

*injured at work*, in relation to a police officer, means injured in such circumstances as entitles the police officer to compensation under the *Workers Compensation Act 1987*.

### 199B Police officers excluded from this Part

- (1) This Part does not apply to or in respect of a police officer who is a contributor to the Police Superannuation Fund under the *Police Regulation (Superannuation) Act 1906* or to the State Superannuation Fund under the *Superannuation Act 1916*.
- (2) This Part does not apply to or in respect of a police officer who is a contributor to the State Authorities Superannuation Fund and who is covered by the additional benefit under the *State Authorities Superannuation Act 1987*, except as provided by section 199D (3).

### 199C Approved death and disability insurance policy to be taken out on behalf of police officers

An approved death and disability insurance policy is required to be taken out on behalf of police officers by the NSW Police Force or by FSS Trustee Corporation.

**199D Approved death and disability insurance policy**

- (1) For the purposes of this Part, an *approved death and disability insurance policy* is an insurance policy approved by the Minister, with the concurrence of the Treasurer, that provides death and disability payments to or in respect of police officers. An approved policy may comprise a number of separate policies.
- (2) An approved death and disability insurance policy:
  - (a) must include provision for payments to or in respect of police officers who die, or who are incapacitated for work, as a result of being injured at work, and
  - (b) may also include provision for payments to or in respect of police officers where their death or incapacity does not result from being injured at work.
- (3) An approved death and disability insurance policy may provide for payments in the form of income protection in connection with an injury to a police officer despite the police officer being a contributor to the State Authorities Superannuation Fund and covered by the additional benefit under the *State Authorities Superannuation Act 1987*.

**199E Contribution by State to cost of approved insurance policy**

The Minister may approve an insurance policy under this Part only if satisfied that the long-term cost to the State of the policy (after deducting the contribution to that cost of police officers under section 199F) will be:

- (a) subject to paragraph (b), approximately 4.6% of the remuneration of police officers covered by the policy, or
- (b) such other amount as the regulations prescribe.

**199F Contributions by police officers to cost of approved insurance policy**

- (1) Police officers are required to make the same contribution to the cost to the State of an approved death and disability insurance policy as the contribution police officers would have been required to make under the *Crown Employees (Police Officers Death and Disability) Award 2005* if that Award had not been rescinded by the *Police Amendment (Death and Disability) Act 2011*.

**Note.** On the rescission of the Award, the contribution required to be made by police officers was 1.8% of their remuneration.
- (2) The contribution is to be made by way of salary sacrifice.

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**199G Regulations relating to death or disability of police officers**

The regulations may make provision for or with respect to the death or disability of police officers, including the following:

- (a) the provisions that must or may be included in an approved death and disability insurance policy,
- (b) the savings and transitional provisions applying to police officers on the commencement of this Part in relation to death and disability payments (including the provisions applying after that commencement during any period in which an approved death and disability insurance policy is not in force),
- (c) the obligations of the NSW Police Force and police officers or former police officers with respect to rehabilitation, retraining and redeployment of incapacitated police officers or former police officers,
- (d) the establishment by the NSW Police Force of injury management and prevention and other programs to facilitate or promote the health and fitness of police officers, and the obligation of police officers to participate in those programs.

**199H Other entitlements not affected**

The provisions of this Part do not affect:

- (a) any compensation payable under the *Workers Compensation Act 1987*, or
- (b) any superannuation entitlements.

**199I Rescission of Crown Employees (Police Officers Death and Disability) Award 2005**

The *Crown Employees (Police Officers Death and Disability) Award 2005* of the Industrial Relations Commission of New South Wales is rescinded.

**199J Rescission of workers compensation top-up provisions of Crown Employees (Police Officers - 2009) Award**

Clause 9 of the *Crown Employees (Police Officers - 2009) Award* of the Industrial Relations Commission of New South Wales is rescinded.

### 199K Savings and transitional arrangements

- (1) In this section:
- former death and disability award* means the award referred to in section 199I that is rescinded by that section.
- former workers compensation top-up award provision* means the provision of the award referred to in section 199J that is rescinded by that section.
- new insurance policy commencement date*, in relation to an injury to a police officer, means the date on and from which the police officer is covered in respect of death or disability arising from any such injury under an approved death and disability insurance policy.
- (2) Except as provided by this section, a police officer who dies or is discharged from the NSW Police Force after the commencement of this Part is not entitled to any payments under the former death and disability award.
- (3) If:
- (a) immediately before the Bill for the *Police Amendment (Death and Disability) Act 2011* was agreed to by both Houses of Parliament, a police officer had been unfit for duty because of a disability for a total period of at least 4 months during the previous 8 months and the NSW Police Force had received a report or certificate from the police officer's nominated treating medical practitioner indicating that:
    - (i) the police officer had reached maximum medical improvement, and
    - (ii) the police officer should be discharged from the NSW Police Force, and
  - (b) the police officer had not been discharged from the NSW Police Force before the commencement of this Part because of that disability,

the provisions of the former death and disability award relating to payments for temporary or partial incapacity continue to apply in respect of that disability of that police officer despite the rescission of the award.

**Note.** See subsection (8) for preservation of entitlements relating to death or permanent and total incapacity under insurance policies taken out pursuant to the award.

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- (4) A police officer:
- (a) who suffers a disability arising from an injury before the new insurance policy commencement date, and
  - (b) who is not covered by the approved death and disability insurance policy (or by an insurance policy referred to in subsection (8)) in respect of that disability, and
  - (c) who is not entitled to a payment under subsection (3) in respect of that disability, and
  - (d) who would have been covered in respect of that disability under the former death and disability award, but for its rescission,
- is entitled to be paid by the NSW Police Force in respect of that disability such amounts as are equivalent to the amounts that the police officer would have been paid under the approved death and disability insurance policy if that policy had covered the police officer.
- (5) If on the commencement of this Part there is no approved death and disability insurance policy that provides income protection benefits to replace the benefits for partial and permanent disability under the former death and disability award, income protection benefits are to be paid to police officers (until there is such a policy) in accordance with the insurance proposal provided to First State Super by TAL Life Limited and tabled in the Legislative Council by or on behalf of the Minister for Police and Emergency Services during consideration by the Legislative Council of the Bill for the *Police Amendment (Death and Disability) Act 2011* (subject to subsection (6)).
- (6) On duty income protection rates under the insurance proposal referred to in subsection (5) are to be increased in accordance with adjustments to the insurance proposal that are tabled with the insurance proposal by or on behalf of the Minister for Police and Emergency Services.
- (7) Despite the rescission of the former workers compensation top-up award provision, police officers in receipt of weekly compensation payments under the *Workers Compensation Act 1987* on the commencement of this Part continue to be entitled to payments under that provision for a period of 9 months after the commencement of this Part.

- (8) This section does not affect any entitlements under an insurance policy that has been taken out on behalf of police officers before the commencement of this Part.
- Note.** Existing insurance policies taken out with First State Super cover police officers for death and for total and permanent incapacity and will continue to apply until replaced by coverage under an approved death and disability insurance policy.
- (9) The rescission of the former death and disability award does not affect any entitlement to payments under that award in relation to the death or discharge of a police officer from the NSW Police Force before the rescission of the former award.
- (10) This section is subject to the regulations made under clause 2 of Schedule 4.

**199L Review of costs of scheme and advice to Minister and Treasurer**

- (1) A committee (comprising of the Commissioner of Police and a representative of the Police Association of NSW nominated by that Association) is to keep under review the cost to the State and fairness to police of securing death and disability payments to or in respect of police officers under this Part.
- (2) The committee is to advise the Minister and the Treasurer from time to time of that cost to the State and of the percentage of the remuneration of police officers that it represents.
- (3) The Commissioner is to ensure that the representative of the Police Association of NSW on the committee has access to such information as may be necessary to enable the committee to conduct the review under this section.

**199M Review of effectiveness of scheme by Auditor-General**

- (1) The Auditor-General is to review whether the provisions of this Part and the injury management practices for police officers have improved the performance of the NSW Police Force in securing the return of injured police officers to duty.
- (2) The review is to be conducted within 12 months after the commencement of this Part (or within such further period as the Minister may approve on the recommendation of the Auditor-General).
- (3) The Commissioner is to ensure that the Auditor-General has access to such information as may be necessary to enable the Auditor-General to conduct the review.

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- (4) The Auditor-General is to report to the Minister and to each House of Parliament on the results of the review as soon as practicable after the review is completed.
  - (5) If a House of Parliament is not sitting when the Auditor-General seeks to present the report, the Auditor-General is to present the report to the Clerk of the House concerned.

**[2] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Police Amendment (Death and Disability) Act 2011*

**[3] Schedule 4, Part 22, clause 68**

Omit the definition of *police officers award*. Insert instead:

*police officers award* means:

- (a) the *Crown Employees (Police Officers Death and Disability) Award 2005*, until its rescission by the *Police Amendment (Death and Disability) Act 2011*, and
- (b) after that rescission, the provisions of Part 9B of this Act and an approved death and disability insurance policy under that Part.

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## **Schedule 2 Amendment of Police Regulation 2008**

**[1] Clause 125 Procedure where workers compensation claimed**

Insert “(other than a police officer)” after “A member of the NSW Police Force” in clause 125 (3).

**[2] Clause 125A**

Insert after clause 125:

**125A Top-up of weekly workers compensation payments during first 6 months for police officers injured at work**

- (1) This clause applies to a police officer who is in receipt of weekly compensation payments under the *Workers Compensation Act 1987* in connection with employment as a police officer and who continues to be employed in the NSW Police Force.
- (2) The NSW Police Force is to pay any such police officer, during the first 26 weeks of incapacity referred to in section 36 of the *Workers Compensation Act 1987* (together with an additional period of the following 13 weeks), an amount representing the difference between the amount of weekly compensation payments received under that Act and the ordinary rate of pay of the police officer.
- (3) A police officer’s entitlements to sick leave or other leave are not affected by the additional payments under this clause.
- (4) The ordinary rate of pay of a police officer for the purposes of this clause includes loadings and allowances in the nature of salary.

**[3] Clause 136 Prescription of police officers award**

Omit the clause.

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## **Schedule 3      Amendment of State Authorities Superannuation Act 1987 No 211**

### **Part 5D**

Omit the Part. Insert instead:

### **Part 5D Death or disability benefits for police officers**

#### **46AI Definitions**

In this Part:

*amending Act* means the *Police Amendment (Death and Disability) Act 2011*.

*approved death and disability insurance policy* has the meaning it has in Part 9B of the *Police Act 1990*.

#### **46AJ Application of Part**

This Part has effect despite any other provision of this Act or the regulations.

#### **46AK Death and disability of police officers**

- (1) The regulations may make provision for or with respect to the following:
  - (a) the effect on coverage under this Act for an additional benefit, and liability to pay the additional benefit levy, of a contributor or former contributor who is or was a police officer and who is covered under an approved death and disability insurance policy,
  - (b) preventing the repayment of any additional benefit levy paid by a contributor or former contributor who is or was a police officer,
  - (c) any other matter that is necessary or convenient for the purposes of complying with or giving effect to Part 9B of the *Police Act 1990*, an approved death and disability insurance policy or this Part.
- (2) Any such regulations may take effect from the date of commencement of this Part, as inserted by the amending Act, or the date on which an approved death and disability insurance policy first applies to a police officer (whichever is earlier).

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Schedule 3 Amendment of State Authorities Superannuation Act 1987 No 211

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- (3) Without limiting section 46AJ, regulations may be made under this Part that are inconsistent with Part 3, 4, 5 or 6 of this Act, or any regulations made under those Parts, but only to the extent that the inconsistency with any of those provisions is necessary for the purpose of compliance with or giving effect to Part 9B of the *Police Act 1990* or to an approved death and disability insurance policy.

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## **Schedule 4    Amendment of Industrial Relations Act 1996 No 17**

### **[1]    Section 105 Definitions**

Insert after section 105 (2):

- (3) A contract relating to the employment of a police officer is not an unfair contract for the purposes of this Part merely because of a matter relating to payments of a kind to which section 146D applies.

### **[2]    Section 146D**

Insert after section 146C:

#### **146D Commission has no jurisdiction in respect of death and disability payments for police officers**

- (1) The Commission does not have jurisdiction or power to make or vary any award or order that provides for death and disability payments to or in respect of police officers.
- (2) The Commission cannot, in any proceedings relating to the remuneration or other conditions of employment of police officers, treat any savings attributable to the operation of the *Police Amendment (Death and Disability) Act 2011* as employee-related cost savings that may offset increased employee-related costs arising from any award or order in those proceedings.
- (3) This section does not apply to awards or orders:
  - (a) with respect to payments for accrued annual, extended or other leave on the death or termination of employment of police officers, or
  - (b) in proceedings to enforce accrued entitlements (including under an award, or provision of an award, rescinded by the *Police Amendment (Death and Disability) Act 2011*), or
  - (c) in proceedings by an incapacitated police officer for the enforcement of obligations of the NSW Police Force under applicable employment policies and practices to provide restricted or other duties to the incapacitated officer, or
  - (d) in proceedings on an appeal under section 186 of the *Police Act 1990*.
- (4) An award or order of the Commission does not have effect to the extent that it is inconsistent with this section.

- (5) This section extends to appeals or references to the Full Bench of the Commission.
- (6) This section does not apply to the Commission in Court Session.
- (7) This section extends to proceedings that are pending in the Commission on the commencement of this section, and to awards or orders made or varied by the Commission after the date on which the Bill for the *Police Amendment (Death and Disability) Act 2011* was introduced into Parliament.
- (8) This section has effect despite section 10 or 146 or any other provision of this or any other Act.
- (9) In this section:
  - award or order** includes:
    - (a) an award (as defined in the Dictionary) or an exemption from an award, and
    - (b) a decision to approve an enterprise agreement under Part 2 of Chapter 2, and
    - (c) the adoption under section 50 of the principles or provisions of a National decision or the making of a State decision under section 51, and
    - (d) anything done in arbitration proceedings or proceedings for a dispute order under Chapter 3.
  - death and disability payments** has the meaning it has in Part 9B of the *Police Act 1990*.

[Second reading speech made in Legislative Council on 9 November 2011

Agreement in principle speech made in Legislative Assembly on 25 November 2011]

BY AUTHORITY