

1993—No. 237

POLICE SERVICE ACT 1990—REGULATION

(Arising out of amendments to the Act)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Police Service Act 1990, has been pleased to make the Regulation set forth hereunder.

TERRY GRIFFITHS
Minister for Police and Emergency Services

Commencement

1. This Regulation commences on 1 July 1993.

Amendments

2. The Police Service Regulation 1990 is amended:
 - (a) by omitting the words “Police Tribunal of New South Wales” wherever occurring (except where occurring as the last words of clause 37) and by inserting instead the words “Police Tribunal”;
 - (b) by inserting in clause 3 in alphabetical order the following definitions:

“**Police Tribunal**” means the Police Tribunal of New South Wales established by the Act;

“**Registrar**” means the Registrar of the Police Tribunal;
 - (c) by inserting in clause 25 before the words “be promoted” the word “to”;
 - (d) by omitting from clauses 30 (2) (a), 32 and 45 (1) (a) the words “the Police Regulation (Allegations of Misconduct) Act 1978” wherever occurring and by inserting instead the words “Part 8A of the Act”;

- (e) by omitting from clause 31 the words “the Officer-in-Charge of the Internal Affairs Branch” and by inserting instead the words “the Commissioner or a police officer nominated by the Commissioner” ;
- (f) by inserting in clause 33 (b) after the words “Part 2 of that Act” the words “or Part 8A of the Act”;
- (g) by omitting clause 34;
- (h) by omitting from clauses 35 (5), 37 (a) and 39 (I) the words “Part 4 of the Police Regulation (Allegations of Misconduct) Act 1978” wherever occurring and by inserting instead the words “Division 4 of Part SA of the Act”;
- (i) by omitting clause 36 (a);
- (j) by omitting from clause 36 (d) the words “of the kind referred to in paragraph (a) (i)” and by inserting instead the words “the subject of a complaint investigated under Division 4 of Part EA of the Act”;
- (k) by omitting from clause 36 (e) the words “of the kind referred to in paragraph (a) (ii)” and by inserting instead the words “other than conduct the subject of a complaint investigated under Division 4 of Part SA of the Act”;
- (l) by omitting from clause 37 (b) the words “Part 4 of that Act” and by inserting instead the words “that Division”;
- (m) by omitting from clause 37 the words “to be forwarded to the Registrar of the Police Tribunal of New South Wales” and by inserting instead the words “to be forwarded to the Registrar”;
- (n) by inserting at the end of clause 37 the following subclauses:
 - (2) If a police officer admits a charge after first denying it in a report referred to in subclause (1), the Commissioner may (subject to section 175 of the Act) deal with the charge as if the denial had not been made.
 - (3) Such an admission is to be made in writing
- (o) by omitting clauses 41 and 44;
- (p) by omitting from clause 42 (1) the words “in accordance with this Division” and by inserting instead the words “under section 179 of the Act”;
- (q) by omitting from clause 45 (1) (c) the words “or the Officer-in-Charge of the Internal Affairs Branch”;

- (r) by omitting clause 45 (2) and (3) and by inserting instead the following subclauses:

(2) In the course of an investigation into an allegation to which subclause (1) applies, a police officer must not, without the consent of the Commissioner, disclose to any person (other than the Commissioner) the identity of the person who made the allegation.

(3) The Commissioner must not grant a consent under subclause (2) unless the Commissioner considers that the disclosure of the identity of the person who made the allegation is necessary for the effective conduct of the investigation into the allegation.

- (s) by inserting after clause 45 the following Division:

Division 4A—The Police Tribunal

Registrar of Police Tribunal

45A. The officer of the District Court performing for the time being the duties of the Registrar of that Court at Sydney is the Registrar of the Police Tribunal.

Seal of Police Tribunal

45B. The Police Tribunal is to have a seal with an impression of the New South Wales Coat of Arms and the inscription “Police Tribunal of New South Wales”.

Records of Police Tribunal

45C. (1) The Registrar is to have the custody of all records and proceedings of the Police Tribunal.

(2) The Registrar is to keep a Minute Book (in or to the effect of Form 1 in Schedule 1) and is to enter in it a minute of each determination of the Police Tribunal.

Issue and service of process

45D. (1) The Registrar is to issue all notices, summonses and other process of the Police Tribunal, unless the Act or this Regulation provides otherwise.

(2) All process of the Police Tribunal is to be sealed with the Tribunal’s seal.

(3) Service of such process is to be made personally on the person to be served, or by such other means as the Police Tribunal may direct.

Conduct money

45E. For the purposes of section 193 (3) of the Act, an amount sufficient to meet the reasonable expenses of a person carrying out the requirements of a subpoena is the amount that would be

payable in respect of that person if the person were an ordinary witness in proceedings in the District Court and the party at whose request the subpoena was issued were entitled to claim witnesses expenses in respect of that person as costs in those proceedings.

Exhibits in proceedings

45F. Unless the President otherwise directs, the Registrar is to retain the exhibits in proceedings before the Tribunal at first instance for 30 days from the date of the Tribunal's determination in respect of those proceedings.

Appeals

45G. (1) An appeal under section 176 of the Act:

- (a) must be in or to the effect of Form 2 in Schedule 1; and
- (b) must state the ground or grounds of appeal; and
- (c) must be signed by the appellant or by the appellant's solicitor or agent; and
- (d) must be lodged with the Registrar.

(2) If an appeal is lodged, the Registrar is to settle and prepare the appeal papers. The Registrar may require the attendance of the appellant and the Commissioner or their representatives for that purpose.

(3) The appeal papers must contain a copy of:

- (a) the charge; and
- (b) the determination of the Tribunal at first instance; and
- (c) the reasons for the determination (if given); and
- (d) the notice of appeal,

and such other documents, papers and material (or copies of them) as the Registrar determines.

(4) If the Registrar so directs, the appellant must serve copies of the appeal papers on such persons as the Registrar specifies in the direction.

Multiple charges

45H. Nothing in this Regulation is to be taken as preventing the Police Tribunal from hearing 2 or more charges together, either at first instance or on appeal.

- (t) by inserting in clause 86 (1) (a) before the words "maximum period" the word "a";

(u) by inserting at the end of the Regulation the following Schedule:

SCHEDULE 1
Form 1

(Cl. 45C (2))

MINUTE BOOK

MINUTES OF PROCEEDINGS IN THE POLICE TRIBUNAL OF NEW SOUTH WALES

No. of Matter	Name of Police Officer Charged or Name of Appellant	Name of Complainant (if applicable)	Nature of proceedings	Determination of Tribunal	Name(s) of Member(s) of the Tribunal or Review Division	Date of Determination

Form 2

(Cl. 45G (1) (a))

Police Service Act 1990

NOTICE OF APPEAL

The Registrar

Police Tribunal of New South Wales

Take Notice that I, A.B., of (address) appeal
to the Review Division of the Police Tribunal of New South Wales from
the determination of His/Her Honour Judge dated
19 , on the ground(s) that:

- * I am not guilty of the charge(s).
- * The evidence disclosed no offence
- * The determination is bad and contrary to law.
- * The determination is against evidence and the weight of evidence.

The address at which all notices and documents may be served on me is

Dated

19

(To be signed by the
appellant or by the
appellant's solicitor or agent)

* Delete any inapplicable ground(s)

EXPLANATORY NOTE

The Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 consolidates and reforms the law relating to complaints about police conduct, discipline of police officers and police disciplinary and promotional appeals. It repeals several Acts and regulations, including the Police Tribunal Regulation 1979. Some significant provisions of that Regulation (relating to police discipline) are transferred to the Police Service Act 1990.

The object of this Regulation is to amend the Police Service Regulation 1990 in the light of the amending Act and to allow certain of the provisions of that Act to commence. In particular, the Regulation transfers to the Police Service Regulation 1990 such provisions of the Police Tribunal Regulation 1979 (relating to the Police Tribunal) as are not incorporated in the Police Service Act 1990 but are required to be retained. It also makes consequential amendments and amendments by way of statute law revision.

The Regulation is made under sections 118, 181 and 199 of the Police Service Act 1990.
