



New South Wales

Police Service Amendment (Complaints and Management Reform) Regulation 1999

under the
Police Service Act 1990

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Police Service Act 1990*.

PAUL WHELAN, M.P.,
Minister for Police

Explanatory note

The object of this Regulation is to amend the *Police Service Regulation 1990* in connection with the amendments to be made to the *Police Service Act 1990* (the **Principal Act**) by the *Police Service Amendment (Complaints and Management Reform) Act 1998* (the **1998 amending Act**). The amendments made by this Regulation deal with the following matters:

- (a) the establishment of a complaints information system for the purposes of Part 8A of the Principal Act (proposed Division 4B of Part 3),
- (b) the establishment of remedial performance programs for the purposes of section 173 of the Principal Act (proposed Division 4C of Part 3),
- (c) other minor amendments that are merely consequential on the enactment of the 1998 amending Act.

This Regulation is made under the *Police Service Act 1990*, including section 219 (the general regulation-making power) and sections 128 and 173.

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Clause 1 Police Service Amendment (Complaints and Management Reform) Regulation 1999

Police Service Amendment (Complaints and Management Reform) Regulation 1999

1 Name of Regulation

This Regulation is the *Police Service Amendment (Complaints and Management Reform) Regulation 1999*.

2 Commencement

This Regulation commences on 8 March 1999.

3 Amendment of Police Service Regulation 1990

The *Police Service Regulation 1990* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in clause 3 (1), in alphabetical order:

complaints information system means the complaints information system referred to in Part 8A of the Act.

review proceedings means proceedings before the Industrial Relations Commission on an application for the review of a section 173 order or section 181D order.

non-reviewable section 173 order means a section 173 order for non-reviewable action within the meaning of section 173 of the Act.

reviewable section 173 order means a section 173 order for reviewable action within the meaning of section 173 of the Act.

section 73 dismissal action means action to dismiss a probationary police officer under section 73 (3) of the Act.

section 173 order means an order under section 173 of the Act under which reviewable or non-reviewable action (within the meaning of that section) is taken with respect to a police officer.

section 181D order means an order under section 181D of the Act under which a police officer is removed from the Police Service.

[2] Clause 9 General conditions of service by police officer

Omit ``, this Regulation and the Commissioner's Instructions" from clause 9 (1).

Insert instead ``and this Regulation".

[3] Clause 9 (4)

Omit the subclause

[4] Clause 10 Debts and liabilities

Omit “dismissal or other punishment” wherever occurring in clause 10 (2) and (4).

Insert instead “the taking of section 73 dismissal action or the making of a section 173 order or section 181D order against the officer”.

[5] Clause 14 Absent police officers

Omit clause 14 (1) (b). Insert instead:

- (b) will be held responsible for any misconduct by the officer during that absence, and

[6] Clause 16 Certificate of discharge

Omit clause 16 (2). Insert instead:

- (2) A police officer is not so entitled if the officer:
 - (a) is removed from the Police Service as a consequence of a section 181D order, or
 - (b) is dismissed from the Police Service as a consequence of section 73 dismissal action, or
 - (c) resigns or retires from the Police Service after having been notified that he or she is:
 - (i) the subject of consideration for the making of a section 181D order or the taking of section 73 dismissal action, or
 - (ii) the subject of an investigation under the *Police Service Act 1990*, the *Police Integrity Commission Act 1996* or the *Ombudsman Act 1974*.

[7] Clause 27 Record sheets

Omit clause 27 (2) (h). Insert instead:

- (h) information (to be known as *adverse entries*) in relation to:
 - (i) any offence in respect of which the officer has been found guilty by a court, and

- (ii) any finding of misconduct or unsatisfactory performance in respect of which a reviewable section 173 order has been made, including the reasons for the finding, and
- (iii) any finding of misconduct or unsatisfactory performance in respect of which a non-reviewable section 173 order has been made, being an order made as a consequence of the officer's substantial or consistent failure to meet reasonable standards of performance or conduct, including the reasons for the finding, and
- (iv) any offence in respect of which a departmental charge had been preferred against the officer before 8 March 1999, being an offence in respect of which the charge was found proven, including the reasons for the finding,

(i) information in relation to:

- (i) any offence in respect of which the officer has been charged before a court, other than an offence in respect of which the officer has been found guilty, including details as to whether the charge was withdrawn, dismissed or otherwise disposed of, and
- (ii) any offence in respect of which a departmental charge had been preferred against the officer before 8 March 1999, other than an offence in respect of which the charge was found proven, including details as to whether the charge was withdrawn, dismissed or otherwise disposed of, and
- (iii) any suspension from duty (with or without pay) to which the officer has been subject.

[8] Part 3, Division 4 heading

Omit the heading. Insert instead:

Division 4 Management of misconduct and unsatisfactory performance of police officers

[9] clause 31 Misconduct to be reported to Commissioner

Omit clause 31 (b). Insert instead:

- (b) could provide sufficient grounds for taking section 73 dismissal action, or making a reviewable section 173 order or a section 181D order, with respect to the officer.

[10] Clause 32 Victimisation

Omit clause 32 (b). Insert instead:

- (b) approve or recommend the taking of section 73 dismissal action, or the making of a section 173 order or section 181D order, with respect to a police officer, or

[11] Clauses 33, 35, 36, 37, 38 and 39

Omit the clauses.

[12] Clause 40 Suspension

Omit “disciplinary action” from clause 40 (1).

Insert instead “the taking of section 73 dismissal action, or the making of a section 181D order, with respect to the officer”.

[13] Clause 42

Omit the clause.

[14] Clause 45 Secrecy as to complaints about conduct

Omit clause 45 (1) (b) (ii). Insert instead:

- (ii) section 73 dismissal action could be taken, or a section 173 order or section 181D order could be made, with respect to that officer,

[15] Clause 45 (1) (d)

Insert ", the Industrial Relations Commission" after "Special Commission of Inquiry".

[16] Part 3, Divisions 4B and 4C

Insert after Division 4A:

Division 4B Complaints information system

45I Complaints information system

- (1) A complaints information system is to be established.
- (2) The following information about complaints is to be registered in the system:
 - (a) such information as is required to be registered in the system by the terms of a protocol or memorandum of understanding referred to in section 128 (2) of the Act,
 - (b) such other information as the Commissioner may from time to time direct to be registered in the system.
- (3) The complaints information system kept under Part 8A of the Act immediately before 8 March 1999 is taken to form part of the complaints information system established under this clause.

Division 4C Management of conduct within Police Service

45J Remedial performance programs

- (1) A remedial performance program referred to in section 173 (3) of the Act must include the following elements:
 - (a) a police officer is to be placed on the program if his or her performance as a police officer is consistently unsatisfactory, having regard to his or her job-stream responsibilities,

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- (b) the police officer is firstly to be required to attend local workplace counselling conducted by his or her supervisor (the number of counselling sessions, the period of time over which they are to be conducted and the date on which a review of the police officer's performance is to be held to be determined by the supervisor following consultation with the police officer),
- (c) a statement of the matters determined in accordance with paragraph (b) is to be signed both by the police officer and the supervisor,
- (d) the principal purpose of the counselling sessions is to ensure that the police officer is made aware of:
 - (i) his or her job-stream responsibilities and work performance expectations, and
 - (ii) the standard to which he or she is expected to perform in fulfilling those responsibilities and expectations,
- (e) if after completion of the counselling sessions the police officer's performance as a police officer is satisfactory, the supervisor must notify the police officer of that fact,
- (f) if after completion of the counselling sessions the police officer's performance as a police officer continues to be unsatisfactory, the supervisor:
 - (i) must notify the police officer of that fact, and
 - (ii) must require the police officer to attend formal counselling sessions (the number of counselling sessions, the period of time over which they are to be conducted and the date on which a final review of the police officer's performance is to be held to be determined by the supervisor),
- (g) a statement of the matters determined in accordance with paragraph (f) is to be signed both by the police officer and the supervisor,

- (h) the decision to require a police officer to attend formal counselling sessions is to be made only after consultation with, and with the concurrence of, the supervisor's commander or line manager,
- (i) the number of counselling sessions, the period of time over which they are to be conducted and the date on which a final review of the police officer's performance is to be held may be extended or postponed, as occasion requires,
- (j) the principal purpose of the formal counselling sessions is to ensure that the police officer is made aware of:
 - (i) those areas in which he or she is failing to fulfil his or her job-stream responsibilities, and
 - (ii) the standard to which his or her performance must be improved, and
 - (iii) the period of time within which he or she must sustain an improved performance in those areas, and
 - (iv) the fact that his or her performance will be closely monitored during that period,
- (k) the police officer's supervisor must cause a written record to be kept as to the steps that are taken to ensure that the police officer is made aware of the matters referred to in paragraph (j),
- (l) if after completion of the formal counselling sessions the police officer's performance as a police officer is satisfactory, the police officer's supervisor must notify the police officer of that fact,
- (m) if after completion of the formal counselling sessions the police officer's performance as a police officer continues to be unsatisfactory, the supervisor:
 - (i) must notify the police officer of that fact, and

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- (ii) may recommend that a section 173 order be made with respect to the police officer,
- (n) the decision to make such a recommendation is to be made only after consultation with, and with the concurrence of, the supervisor's commander or line manager.

(2) In this clause, a reference to a police officer's job-stream responsibilities is a reference to the responsibilities and duties that attach to the police officer's rank and position within the Police Service.

[17] Clause 66C Operation of this Part

Omit "disciplinary proceedings from being taken under Part 9 of the Act" from clause 66C (4) (a).
Insert instead "the making of a section 173 order or section 181D order".

[18] Clause 66C (4) (b)

Omit "is or".

[19] Clause 66D Code of behaviour

Omit "disciplinary proceedings" from clause 66D (6).
Insert instead "Part 9 of the Act".

[20] Clause 66G Consequences for police officers consuming alcohol

Omit "possible disciplinary action in accordance with this clause" from clause 66G (2).
Insert instead "the possibility that a section 173 order may be made with respect to the officer".

[21] Clause 66G (4)

Omit “may reprimand the officer or may direct the preferment of a departmental charge against the police officer under Part 9 of the Act”.

Insert instead “may recommend the making of a section 173 order with respect to the officer”.

[22] Clause 66G (5)

Omit “to direct the preferment of a departmental charge against the police officer under Part 9 of the Act”.

Insert instead “to make a section 173 order or section 181D order with respect to the officer”.

[23] Clause 66W Consequence for police officers repeatedly consuming alcohol

Omit “may direct the preferment of a departmental charge against the police officer under Part 9 of the Act” from clause 66H (2).
Insert instead “may make a section 173 order or section 181D order with respect to the officer”.

[24] Clause 66I Consequences for police officers using prohibited drugs

Omit ”possible disciplinary action in accordance with this clause” from clause 66I (2).

Insert instead ”the possibility that a section 173 order may be made with respect to the officer”.

[25] Clause 66I (4)

Omit “may direct the preferment of a departmental charge against the police officer under Part 9 of the Act”.

Insert instead “may make a section 173 order with respect to the officer”.

[26] Clause 66 (5)

Omit “to direct the preferment of a departmental charge against the police officer under Part 9 of the Act”.

Insert instead “to make a section 173 order or section 181D order with respect to the officer”.

[27] Clause 66J Consequences for police officers repeatedly using prohibited drugs

Omit “must direct the preferment of a departmental charge against the police officer under Part 9 of the Act” from clause 66H (2). Insert instead “must make a section 173 order or section 181D order with respect to the officer”.

[28] Clause 66L Other breaches of code of behaviour

Omit “may take disciplinary action under Part 9 of the Act” from clause 66L (2).

Insert instead “may make a section 173 order or section 181D order”.

[29] Part 5A, Division 8 Certificate evidence in proceedings

Omit the Division.

[30] Part 9

Insert after Part 8:

Part 9 Savings and transitional provisions

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The provisions of this Regulation (as in force immediately before 8 March 1999) continue to apply to and in respect of:

- (a) departmental charges preferred under Part 9 of the Act before 8 March 1999, and

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(b) complaints referred to in section 25 of the *Police Department (Transit Police) Act 1989* (whether made before or after 8 March 1999),
as if the *Police Service Amendment (Complaints and Management Reform) Regulation 1999* had not been made.