

POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT, 1978, No. 84

New South Wales



ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. 84, 1978.

An Act to confer and impose on the Ombudsman and the Commissioner of Police certain powers, authorities, duties and functions with respect to the investigation of, and adjudication upon, allegations of misconduct made against members of the Police Force and to constitute a Police Tribunal of New South Wales. [Assented to, 11th September, 1978.]

Police Regulation (Allegations of Misconduct).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.—PRELIMINARY.

1. This Act may be cited as the "Police Regulation Short title. (Allegations of Misconduct) Act, 1978".

2. (1) Section 1 and this section shall commence on the date of assent to this Act. Commence-
ment.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :—

Arrangement
of Act.

PART I.—PRELIMINARY—ss. 1-4.

PART II.—COMPLAINTS—ss. 5-12.

PART III.—CONCILIATION—ss. 13-16.

PART IV.—INVESTIGATIONS—ss. 17-26.

PART V.—REPORTS—ss. 27-33.

PART VI.—INTERNAL AFFAIRS BRANCH—ss. 34, 35.

PART VII.—POLICE TRIBUNAL—ss. 36-47.

PART VIII.—GENERAL—ss. 48-61.

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Interpre-
tation.

4. In this Act, except to the extent that the context or subject-matter otherwise indicates or requires—

“Commissioner” means the Commissioner of Police for the time being holding office under the Police Regulation Act, 1899;

“complaint” means a complaint made in accordance with Part II;

“conduct” means, in relation to a member of the Police Force, any action or inaction, or alleged action or inaction, of the member of the Police Force that occurs after the day appointed and notified under section 2 (2) and may not be made the subject of a complaint under section 12 of the Ombudsman Act, 1974;

“Deputy Commissioner” means the Deputy Commissioner of Police for the time being holding office under the Police Regulation Act, 1899;

“Internal Affairs Branch” means the Internal Affairs Branch of the Police Force constituted in accordance with this Act;

“investigation” means investigation under Part IV;

“member of the Police Force” has the same meaning as it has in the Police Regulation Act, 1899;

“Ombudsman” means the Ombudsman for the time being holding office under the Ombudsman Act, 1974;

“President” means the President of the Tribunal;

“Tribunal” means the Police Tribunal of New South Wales constituted under this Act.

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PART II.—COMPLAINTS.

Complaints.

5. (1) Where a person complains in accordance with this Part about the conduct of a member of the Police Force, the complaint shall be dealt with as provided by this Act.

(2) Subsection (1) does not prejudice or affect any right a person has to complain otherwise than in accordance with this Part about the conduct of a member of the Police Force.

(3) A person may not make a complaint in accordance with this Part about the conduct of a member of the Police Force if—

- (a) he has already made another complaint (whether in accordance with this Part or otherwise) about the same conduct and that other complaint—
 - (i) is under consideration prior to a determination as to whether it should be the subject of an investigation;
 - (ii) is the subject of an investigation; or
 - (iii) has been adjudicated upon after investigation, whether the investigation is, or is to be, under Part IV or otherwise; or
- (b) he has already made another complaint in accordance with this Part about the same conduct and—
 - (i) further consideration of that other complaint is in abeyance under section 54 (1);
 - (ii) the Ombudsman has informed the Commissioner that he has dealt with that other complaint in a manner acceptable to the complainant or that, under section 54 (2), he has treated the complaint as having been so dealt with; or
 - (iii) the Commissioner or other member of the Police Force has dealt with the complaint in a manner acceptable to the complainant.

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Making of
complaints.

6. (1) A complaint is made in accordance with this Part if it is in writing and—

- (a) it is delivered to a member of the Police Force personally or by post;
- (b) it is lodged at the office of the Ombudsman while it is open for business or it is delivered to that office by post;
- (c) it is addressed to the Ombudsman and lodged at the office of a court of petty sessions while it is open for business; or
- (d) it is referred to the Ombudsman by the Minister.

(2) Where a person wishes to make a complaint in accordance with this Part, the complaint may, with the written consent of the person, be made on his behalf by a member of Parliament.

(3) Where a person is in lawful detention or custody and informs the person by whom he is detained or in whose custody he is, or a person in superintendence over him, that he wishes to make a complaint to a member of the Police Force, or to the Ombudsman, the person so informed shall—

- (a) take all steps necessary to facilitate the making of the complaint; and
- (b) send immediately to the addressee, unopened, any written matter addressed to a member of the Police Force (whether by name or by reference to an office held by him) or the Ombudsman.

(4) Where the Minister refers a complaint under subsection (1) (d) or a member of Parliament acts for a person under subsection (2), neither the Minister nor the member becomes the complainant except for the purposes of sections 15, 18 (2) and (4), 27, 29 (3), 31, 44 (2) (d) and 54 (2).

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(5) Where the Minister publishes to a person whose complaint has been referred under subsection (1) (d), or a member of Parliament publishes to a person for whom he acted under subsection (2), any matter with respect to the complaint published to him by a member of the Police Force, or the Ombudsman, the publication has, for all purposes, the same effect as if it had been published to that person by the member of the Police Force, or the Ombudsman, as the case may be.

7. (1) This section applies where—

- Mixed and linked complaints.
- (a) a complaint relates partly to conduct of a member of the Police Force that is conduct within the meaning of this Act and partly to conduct of that or another member of the Police Force that, while it is not conduct within the meaning of this Act, is conduct that may be made the subject of a complaint under section 12 of the Ombudsman Act, 1974; or
 - (b) a complaint is made in respect of conduct of a member of the Police Force that is conduct within the meaning of this Act and, in the opinion of the Ombudsman, that conduct is directly linked to conduct of that or another member of the Police Force in respect of which the Ombudsman has already received, or later receives, a complaint under section 12 of the Ombudsman Act, 1974.

(2) Where this section applies, the complaint or complaints shall be dealt with in accordance with the directions of the Ombudsman.

(3) For the purposes of subsection (2), the Ombudsman may direct, in the case referred to in subsection (1) (a), that the complaint be dealt with—

- (a) under this Act in so far as it relates to conduct of a member of the Police Force within the meaning of this Act and under the Ombudsman Act, 1974, in so far as

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it relates to conduct of a member of the Police Force that may be made the subject of a complaint under section 12 of that Act;

- (b) notwithstanding anything in the Ombudsman Act, 1974—as if the whole of the conduct complained of were conduct of a member of the Police Force that may be made the subject of a complaint under section 12 of that Act; or
- (c) notwithstanding anything in this Act—as if the whole of the conduct complained of were conduct of a member of the Police Force that is conduct within the meaning of this Act.

(4) For the purposes of subsection (2), the Ombudsman may direct, in the case referred to in subsection (1) (b)—

- (a) that the complaint that relates to conduct of a member of the Police Force that is conduct within the meaning of this Act shall be dealt with under this Act and that the linked complaint shall be dealt with, or continue to be dealt with, under the Ombudsman Act, 1974;
- (b) that both complaints shall, notwithstanding anything in the Ombudsman Act, 1974, be dealt with in conjunction as if they both related to conduct of a member of the Police Force that may be made the subject of a complaint under section 12 of that Act; or
- (c) that both complaints shall, notwithstanding anything in this Act, be dealt with in conjunction as if they both related to conduct of a member of the Police Force within the meaning of this Act.

(5) Where it appears to the Ombudsman—

- (a) that he is dealing under the Ombudsman Act, 1974, with a complaint that relates to conduct of a member of the Police Force that is conduct within the meaning of this Act; or

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- (b) that he is dealing under this Act with a complaint relating to conduct of a member of the Police Force that is not conduct within the meaning of this Act,

he shall not discontinue action on the complaint but subject to this section shall, as soon as practicable, continue action thereon in accordance with the provisions of the appropriate Act.

8. (1) A member of the Police Force who receives a Police to
complaint that has not already been sent to the Commissioner ^{notify} complaints.
shall—

- (a) unless he is a member of the Internal Affairs Branch, forthwith by telephone notify the Internal Affairs Branch of particulars of the complaint; and
- (b) send the document incorporating the complaint to the Commissioner.

(2) The senior officer who is on duty at the Internal Affairs Branch at the time the Branch is notified of or receives a complaint shall, as soon as practicable, cause the Ombudsman to be notified of brief details of the complaint.

9. The Commissioner shall, as soon as practicable after ^{Com-}receiving a complaint— ^{missioner.}

- (a) where he receives the complaint pursuant to section 8 (1) (b)—cause a copy of the document incorporating the complaint to be sent to the Ombudsman; or
- (b) except where he receives the complaint pursuant to section 8 (1) (b) or from the Ombudsman—cause the Ombudsman to be notified by telephone of brief details of the complaint.

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Clerks of petty sessions to notify complaints.

10. (1) Where a complaint is lodged at the office of a court of petty sessions, the clerk of the court shall, by telephone, notify the Ombudsman as soon as practicable of brief details of the complaint and—

(a) if so directed by the Ombudsman—

- (i) give the document incorporating the complaint to a member of the Police Force specified by the Ombudsman;
- (ii) obtain a receipt for that document from that member of the Police Force;
- (iii) retain a copy of that document in his records; and
- (iv) send a copy of that document to the Ombudsman together with the receipt referred to in subparagraph (ii) and a report of the action taken by him; or

(b) if not directed as specified in paragraph (a), forthwith send the document incorporating the complaint to the Ombudsman.

(2) The Ombudsman shall not give the direction referred to in subsection (1) (a) unless he is requested so to do by a member of the Police Force responsible for investigating any aspect of the complaint that may relate to a possible criminal offence.

(3) For the purposes of this Act, the clerk of a court of petty sessions shall be deemed to be an officer of the Ombudsman.

Notification of possible criminal offence.

11. Where a person who receives a complaint made in accordance with this Part is of the opinion that any aspect of the complaint relates to a possible criminal offence and that an investigation of that aspect would be prejudiced by any delay in its commencement, he shall forthwith by telephone so notify the Commissioner, the Deputy Commissioner or the senior officer who is at the time on duty at the Internal Affairs Branch.

B

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12. The Ombudsman shall establish and maintain, in such form as he thinks fit, a register of complaints received by him and complaints of which he is notified. **Ombudsman to register complaints.**

PART III.—CONCILIATION.

13. This Part does not apply to or in respect of a complaint of conduct by a member of the Police Force where— **Application of Part.**

- (a) that conduct appears to have involved the commission of an indictable offence; or
- (b) the Commissioner has informed the Ombudsman that he has directed that the complaint be investigated under Part IV.

14. (1) Where the Ombudsman or a member of the Police Force is satisfied that, without an investigation under Part IV, he may be able to deal, in a manner acceptable to the complainant, with a complaint about the conduct of a member of the Police Force, he may proceed to deal with the complaint in that manner. **Conciliation of complainant.**

(2) A member of the Police Force who is considering whether he should deal with a complaint under subsection (1) shall forthwith so inform the Ombudsman and (unless he is a member of the Internal Affairs Branch) the Internal Affairs Branch.

(3) A member of the Police Force who deals with a complaint under subsection (1) shall inform the Ombudsman of the outcome and (unless he is a member of the Internal Affairs Branch) the Internal Affairs Branch.

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(4) Where the Ombudsman deals with a complaint under subsection (1) in a manner acceptable to the complainant, he shall inform the Commissioner accordingly.

Ombudsman may make recommendations. **15.** For the purposes of this Part, the Ombudsman may make such recommendations to the Commissioner or a complainant, or to both of them, as he thinks fit.

Procedure where conciliation fails. **16.** Where an attempt made under this Part to deal with a complaint in a manner acceptable to the complainant is unsuccessful, the complaint shall thereafter be dealt with as if this Part had not been enacted.

PART IV.—INVESTIGATIONS.

Commissioner to cause complaints to be investigated. **17.** (1) The Commissioner may cause a complaint to be investigated under this Part if—

- (a) the complaint was received by him or another member of the Police Force; or
- (b) he or the Deputy Commissioner or a member of the Internal Affairs Branch was notified of the complaint under section 11.

(2) The Commissioner shall cause a complaint to be investigated under this Part if the Ombudsman determines that the complaint should be investigated and notifies the Commissioner accordingly as provided by section 18 (3).

(3) Where, under subsection (1), the Commissioner causes a complaint to be investigated he shall, as soon as practicable, notify the Ombudsman that he has done so.

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(4) The Ombudsman shall not make a determination referred to in subsection (2) with respect to a complaint that is the subject of a notification under subsection (3).

18. (1) In determining whether a complaint should be investigated, the Ombudsman may have regard to such matters as he thinks fit, including whether, in his opinion—

Deter-
mination
by Ombuds-
man.

- (a) the complaint is frivolous, vexatious or not in good faith;
- (b) the subject-matter of the complaint is trivial;
- (c) the conduct complained of occurred at too remote a time to justify investigation;
- (d) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress; or
- (e) the complainant has no interest, or an insufficient interest, in the conduct complained of.

(2) Where the Ombudsman determines that a complaint should be investigated, he shall notify the complainant and the Commissioner accordingly and may, if he thinks fit, also notify the member of the Police Force whose conduct is the subject of the complaint.

(3) A notification to the Commissioner under subsection (2)—

- (a) shall be in writing;
- (b) as far as practicable, shall identify the member of the Police Force whose conduct is the subject of the complaint to which the notification relates; and
- (c) shall be accompanied by a copy of the document that incorporates the complaint.

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(4) Where the Ombudsman determines that a complaint should not be investigated, he shall notify the complainant accordingly, giving his reasons, and shall send to the Commissioner a copy of the notification and of the document incorporating the complaint to which it relates.

Conduct of
investiga-
tion.

19. Where a complaint is to be investigated, the investigation shall be conducted—

- (a) by investigative staff of the Internal Affairs Branch unless—
 - (i) the conduct the subject of the complaint is conduct of a member of the Police Force who is, or at the time the conduct occurred was, a member of the Internal Affairs Branch;
 - (ii) the conduct the subject of the complaint is conduct of a member of the Police Force who, at the time the investigation is directed, is senior to all the investigative staff of the Internal Affairs Branch; or
 - (iii) the complaint is to be investigated as provided by paragraph (b) or (c);
- (b) where the conduct the subject of the complaint is conduct referred to in paragraph (a) (i) or (ii)—by such members of the Police Force as the Commissioner directs; or
- (c) where the conduct to which the complaint relates is of a class or kind that the Ombudsman and the Commissioner have agreed should not be the subject of an investigation by the Internal Affairs Branch—by such members of the Police Force as the Commissioner directs.

Investiga-
tion not
to be
deferred
without
consent.

20. (1) Pending the conclusion of criminal proceedings which have been instituted, the Commissioner may, with the consent of the Ombudsman, defer the commencement or continuation of an investigation of a complaint which is, or may be, in issue in those proceedings.

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(2) Except as provided in subsection (1), the commencement or continuation of an investigation shall not be deferred.

21. The Commissioner shall provide the Ombudsman with such documentary and other information as the Ombudsman may from time to time request with respect to an investigation proceeding under this Part. Commissioner to provide certain information.

22. (1) Where it appears to a member of the Police Force conducting an investigation that sufficient evidence exists to warrant the prosecution of any person for an offence, he shall, subject to the Police Regulation Act, 1899, and the rules made thereunder, cause appropriate proceedings to be instituted against that person. Proceedings to be instituted if warranted

(2) Where a member of the Police Force referred to in subsection (1) causes proceedings to be instituted as provided by that subsection—

(a) he shall inform the Commissioner; and

(b) the Commissioner shall inform the Ombudsman,

of the institution of the proceedings and of the particulars thereof.

23. A member of the Police Force conducting an investigation shall— Result of investigation to be reported.

(a) at such times as the Commissioner may direct while the investigation is proceeding; and

(b) at the conclusion of his investigation,

report to the Commissioner the progress or result of his investigation, as the case may require, and provide the Commissioner with copies of all statements taken by him in the course of the investigation and of all other documents upon which the report is based.

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Report,
etc., to be
sent to
Ombudsman.

24. (1) As soon as practicable after he is satisfied that an investigation has been concluded, the Commissioner shall—

- (a) send to the Ombudsman a copy of the report provided under section 23 at the conclusion of the investigation and copies of all statements taken in the course of the investigation and of all other documents upon which the report is based;
- (b) provide the Ombudsman with such comments on the report and statements as the Commissioner thinks fit; and
- (c) specify what action should, in the opinion of the Commissioner, be taken with respect to the complaint to which the investigation related.

(2) The Commissioner and any member of the Police Force who investigated a complaint shall, upon being required by the Ombudsman so to do after he receives the information referred to in subsection (1), provide such additional information as the Ombudsman considers is necessary to enable him to determine whether the complaint was properly investigated.

Further
investigation.

25. (1) Where, after receiving the information referred to in section 24, the Ombudsman is not satisfied that the complaint to which the information relates was properly investigated, he shall report to the Commissioner accordingly, specifying what are, in his opinion, the deficiencies in the investigation.

(2) Upon receipt of a report under subsection (1), the Commissioner shall cause a further investigation to be conducted in order to remedy the deficiencies referred to in the report.

(3) This Part (including this section) applies to and in respect of a further investigation under this section in the same way as it applies to an initial investigation.

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26. (1) Where the Commissioner is of the opinion that publication of any material or information which he is under this Part required to provide for the Ombudsman might prejudice the investigation or prevention of crime, or otherwise be contrary to the public interest, he shall inform the Ombudsman accordingly, giving the reasons for his opinion. Certain information to be confidential.

(2) Where the Ombudsman is provided with material or information in respect of which the Commissioner has given the opinion referred to in subsection (1), the Ombudsman—

- (a) may not, except as provided in paragraph (b), publish that material or information; and
- (b) may, if in his opinion the circumstances so warrant, make in relation to that material or information a report to the Minister for presentation to Parliament.

PART V.—REPORTS.

27. Where, after considering all the material and information provided for him under Part IV with respect to a complaint, the Ombudsman is satisfied that the complaint has not been sustained, he shall so report to— Unjustified complaints.

- (a) the complainant;
- (b) the Commissioner; and
- (c) the member of the Police Force whose conduct was the subject of the complaint.

28. (1) Where, after considering all the material and information provided for him under Part IV the Ombudsman is satisfied that the conduct to which the complaint relates— Justified complaints.

- (a) was contrary to law;

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- (b) was unreasonable, unjust, oppressive or improperly discriminatory;
- (c) was in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory;
- (d) was based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations;
- (e) was based wholly or partly on a mistake of law or fact;
or
- (f) was conduct for which reasons should have been given but were not given,

or that the complaint has been otherwise sustained, the Ombudsman shall compile a report relating to the complaint and the conduct to which it relates, giving reasons for his conclusions.

(2) In a report under subsection (1), the Ombudsman may recommend—

- (a) that the conduct to which it relates be considered or reconsidered by the member of the Police Force whose conduct it was, or by any person in a position to supervise or direct that member of the Police Force in relation to the conduct or to review, rectify, mitigate or change the conduct or its consequences;
- (b) that action be taken to rectify, mitigate or change the conduct or its consequences;
- (c) that reasons be given for the conduct;
- (d) that any law or practice relating to the conduct be changed; or
- (e) that any other action be taken.

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29. (1) When the Ombudsman has compiled a report under section 28 he shall, before acting under subsection (2) or (3)— Distribution of report.

- (a) inform the Minister administering the Police Regulation Act, 1899, of the compilation of the report; and
- (b) on request by that Minister, consult him.

(2) The Ombudsman shall give a copy of his report under section 28 to the Minister administering the Police Regulation Act, 1899, and to the Commissioner and, as soon as practicable after receiving the report, the Commissioner shall give a copy of the report to the member of the Police Force whose conduct is the subject of the report.

(3) The Ombudsman may, if he thinks fit, give to a complainant a copy of a report under section 28 that relates to his complaint.

30. (1) The Commissioner shall notify the Ombudsman of any action proposed, and of any action taken, in consequence of a report under section 28. Action on report.

(2) Where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of a report under section 28, he may make a report to the Minister for presentation to Parliament.

31. Where a complaint is investigated under Part IV, the Ombudsman— Report to complainant.

- (a) may from time to time report to the complainant on the progress of the investigation;
- (b) shall report to the complainant on the results of the investigation; and
- (c) may make to the complainant such comments on the investigation and its consequences as he thinks fit.

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Special
report to
Parliament.

32. (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the discharge of his functions under this Act.

(2) The Ombudsman may include in a report under subsection (1) or under section 30 (2) a recommendation that the report be made public forthwith.

(3) Where a report under subsection (1) or under section 30 (2) contains a recommendation referred to in subsection (2), the Minister may make it public before it is presented to Parliament.

Serious
misconduct.

33. Where the Ombudsman is of the opinion that a member of the Police Force is or may be guilty of such misconduct as may warrant dismissal, removal or punishment, he shall report his opinion—

(a) to the Minister administering the Police Regulation Act, 1899; and

(b) to the Commissioner,

giving his reasons.

PART VI.—INTERNAL AFFAIRS BRANCH.

Constitu-
tion of
Internal
Affairs
Branch.

34. (1) There is hereby constituted within the Police Force the Internal Affairs Branch.

(2) The Internal Affairs Branch shall consist of—

(a) the Officer-in-Charge;

(b) investigative staff; and

(c) other staff.

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(3) The Officer-in-Charge shall be a member of the Police Force of or above the rank of Inspector appointed by the Commissioner with the approval of the Minister.

(4) The Officer-in-Charge shall be responsible to the Commissioner for the operation of the Internal Affairs Branch.

(5) The investigative and other staff of the Internal Affairs Branch shall be such specially selected members of the Police Force as the Commissioner, with the approval of the Minister, from time to time determines.

(6) Subject to subsections (7) and (8), a member of the investigative staff of the Internal Affairs Branch shall be appointed to the Branch for a term not exceeding 3 years and may not be appointed for terms of office totalling more than 5 years.

(7) Where the Commissioner is satisfied that there are special reasons for so doing, he may, with the approval of the Minister—

- (a) terminate the appointment of a member of the investigative staff of the Internal Affairs Branch before the expiration of the member's term of office; or
- (b) extend the term of office of such a member subject to his terms of office totalling not more than 5 years.

(8) For the purpose of investigating a particular matter, the Commissioner may, from time to time, second to the Internal Affairs Branch members of the Police Force having special knowledge or skills in relation to that matter and he may, at any time, terminate such a secondment.

35. (1) It is the duty of the Internal Affairs Branch—
- (a) to investigate, and report upon, complaints referred to it for investigation under Part IV;

Duties of
Internal
Affairs
Branch.

Police Regulation (Allegations of Misconduct).

- (b) to investigate, and report upon, any conduct or alleged conduct of a member of the Police Force referred to it by the Commissioner for investigation otherwise than under Part IV;
- (c) to investigate, and report upon, any matter arising out of, or incidental to, an investigation under paragraph (a) or (b);
- (d) to perform any other duty imposed by or under this or any other Act on the Internal Affairs Branch; and
- (e) to perform such other functions arising out of or incidental to the general government and discipline of the Police Force as the Commissioner may direct.

(2) Subject to section 34 (8), an investigation referred to in paragraph (a), (b) or (c) shall be carried out, and a report consequent thereon shall be made, only by members of the investigative staff of the Internal Affairs Branch.

PART VII.—POLICE TRIBUNAL.

Constitution
of Tribunal.

36. (1) There is hereby constituted the Police Tribunal of New South Wales which shall consist of a President and members.

(2) The Tribunal is a court of record and its seal shall be judicially noticed.

(3) A reference in this Part to a member of the Tribunal does not include a reference to the President or Deputy President.

President
of
Tribunal.

37. (1) The President shall be appointed by the Governor and shall be—

- (a) a Judge of the Supreme Court of New South Wales who shall be appointed on the nomination of the Chief Justice;

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- (b) a member of the Industrial Commission of New South Wales who shall be appointed on the nomination of the President of that Commission; or
- (c) a person appointed as chairman of the Crown Employees Appeal Board under section 4 (1) (c) of the Crown Employees Appeal Board Act, 1944.

(2) The President—

- (a) holds office for such term not exceeding 5 years as is specified in the instrument of his appointment;
- (b) is eligible for re-appointment; and
- (c) vacates his office as President if he ceases to hold the office by virtue of which he was appointed President.

(3) The rank, title, status, precedence, remuneration, powers, authorities, duties, functions, rights and privileges of a Judge of the Supreme Court of New South Wales, or pertaining to an office by virtue of which a person has the status of such a Judge, and the continuity of his service as such a Judge or as a holder of that office, are not affected by the exercise of the powers, authorities, duties and functions conferred or imposed on him by or under this Act.

(4) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment by the Governor of the President and the President is not, in that capacity, subject to that Act during his term of office.

38. (1) The Governor may appoint as Deputy President of the Tribunal for a term not exceeding 5 years a person eligible for appointment as President. Deputy
President
of
Tribunal.

(2) Section 37 (2), (3) and (4) applies to and in respect of the Deputy President of the Tribunal in the same way as it applies to and in respect of the President.

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(3) Where the President is unable to act as such, the Deputy President becomes, for all purposes, the President until such time as the President is again able to act as such.

Members of Tribunal. **39.** Each Judge of the District Court of New South Wales is a member of the Tribunal.

Staff of Tribunal. **40.** The Governor may, under and subject to the Public Service Act, 1902, appoint and employ such officers and employees as are necessary to enable the Tribunal to exercise and perform its powers, authorities, duties and functions.

Hearing of disciplinary charges. **41.** (1) Subject to this Part, the Tribunal has exclusive jurisdiction to hear and determine a departmental charge preferred against a member of the Police Force and denied by him where—

- (a) the charge relates to conduct the subject of a complaint investigated under Part IV; or
- (b) the charge relates to other conduct and the member of the Police Force charged elects to have the charge heard and determined by the Tribunal.

(2) In exercising the jurisdiction conferred by subsection (1), the Tribunal shall be constituted by a member sitting alone.

(3) For the purposes of this section, there may be contemporaneous sittings of the Tribunal constituted by different members and those sittings may be in different places.

Original jurisdiction of Tribunal. **42.** (1) Where the Tribunal is exercising the jurisdiction conferred by section 41—

- (a) it has the powers, authorities, protections and immunities of a commissioner appointed under Division 1 of Part II of the Royal Commissions Act, 1923, and that Act, section 13 and Division 2 of Part II excepted, applies to

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and in respect of proceedings before the Tribunal under section 41 in the same way as it applies to and in respect of proceedings before a royal commission; and

- (b) the complainant is not a party to the proceedings where they arise from a charge referred to in section 41 (1) (a).

43. (1) Where the Tribunal exercising its original jurisdiction under section 41 determines that a charge preferred against a member of the Police Force has been proved, that member of the Police Force may appeal against the determination to the Review Division of the Tribunal on any one or more of the following grounds :—

Appellate
jurisdiction
of the
Tribunal.

- (a) that he is not guilty of the charge;
- (b) that the evidence disclosed no offence;
- (c) that the determination is bad and contrary to law;
- (d) that the determination is against the evidence and the weight of evidence.

(2) The Review Division of the Tribunal shall be constituted by the President and 2 members of the Tribunal sitting together.

(3) At a sitting of the Review Division of the Tribunal—

- (a) a decision of the President as to—
 - (i) the jurisdiction of the Tribunal;
 - (ii) the admissibility of evidence; or
 - (iii) procedure,is the decision of the Tribunal; and
- (b) subject to paragraph (a), the President has one vote and each of the members present has one vote and a decision supported by a majority in number of those votes is a decision of the Tribunal.

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(4) For the purposes of subsection (3) (b), an abstention from voting is a vote in the negative.

Proceedings
generally.

44. (1) At any proceedings before the Tribunal, whether under section 41 or 43—

- (a) the Commissioner and the member of the Police Force charged are each entitled to be represented by counsel, solicitor or agent;
- (b) the public shall not be excluded unless the Tribunal exercising jurisdiction at those proceedings otherwise orders; and
- (c) the function of the Tribunal is to determine, upon the true merits and justice of the case and without being bound by strict legal precedent, whether or not the charge that gave rise to the proceedings has been proved.

(2) The Tribunal shall cause a copy of its determination at proceedings before it to be sent to—

- (a) the Commissioner;
- (b) the member of the Police Force charged;
- (c) the Ombudsman; and
- (d) where the proceedings arose from a charge referred to in section 41(1)(a)—the complainant.

Inquiry
concerning
discipline.

45. (1) The Tribunal shall, at the request of the Minister, inquire into, and report to the Minister upon, any matter relating to discipline in the Police Force.

(2) For the purposes of this section—

- (a) the Tribunal shall be constituted by the President sitting alone; and
- (b) the Royal Commissions Act, 1923, applies to and in respect of the Tribunal and an inquiry under this section in the same way as it applies to and in respect of a

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sole commissioner under that Act who is a Judge of the Supreme Court and to and in respect of an inquiry by him as a commissioner under that Act, and so applies as if section 17(4) of that Act had been repealed.

(3) At any proceedings before the Tribunal under this section, the public shall not be excluded unless the Tribunal so orders.

(4) A report under subsection (1)—

- (a) shall be presented to Parliament; and
- (b) may contain a recommendation that the report be made public forthwith.

(5) Where a report under subsection (1) contains a recommendation referred to in subsection (4)(b), the Minister may make the report public before it is presented to Parliament.

46. Subject to consultation with the Chief Judge of the District Sittings, Court of New South Wales as to the availability of a member, ^{etc., of} the President shall arrange for sittings of the Tribunal and the ^{Tribunal.} allocation of its work.

47. Subject to this Act and the regulations, the Tribunal has ^{Proceedings} control of its proceedings. ^{of Tribunal.}

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PART VIII.—GENERAL.

Powers,
etc., of
acting
Ombuds-
man,
Deputy
Ombudsman
and
special
officer.

48. (1) This Act applies to and in respect of an acting Ombudsman appointed under section 7 of the Ombudsman Act, 1974, in the same way as it applies to and in respect of the Ombudsman.

(2) The powers, authorities, duties and functions of the Ombudsman that, pursuant to section 8 (3) of the Ombudsman Act, 1974, the Deputy Ombudsman may be directed by the Ombudsman to exercise or perform do not include those conferred or imposed by sections 27 and 31 (b) and (c).

(3) The powers, authorities, duties and functions of the Ombudsman that may, under section 10 of the Ombudsman Act, 1974, be delegated to a special officer of the Ombudsman do not include—

- (a) any power or duty to make a report under this Act; or
- (b) the power to require additional information referred to in section 24 (2).

Powers,
etc., of
Deputy
Commis-
sioner of
Police.

49. The powers, authorities, duties and functions of the Commissioner that, pursuant to section 4A of the Police Regulation Act, 1899, may be exercised or performed by the Deputy Commissioner of Police include the powers, authorities, duties and functions conferred and imposed on the Commissioner by this Act.

Liability
to do duty
continues.

50. This Act does not operate to absolve a member of the Police Force who receives a complaint from liability to perform any duty imposed on him otherwise than by this Act.

Ombudsman
may
require
further
informa-
tion.

51. For the purposes of Part III or for the purpose of determining whether a complaint should be investigated under Part IV, the Ombudsman may do any one or more of the following :—

- (a) request a complainant to attend before him for the purpose of providing further information concerning the complaint;

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- (b) request the complainant to provide further written particulars concerning the complaint;
- (c) request the complainant to verify his complaint, or any particulars given by him concerning his complaint, by statutory declaration.

52. Where the Ombudsman provides the Commissioner with a copy of a document incorporating a complaint, the Commissioner shall, at the request of the Ombudsman, provide the Ombudsman, for the purposes of Part III or for the purpose of determining whether the complaint should be investigated under Part IV—

- (a) with an explanation of the policies, procedures and practices of the Police Force relevant to the conduct complained of; and
- (b) to the extent to which he is able to do so, with any explanation, comment or information sought by the Ombudsman in connection with the complaint.

53. (1) If a complainant objects to a request under section 51, or the Commissioner objects to a request under section 52, and the Ombudsman is informed of the objection and the grounds of the objection, the Ombudsman may withdraw the request if he is satisfied that the grounds of the objection are well-founded.

(2) Where a request under section 51 or 52 is withdrawn by the Ombudsman, it shall be deemed never to have been made.

54. (1) Where the Ombudsman makes a request under section 51 he shall, subject to section 53, take no further action in connection with the complaint to which the request relates until the request is complied with or a reasonable time for compliance with the request has elapsed.

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(2) If a request under section 51 is not complied with within a reasonable time, the Ombudsman may treat the complaint to which it relates as having been dealt with under Part III in a manner acceptable to the complainant and if he so treats the complaint he shall inform the Commissioner and the complainant accordingly.

Certain provisions of Act No. 68, 1974, to apply.

55. Sections 17, 18 and 23 of the Ombudsman Act, 1974, apply to and in respect of the exercise and performance by the Ombudsman of the powers, authorities, duties and functions conferred and imposed by this Act in the same way as they apply to and in respect of an investigation by the Ombudsman under the Ombudsman Act, 1974.

Annual report.

56. The reference in section 30 (1) of the Ombudsman Act, 1974, to the work and activities in respect of which the Ombudsman is required to make an annual report for presentation to Parliament includes a reference to his work and activities under this Act.

Information received to be confidential.

57. Without limiting the operation of section 34 (a) of the Ombudsman Act, 1974, in the application of section 34 of that Act to and in respect of information received in the course of the administration or execution of this Act, the reference in that section—

- (a) to a public authority—shall be construed as a reference to a member of the Police Force;
- (b) to the head of that authority—shall be construed as a reference to the Commissioner; and
- (c) to the responsible Minister—shall be construed as a reference to the Minister administering the Police Regulation Act, 1899.

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58. (1) The Ombudsman shall not, nor shall an officer or special officer of the Ombudsman, be competent or compellable, in any legal proceedings or in any proceedings before the Tribunal, to give evidence or produce documents in respect of any matter in which he is or was involved in the course of the administration or execution of this Act. Ombudsman
or officer
as witness.

(2) Subsection (1) does not apply to or in respect of any proceedings under section 37 of the Ombudsman Act, 1974, or under Part III of the Royal Commissions Act, 1923.

(3) Subsections (1) and (2) do not prejudice or affect the operation of section 35 of the Ombudsman Act, 1974, in relation to the administration and execution of this Act.

59. (1) Subject to this section, a document brought into existence for the purposes of this Act is not admissible in evidence in any proceedings other than proceedings (including an inquiry under section 45) with respect to the discipline of the Police Force before— Certain
document
privileged.

- (a) the Commissioner; or
- (b) the Tribunal.

(2) Subsection (1) does not apply to or in respect of—

- (a) a document incorporating a complaint;
- (b) a document published by order of, or under the authority of either House, or both Houses, of Parliament;
- (c) a document published under section 32 (3) or 45 (5);
or
- (d) a document that a witness is willing to produce.

(3) Subsections (1) and (2) do not operate to render admissible in evidence in any proceedings any document that would not have been so admissible if this section had not been enacted.

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Publicity. **60.** (1) The Ombudsman shall cause to be prepared pamphlets briefly explaining the rights and duties of members of the Police Force and the public under this Act.

(2) The pamphlets referred to in subsection (1) shall be written in the English language and in such other languages as the Ombudsman considers necessary.

(3) The Ombudsman shall—

- (a) supply the Commissioner with sufficient quantities of the pamphlets referred to in subsection (1) to enable a reasonable supply of the pamphlets to be available at each police station in the State, and the Commissioner shall distribute the pamphlets accordingly;
- (b) supply the permanent head of the Department of the Attorney-General and of Justice with sufficient quantities of the pamphlets referred to in subsection (1) to enable a reasonable supply of the pamphlets to be available at the office of each court of petty sessions in the State, and that permanent head shall distribute the pamphlets accordingly;
- (c) make such arrangements as he thinks fit with any Government department or instrumentality or with any other body or organisation for making the pamphlets available, or distributing them, to any interested person; and
- (d) take such further or other action as the Ombudsman considers necessary to bring the provisions of this Act to the attention of interested persons.

Regulations. **61.** (1) The Governor may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

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(2) Without affecting the generality of subsection (1), regulations may be made for and with respect to the institution and conduct of proceedings before the Tribunal and the implementation of its determinations.
