

POLICE SERVICE (MANAGEMENT) AMENDMENT ACT 1993
No. 39

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Police Service Act 1990 No. 47
4. Consequential amendment and repeal of other Acts

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

POLICE SERVICE (MANAGEMENT) AMENDMENT ACT 1993
No. 39

NEW SOUTH WALES



Act No. 39, 1993

An Act to amend the Police Service Act 1990 with respect to the Police Board and the Commissioner of Police; and for other purposes. [Assented to 8 June 1993]

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

1. This Act may be cited as the Police Service (Management) Amendment Act 1993.

Commencement

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

Amendment of Police Service Act 1990 No. 47

3. The Police Service Act 1990 is amended as set out in Schedule 1.

Consequential amendment and repeal of other Acts

4. (1) The Acts specified in Schedule 2 are amended as set out in that Schedule.

(2) The Police Service (Inspector General) Act 1991 (1991 No. 62) is repealed.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990**

(Sec. 3)

(1) Parts 3 and 4:

Omit the Parts, insert instead:

**PART 3—THE POLICE BOARD OF NEW
SOUTH WALES**

Constitution of the Board

15. (1) There is constituted by this Act the Police Board of New South Wales.

(2) The Police Board is a body corporate.

(3) The Police Board is a statutory body representing the Crown.

Board subject to Ministerial control

16. The Police Board is, in the exercise of its functions, subject to the control and direction of the Minister.

SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990—*continued*

Composition and procedure of the Board

17. (1) The Police Board is to consist of:

- (a) the Chairperson of the Police Board; and
- (b) the Commissioner; and
- (c) the Director-General of the Ministry for Police; and
- (d) at least 2 but not more than 4 part-time members appointed by the Governor.

(2) Although the Commissioner and the Director-General are members of the Police Board, they do not have a vote at any meeting of the Board. They each have a right to be heard at any meeting of the Police Board but both or either of them may be excluded from any meeting if the Board so directs.

(3) The Police Board must disclose in its annual report whether the Commissioner or Director-General was excluded from any meeting of the Board during the reporting year and, if so, the number of occasions on which each of them was so excluded. The Chairperson of the Police Board is to give the Minister written notice of any such exclusion as soon as practicable after it occurs.

(4) Schedule 1 has effect with respect to the members and procedure of the Police Board.

Appointment of Chairperson of the Board

18. (1) The Governor may appoint a person as Chairperson of the Police Board.

(2) The appointment of the Chairperson is to be OR a part-time basis.

(3) Neither the Commissioner nor the Director-General of the Ministry for Police is eligible to be appointed as Chairperson of the Police Board.

Functions of the Board

19. The Police Board has the following functions:

- (a) the functions conferred on it by this Act in connection with the employment of members of the Police Service Senior Executive Service and other members of the Police Service;
- (b) the supervision and promotion of career development and training for all members of the Police Service;

SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990—*continued*

- (c) after consultation with the Minister, the undertaking of reviews it considers appropriate of the procedures of the Police Service designed to safeguard the integrity of the Police Service;
- (d) the making of reports or recommendations to the Minister:
 - (i) on any matter referred to it by the Minister; or
 - (ii) on any matter arising from the exercise of its functions or, after consultation with the Minister, on any other matter it considers appropriate;
- (e) such other functions as are conferred or imposed on it by or under this or any other Act.

Staff of the Board

20. (1) The staff of the Police Board is to be employed under Part 2 of the Public Sector Management Act 1988.

(2) The Police Board may, with the approval of the Minister, arrange for the use of the services of any staff (by secondment or otherwise) or facilities of the Police Service, a government department or a public authority.

Delegation by the Board

21. (1) The Police Board may delegate to any person any of the functions of the Police Board, other than this power of delegation.

(2) The Police Board must consult the Minister about any proposed delegation by the Board under this section.

Powers of entry and inspection

22. (1) An authorised person may, for the purpose of exercising the Police Board's functions, enter any police premises at any time.

(2) The authorised person may, for that purpose, call for and inspect all or any police records, documents, files or other matter, whether of the same or a different kind or nature, on those premises, and question and seek information from any member of the Police Service.

SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990—*continued*

(3) A member of the Police Service who fails to comply with any requirement made of the member under this section or to give all assistance and co-operation to the authorised person is guilty of an offence.

Maximum penalty: 20 penalty units or 6 months imprisonment, or both.

(4) An authorised person is to be issued with a certificate of authority under this section signed by the Chairperson of the Board.

(5) In this section, “**authorised person**” means a member of the Police Board, or other person, authorised by the Chairperson of the Police Board for the purposes of this section.

Annual report of the Board

23. (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Police Board is required to prepare and forward to the Minister a report on its work and activities for the 12 months ending on 30 June in that year.

(2) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

PART 4—THE COMMISSIONER OF POLICE

Appointment of Commissioner

24. (1) The Commissioner of Police is to be appointed by the Governor on the recommendation of the Minister.

(2) It does not matter whether the person appointed is or is not already a member of the Police Service.

(3) Before a person is appointed:

- (a) the Police Board is required to invite applications for appointment to the office from any persons wishing to apply; and
- (b) the Minister is required to obtain and have regard to the recommendation of the Police Board in relation to the appointment; and

SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990—*continued*

- (c) the Minister is required to obtain and have regard to an official report (referred to in section 3 (3)) on the previous employment and conduct of any police officer proposed to be appointed or (if the person proposed to be appointed is not a police officer) to a similar report; and
- (d) the Minister is required to request and have regard to a report under this section by the Parliamentary Joint Committee known as the Committee on the Independent Commission Against Corruption of its examination of the integrity of the person proposed to be appointed.

(4) In deciding to make a recommendation in relation to an appointment under this section, the Police Board must, from among the applicants eligible for appointment, select the applicant who has, in the opinion of the Police Board, the greatest merit.

(5) However, the Police Board is not required to invite applications for appointment if it decides to recommend the re-appointment of the person holding office as Commissioner.

(6) The Parliamentary Joint Committee has 14 days after it receives a request under subsection (3) (d) to report to the Minister and has a further 30 days (after the initial 14 days) to do so if it notifies the Minister within that 14 days that it requires more time to consider the matter. A request is to be in writing and may be withdrawn by the Minister at any time.

(7) Section 70 (Confidentiality) of the Independent Commission Against Corruption Act 1988 applies in respect of the exercise of the Parliamentary Joint Committee's functions relating to the appointment of a Commissioner in the same way as it applies in respect of the exercise of the Committee's functions relating to the appointment of the Commissioner for the Independent Commission Against Corruption.

SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990—*continued*

Acting Commissioner

25. (1) The Minister may appoint a member of the Police Service recommended by the Police Board to act as Commissioner during the illness or absence of the Commissioner or during any vacancy in the office of Commissioner.

(2) Any such member, while acting as Commissioner, has all the functions of the Commissioner.

(3) The Minister may, at any time, terminate the appointment of any such member to act as Commissioner.

Term appointment of Commissioner

26. Subject to this Act, the Commissioner holds office for such period (not exceeding 5 years) as is specified in the Commissioner's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Employment and remuneration of Commissioner

27. (1) The employment of the Commissioner is to be governed by a contract of employment between the Commissioner and the Minister.

(2) Sections 41–47, 59 and 61 (relating to employment and remuneration of executive officers) apply to the Commissioner in the same way as they apply to an executive officer. However, in the application of those sections a reference to the Police Board is to be read as a reference to the Minister.

Removal of Commissioner

28. (1) The Governor may remove the Commissioner from office on the recommendation of the Minister.

(2) The Governor, on the recommendation of the Minister:

- (a) may declare the person so removed from office as Commissioner to be an unattached officer in the service of the Crown; and
- (b) may revoke any such declaration.

SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990—*continued*

(3) A recommendation of the Minister under this section may be made only if the recommendation is supported:

- (a) by the Police Board; or
- (b) by resolutions of both Houses of Parliament passed after the Police Board has been given an opportunity to consider the matter.

(4) While such a declaration remains in force, the person concerned is entitled to monetary remuneration and employment benefits as if the person had not been removed from office.

(5) If:

- (a) the Commissioner is removed from office and such a declaration is not made; or
- (b) a declaration that is made is revoked,

the person concerned ceases to be employed in the service of the Crown, unless appointed to another position in the service of the Crown.

(6) A declaration under this section, unless sooner revoked, is revoked on the date on which the term of office of the person as Commissioner would have expired.

(7) A person removed from office as Commissioner (except for misbehaviour after due inquiry) is entitled to the same compensation under section 53 as an executive officer removed from office as referred to in that section.

(8) The Commissioner may be removed from office only under this section.

Retirement of Commissioner

29. (1) The Commissioner may retire on or after reaching 55 years of age.

(2) The Commissioner is not required to retire on reaching 65 years of age.

(3) Nothing in this section affects the provisions of an Act relating to any superannuation scheme of which the Commissioner is a member. However, the Commissioner may not be retired under any such Act without the Commissioner's consent.

SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990—*continued*

Vacation of office of Commissioner

30. (1) The office of Commissioner becomes vacant if the Commissioner:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) is removed from office under section 28; or
- (d) retires from office under this or any other Act; or
- (e) resigns his or her office in writing addressed to the Minister.

(2) The retirement or resignation of a Commissioner does not take effect until:

- (a) the Minister accepts the retirement or resignation; or
- (b) the Commissioner has given the Minister at least 4 weeks' notice in writing of the day on which the Commissioner intends to retire or resign and the Commissioner is not on that day under official investigation for misbehaviour.

(3) The Commissioner is under official investigation for misbehaviour if the Minister so certifies with the concurrence in writing of the Chairperson of the Police Board.

Delegation by Commissioner

31. The Commissioner may delegate to another member of the Police Service any of the functions conferred or imposed on the Commissioner by or under this or any other Act, other than this power of delegation.

(2) Schedule 1 (**Provisions relating to the members and procedure of the Police Board**):

- (a) Clause 1, definition of “part-time member”:

Omit “other than the Commissioner or the Chairperson”, insert instead “other than the Chairperson, Commissioner or Director-General of the Ministry for Police”.

SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990—*continued*

- (b) After the definition of “part-time member” in clause 1, insert:

“**voting member**” means a member other than the Commissioner or the Director-General of the Ministry for Police.

- (c) At the end of clause 3, insert:

(2) Subject to this Schedule, the Chairperson holds office for such period (not exceeding 5 years) as is specified in the Chairperson’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

- (d) From clause 4, omit “A part-time Chairperson”, insert instead “The Chairperson” and omit “the part-time Chairperson”, insert instead “the Chairperson”.

- (e) Omit clause 5 (1) (f) and (i).

- (f) From clause 5 (1) (h), omit “a part-time”, insert instead “the” and omit “part-time” where secondly and thirdly occurring.

- (g) From clause 7 (2), omit “a part-time Chairperson” wherever occurring, insert instead “the Chairperson”.

- (h) After clause 10, insert:

Notice of meetings

10A. All members are to be given notice of meetings of the Board by the Chairperson or by an officer of the Board authorised by the Chairperson.

- (i) Omit clause 11, insert instead:

Quorum

11. A quorum for a meeting of the Board is a majority of the voting members of the Board for the time being.

- (j) Omit clause 12, insert instead:

Presiding member

12. (1) The Chairperson or, in the absence of the Chairperson, a part-time member elected to chair the meeting by the voting members present is to preside at a meeting of the Board.

Police Service (Management) Amendment Act 1993 No. 39

SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990—*continued*

(2) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

(k) Clause 13:

After “votes cast”, insert “by voting members”.

(l) Clause 14:

From clause 14 (1), omit “those members”, insert instead “such of those members as are voting members”.

(3) Schedule 2 (**Police Service Senior Executive Positions**):

Omit “Inspector General”.

(4) Schedule 4 (**Savings, transitional and other provisions**):

(a) At the end of clause 2 (1) of Part 1 (Savings and transitional regulations), insert:

the Police Service (Management) Amendment Act 1993.

(b) Omit clause 14 (Application of s. 26).

(c) At the end of the Schedule, insert:

**PART 6—PROVISIONS CONSEQUENT ON
ENACTMENT OF POLICE SERVICE
(MANAGEMENT) AMENDMENT ACT 1993**

Definitions

20. In this Part:

“**amending Act**” means the Police Service (Management) Amendment Act 1993;

“**appointed day**” means the day appointed for the commencement of Schedule 1 (1) to the amending Act.

Police Board

21. (1) The Police Board constituted under section 15 (as in force immediately before the substitution of that section by the amending Act) is a continuation of, and the same legal entity as, the Police Board constituted under that section (as so substituted).

SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1990—*continued*

(2) A person who, immediately before the appointed day, held office as a member of the Police Board ceases to hold that office on the appointed day. The person is eligible (if otherwise qualified) to be re-appointed, but is not entitled to any remuneration or compensation for so ceasing to hold that office.

(3) A delegation by the Police Board made under section 21 and in force immediately before the substitution of that section by the amending Act is taken to be a delegation under that section (as so substituted), but only to the extent that the Police Board continues to have the relevant function.

Commissioner of Police

22. (1) The person holding office as Commissioner immediately before the appointed day is taken to have been appointed as Commissioner on the appointed day for a period of 5 years or until the person reaches 65 years of age, whichever is the shorter period. However, if that person was appointed for a term, the person is taken to have been appointed for the balance of that term.

(2) For the avoidance of doubt, the provisions of the amending Act (including the provisions relating to the Commissioner's contract of employment and the Commissioner's removal from office) apply to the Commissioner during the period of appointment under this clause.

(3) Until the Commissioner enters into a contract of employment, the Commissioner is entitled to remuneration at the rate payable to the Commissioner immediately before the appointed day.

(4) A delegation by the Commissioner made under section 31 and in force immediately before the substitution of that section by the amending Act is taken to be a delegation under that section (as so substituted).

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE
ACT 1980—*continued***

Inspector General

23. (1) The person holding office as Inspector General in the Police Service immediately before the day appointed for the commencement of Schedule 1 (3) to the amending Act is taken to have been appointed, on that day, to the position of Inspector General in the Public Service (being a position in the Ministry for Police) for the balance of the term of office as Inspector General in the Police Service.

(2) The contract of employment of that person under section 41 is taken, on that day and pending a new contract of employment, to be a contract of employment entered into under section 42G of the Public Sector Management Act 1988.

(3) That person, or any other person who holds office as Inspector General, may exercise the functions of an authorised person under section 22 (Powers of entry and inspection) for the purposes of the Inspector General's functions.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS**

(Sec. 4 (1))

Public Sector Management Act 1988 No. 33

Schedule 3B (Senior Executive Positions):

At the beginning of the positions relating to the Ministry for Police, insert the following position:

Inspector General

Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)

(1) Section 24A (**Definitions**):

After "1988" in the definition of "chief executive office holder", insert "or the Commissioner of Police".

Police Service (Management) Amendment Act 1993 No. 39

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

- (2) Schedule 1 (**Public offices**):
Omit “Commissioner of Police.”.
- (3) Schedule 3 (**Public offices**):
Omit from Part 2 “Chairperson of the Police Board.”.
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*[Minister's second reading speech made in—
Legislative Assembly on 31 March 1993
Legislative Council on 20 May 1993]*