

POLICE SERVICE (COMPLAINTS) AMENDMENT ACT 1994
No. 9

NEW SOUTH WALES



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POLICE SERVICE (COMPLAINTS) AMENDMENT ACT 1994
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Act No. 9, 1994

An Act to amend the Police Service Act 1990 in relation to the conduct of police officers that may be the subject of complaint and investigation under that Act, and to make consequential amendments to the Ombudsman Act 1974. [Assented to 4 May 1994]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Police Service (Complaints) Amendment Act 1994.

Commencement

2. This Act commences on the date of assent.

Amendment of Police Service Act. 1990 No. 47

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

Consequential amendment of Ombudsman Act 1974 No. 68

4. The Ombudsman Act 1974 is amended as set out in Schedule 2.

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

(Sec. 3)

(1) Section 121:

Omit section 121, insert instead:

Definition of “conduct” of police officer

121. (1) In this Part, “**conduct**” of a police officer means any action or inaction (or alleged action or inaction) of the police officer, whether or not:

- (a) it occurs while the police officer is officially on duty;
or
- (b) it involves the commission of an offence by the police officer; or
- (c) it is within the usual functions of a police officer.

(2) However, in this Part, “**conduct**” of a police officer does not include anything that may be made the subject of a complaint under section 12 of the Ombudsman Act 1974 (which relates to complaints about matters of administration).

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

(2) Section 141A:

After section 141, insert:

Investigations not to proceed for complaints unconnected with fact person a police officers

141A. (1) The Ombudsman is not to determine that a complaint should be investigated under this Division if of the opinion that the conduct the subject of the complaint is unconnected with the fact that the person concerned is a police officer,

(2) If the Ombudsman forms that opinion after an investigation has begun, the Ombudsman is to consent to or direct a discontinuation of the investigation under section 143.

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

(a) At the end of clause 2 (1), insert:

the Police Service (Complaints) Amendment Act 1994.

(b) After Part 7, insert:

**PART 8—PROVISIONS CONSEQUENT ON
ENACTMENT OF POLICE SERVICE
(COMPLAINTS) AMENDMENT ACT 1994**

Operation of amendments

29. (1) An amendment of this Act or the Ombudsman Act 1974 made by the Police Service (Complaints) Amendment Act 1994 extends to conduct occurring or complaints made before the commencement of the amendment.

(2) Anything done, or purporting to have been done, under this Act or the Ombudsman Act 1974 at any time after the commencement of the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 on 1 July 1993 and before the commencement of any amendment made by the Police Service (Complaints) Amendment Act 1994 that would have been validly done only if that amendment had been in force at that time is validated.

Police Service (Complaints) Amendment Act 1994 No. 9

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

(3) This clause applies to a matter despite any legal proceedings pending with respect to the matter on the commencement of this clause. However, this clause does not affect any judgment or order given or made by a court before that commencement with respect to a particular matter as between the parties to the proceedings.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OMBUDSMAN ACT 1974**

(Sec. 4)

Section 5 (Definitions):

Omit the definition of “police conduct” in section 5 (1), insert instead:

“police conduct” means conduct of a police officer within the meaning of Part 8A of the Police Service Act 1990;

(2) **Schedule 1 (Excluded conduct of public authorities):**

Omit item 13, insert instead:

13. Conduct of a police officer when exercising the functions of a police officer with respect to crime and the preservation of the peace.

*[Minister's second reading speech made in—
Legislative Assembly on 14 April 1994
Legislative Council on 20 April 1994]*