



New South Wales

# Police Legislation Amendment (Civil Liability) Act 2003 No 74

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New South Wales

## **Police Legislation Amendment (Civil Liability) Act 2003 No 74**

Act No 74, 2003

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An Act to amend the *Employees Liability Act 1991* to confirm that police officers are employees of the Crown for the purposes of that Act; to amend the *Law Reform (Vicarious Liability) Act 1983* to require persons seeking damages for torts committed by police officers in the performance or purported performance of their official functions generally to sue the Crown instead of the police officers concerned; to amend the *Police Act 1990* to extend the exclusion from civil liability of members of NSW Police; and for other purposes. [Assented to 20 November 2003]

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

**1 Name of Act**

This Act is the *Police Legislation Amendment (Civil Liability) Act 2003*.

**2 Commencement**

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

**3 Amendment of Acts**

The Acts specified in Schedules 1–3 are amended as set out in those Schedules.

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**Schedule 1 Amendment of Employees Liability  
Act 1991 No 4**

(Section 3)

**Section 2A**

Insert after section 2:

**2A Police officers**

For the avoidance of doubt, a police officer is declared to be an employee of the Crown for the purposes of this Act.

## **Schedule 2 Amendment of Law Reform (Vicarious Liability) Act 1983 No 38**

(Section 3)

### **[1] Part 1, heading**

Insert before section 1:

### **Part 1 Preliminary**

### **[2] Section 5 Definitions**

Insert in alphabetical order in section 5 (1):

*court* includes a tribunal, and in relation to a claim for damages means any court or tribunal by or before which the claim falls to be determined.

*legal proceedings* means proceedings in a court.

*originating process* means any statement of claim, summons, application or other process by means of which legal proceedings are commenced.

*police tort claim*—see section 9B (1).

### **[3] Part 2, heading**

Insert before section 7:

### **Part 2 Vicarious liability of masters for independent functions**

### **[4] Part 3, heading**

Insert before section 8:

### **Part 3 Vicarious liability of Crown for persons in its service**

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**[5] Part 4**

Insert after section 8:

**Part 4      Legal proceedings for damages for torts  
by police officers**

**9      When torts committed by police officers**

In this Part, a tort is committed, or allegedly committed, by a police officer if the tort is committed, or allegedly committed, by a person who was a police officer at the time of the tort or alleged tort (whether or not acting in a personal or official capacity).

**9A      Part extends to former police officers**

A reference in this Part to a claim against a police officer in respect of a tort or alleged tort includes a reference to a claim against a person who was a police officer at the time of the tort or alleged tort, but who has ceased to be a police officer since that time.

**9B      How can police tort claims be made?**

- (1) A *police tort claim* is a claim for damages for a tort allegedly committed by a police officer (the *police officer concerned*) in the performance or purported performance of the officer's functions (including an independent function) as a police officer, whether or not committed jointly or severally with any other person.
- (2) Except as provided by this Part, a person may not in any legal proceedings make a police tort claim against the police officer concerned, but may instead make the claim against the Crown.
- (3) A person who makes a police tort claim against the Crown in any legal proceedings may join the police officer concerned as a party to the proceedings only if the Crown denies that it would be vicariously liable for the alleged tort if it were established that the police officer concerned had committed the tort.

- (4) If a person seeks to join a police officer under subsection (3) as a party to legal proceedings:
- (a) the person is not required to file a new originating process, but may instead amend the existing originating process, and
  - (b) the court is to make such orders as it considers appropriate to enable the existing originating process to be duly amended, and
  - (c) nothing in the *Limitation Act 1969* precludes the making of a claim in the amended originating process for damages against the police officer for the alleged tort if the amendment to the originating process is made within 2 months after the Crown denies that it would be vicariously liable for the alleged tort if it were established that the police officer had committed the tort.

**9C Court required to make initial determination as to vicarious liability in any legal proceedings where in issue**

If the vicarious liability of the Crown is in issue in any legal proceedings in which a claim is made for damages for a tort allegedly committed by a police officer (whether or not it is a police tort claim) and the Crown and the police officer are both parties to the proceedings:

- (a) subject to paragraph (b)—the court must make an initial determination as to whether or not the Crown would be vicariously liable for the tort if it were established that the tort was committed by the police officer, and
- (b) that determination is to be made as soon as is reasonably practicable during the proceedings unless the court considers it impracticable in the circumstances to make such a determination before it determines whether or not the tort was committed.

**9D When court to strike out or dismiss claims against police officer or Crown**

- (1) Subject to section 9E, a court must make such orders as it considers appropriate to ensure that a claim before it for damages against a police officer for a tort allegedly committed by the officer is struck out or dismissed if:

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- (a) the court makes an initial determination under section 9C that the Crown would be vicariously liable for the tort if it were established that the tort was committed by the police officer, or
  - (b) the Crown concedes that it would be vicariously liable for the tort if it were established that the tort was committed by the police officer.
- (2) A court must make such orders as it considers appropriate to ensure that a claim before it for damages against the Crown for a tort allegedly committed by a police officer is struck out or dismissed if it makes an initial determination under section 9C that the Crown would not be vicariously liable for the tort if it were established that the tort was committed by the police officer.

**9E Part does not affect certain claims and legal proceedings**

Nothing in this Part:

- (a) makes the Crown vicariously liable for a tort committed by a police officer if it would not otherwise be vicariously liable for that tort, or
- (b) prevents the Crown from bringing legal proceedings against, or claiming damages or a contribution or indemnity in any legal proceedings from, a police officer for a tort committed by the officer, or
- (c) prevents the Crown from joining a police officer to proceedings claiming damages for a tort committed by the police officer, or
- (d) prevents a person from bringing legal proceedings, or claiming damages in any legal proceedings, against another person who is not a police officer but who is jointly or severally liable for a tort committed by a police officer, or
- (e) prevents a person from making a police tort claim against a police officer in any legal proceedings brought against the person by the police officer, or
- (f) prevents a person from bringing legal proceedings, or claiming damages in any legal proceedings, against a police officer for a tort committed by the police officer otherwise than in the circumstances referred to in section 8 (1).



**9F Effect of Part on other laws**

The provisions of this Part have effect despite any other Act or law (whether written or unwritten). However, nothing in this Part affects the operation of the *Limitation Act 1969*, except as provided by section 9B (4).

**9G Application of Part to pre-commencement torts**

- (1) This Part extends to torts allegedly committed by police officers before the commencement of this Part (a *pre-commencement tort*).
- (2) This Part (other than sections 9B (2), 9C and 9D (2)) also extends to any legal proceedings to which the Crown is a party concerning a pre-commencement tort, but only if:
  - (a) the proceedings are pending on the commencement of this Part, and
  - (b) the court has not yet begun a hearing on the merits in the proceedings.

**[6] Part 5, heading**

Insert before section 10:

**Part 5 Miscellaneous**

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## Schedule 3 Amendment of Police Act 1990 No 47

(Section 3)

### [1] Section 213

Omit the section. Insert instead:

#### **213 Protection from personal liability**

A member of NSW Police is not liable for any injury or damage caused by any act or omission of the member in the exercise by the member in good faith of a function conferred or imposed by or under this or any other Act or law (whether written or unwritten).

### [2] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

*Police Legislation Amendment (Civil Liability) Act 2003*

### [3] Schedule 4, Part 20

Insert after Part 19:

## **Part 20 Provisions consequent on enactment of Police Legislation Amendment (Civil Liability) Act 2003**

### **66 Application of amendment to section 213**

- (1) Section 213 (as substituted by the *Police Legislation Amendment (Civil Liability) Act 2003*) extends to any act or omission of a member of NSW Police that was done, or omitted to be done, before the commencement of that section.
- (2) However, section 213 (as substituted by the *Police Legislation Amendment (Civil Liability) Act 2003*) does not extend to any proceedings in respect of any such act or omission brought before the commencement of that section.

[Second reading speech made in—

Legislative Assembly on 13 November 2003

Legislative Council on 18 November 2003]

BY AUTHORITY