



New South Wales

# Police Regulation 2015

under the  
Police Act 1990

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

TROY GRANT, MP  
Minister for Justice and Police

## Explanatory note

The object of this Regulation is to remake, with minor changes, the *Police Regulation 2008*, which is repealed on 1 September 2015 under section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the appointment, promotion and management of police officers,
- (b) the appointment of administrative officers and temporary employees,
- (c) administrative provisions with respect to police officers, administrative officers and temporary employees,
- (d) the consumption of alcohol and the use of prohibited drugs,
- (e) leave entitlements,
- (f) death and disability payments,
- (g) allowances,
- (h) recognised law enforcement officers,
- (i) savings and formal matters.

This Regulation is made under the *Police Act 1990*, including sections 12, 70, 80 (4), 128, 207E, 211B, 219 (the general regulation-making power) and various other sections referred to in this Regulation.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*—namely, matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Police Regulation 2015

under the

Police Act 1990

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Police Regulation 2015*.

#### 2 Commencement

This Regulation commences on 1 September 2015 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Police Regulation 2008*, which is repealed on 1 September 2015 under section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation:

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

**eligibility program** means a program relating to a person's eligibility for placement on a promotion list.

**eligibility requirement** means any of the following:

- (a) a pre-qualifying assessment,
- (b) a promotion examination,
- (c) a management performance review,
- (d) an eligibility program.

**management performance review** means a performance review relating to a person's eligibility for placement on a promotion list.

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

**Police Code of Conduct** means the document issued by the Commissioner under the title *NSW Police Code of Conduct and Ethics*.

**pre-qualifying assessment** means an assessment relating to a person's eligibility for placement on a promotion list.

**principal promotion list** means a promotion list that is not established as a reserve promotion list.

**promotion examination** means an examination relating to a person's eligibility for placement on a promotion list.

**Review Committee** means the Promotions Review Committee established under clause 42.

**Review Panel** means a Management Performance Review Panel convened under clause 38.



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

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

**section 80 dismissal action** means action to dismiss a probationary police officer under section 80 (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 NSW Police Force.

**sergeants reserve promotion list** means a promotion list for the rank of sergeant that is established as a reserve promotion list.

**the Act** means the *Police Act 1990*.

- (2) Notes in this Regulation do not form part of this Regulation.

## **Part 2 Police officers**

### **Division 1 General provisions**

#### **4 Division of State for police purposes**

The Commissioner is responsible, for the purposes of the NSW Police Force:

- (a) for the division of the State into Regions and Local Areas, and
- (b) for the establishment of Region Commands, Local Area Commands, Branches, Sections and Special Task Forces.

#### **5 Grades within ranks of police officers**

- (1) The grades within the ranks of superintendent, inspector, sergeant and constable are as follows:

**Superintendents (in descending order)**

- chief superintendent
- superintendent

**Inspectors (in descending order)**

- chief inspector
- inspector

**Sergeants (in descending order)**

- senior sergeant
- sergeant

**Constables (in descending order)**

- senior constable
- constable

- (2) A police officer of any rank may, on satisfying requirements specified by the Commissioner, be designated as a detective.

#### **6 General responsibilities of police officers**

- (1) Police officers within the NSW Police Force Senior Executive Service:
  - (a) if in charge of a Region or Local Area, are responsible for the peace and good order of the Region or Area, and
  - (b) are responsible for the proper performance of duty by police officers, administrative officers and temporary employees under their control.
- (2) Superintendents and inspectors:
  - (a) if in charge of a Local Area, are responsible for the peace and good order of the Area, and
  - (b) are responsible for the proper performance of duty by police officers, administrative officers and temporary employees under their control.
- (3) Police officers, if in charge of a Branch, Section or Special Task Force, are responsible for the proper performance of duty by police officers, administrative officers and temporary employees under their control.

## **7 Oath or affirmation of office for police officers**

- (1) The form of the oath required to be taken by a police officer under section 13 of the Act is as follows:

I, \_\_\_\_\_, do swear that I will well and truly serve our Sovereign Lady the Queen as a police officer without favour or affection, malice or ill-will until I am legally discharged, that I will cause Her Majesty's peace to be kept and preserved, and that I will prevent to the best of my power all offences against that peace, and that while I continue to be a police officer I will to the best of my skill and knowledge discharge all my duties faithfully according to law. So help me God.
- (2) The form of the affirmation is the same as the form of the oath, except that:
  - (a) the words "solemnly, sincerely and truly declare and affirm" are to be substituted for the word "swear", and
  - (b) the words "So help me God" are to be omitted.

## **8 Performance of duties by police officers**

- (1) Police officers are to comply strictly with the Act and this Regulation and promptly comply with all lawful orders from those in authority over them.
- (2) In particular, a police officer is required:
  - (a) to serve wherever the officer is duly directed, and
  - (b) to perform such police duty as may be duly directed, whether or not during the officer's rostered hours of duty.

## **9 Responsibilities of off-duty police officers**

- (1) A police officer who is off-duty (whether rostered off-duty, on annual leave, suspended or otherwise absent):
  - (a) is subject to the provisions of this Regulation and the Police Code of Conduct, and
  - (b) will be held responsible for any misconduct by the officer while off-duty, and
  - (c) unless on sick leave, may be recalled to duty as if the officer were on duty.
- (2) If directed to do so by his or her supervising officer, a police officer who is off-duty must give notice to the supervising officer (or such other police officer or administrative officer as the supervising officer may nominate) if the off-duty officer is to be absent from his or her usual place of residence for more than 24 hours.
- (3) The notice must indicate where the police officer intends to be, and how the police officer may be contacted, during that absence.

## **10 Health assessment of police officers**

Before completing his or her probation and at such other times as the Commissioner may direct, a police officer must undergo a health assessment in accordance with the government sector employment rules under the *Government Sector Employment Act 2013* in the same way as if the person was a Public Service employee whose engagement in a Public Service agency is subject to a health assessment.

## **11 Certificate of service**

- (1) A police officer is entitled to be issued with a certificate of service by the Commissioner on resignation or retirement unless:
  - (a) the officer is removed from the NSW Police Force as a consequence of a section 181D order, or

- (b) the officer is dismissed from the NSW Police Force as a consequence of section 80 dismissal action, or
  - (c) the officer resigns or retires from the NSW Police Force 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 80 dismissal action, or
    - (ii) the subject of an investigation under the Act, the *Police Integrity Commission Act 1996* or the *Ombudsman Act 1974*.
- (2) A police officer who is not issued with a certificate of service because of an investigation concerning the officer's conduct is nevertheless entitled to a certificate if, after the investigation and any proceedings arising from the investigation are completed, there is no evidence of misconduct on the part of the officer.

## **12 Appointments to specialist positions—required time at rank**

- (1) For the purposes of section 66AA (3) (a) of the Act, the *required time at rank* is:
- (a) in the case of a specialist position of the rank of sergeant—a period of, or periods totalling, not less than 2 years at the grade of senior constable, or
  - (b) in the case of a specialist position of the rank of inspector—a period of, or periods totalling, not less than 3 years at the rank of sergeant or a higher rank, or
  - (c) in the case of a specialist position of the rank of superintendent—a period of, or periods totalling, not less than 3 years at the rank of inspector or a higher rank.
- (2) A reference in subclause (1) to the period of 3 years at a particular rank includes a period of any provisional or temporary appointment under Part 6 of the Act at that rank or any period during which the person concerned has acted in an executive position under the Act. However, if the person's provisional appointment is revoked, the period of that appointment is to be disregarded for the purposes of subclause (1).

## **Division 2 Appointment and promotion of constables**

### **13 Appointment of constables on probation**

- (1) In accordance with section 80 (2) of the Act, a person when first appointed as a police officer of the rank of constable is to be appointed on probation:
- (a) for a period of 1 year, or
  - (b) for such longer or shorter period (being not less than 6 months) as the Commissioner may direct in the case of that person.
- (2) Despite subclause (1), the Commissioner may direct that the period of probation be less than 6 months, or may waive the period of probation completely, if the person has previously served as a police officer in the NSW Police Force or in any other police service or police force (however called).
- (3) All or any part of such previous service may, with the approval of the Commissioner, be counted towards seniority.

### **14 Confirmation of appointment as constable**

Confirmation of appointment in the rank of constable is subject to:

- (a) the successful completion of initial basic training, as determined by the Commissioner, and
- (b) the completion of the period of probation, and

- (c) a satisfactory fitness report, and
- (d) the other requirements of this Division.

#### **15 Fitness report for probationary constables**

- (1) The appointment of a probationary constable is not to be confirmed unless a police officer designated by the Commissioner has reported that the probationary constable is fit to discharge satisfactorily the duties of constable.
- (2) Any such fitness report is to deal with the probationary constable's:
  - (a) medical fitness, as indicated by a health assessment referred to in clause 10, and
  - (b) aptitude for the discharge of the duties of constable, and
  - (c) competence, integrity, performance and conduct.
- (3) If on the day on which the Commissioner would otherwise confirm his or her appointment the probationary constable is medically unfit but satisfies all other requirements, the Commissioner may confirm the appointment on and from the day the probationary constable is certified medically fit by a medical practitioner.
- (4) The seniority of a constable whose appointment is confirmed in accordance with subclause (3) is to be determined:
  - (a) if the constable's medical unfitness was due to any wound, injury or sickness occasioned in the actual execution of duty, as though the appointment had been confirmed:
    - (i) on the day on which it would have been confirmed but for the constable's medical unfitness, or
    - (ii) if that day occurred more than 12 months before the day on which the appointment was actually confirmed, on the day occurring 12 months before the day on which it was actually confirmed, or
  - (b) if the constable's medical unfitness was not due to any wound, injury or sickness occasioned in the actual execution of duty, as though the appointment had been confirmed:
    - (i) on the day on which it would have been confirmed but for the constable's medical unfitness, or
    - (ii) if that day occurred more than 9 months before the day on which the appointment was actually confirmed, on the day occurring 9 months before the day on which it was actually confirmed.

#### **16 Promotion of constables**

Promotion to the grade of senior constable is subject to:

- (a) the successful completion of internal or external qualifications as determined by the Commissioner, and
- (b) the completion of 4 years' service:
  - (i) from the date on which the constable's appointment was confirmed, or
  - (ii) if the constable's seniority runs from an earlier day, from that earlier day, and
- (c) a satisfactory fitness report, and
- (d) the other requirements of this Division.

**17 Fitness report for promotion to senior constable**

- (1) A constable is not to be promoted to the grade of senior constable unless a police officer designated by the Commissioner has reported that the constable is fit to discharge satisfactorily the duties of senior constable.
- (2) Any such report is to deal with the constable's:
  - (a) aptitude for the discharge of the duties of senior constable, and
  - (b) competence, integrity, performance and conduct.

**18 Exceptional bravery or specially meritorious service**

- (1) Despite anything to the contrary in this Division, the Commissioner:
  - (a) may confirm the appointment of a probationary constable, or
  - (b) may promote a constable to the grade of senior constable, on the basis of exceptional bravery or specially meritorious service.
- (2) A police officer whose appointment is confirmed or who is promoted under this clause is not eligible for a further promotion until any prescribed qualifications for the grade up to and including that of the further promotion have been satisfied.

**Division 3 Appointment of sergeants**

**19 Requirements for appointment as sergeant**

- (1) This clause applies to appointments by way of promotion under Part 6 of the Act.
- (2) Except as provided by the Act, a person is not eligible to be appointed to a position of the rank of sergeant unless the person:
  - (a) is, or has previously been, permanently appointed to the rank of sergeant or above, or
  - (b) is on a sergeants promotion list that is in force when the position is advertised.
- (3) If a person is on the sergeants reserve promotion list, the person may be offered an appointment to a position of the rank of sergeant only if:
  - (a) the position has been advertised on at least 2 occasions among persons on the principal promotion list for the rank of sergeant, and
  - (b) no person on that principal promotion list has indicated a preference for the position.

**Division 4 Appointment of inspectors**

**20 Application of Division**

This Division applies to appointments by way of promotion under Part 6 of the Act.

**21 Requirements for appointment as inspector**

Except as provided by the Act, a person is not eligible to be appointed to a position of the rank of inspector unless the person:

- (a) is, or has previously been, permanently appointed to the rank of inspector or above, or
- (b) is on the inspectors promotion list that is in force when the position is advertised.

## Division 5 Appointment of superintendents

### 22 Application of Division

This Division applies to appointments by way of promotion under Part 6 of the Act.

### 23 Requirements for appointment as superintendent

Except as provided by the Act, a person is not eligible to be appointed to a position of the rank of superintendent unless the person:

- (a) is, or has previously been, permanently appointed to the rank of superintendent or above, or
- (b) is on the superintendents promotion list that is in force when the position is advertised.

## Division 6 Promotion lists

### 24 Establishment of promotion lists

- (1) A person may be placed on the promotion list for a rank of police officer if the person meets the requirements for placement set out in this clause.
- (2) A person is eligible to be placed on a promotion list if:
  - (a) the person has completed the required time at rank before applying to complete the pre-qualifying assessment for that rank, and
  - (b) the person has, within the last 3 years, obtained a mark in the pre-qualifying assessment for that rank and has, on the basis of the person's mark in that assessment, been determined by the Commissioner to meet the quota requirements for selecting persons to proceed to undertake the promotion examination and management performance review for that rank or grade within a rank, and
  - (c) the person has, within the last 3 years, completed the promotion examination, and the management performance review, for that rank or grade within a rank, and
  - (d) the person has, on the basis of the person's performance in the pre-qualifying assessment and that examination and review, been determined by the Commissioner to meet the quota requirements for selecting persons to proceed to undertake the eligibility program for that rank or grade within a rank, and
  - (e) the person has, within the last 3 years, successfully completed the eligibility program and obtained an eligibility mark, as determined by the Commissioner, for that rank or grade within a rank.
- (3) Despite subclause (2) but subject to clause 25, a person is not, except in such cases as the Commissioner may determine, eligible to undertake the promotion examination for a rank unless the person has, in the 6 months before the examination is held, completed the management performance review for that rank.
- (4) The **required time at rank** for the purposes of subclause (2) is:
  - (a) in the case of a person applying for placement on the sergeants promotion list—a period of, or periods totalling, not less than 2 years at the grade of senior constable, and
  - (b) in the case of a person applying for placement on the inspectors promotion list—a period of, or periods totalling, not less than 3 years of appointment (including any provisional or temporary appointment under Part 6 of the Act or an appointment to act in an executive position under the Act) at the rank of sergeant or a higher rank, and

- (c) in the case of a person applying for placement on the superintendents promotion list—a period of, or periods totalling, not less than 3 years of appointment (including any provisional or temporary appointment under Part 6 of the Act or an appointment to act in an executive position under the Act) at the rank of inspector or a higher rank.
- (5) However, if the person's provisional appointment is revoked, the period of that appointment is to be disregarded for the purposes of subclause (4).

## **25 Eligibility requirements**

- (1) The Commissioner may:
  - (a) determine quotas for the number of persons who may be selected to attempt eligibility requirements for placement on a promotion list in each year, and
  - (b) from time to time determine the standard for successful completion of an eligibility requirement.
- (2) The Commissioner may from time to time determine the period within which successive attempts to complete the same eligibility requirement may be made and may limit the number of attempts to successfully complete an eligibility requirement that a person is permitted to make.

## **26 Rankings on promotion lists**

- (1) Persons placed on a promotion list are to be ranked on that list in order according to the eligibility mark of each person. The ranking of persons on a promotion list is to be published on an intranet site of the NSW Police Force that can be accessed by police officers.
- (2) The eligibility mark of a person for the purposes of this clause is the mark determined by the Commissioner on the basis of the following matters:
  - (a) the person's performance in each eligibility requirement (other than a pre-qualifying assessment) relevant to the promotion list,
  - (b) the person's period of service at his or her current rank,
  - (c) any relevant tertiary qualifications held by the person.
- (3) The Commissioner may determine the weighting to be given to each such matter for the purpose of calculating eligibility marks for a promotion list.
- (4) A person who undertakes a management performance review while placed on a promotion list may, before undertaking the review, elect to have the person's eligibility mark amended in accordance with the score awarded for the review.
- (5) If any such election is made, the Commissioner is to amend the person's eligibility mark in accordance with the score awarded for the review and make any necessary change to the order of ranking of the person on the next replacement promotion list for the rank concerned.

## **27 Time for acceptance of promotion offers**

A person who is on a promotion list and who is offered an appointment to a rank to which the list applies is taken to have refused the offer if the person fails to accept the appointment within 72 hours of the offer being made, or within such longer period as the Commissioner may allow in a particular case.

## **28 Removal or suspension from list**

- (1) A police officer who is appointed by way of promotion to a rank to which a promotion list applies is to be removed from the list.



- (2) The Commissioner must notify a person in writing if the person is suspended or removed from a promotion list on integrity grounds.
- (3) If a person who is on a promotion list is offered an appointment to a rank to which the list applies but subsequently refuses the offer of appointment, the person may be suspended from the promotion list for such period (not exceeding 3 months) as may be determined by the Commissioner unless the Commissioner is satisfied that the person has reasonable grounds for refusing the offer.

### **29 Currency of promotion list**

- (1) A promotion list (other than a sergeants reserve promotion list) remains current:
  - (a) for the period of 12 months after it is established, or
  - (b) until all persons on the list have been removed from the list, whichever occurs first.
- (2) A sergeants reserve promotion list remains current during the currency of the principal promotion list for the rank of sergeant.
- (3) A sergeants reserve promotion list is taken to cease to have effect if all persons on the list have been removed from the list.

### **30 Replacement promotion lists**

- (1) Except as provided by this clause, a person who is on a promotion list for a rank is to be included on any replacement promotion list if the person remains eligible to be placed on such a promotion list.
- (2) A person may not be included in a replacement promotion list if the person was last awarded an eligibility mark more than 3 years before the promotion list is established.

## **Division 7      Reviews in relation to promotion lists**

### **Subdivision 1      Preliminary**

#### **31 Definition**

In this Division, *Deputy Commissioner* means the Deputy Commissioner, Corporate Services.

#### **32 Delegation**

The Deputy Commissioner may delegate any of the Deputy Commissioner's functions under this Division (other than this power of delegation) to any other member of the NSW Police Force.

### **Subdivision 2      Pre-qualifying assessments**

#### **33 Review of performance in pre-qualifying assessment**

- (1) A person may apply to the Deputy Commissioner for a review of the person's performance in a pre-qualifying assessment.
- (2) A person who attempts a pre-qualifying assessment must be advised that the person is entitled to apply for a review of the person's performance in the assessment.

- (3) The grounds for applying for a review under this clause are limited to the following matters:
  - (a) the assessment process (including matters such as the date and timing of the assessment, work requirements, the applicant's health and any circumstances that disadvantaged the applicant when attempting the assessment),
  - (b) the form and content of the assessment,
  - (c) the mark awarded for the assessment based on the answers or assignment provided by the person.
- (4) An application for a review under this clause must:
  - (a) be in writing and state the grounds on which the application for review is made, and
  - (b) be made no later than 72 hours after the person is notified of the person's results in the pre-qualifying assessment.
- (5) However, an application may be made before the person is notified of the person's results.
- (6) After reviewing the applicant's performance in the pre-qualifying assessment, the Deputy Commissioner may:
  - (a) affirm the person's results in the pre-qualifying assessment, or
  - (b) vary the person's results, or
  - (c) allow the person to attempt the pre-qualifying assessment again.
- (7) The applicant is to be notified in writing of the Deputy Commissioner's decision within 14 days after the Deputy Commissioner receives the application for the review. However, failure to notify the applicant within that 14-day period does not invalidate the Deputy Commissioner's decision in relation to the review.
- (8) Except as provided by clause 43 (2), the decision of the Deputy Commissioner in relation to a review under this clause is final and is not subject to any further review.

### **Subdivision 3 Promotion examinations**

#### **34 Review of performance in promotion examination**

- (1) A person may apply to the Deputy Commissioner for a review of the person's performance in a promotion examination.
- (2) A person who attempts a promotion examination must be advised that the person is entitled to apply for a review of the person's results in the examination.
- (3) The grounds for applying for a review under this clause are limited to the following matters:
  - (a) the process of the examination (including matters such as the date and timing of the examination, work requirements, the applicant's health and any circumstances that disadvantaged the applicant when sitting the examination),
  - (b) the form and content of the examination,
  - (c) the mark awarded for the examination based on the answers provided by the person.
- (4) An application for a review under this clause must:
  - (a) be in writing and state the grounds on which the application for review is made, and
  - (b) be made no later than 72 hours after the person is notified of the person's results.

- (5) However, an application may be made before the person is notified of the person's results.
- (6) If an application for a review is made on the ground referred to in subclause (3) (c), the person's examination is to be remarked by 2 independent markers (with the average of those marks being the result of the remark).
- (7) After reviewing the applicant's results in the promotion examination, the Deputy Commissioner may:
  - (a) affirm the person's results in the examination, or
  - (b) vary the person's results by adopting the results of the re-mark under subclause (6), or
  - (c) allow the person to resit the examination.
- (8) The applicant is to be notified in writing of the Deputy Commissioner's decision within 14 days after the Deputy Commissioner receives the application for review. However, failure to notify the applicant within that 14-day period does not invalidate the Deputy Commissioner's decision.
- (9) Except as provided by clause 43 (2), the decision of the Deputy Commissioner in relation to a review under this clause is final and is not subject to any further review.

#### **Subdivision 4 Management performance reviews**

##### **35 Application for review of performance management decision**

- (1) A person who is subject to a management performance review may apply to the Deputy Commissioner for a review of any decision made in relation to the management performance review.
- (2) A person who is subject to a management performance review must be advised that the person is entitled to apply for a review of any decision made in relation to the management performance review.
- (3) The grounds for applying for a review under this clause are limited to the following matters:
  - (a) the management performance review process (including matters such as work requirements, the applicant's health and any circumstances that disadvantaged the applicant when undertaking the management performance review),
  - (b) the mark awarded for the management performance review,
  - (c) the calling into question of the applicant's conduct in connection with the management performance review.
- (4) An application for a review under this clause must:
  - (a) be in writing and state the grounds on which the application for review is made, and
  - (b) be made no later than 7 days after the person is given notice of any mark for the management performance review.
- (5) However, an application may be made before the person is given such notice.

##### **36 Referral of application to Review Panel**

The Deputy Commissioner is to refer any application under clause 35 to a Review Panel within 48 hours after the Deputy Commissioner receives the application.

**37 Referral to Review Panel of decisions to award low or high scores for management performance reviews**

- (1) Any decision to award a low score or a high score for a management performance review is to be referred by the Deputy Commissioner, as soon as practicable after the Deputy Commissioner is made aware of the decision, to a Review Panel for review by the Panel.
- (2) The Deputy Commissioner is to issue guidelines for determining what constitutes a low score or a high score for the purposes of this clause.

**38 Convening of Management Performance Review Panels**

- (1) The Deputy Commissioner may convene such number of Management Performance Review Panels as the Deputy Commissioner considers appropriate to deal with applications under clause 35 or with referrals under clause 37.
- (2) A Review Panel consists of the following members:
  - (a) a representative of the Police Association of NSW appointed by the President of the Police Association of NSW,
  - (b) a Superintendent appointed by the Commissioner,
  - (c) a member of the NSW Police Force who is a Human Resources Manager and who is appointed by the Assistant Commissioner, Human Resources as the Chairperson of the Review Panel.
- (3) Subject to this clause, a member of a Review Panel holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible for re-appointment.
- (4) Each person who is responsible for appointing a member of a Review Panel may appoint a person as an alternate member to act during the absence or illness of the member concerned. An alternate member has and may exercise, while acting as a member, the functions of the person for whom he or she is the alternate member.
- (5) A member (including any alternate member) may be removed from office at any time by the person who appointed the member.

**39 Procedure for conducting review**

- (1) The procedure for conducting a review by a Review Panel is, subject to the Act and this Subdivision, to be determined by the Commissioner.
- (2) A review by a Review Panel is not to be conducted by way of a hearing that involves any person appearing before the Review Panel.
- (3) In conducting a review, the Review Panel may consider any information that is relevant to the management performance review concerned.
- (4) The Chairperson of a Review Panel is to preside at a meeting of the Review Panel.
- (5) A decision supported by a majority of the votes cast at a meeting of a Review Panel is the decision of the Panel concerned.
- (6) A person who was involved in a decision the subject of a review may not be a member of the Review Panel considering the decision concerned.

**40 Decision of Review Panel**

- (1) The Review Panel may, following its review of a decision made in relation to a management performance review (including a decision to award a low score or a high score for a management performance review):
  - (a) affirm the decision, or

- (b) vary the decision, or
  - (c) set aside the decision and make a decision in substitution for the decision set aside.
- (2) In the case of an application under clause 35, the applicant is to be notified in writing of the Review Panel's decision within 72 hours after the decision is made. However, failure to notify the applicant within that 72-hour period does not invalidate the Review Panel's decision.
- (3) Except as provided by clause 43 (2), the decision of the Review Panel is final and is not subject to review by any person or body.

## **Subdivision 5 Eligibility programs**

### **41 Review of eligibility program results**

- (1) A person may apply to the Deputy Commissioner for a review of the results obtained by the person in an eligibility program.
- (2) A person who undertakes an eligibility program must be advised that the person is entitled to apply for a review of the person's results in the program.
- (3) The grounds for applying for a review under this clause are limited to the following matters:
  - (a) the process of the eligibility program (including matters such as the date and timing of the program, work requirements, the applicant's health and any circumstances that disadvantaged the applicant when undertaking the program),
  - (b) the form and content of the program,
  - (c) the mark awarded for the program based on the answers or assignments provided by the person.
- (4) An application for a review under this clause must:
  - (a) be in writing and state the grounds on which the application for review is made, and
  - (b) be made no later than 7 days after the person is notified of the person's results.
- (5) However, an application may be made before the person is notified of the person's results.
- (6) If an application for a review is made on the ground referred to in subclause (3) (c), the work provided by the person in relation to the eligibility program is to be remarked by 2 independent markers (with the average of those marks being the result of the remark).
- (7) After reviewing the applicant's results in the eligibility program, the Deputy Commissioner may:
  - (a) affirm the person's results in the program, or
  - (b) vary the person's results by adopting the results of the re-mark under subclause (6), or
  - (c) allow the person to undertake all or any part of the program again.
- (8) The applicant is to be notified in writing of the Deputy Commissioner's decision within 14 days after the Deputy Commissioner receives the application for review. However, failure to notify the applicant within that 14-day period does not invalidate the Deputy Commissioner's decision.

- (9) Except as provided by clause 43 (2), the decision of the Deputy Commissioner in relation to a review under this clause is final and is not subject to any further review.

## **Subdivision 6 Promotions Review Committee**

### **42 Establishment and composition of Promotions Review Committee**

- (1) A Promotions Review Committee is established.
- (2) The Review Committee consists of the following members:
  - (a) an employer representative appointed by the Commissioner,
  - (b) an employee representative appointed by the President of the Police Association of NSW,
  - (c) an independent person appointed by the Minister as the Chairperson of the Promotions Review Committee.
- (3) Subject to this clause, a member of the Review Committee holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible for re-appointment.
- (4) Each person who is responsible for appointing a member of the Review Committee may appoint a person as an alternate member to act during the absence or illness of the member concerned. An alternate member has and may exercise, while acting as a member, the functions of the person for whom he or she is the alternate member.
- (5) A member (including any alternate member) may be removed from office at any time by the person who appointed the member.

### **43 Application for review by Review Committee**

- (1) A person may apply to the Review Committee for a review of a decision as to the ranking of the person on a promotion list.
- (2) A person may apply to the Review Committee for a review of a decision in relation to the person's performance in an eligibility requirement, but only on the ground that the person has been disadvantaged by a failure to comply with the procedural requirements at the previous stage of the review process (including, for example, failing to be notified of the decision of the relevant person or body within the required time period).
- (3) An application under this clause:
  - (a) is to be in writing and state the grounds on which the application is made, and
  - (b) is to be made not later than 7 days after the person is notified of the decision concerned (or within such longer period as the Review Committee may allow in a particular case).
- (4) For the purposes of subclause (1), a decision in relation to a person's performance in an eligibility requirement is not a decision as to the ranking of the person on a promotion list.

### **44 Procedure for conducting review**

- (1) The procedure for conducting a review under this Subdivision is, subject to the Act and this Subdivision, to be determined by the Review Committee.
- (2) A review by the Review Committee is not to be conducted by way of a hearing involving persons appearing before the Review Committee.
- (3) In conducting a review, the Review Committee is to consider:
  - (a) any written information provided by the applicant, and

- (b) any information provided by the Commissioner.
- (4) The Review Committee may:
  - (a) require the applicant to provide further information in relation to the application, and
  - (b) obtain expert advice in relation to any matter that is subject to the review, and
  - (c) inform itself in such other manner as the Committee thinks appropriate.
- (5) The Commissioner must, if requested to do so by the Review Committee, provide to the Committee any information that is relevant to the decision concerned.
- (6) The Chairperson of the Review Committee is to preside at a meeting of the Review Committee.
- (7) A decision supported by a majority of the votes cast at a meeting of the Review Committee is the decision of the Committee.
- (8) A person who was involved in a decision the subject of a review may not be a member of the Review Committee considering the decision concerned.

#### **45 Decision of Review Committee**

- (1) The Review Committee may, following its review:
  - (a) affirm the decision the subject of the review, or
  - (b) vary the decision, or
  - (c) set aside the decision and make a decision in substitution for the decision set aside.
- (2) Any such review must be completed not later than 14 days after the application for the review is made.
- (3) The Review Committee must notify the Commissioner and the applicant of its decision, and the reasons for the decision, as soon as practicable after making the decision.
- (4) The decision of the Review Committee is taken to be the decision of the Commissioner and is to apply accordingly.
- (5) The decision of the Review Committee is final and is not subject to review by any person or body.

### **Subdivision 7 Other reviews**

#### **46 Review of decisions made on integrity grounds**

- (1) A person may apply to the Commissioner for a review of the decision:
  - (a) to suspend or remove the person from a promotion list on integrity grounds, or
  - (b) to refuse, on integrity grounds, the person the right to participate, or continue to participate, in any part of the process to obtain placement on a promotion list.
- (2) An application for a review under this clause must:
  - (a) be in writing and state the grounds on which the application is made, and
  - (b) be made no later than 7 days after the person is notified of the decision concerned.
- (3) If an application under this clause is made, the Commissioner is to refer the application within 48 hours to a person who is appointed by the Minister for the

purpose of conducting the review (referred to in this Subdivision as the *appointed person*).

#### **47 Procedure for conducting review**

- (1) The procedure for conducting a review under this Subdivision is, subject to the Act and this Subdivision, to be determined by the appointed person.
- (2) Any such review is not to be conducted by way of a hearing involving persons appearing before the appointed person.
- (3) In conducting the review, the appointed person may have regard to:
  - (a) any written information provided by the applicant, and
  - (b) any information provided by the Commissioner (including any information as to the integrity of the applicant, being information in respect of which the decision the subject of the review was based).
- (4) The Commissioner is authorised to provide any such information to the appointed person.
- (5) The appointed person may:
  - (a) require the applicant to provide further information in relation to the application, and
  - (b) obtain expert advice in relation to any matter that is subject to the review, and
  - (c) inform himself or herself in such other manner as the appointed person thinks appropriate.
- (6) The Commissioner must, if requested to do so by the appointed person, provide to the person any information that is relevant to the decision concerned.

#### **48 Decision of appointed person**

- (1) The appointed person may, following his or her review of the decision the subject of review:
  - (a) affirm the decision, or
  - (b) vary the decision, or
  - (c) set aside the decision and make a decision in substitution for the decision set aside.
- (2) The appointed person must notify the Commissioner and the applicant of the appointed person's decision, and the reasons for the decision, as soon as practicable after making the decision.
- (3) The decision of the appointed person is taken to be the decision of the Commissioner and is to apply accordingly.
- (4) The decision of the appointed person is final and is not subject to review by any person or body.

### **Division 8 Retention of information concerning police officers**

#### **49 Retention of information concerning police officers**

- (1) The Commissioner must ensure that the following information is kept in relation to each police officer:
  - (a) information as to any offence in respect of which the officer has been charged before a court, including information as to:
    - (i) whether the officer was found guilty of the offence, or



- (ii) whether the charge was withdrawn, dismissed or otherwise disposed of,
  - (b) information as to any finding of misconduct or unsatisfactory performance in respect of which a section 173 order has been made, being:
    - (i) a reviewable section 173 order, or
    - (ii) a non-reviewable section 173 order made as a consequence of the officer's substantial or consistent failure to meet reasonable standards of performance or conduct,including information as to the reasons for the finding,
  - (c) information as to any offence in respect of which a departmental charge had been preferred against the officer before 8 March 1999, including information as to:
    - (i) whether the charge was found proven (and, if so, the reasons for the finding), or
    - (ii) whether the charge was withdrawn, dismissed or otherwise disposed of.
- (2) A police officer is entitled on application to be given access to any information kept in relation to the police officer under this clause.

## **Division 9 Misconduct and unsatisfactory performance**

### **50 Police officer to report misconduct**

- (1) If:
- (a) an allegation is made in writing to a police officer that another police officer has engaged in conduct which, in the opinion of the officer to whom the allegation is made, constitutes a criminal offence or other misconduct, or
  - (b) a police officer sincerely believes that another police officer has engaged in any conduct of that kind,
- the officer is required to report the conduct or alleged conduct by the other officer to a senior police officer (being a police officer who is more senior in rank than the officer making the report).
- (2) This clause does not apply to conduct or alleged conduct:
- (a) that has been made the subject of a complaint under Part 8A of the Act, or
  - (b) that has been the subject of evidence or other material given, or submissions made, in the course of criminal proceedings, or
  - (c) that has already been reported under this clause to a senior police officer.
- (3) A senior police officer to whom conduct (or alleged conduct) by a police officer is reported is required to report it promptly to the Commissioner or a police officer nominated by the Commissioner if the senior police officer believes that the conduct (or alleged conduct):
- (a) constitutes (or would constitute) a criminal offence, or
  - (b) could provide sufficient grounds:
    - (i) for taking section 80 dismissal action, or
    - (ii) for making a reviewable section 173 order or a section 181D order.

### **51 Victimisation**

- (1) A police officer must not, in relation to any other police officer:
- (a) fail to approve, or fail to recommend, the promotion of that other officer, or

- (b) approve or recommend:
    - (i) the taking of section 80 dismissal action, or
    - (ii) the making of a section 173 order or section 181D order, with respect to that other officer, or
  - (c) direct, approve or recommend the transfer of that other officer to another position in the NSW Police Force or in any other government sector agency, or
  - (d) make, approve or recommend a decision which detrimentally affects the benefits or awards of that other officer, or
  - (e) fail to approve or recommend that that other officer receive education or training which could reasonably be expected to improve that other officer's opportunities for promotion or to confer some other advantage on that other officer, or
  - (f) change the duties of that other officer so that they are not appropriate to that other officer's salary or position or approve or recommend such a change, or
  - (g) otherwise act to the detriment of that other officer,
- in retaliation against that other officer because that other officer has made a protected report.
- (2) In this clause, **protected report** means a report under this Division, a complaint under Part 8A of the Act, a public interest disclosure within the meaning of the *Public Interest Disclosures Act 1994* or a disclosure to another police officer.

**Note.** Section 206 of the Act provides that it is an offence (maximum penalty: 50 penalty units or 12 months' imprisonment, or both) to take detrimental action against a police officer where an allegation of misconduct or criminal activity has been made by that officer in the performance of his or her duty or in accordance with the procedures for making allegations set out in the Act.

## 52 Suspension

- (1) If the Commissioner has reasonable cause to believe that the conduct of a police officer has been such as to justify:
  - (a) the taking of section 80 dismissal action or the making of a section 181D order with respect to the officer, or
  - (b) the institution of criminal proceedings against the officer,the Commissioner may suspend the officer from office (with or without pay) pending further investigation and decision as to the action to be taken.
- (2) If it is established to the satisfaction of the Commissioner that an officer under suspension from office without pay is suffering undue hardship, the Commissioner may approve of the officer obtaining other employment for such period as the Commissioner may direct.
- (3) If it is established to the satisfaction of the Commissioner that the officer or the officer's family will suffer undue hardship because of the suspension without pay, the Commissioner may approve a maintenance payment of not more than 100% of the salary of the officer at the time of the suspension.

## 53 Proceedings against police officers

A police officer may not commence criminal proceedings against another police officer unless authorised by the Commissioner.

#### **54 Secrecy as to complaints about conduct**

- (1) This clause applies if:
  - (a) any person (including a police officer) makes an allegation, not being an allegation which constitutes a complaint under Part 8A of the Act, to a police officer (in this clause called *the senior officer*) concerning the conduct of a police officer, and
  - (b) the senior officer has reasonable grounds for believing that, if the allegation were true:
    - (i) the police officer against whom the allegation was made would have committed a criminal offence, or
    - (ii) section 80 dismissal action could be taken, or a section 173 order or section 181D order could be made, with respect to that officer.
- (2) In the circumstances referred to in subclause (1), the senior officer must not disclose to the officer against whom the allegation was made or any other person the identity of the person who made the allegation, except:
  - (a) to or with the authority of the Commissioner, or
  - (b) in connection with the institution of or otherwise for the purposes of any proceedings before a Royal Commission, a Special Commission of Inquiry, the Industrial Relations Commission or a court.
- (3) In the course of an investigation into the allegation, a police officer must not, without the consent of the Commissioner, disclose to any person (other than the Commissioner) the identity of the person who made the allegation.
- (4) The Commissioner must not grant a consent under subclause (3) unless the Commissioner considers that the disclosure of the identity of the person who made the allegation is necessary for the effective conduct of the investigation into the allegation.

#### **55 Disclosure of documents concerning action under Part 9 of Act subject to client legal privilege (legal professional privilege)**

For the purposes of sections 174 (5) and 181E (3) of the Act, the Commissioner is not under a duty to make available to an applicant in review proceedings any document provided to the Commissioner in connection with the taking of action against the applicant under Part 9 of the Act if the document would be privileged from production in legal proceedings on the ground of client legal privilege (legal professional privilege).

### **Division 10 Complaints information system**

#### **56 Establishment of complaints information system**

- (1) A complaints information system is to be established.
- (2) The system is to be operated and maintained by the Commissioner.
- (3) The Commissioner must allow the Police Integrity Commission and the Ombudsman to have access to the system for the purpose only of enabling unrestricted access to all information in the system as provided for in section 129 (3) and (5) of the Act.
- (4) The Commissioner must provide the Police Integrity Commission and the Ombudsman with such information as that body or person may request with respect to the design of the system and the procedures in accordance with which the system is operated and maintained.

- (5) Despite subclauses (3) and (4), the Commissioner is not to allow unauthorised access to information the subject of a caveat under section 129 (4) of the Act.
- (6) 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.
- (7) The complaints information system kept prior to 1 September 2008 (including the complaints information system kept under Part 8A of the Act prior to 8 March 1999) is taken to form part of the complaints information system established under this clause.

## **Division 11 Remedial performance programs**

### **57 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,
  - (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 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
    - (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 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 NSW Police Force.

## **Division 12 Uniform and insignia**

### **58 Police officers to wear uniform**

- (1) Uniform must be worn at all times by police officers when on duty or when proceeding to and from their police stations, unless otherwise authorised by the Commissioner.
- (2) The Commissioner may from time to time approve of police officers performing certain types of duty being permitted to wear other clothing.
- (3) The pattern and cut of the uniform must not be altered in any way and badges, service numbers and insignia of rank must be worn in such manner as the Commissioner may from time to time direct.

### **59 Insignia of rank**

- (1) Insignia of rank must be worn on epaulettes.
- (2) The details of insignia of rank, uniform, badges and service number are to be as the Commissioner may from time to time direct.

## **60 Responsibility for loss or damage**

A police officer:

- (a) is responsible for all articles of uniform and equipment issued to the officer, and
- (b) is responsible for any damage to uniform or equipment through neglect and may be required to meet its replacement cost.

## **Division 13 Commissioner's Valour Award**

### **61 Conferral of Valour Award**

- (1) If while on police operational duty a police officer performs an act of conspicuous merit involving exceptional bravery, the Commissioner may grant to the officer the Commissioner's Valour Award.
- (2) The recipient is entitled to use the initials "VA" added after his or her name.

### **62 Bar for Valour Award**

- (1) If while on police operational duty a police officer who has previously been granted the Valour Award performs a further act of conspicuous merit involving exceptional bravery, the Commissioner may grant to the officer a Silver Bar to the Commissioner's Valour Award.
- (2) The recipient is entitled to use the initials "VA" followed by an asterisk after his or her name.

### **63 Form of Valour Award**

- (1) The Commissioner's Valour Award comprises an ornamental sterling silver medallion 22 millimetres in diameter depicting the New South Wales Police crest and embellished with blue enamel on its highlighted and shaded features.
- (2) The medallion is to be mounted centrally on an ornamental sterling silver cross 38 millimetres in width.
- (3) The medallion is to be suspended by a silver ring from a plain silver bar on a mainly blue ribbon 38 millimetres wide.
- (4) The medallion is to bear the words "FOR BRAVERY".
- (5) Subsequent Bars to the Commissioner's Valour Awards are to be represented by a laurelled leaf bar with a central rose design, 38 millimetres long in silver gilt.
- (6) A miniature of the medallion is to be depicted in a lapel brooch 12 millimetres wide.
- (7) Subsequent Bars to the Commissioner's Valour Awards are to be represented on the back of the lapel brooch by a metal blue disc of 15 millimetres diameter.
- (8) The lapel brooch and disc are to be worn only by police officers in plainclothes.

## **Division 14 New South Wales Police Medal**

### **64 Conferral of Medal**

The Commissioner may grant to a police officer the New South Wales Police Medal. The Medal is to be granted in accordance with the *Guidelines for the New South Wales Police Medal* approved by the Commissioner from time to time.

## **Division 15 Payment of gratuities and rewards**

### **65 Payment of gratuities for special services**

The Commissioner may approve the payment of gratuities, or recommend the payment of rewards, for special services by police officers.

### **66 Special leave benefit where police officer disengaged**

- (1) This clause applies to a police officer who:
  - (a) accepts an offer of a disengagement benefit under section 8A of the *Police Regulation (Superannuation) Act 1906*, or
  - (b) is offered a disengagement benefit under that section but elects instead to make provision for the benefit under section 9B of that Act.
- (2) A police officer to whom this clause applies is entitled to be paid on the termination of the officer's services the money value of 39 weeks' special leave with pay as a gratuity.
- (3) However, the following provisions apply if the police officer is entitled to be paid a benefit under clause 71 of the *Crown Employees (Police Officers—2014) Award (the Award)*:
  - (a) if the amount payable to the police officer under clause 71 of the Award is less than the amount calculated under subclause (2)—the gratuity is to be reduced by the amount payable to the police officer under clause 71 of the Award,
  - (b) if the amount payable to the police officer under clause 71 of the Award is the same as or greater than the amount calculated under subclause (2)—the police officer is not entitled to be paid a gratuity under this clause.
- (4) Any gratuity under this clause is in addition to any other gratuity to which the police officer may be entitled under the *Police Regulation (Superannuation) Act 1906*.
- (5) Any gratuity under this clause is payable by the Commissioner and is not payable from the Police Superannuation Fund.
- (6) Any amendment to this clause that changes the entitlements of a police officer to a gratuity under this clause applies only to an offer of a disengagement benefit referred to in subclause (1) that is made after the commencement of that amendment.

## **Part 3 Administrative officers and temporary employees**

### **67 General responsibilities of administrative officers and temporary employees**

Administrative officers are responsible for the proper performance of duty by police officers, administrative officers and temporary employees under their control.

### **68 Health assessment of administrative officers**

Before the first appointment of a person as an administrative officer is confirmed, the person must undergo a health assessment in accordance with the government sector employment rules under the *Government Sector Employment Act 2013* in the same way as if the person was a Public Service employee whose engagement in a Public Service agency is subject to a health assessment.

### **69 Appointments on probation**

- (1) A person when first appointed as an administrative officer is to be appointed on probation for a period of 6 months or for such longer period as the Commissioner directs in respect of the person.
- (2) The Commissioner may appoint a person as an administrative officer without the person being required to serve such a period of probation.
- (3) If a person is appointed on probation, the Commissioner may (after due inquiry and report):
  - (a) after the period of probation, confirm the appointment, or
  - (b) during or after the period of probation, annul the appointment.

### **70 Application of Public Service conditions of employment**

- (1) The provisions of the regulations under the *Government Sector Employment Act 2013* that relate to the following matters apply to administrative officers and temporary employees in the same way as they apply to Public Service employees:
  - (a) public holidays,
  - (b) absence from duty,
  - (c) increments,
  - (d) fitness for duty.
- (2) For that purpose, a reference in any such provision to the Public Service Commissioner or the agency head is to be read as a reference to the Commissioner.
- (3) In the case of an administrative officer within the NSW Police Force Senior Executive Service, this clause is subject to the contract of employment under Part 5 of the Act between the officer and the Commissioner.



## **Part 4 Members of the NSW Police Force generally**

### **71 Acting or relieving in other positions**

- (1) The Commissioner may direct the manner in which and the occasions on which the functions of suspended, sick or absent members of the NSW Police Force (or the functions attaching to vacant positions) are to be exercised by other members.
- (2) A police officer may act or relieve in a police or administrative position and an administrative officer may act or relieve in an administrative or police position.

### **72 Administrative officers and temporary employees may not exercise police powers**

An administrative officer or temporary employee who:

- (a) acts or relieves in a position currently held by a police officer, or
  - (b) exercises any supervisory functions in relation to police officers,
- is not thereby authorised to exercise (or direct the exercise of) the statutory or common law powers of a police officer.

### **73 Members refusing promotion or appointment**

Except as provided by clause 28 (3), a member of the NSW Police Force who has been offered a promotion or appointment in the NSW Police Force may decline the promotion or appointment without prejudice to any rights that the member would, if the promotion or appointment had not been declined, have had to any future promotion or appointment.

### **74 Name-plates to be worn**

A member of the NSW Police Force is to wear a name-plate in such manner, and containing such particulars, as the Commissioner may from time to time direct, unless the member is exempted by the Commissioner from having to wear such a name-plate.

### **75 Numerical identification plates to be worn**

A uniformed police officer who is not required to wear a name-plate must instead wear a numerical identification plate in such manner, and containing such particulars, as the Commissioner may from time to time direct.

### **76 Confidential information**

- (1) A member of the NSW Police Force or a student of policing must treat all information which comes to his or her knowledge in his or her official capacity as strictly confidential, and on no account without proper authority divulge it to anyone.
- (2) In particular, a member of the NSW Police Force or a student of policing must observe the strictest secrecy in regard to NSW Police Force business, and is forbidden to communicate without proper authority in any way to any person outside the NSW Police Force any information in regard to police or other official business connected with his or her duties, or which may come to his or her knowledge in the performance of them.
- (3) Nothing in this clause operates so as to impede the due performance of operational police duties or to prevent the giving of information if it is reasonable to do so for the purpose of dealing with an emergency when life or property is at risk.

## Part 5 Consumption of alcohol and use of prohibited drugs or steroids

### Division 1 Preliminary

#### 77 Definitions

In this Part:

**analyst** means a person employed by an organisation accredited by the National Association of Testing Authorities, Australia for the purposes of AS 4308 as an analyst.

**AS 4308** means the document entitled AS/NZS 4308—2008: *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*, published by Standards Australia, as in force on 19 March 2008.

**authorised person** means a person who is appointed as an authorised person under Division 4.

**breath analysing instrument** means any instrument of a type approved by the Governor by order under the *Road Transport Act 2013* as such an instrument, that is, as an instrument designed to ascertain, by analysis of a person's breath, the concentration of alcohol present in that person's breath or blood.

**breath analysis** means a test carried out by a breath analysing instrument for the purpose of ascertaining, by analysis of a person's breath, the concentration of alcohol present in that person's breath or blood.

**breath test** means a test:

- (a) that is designed to indicate the concentration of alcohol present in a person's breath or blood, and
- (b) that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the *Road Transport Act 2013*.

**code of behaviour** means the code of behaviour set out in clause 79.

**initial screening test** means a preliminary test conducted under clause 94.

**police uniform** includes any portion of a police uniform that bears any badge, patch, insignia of rank or any other identifiable marking of the NSW Police Force.

**prescribed concentration of alcohol** means a concentration of 0.02 grams or more of alcohol in 210 litres of breath or 100 millilitres of blood.

**prohibited drug** has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

**steroid** means anabolic and androgenic steroidal agents included in Schedule 4 of the Poisons List under the *Poisons and Therapeutic Goods Act 1966*.

#### 78 Operation of Part

- (1) Nothing in this Part affects any liability for an offence relating to the consumption or supply of alcohol, or the use or supply of other drugs, arising under the *Road Transport Act 2013* or the *Drug Misuse and Trafficking Act 1985* or any other Act.
- (2) Nothing in this Part affects any right to conduct breath or other tests for the presence of alcohol or other drugs in a person's body, under the *Road Transport Act 2013*, the *Marine Safety Act 1998* or any other Act.
- (3) Nothing in this Part affects any obligation or right under the *Anti-Discrimination Act 1977*, the *Work Health and Safety Act 2011* or any other Act.

- (4) Nothing in this Part:
  - (a) prevents the making of a section 173 order or section 181D order in relation to any other matter associated with the consumption of alcohol or the use of prohibited drugs or steroids by a police officer, or
  - (b) prevents disciplinary proceedings from being taken under any Act in relation to any other matter associated with the consumption of alcohol or the use of prohibited drugs or steroids by a member of the NSW Police Force who is not a police officer.

## **Division 2 Code of behaviour**

### **79 Code of behaviour**

- (1) A member of the NSW Police Force must not use any prohibited drug.
- (2) A member of the NSW Police Force must not use any steroid unless the police officer's use of the steroid is in accordance with a prescription of a medical practitioner.
- (3) A member of the NSW Police Force must not have the prescribed concentration of alcohol in his or her breath or blood while the member is rostered on duty.
- (4) A member of the NSW Police Force must not consume alcohol while the member is on police premises. This applies whether or not the member is rostered on duty.
- (5) A police officer must not consume alcohol while the police officer is wearing a police uniform. This applies whether or not the police officer is rostered on duty.
- (6) A police officer must not, when required under the Act or this Part to do so, refuse or fail:
  - (a) to undergo a breath test, or
  - (b) to submit to a breath analysis, or
  - (c) to provide a sample of urine or hair,in accordance with a direction given by an authorised person.
- (7) A member of the NSW Police Force must treat all information relating to the results of any test conducted under section 211A or 211AA of the Act or this Part that comes to the member's knowledge in his or her official capacity as strictly confidential and must not divulge the information to anyone, except for the purposes of Part 9 of the Act or in connection with the assessment, counselling or rehabilitation of the police officer under this Part.
- (8) A member of the NSW Police Force must not conspire with, or aid or abet, any police officer to breach this code of behaviour.
- (9) A breach of this code of behaviour does not constitute an offence.

### **80 Exemptions from compliance with code of behaviour**

- (1) The code of behaviour does not apply so as to prevent a member of the NSW Police Force from consuming alcohol:
  - (a) in the performance of a police task, or
  - (b) in an official capacity, or
  - (c) in any other circumstances,if the member is authorised by the Commissioner to do so.

- (2) The code of behaviour does not apply so as to prevent a member of the NSW Police Force from consuming alcohol on police premises if the member has the approval of the commander or manager of those premises to do so.
- (3) An authorised officer must not direct a police officer to undergo a breath test, submit to a breath analysis, or provide a sample, if the police officer is unable on medical grounds to do so.
- (4) The code of behaviour does not prevent a member of the NSW Police Force from divulging otherwise confidential information with the written authority of the Commander, Human Resources Command or the relevant police officer.

### **Division 3 Consequences of breach of code of behaviour**

#### **81 Immediate action: police officer relieved from duty and reported**

- (1) If the result of a test conducted under section 211A of the Act or this Part indicates that the prescribed concentration of alcohol is present in a police officer's breath or blood while the police officer is rostered on duty (and no breath analysis indicates otherwise), the police officer is to be immediately relieved of duty and is not to carry out any duty for the duration of the officer's shift.
- (2) The Commissioner may decide that a police officer who is relieved from duty because of the operation of this clause is not entitled to be paid (whether in wages or salary, paid sick leave or any other type of payment) for that part of the relevant shift that the officer did not work.

#### **82 Consequences for police officers consuming alcohol**

- (1) This clause applies if:
  - (a) the Commissioner considers, as a result of a test conducted under section 211A of the Act or this Part, that a police officer has breached the code of behaviour by having the prescribed concentration of alcohol in his or her breath or blood while rostered on duty, and
  - (b) the police officer has not breached the code of behaviour in that manner in the 3 years immediately preceding the breach.
- (2) In such a case, the Commissioner may ask the police officer to choose whether to undergo counselling and rehabilitation or whether to face the possibility that a section 173 order may be made with respect to the officer.
- (3) If the police officer chooses to undergo counselling and rehabilitation, the Commissioner must direct the police officer:
  - (a) to attend any interview organised with the officer's commander or manager, and
  - (b) to attend an interview with a NSW Police Force drug and alcohol counsellor for assessment, and
  - (c) to participate in any rehabilitation program recommended by that counsellor.
- (4) If a police officer:
  - (a) chooses not to undergo counselling or rehabilitation, or
  - (b) without reasonable excuse, fails to attend an interview or counselling session after choosing to do so, or
  - (c) without reasonable excuse, fails to participate in a rehabilitation program after choosing to do so,the police officer's commander or manager may recommend the making of a section 173 order with respect to the officer.

- (5) The Commissioner is not required to ask the police officer to choose whether to undergo counselling if the Commissioner, having regard to all the circumstances, considers that it would be more appropriate to make a section 173 order or section 181D order with respect to the officer.

### **83 Consequences for police officers repeatedly consuming alcohol**

- (1) This clause applies if:
  - (a) the Commissioner considers, as a result of a test conducted under section 211A of the Act or this Part, that a police officer has breached the code of behaviour by having the prescribed concentration of alcohol in his or her breath or blood while rostered on duty, and
  - (b) the police officer has breached the code of behaviour in that manner in the 3 years immediately preceding the breach.
- (2) In such a case, the Commissioner may make a section 173 order or section 181D order with respect to the officer.
- (3) The Commissioner may refer the police officer to a medical practitioner for the purpose of that officer determining the police officer's fitness to remain a police officer.
- (4) The Commissioner is to have regard to any report made by the medical practitioner in relation to such a police officer.

### **84 Consequences of a positive screening test**

If an initial screening test returns a result indicating the possible presence of prohibited drugs in a sample of a police officer's urine, the Commissioner may:

- (a) take no action until the outcome of an analysis of the urine in accordance with clause 96 is known, or
- (b) place the officer on modified duties, such as station or office duties, or
- (c) relieve the officer from duty on full pay.

### **85 Consequences for police officers using prohibited drugs or steroids**

- (1) This clause applies if:
  - (a) the Commissioner considers, as a result of a test (other than an initial screening test) conducted under section 211A or 211AA of the Act or this Part, that a police officer has breached the code of behaviour by using a prohibited drug or steroid, and
  - (b) the police officer has not breached the code of behaviour in that manner in the 5 years preceding the breach.
- (2) In such a case, the Commissioner may ask the police officer to choose whether to undergo counselling and rehabilitation or whether to face the possibility that a section 173 order may be made with respect to the officer.
- (3) If the police officer chooses to undergo counselling and rehabilitation, the Commissioner must direct the police officer:
  - (a) to attend any interview organised with the officer's commander or manager, and
  - (b) to attend an interview with a NSW Police Force drug and alcohol counsellor for assessment, and
  - (c) to participate in any rehabilitation program recommended by that counsellor.

- (4) If a police officer:
  - (a) chooses not to undergo counselling or rehabilitation, or
  - (b) without reasonable excuse, fails to attend an interview or counselling session after choosing to do so, or
  - (c) without reasonable excuse, fails to participate in a rehabilitation program after choosing to do so,the Commissioner may make a section 173 order with respect to the officer.
- (5) The Commissioner is not required to ask the police officer to choose whether to undergo counselling if the Commissioner, having regard to all the circumstances, considers that it would be more appropriate to make a section 173 order or section 181D order with respect to the officer.

**86 Consequences for police officers repeatedly using prohibited drugs or steroids**

- (1) This clause applies if:
  - (a) the Commissioner considers, as a result of a test (not including a screening test) conducted under section 211A or 211AA of the Act or this Part, that a police officer has breached the code of behaviour by using a prohibited drug or steroid, and
  - (b) the police officer has breached the code of behaviour in that manner in the 5 years preceding the breach.
- (2) In such a case, the Commissioner may make a section 173 order or a section 181D order in relation to the breach of the code of behaviour by any such police officer.

**87 Special provisions in relation to probationary constables**

- (1) This clause applies to an officer who has been appointed on probation.
- (2) If the Commissioner considers, as a result of a test (other than an initial screening test) conducted under section 211A or 211AA of the Act or this Part, that such an officer has breached the code of behaviour by having the prescribed concentration of alcohol in his or her breath or blood while rostered on duty or by using a prohibited drug or steroid, the Commissioner must either:
  - (a) direct the officer to attend an interview with a NSW Police Force drug and alcohol counsellor for assessment and to participate in any rehabilitation program recommended by that counsellor, or
  - (b) direct that the officer's appointment be terminated.
- (3) If such an officer fails, without reasonable excuse, to attend an interview or counselling session after being directed to do so, the Commissioner must direct that the officer's appointment be terminated.
- (4) The Commissioner may at any time refer the officer to a medical practitioner for the purpose of that officer determining the officer's fitness for duty.
- (5) The Commissioner is to have regard to any report made by the medical practitioner in relation to such an officer.

**88 Other breaches of code of behaviour**

- (1) This clause applies to a police officer who breaches the code of behaviour:
  - (a) by consuming alcohol while wearing a police uniform (while not rostered on duty), or
  - (b) by consuming alcohol while on police premises (while not rostered on duty), or

- (c) by refusing or failing to undertake a breath test when required to do so under this Part, or
  - (d) by refusing to submit to a breath analysis or to provide a sample of urine or hair when required to do so under this Part,
- and who is not exempt from complying with the code of behaviour by reason of clause 80.
- (2) In such a case, the Commissioner may make a section 173 order or section 181D order in relation to the breach of the code of behaviour by any such police officer.

#### **89 Special follow-up testing**

- (1) The Commissioner may direct an authorised person to conduct special follow-up testing of police officers whom the Commissioner has previously considered to be in breach of the code of behaviour.
- (2) Special testing must occur at least once a year. The police officer is not to be given notice of the time of testing.
- (3) Special testing may involve any one or more of the following in accordance with this Part:
- (a) breath testing,
  - (b) breath analysis,
  - (c) a requirement to supply a sample of hair,
  - (d) a requirement to supply a sample of urine.
- (4) Any such special testing is to continue:
- (a) for 3 years from the most recent breach, in relation to a police officer who breached the code of behaviour by having more than the prescribed concentration of alcohol in his or her breath or blood, or
  - (b) for 5 years from the most recent breach, in relation to a police officer who breached the code of behaviour by using a prohibited drug or steroid.
- (5) The Commissioner may at any time change or revoke any direction given under this clause.

#### **90 Double jeopardy**

- (1) A police officer is not liable to be punished under this Part in relation to the same incident for both:
- (a) having the prescribed concentration of alcohol in his or her breath or blood while rostered on duty, or using a prohibited drug or steroid, or consuming alcohol while wearing a police uniform or while on police premises, and
  - (b) refusing or failing to undertake a breath test, to submit to a breath analysis or to provide a sample of urine or hair in accordance with this Part.
- (2) A police officer is not liable to be punished under this Part in relation to the same incident for both:
- (a) having the prescribed concentration of alcohol in his or her breath or blood while rostered on duty, and
  - (b) consuming alcohol while wearing a police uniform or while on police premises.

## **Division 4 Authorisation of people to conduct tests and use instruments**

### **91 Appointment of authorised persons**

- (1) The Commissioner may, by instrument in writing, appoint any person to be an authorised person for the purposes of section 211A or 211AA of the Act and this Part. For those purposes, the Commissioner may appoint a police officer or any other person.
- (2) The Commissioner may appoint as an authorised person:
  - (a) a person by name, or
  - (b) the holder from time to time of a particular office by reference to the title of the office concerned.
- (3) The Commissioner must furnish authorised persons with certificates of their appointment as authorised persons.
- (4) An authorised person must, if requested to do so, produce the certificate of appointment to any police officer required by the authorised person to submit to a breath test or to do any other thing under section 211A or 211AA or this Part.

## **Division 5 Conduct of testing**

### **92 Breath analysis of police officers following positive breath testing**

- (1) This clause applies if:
  - (a) it appears to an authorised person as a result of a breath test conducted under section 211A of the Act that the prescribed concentration of alcohol may be present in a police officer's breath or blood, or
  - (b) a police officer who is required by an authorised person to undergo a breath test under this Part refuses or fails to do so in accordance with the direction of the authorised person.
- (2) In such a case, the authorised person may require the police officer to submit to a breath analysis in accordance with the directions of the person.
- (3) A breath analysis may be carried out only by an authorised person.
- (4) As soon as practicable after a police officer has submitted to a breath analysis the person who carried out the analysis must deliver to the police officer a statement in writing signed by the person specifying:
  - (a) the concentration of alcohol determined by the analysis to be present in the police officer's breath or blood and expressed in grams of alcohol in 210 litres of breath or 100 millilitres of blood, and
  - (b) the day on which and time of the day at which the breath analysis was completed.
- (5) A police officer who is required to submit to a breath analysis may request the person making the requisition to arrange for the taking (in the presence of an authorised person) of a sample of the police officer's blood for analysis, at the police officer's own expense, by:
  - (a) a medical practitioner nominated by the police officer, or
  - (b) a medical practitioner nominated by the person at the police officer's request.
- (6) The making of any such request or the taking of a sample of a police officer's blood does not absolve the police officer from the obligation imposed on the police officer to submit to a breath analysis in accordance with this clause.



- (7) If a police officer makes such a request, the authorised officer must take all reasonable steps to contact the relevant medical practitioner.

## **Division 6 Handling and analysis of samples**

### **93 Object of Division**

The object of this Division is to set out the procedure to be followed in relation to:

- (a) a sample of urine or hair provided by a police officer under section 211A or 211AA of the Act (which empowers an authorised person to require a police officer to provide a sample of the officer's urine or hair for the purpose of testing for the presence of prohibited drugs or steroids), or
- (b) a sample of blood provided by a police officer under clause 92 (which allows a police officer to request that a sample of blood be taken) or under section 211A (4B) of the Act (under which a police officer may be required to provide a sample of blood).

### **94 Action with respect to initial screening of samples of urine**

- (1) This clause applies if a sample of urine is taken under section 211A of the Act for the purpose of testing for the presence of prohibited drugs.
- (2) The sample may be subjected to a preliminary test conducted:
  - (a) on the site at which it is originally provided, and
  - (b) in accordance with the on-site screening procedure set out in AS 4308 or any other procedure approved by the Commissioner in that regard.
- (3) If the preliminary test of the sample returns a result indicating the possible presence of prohibited drugs, it must be dealt with in accordance with clause 95 (3), (4), (5) and (6).
- (4) If the preliminary test of the sample returns a result indicating the absence of prohibited drugs, it must be disposed of in accordance with AS 4308.

### **95 Action with respect to samples of urine, hair and blood**

- (1) This clause applies to:
  - (a) an authorised person who arranges for a sample of urine, hair or blood to be taken when empowered to do so under section 211A or 211AA of the Act, and
  - (b) a medical practitioner who takes a sample of blood when empowered to do so under clause 92 or directed to do so by an authorised person under section 211A (4B) of the Act.
- (2) This clause does not apply in relation to a sample of urine that has been the subject of an initial screening test that returned a result indicating the absence of prohibited drugs.
- (3) A person to whom this clause applies must ask the police officer from whom the sample was taken whether or not the police officer would like to keep part of the sample of urine, hair or blood taken from the officer.
- (4) A person to whom this clause applies must:
  - (a) divide the sample into 2 approximately equal portions, or, if the police officer has indicated that he or she would like to keep a part of the sample, divide the same into 3 approximately equal portions, and
  - (b) place each portion into a container, and
  - (c) fasten and seal each container, and

- (d) mark or label each container for future identification.
- (5) Of the sealed containers:
  - (a) the first container must:
    - (i) in the case of a sample taken by a medical practitioner under clause 92, be handed by a medical practitioner to the authorised person present when the sample was taken, or
    - (ii) in any other case, be dealt with in accordance with clause 96, and
  - (b) the second container must be transported to a laboratory accredited by the National Association of Testing Authorities, Australia for the purposes of AS 4308 and nominated by the Commissioner, and must be stored at that laboratory on behalf of the Commissioner, and
  - (c) in the case where the police officer has indicated that he or she would like to keep a part of the sample, the third container must be given to the police officer.
- (6) In the case of samples of urine, the two sealed containers referred to in subclause (5) (a) and (b) must be handled in accordance with the procedure set out in AS 4308 or any other procedure approved by the Commissioner in that regard.

#### **96 Analysis of samples of urine, hair or blood**

- (1) An authorised person may arrange for a portion of a sample of a police officer's urine, hair or blood taken in accordance with section 211A or 211AA of the Act or this Part to be submitted for analysis to an analyst to determine the concentration of alcohol in the blood or to determine whether the urine or hair contains a prohibited drug or steroid.
- (2) An analyst to whom a portion of a sample of urine, hair or blood is submitted for analysis under this clause may carry out an analysis of the portion to determine the concentration of alcohol in the blood or to determine whether the urine or hair contains alcohol or a prohibited drug or drugs or a steroid or steroids, as the case requires.
- (3) Such analysis must be carried out, and a report on that analysis provided, in accordance with the procedure set out in AS 4308 or any other procedure approved by the Commissioner in that regard.
- (4) Analysis must be carried out in a laboratory accredited by the National Association of Testing Authorities, Australia for the purposes of AS 4308 and nominated by the Commissioner.
- (5) If the first analysis of a portion of the sample indicates the presence of alcohol or a prohibited drug or steroid in the sample, an analysis of another portion of the sample must be undertaken.

### **Division 7 Offence**

#### **97 Interfering with results of test**

- (1) A person who does anything to introduce, or alter the concentration of, alcohol or any prohibited drug or steroid in the police officer's urine, hair, breath or blood:
  - (a) before submitting to a breath analysis, or

(b) before providing a test sample,  
is guilty of an offence if the person does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the police officer.

Maximum penalty: 20 penalty units.

- (2) A police officer is guilty of an offence if the police officer:
- (a) in purported compliance with a requirement to provide a test sample under the Act, provides a false test sample, or
  - (b) replaces a test sample provided by the police officer with a false test sample, or
  - (c) encourages another person to provide a test sample, or to do anything else, for the purpose of assisting the police officer to contravene paragraph (a) or (b).

Maximum penalty: 20 penalty units.

- (3) A person who removes or interferes with a test sample provided by a police officer for the purpose of preventing or perverting the course of any proceedings against a police officer is guilty of an offence.

Maximum penalty: 20 penalty units.

- (4) A person who assists or encourages a person to contravene subclause (1), (2) (a) or (b) or (3) with the intention of assisting or encouraging that contravention is guilty of an offence.

Maximum penalty: 20 penalty units.

- (5) In this clause:

**encourage** includes request or command.

**false test sample** means:

- (a) a test sample obtained from another person (not being the police officer required to provide the test sample), or
- (b) a test sample that has been interfered with, or
- (c) a thing that is not a test sample.

**interfere** with a test sample means do anything that alters or disguises the concentration of alcohol or prohibited drug or steroid in the test sample.

**proceedings** includes disciplinary proceedings and any investigation of the conduct of a police officer carried out under the Act or another Act.

**test sample** means a sample of a person's urine, hair, breath or blood.

## Part 6 Leave entitlements

### Division 1 Preliminary

#### 98 General

- (1) This Part is subject to:
  - (a) any award or enterprise agreement under the *Industrial Relations Act 1996*, and
  - (b) any agreement under section 87 of the Act (including any agreement under section 86 of the Act, as in force before 1 December 2006, or any award, industrial agreement or determination applicable under clause 8 of Schedule 4 to the Act).
- (2) For the purpose of calculating the entitlement of a member of the NSW Police Force to leave under this Part, any period served by the member before the commencement of this Part as a member of the Police Force or as a Public Service employee is to be taken into account as service as a member of the NSW Police Force.

**Note.** Current awards such as the *Crown Employees (Police Officers—2014) Award* and the *Crown Employees (NSW Police Force Administrative Officers and Temporary Employees) Award 2009* generally provide for leave entitlements for members of the NSW Police Force to whom this Part applies.

#### 99 Applications for leave

- (1) An application by a member of the NSW Police Force for leave under this Part is to be made to and dealt with by the Commissioner.
- (2) The Commissioner, in dealing with any such application, must have regard to the exigencies of the NSW Police Force, but as far as practicable is to deal with the application in accordance with the wishes of the member.

#### 100 Special provisions relating to administrative officers and temporary employees

- (1) Unless the contrary intention appears, a period of leave to which an administrative officer or temporary employee is entitled under this Part is, where the officer or employee is employed in the NSW Police Force for 6 or 7 working days each week, to be increased to six-fifths or seven-fifths, respectively, of the period of leave to which the officer or employee would, but for this subclause, be entitled under this Part.
- (2) If the period of leave to which a temporary employee is entitled under this Part exceeds the period for which the temporary employee is employed under the Act, the balance of that period of leave may be granted during subsequent periods of employment in the NSW Police Force if each such subsequent period of employment commences on the termination of a previous period of employment in the NSW Police Force.

### Division 2 Extended leave

#### 101 Entitlement to extended leave

- (1) Subject to this Division, a member of the NSW Police Force is entitled:
  - (a) after service for 10 years, to leave for 2 months on full pay or 4 months on half pay, and
  - (b) after service for more than 10 years, to:
    - (i) leave as provided by paragraph (a), and

- (ii) in addition, an amount of leave proportionate to the member's length of service after 10 years, calculated on the basis of 5 months on full pay, or 10 months on half pay, for 10 years served after service for 10 years.
- (2) For the purpose of calculating the entitlement of a person to extended leave under this clause at any time:
  - (a) service referred to in this clause includes service before the commencement of this Part (as referred to in clause 98 (2)), and
  - (b) there must be deducted from the amount of extended leave to which, but for this paragraph, that person would be entitled:
    - (i) any extended leave, or leave in the nature of extended leave, and
    - (ii) the equivalent, in extended leave, of any benefit instead of extended leave or leave in the nature of extended leave, taken or received by that person before that time, including any such leave taken, or benefit received, by that person in accordance with any former Act, and
  - (c) the provisions of Schedule 2 to the *Government Sector Employment Regulation 2014* have effect.
- (3) Nothing in subclause (2) is to be regarded as authorising, in respect of the same period of leave taken or the same benefit received, a deduction under both subclause (2) (b) and clause 7 of Schedule 2 to the *Government Sector Employment Regulation 2014*.
- (4) If the services of a member of the NSW Police Force with at least 5 years' service as an adult and less than 10 years' service are terminated (otherwise than by the making of a section 181D order):
  - (a) by the Crown, the Governor or the Commissioner for any reason other than the member's serious and intentional misconduct, or
  - (b) by the member on account of illness, incapacity or domestic or other pressing necessity,the member is entitled:
  - (c) for 5 years' service, to 1 month's leave on full pay, and
  - (d) for service after 5 years, to a proportionate amount of leave on full pay calculated on the basis of 3 months' leave for 15 years' service (that service to include service as an adult and otherwise than as an adult).
- (5) For the purposes of subclause (4), **service as an adult**, in the case of a member of the NSW Police Force employed to do any work for which the remuneration has been fixed by an industrial award or industrial agreement (however described) under any law in force in New South Wales, means the period of service during which the remuneration applicable to the member was at a rate not lower than:
  - (a) in the case of a police officer—the rate for a constable, or
  - (b) in any other case—the lowest rate fixed under the award or agreement, for an adult male or adult female in the same trade, classification, calling, group or grade as the member.
- (6) For the purposes of subclause (1), **service** includes:
  - (a) service under the *Teaching Service Act 1980*, and
  - (b) any period of leave without pay taken before the commencement of the *Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963*, and

- (c) in the case of a member of the NSW Police Force who has completed at least 10 years' service—any period of leave without pay, not exceeding 6 months, taken after that commencement.
- (7) In subclause (6) (c), for the purpose of determining whether or not a member of the NSW Police Force has completed at least 10 years' service, the member's period of service is to be taken:
  - (a) to include any period of leave without pay taken before the commencement of the *Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963*, and
  - (b) to exclude any period of leave without pay taken after that commencement.
- (8) For the purposes of subclause (4), **service** does not include any period of leave without pay whether taken before or after the commencement of the *Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963*.

#### **102 Entitlement to gratuity instead of extended leave**

A member of the NSW Police Force who has acquired a right to extended leave with pay is entitled, immediately on the termination of the member's services, to be paid instead of that leave the money value of the extended leave as a gratuity in addition to any gratuity to which the member may be otherwise entitled.

#### **103 Payment where member of the NSW Police Force has died**

- (1) If a member of the NSW Police Force has acquired a right to extended leave with pay and dies before starting it, or after starting it dies before completing it:
  - (a) the member's surviving spouse, or
  - (b) if there is no such surviving spouse, the member's children, or
  - (c) if there is no such surviving spouse or child, a person who, in the opinion of the Commissioner, was, at the time of the member's death, a dependant relative of the member,is or are entitled to receive the money value of the leave not taken, or not completed, calculated at the rate of salary that the member received at the time of his or her death, less any amount paid to the member in respect of the leave not taken, or not completed.
- (2) If a member of the NSW Police Force with at least 5 years' service as an adult and less than 10 years' service dies:
  - (a) the member's surviving spouse, or
  - (b) if there is no such surviving spouse, the member's children, or
  - (c) if there is no such surviving spouse or child, a person who, in the opinion of the Commissioner, was, at the time of the death of the member, a dependant relative of the member,is or are entitled to receive the money value of the leave which would have accrued to the member had his or her services terminated, calculated at the rate of salary that the member was receiving at the time of his or her death.
- (3) If there is a guardian of any children entitled under subclause (1) or (2), the payment to which those children are entitled may be made to that guardian for their maintenance, education and advancement.
- (4) If there is no person entitled under subclause (1) or (2) to receive the money value of any leave not taken or not completed by a member of the NSW Police Force or which would have accrued to a member of the NSW Police Force, payment in respect of that leave must be made to the member's personal representatives.

- (5) Any payment under this clause is in addition to any payment due under any Act under which superannuation benefits are paid.
- (6) If payment of the money value of leave has been made under this clause, the Crown and the Commissioner cease to be liable for payment of any amount in respect of that leave.
- (7) In this clause, *surviving spouse* of a member of the NSW Police Force who has died includes any person who, immediately before the death, was the de facto partner of the member.

**Note.** “De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

### **Division 3 Annual leave (non-PSSSES police officers)**

#### **104 Application of Division**

This Division applies to all police officers, other than those who are members of the NSW Police Force Senior Executive Service.

#### **105 Entitlement to annual leave**

- (1) Annual leave on full pay accrues to a non-commissioned police officer at the rate of 30 working days per year.
- (2) Annual leave on full pay accrues to a commissioned police officer:
  - (a) at the rate of 25 working days per year, or
  - (b) at the rate of 30 working days per year if the officer qualifies for 3 or more additional working days leave in accordance with subclause (4) and is regularly rostered to work shift work on Sundays and public holidays.
- (3) A police officer while attached to a Police Station within the Western Division or Central Division (within the meaning of the *Crown Lands Consolidation Act 1913*, as in force immediately before its repeal) accrues additional annual leave on full pay at the rate of 5 working days per year.
- (4) A police officer who is rostered to work his or her ordinary hours on a Sunday or public holiday (a *compensable shift*) accrues, on the completion of the relevant qualifying period, additional annual leave on full pay on the following basis:
  - (a) 1 additional working day if between 4 and 10 compensable shifts have been worked during that period,
  - (b) 2 additional working days if between 11 and 17 compensable shifts have been worked during that period,
  - (c) 3 additional working days if between 18 and 24 compensable shifts have been worked during that period,
  - (d) 4 additional working days if between 25 and 31 compensable shifts have been worked during that period,
  - (e) 5 additional working days if 32 or more compensable shifts have been worked during that period.
- (5) A reference in subclause (4) to the relevant qualifying period is:
  - (a) in the case of a commissioned police officer (except as provided by paragraph (c))—a reference to the period of 12 months commencing on 1 December 1979 and to any subsequent period of 12 months, and
  - (b) in the case of a sergeant or constable (except as provided by paragraph (c))—a reference to the period of 12 months commencing on 1 December 1977 and to any subsequent period of 12 months, and

- (c) if a police officer leaves the NSW Police Force before the end of a 12-month period referred to in paragraph (a) or (b)—a reference, in relation to that officer, to the period from the commencement of that 12-month period to the date on which the officer ceases to be a police officer.
- (6) A police officer accrues additional annual leave on full pay at the rate of 1 working day for each holiday publicly observed throughout the State, other than the days on which New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day or Boxing Day are publicly observed.

#### **106 Excess annual leave**

- (1) Police officers who are authorised to grant annual leave must ensure that any annual leave granted to any police officer in any calendar year that is in excess of that to which the officer is entitled is deducted from the officer's annual leave entitlement in the next succeeding calendar year.
- (2) Nothing in subclause (1) affects the entitlement of a police officer to accrue 2 years' annual leave.

#### **107 Limits on accumulation**

- (1) Annual leave accrued and not taken by a police officer owing to the exigencies of the NSW Police Force, or for any other reason the Commissioner considers sufficient, accumulates up to a maximum of:
  - (a) 60 working days, in the case of:
    - (i) a non-commissioned police officer, or
    - (ii) a commissioned police officer to whom clause 105 (2) (b) applies, or
  - (b) 50 working days, in the case of a commissioned police officer (other than a commissioned police officer to whom clause 105 (2) (b) applies).
- (2) Subject to this clause, all annual leave accruing in excess of the relevant maximum number of working days is forfeited.
- (3) The Commissioner may direct a police officer to take, at such time as is convenient to the working of the NSW Police Force, annual leave accrued, but as far as practicable the wishes of the officer concerned are to be taken into consideration in directing the time for the taking of leave.
- (4) If the Commissioner is satisfied that a police officer is prevented from taking an amount of annual leave sufficient to reduce the accrued leave below the relevant maximum number of working days, the leave accrued in excess of the relevant maximum number of working days is, if the Commissioner so directs, not to be forfeited.
- (5) If the Commissioner has given a direction under subclause (4), the Commissioner is, at that time or as soon as practicable after that time, to give to the police officer a direction under subclause (3) in respect of the leave accrued in excess of the relevant maximum number of working days.
- (6) If any such police officer does not take leave in accordance with any direction referred to in subclause (5), all leave accrued to that officer in excess of the relevant maximum number of working days is then forfeited.

#### **108 Termination of services**

- (1) A police officer who resigns or retires or whose services are otherwise terminated (except by death) is, on cessation of employment, entitled to be paid immediately,



instead of annual leave accrued and remaining untaken, the money value of that leave as a gratuity.

- (2) An officer to whom subclause (1) applies may elect to take either the whole or part of the annual leave accrued and remaining untaken at cessation of active duty as annual leave on full pay instead of taking the money value of that leave as a gratuity.
- (3) If an officer has acquired a right to annual leave with pay and dies before entering on it, or after entering on it dies before its termination:
  - (a) the officer's surviving spouse, or
  - (b) if there is no such surviving spouse, the officer's children, or
  - (c) if there is no such surviving spouse or child, a person who, in the opinion of the Commissioner, was, at the time of the officer's death, a dependant relative of the officer,is or are entitled to receive the money value of the leave not taken.
- (4) If there is a guardian of any children entitled under subclause (3), the payment to which those children are entitled may be made to that guardian for their maintenance, education and advancement.
- (5) If there is no person entitled under subclause (3) to receive the money value of any leave not taken or not completed by an officer or which would have accrued to an officer, the payment is to be made to the officer's personal representatives.
- (6) If payment of the money value of leave has been made under this clause, the Crown and the Commissioner cease to be liable for payment of any amount in respect of that leave.
- (7) In this clause, *surviving spouse* of a police officer who has died includes any person who, immediately before the death, was the de facto partner of the officer.

#### **109 Accrual of annual leave while on extended leave, sick leave**

- (1) Annual leave accrues in respect of any period a police officer is on extended leave on full pay, but during one-half only of any period of extended leave on half pay.
- (2) Annual leave accrues in respect of any period during which a police officer is on sick leave (whether with or without pay) and in respect of any period of leave without pay granted on account of incapacity for which compensation has been authorised to be paid under the *Workers Compensation Act 1987*.

#### **110 Adjustment for excess leave on termination of services**

- (1) If any police officer ceases to be a police officer during but before the end of a calendar year, the officer is to be taken to have been entitled for that year to annual leave in respect only of the period from the commencement of that year to the date on which the officer so ceases to be a police officer, and that leave is to be calculated as a proportionate part of the entitlement for that year.
- (2) It is a condition on which any annual leave is granted or taken that when a police officer ceases to be such an officer a sum of money equivalent to the value, calculated at the rate of pay the officer is receiving at the date he or she ceases to be such an officer, of all annual leave the officer has had in excess of that to which the officer was entitled must be repaid by the officer to the Commissioner on demand.
- (3) In addition to the other means of recovering it, the sum of money referred to in subclause (2) or any part of it may be deducted from any pay or other money due to the officer.

## **Division 4 Annual leave (PSES police officers, administrative officers and temporary employees)**

### **111 Application of Division**

This Division applies to all members of the NSW Police Force, other than those who are police officers to whom Division 3 applies.

### **112 Entitlement to annual leave**

- (1) Annual leave on full pay accrues to members of the NSW Police Force at the rate of 20 working days per year.
- (2) Subject to the approval of the Commissioner, additional annual leave on full pay accrues to members of the NSW Police Force indefinitely stationed in the Western or Central Division of the State at the rate of 5 working days per year.
- (3) Annual leave accrues from month to month only, but for the purpose of calculating annual leave which may be due on the cessation of employment, credit is to be given for periods of service of less than 1 month.
- (4) In this clause, *Western or Central Division of the State* means the Western Division or Central Division within the meaning of the *Crown Lands Consolidation Act 1913*, as in force immediately before its repeal.

### **113 Limits on accumulation**

- (1) Annual leave accrued and not taken by a member of the NSW Police Force owing to the exigencies of the NSW Police Force, or for any other reason the Commissioner considers sufficient, accumulates up to a maximum of 40 working days.
- (2) Subject to this clause, all annual leave accruing in excess of 40 working days is forfeited.
- (3) The Commissioner may direct a member of the NSW Police Force to take, at such time as is convenient to the working of the NSW Police Force, annual leave accrued, but as far as practicable the wishes of the member concerned are to be taken into consideration in directing the time for the taking of leave.
- (4) If the Commissioner is satisfied that a member of the NSW Police Force is prevented from taking an amount of annual leave sufficient to reduce the accrued leave below 40 working days, the leave accrued in excess of 40 working days is, if the Commissioner so directs, not to be forfeited.
- (5) If the Commissioner has given a direction under subclause (4), the Commissioner is, at that time or as soon as practicable thereafter, to give to the member a direction under subclause (3) in respect of the leave accrued in excess of 40 working days.
- (6) If any such member does not take leave in accordance with any direction referred to in subclause (5), all leave accrued to that member in excess of 40 working days is then forfeited.

### **114 Miscellaneous**

- (1) Annual leave does not accrue to a member of the NSW Police Force in respect of any period of absence from duty without pay or without leave.
- (2) Despite subclause (1), annual leave accrues in respect of:
  - (a) any period of leave without pay granted on account of incapacity for which compensation has been authorised to be paid under the *Workers Compensation Act 1987*, and
  - (b) any period of sick leave without pay, and

- (c) any other period of leave without pay, not exceeding 5 working days in any period of 12 months.
- (3) If a member of the NSW Police Force takes extended leave on half pay, the period of that leave is to be taken into account to the extent of one-half of the leave only in calculating the member's accrual of annual leave.
- (4) A member of the NSW Police Force who resigns or retires or whose services are otherwise terminated (except by death) is, on cessation of employment, entitled to be paid immediately, instead of annual leave accrued and remaining untaken or unforfeited, the money value of that leave as a gratuity.
- (5) A member of the NSW Police Force to whom subclause (4) applies may elect to take either the whole or part of the annual leave accrued and remaining untaken or unforfeited at cessation of active duty as annual leave on full pay instead of taking the money value of that leave as a gratuity.
- (6) If a member of the NSW Police Force has acquired a right to annual leave with pay and dies before entering on it, or after entering on it dies before its termination:
  - (a) the member's surviving spouse, or
  - (b) if there is no such surviving spouse, the children of the member, or
  - (c) if there is no such surviving spouse or child, a person who, in the opinion of the Commissioner, was, at the time of the death of the member, a dependant relative of the member,is or are entitled to receive the money value of the leave not taken.
- (7) If there is a guardian of any children entitled under subclause (6), the payment to which those children are entitled may be made to that guardian for their maintenance, education and advancement.
- (8) If there is no person entitled under subclause (6) or (7) to receive the money value of any leave not taken or not completed by a member of the NSW Police Force or which would have accrued to a member of the NSW Police Force, the payment is to be made to the personal representative of the member.
- (9) If payment of the money value of leave has been made under this clause, no proceedings may be brought against the Commissioner or Crown for payment of any amount in respect of that leave.
- (10) In this clause, *surviving spouse* of a member of the NSW Police Force who has died includes any person who, immediately before the death, was the de facto partner of the member.

## **Division 5 Adoption, maternity and parental leave**

### **115 Adoption leave**

- (1) A member of the NSW Police Force who adopts, and becomes the primary care-giver for, a child:
  - (a) if the child has not commenced school at the date of the taking of custody—is entitled to be granted adoption leave for a maximum period of 12 months, or
  - (b) if the child has commenced school at that date—may be granted adoption leave for such period (not exceeding 12 months on a full-time basis) as the Commissioner may determine,from the date when the member takes custody of the child concerned, whether that date is before or after the date on which a court makes an order for the adoption of the child by the member.

- (2) Adoption leave referred to in subclause (1) (a):
  - (a) may be taken full-time for a period not exceeding 12 months, or
  - (b) may be taken part-time over a period not exceeding 2 years, or
  - (c) may be taken partly full-time and partly part-time over a proportionate period, as the Commissioner may permit.
- (3) A member of the NSW Police Force who resumes duty immediately on the expiration of adoption leave:
  - (a) if the position occupied by the member immediately before the commencement of that leave still exists—is entitled to be placed in that position, or
  - (b) if the position so occupied by the member has ceased to exist—is entitled to be appointed (subject to the availability of other suitable positions) to another position for which the member is qualified in accordance with the Act and this Regulation.
- (4) Except as otherwise provided by subclause (5), adoption leave is to be granted without pay.
- (5) A member of the NSW Police Force who:
  - (a) applies for adoption leave within such time and in such manner as the Commissioner may from time to time determine, and
  - (b) prior to the commencement of adoption leave, completes not less than 40 weeks' continuous service,is entitled to payment at his or her ordinary rate of pay for a period of 3 weeks of adoption leave or the period of adoption leave taken, whichever is the shorter period.

#### 116 Maternity leave

- (1) In this clause:

*birth* includes stillbirth.

*expected date of birth*, in relation to a member of the NSW Police Force who is pregnant, means a date specified by a medical practitioner to be the date on which the medical practitioner expects the member to give birth.
- (2) A member of the NSW Police Force who is pregnant is, subject to this clause, entitled to be granted maternity leave:
  - (a) for a period (not exceeding 9 weeks on a full-time basis) prior to the expected date of birth, and
  - (b) for a maximum period of 12 months after the actual date of birth.
- (3) Maternity leave referred to in subclause (2) (b):
  - (a) may be taken full-time for a period not exceeding 12 months, or
  - (b) may be taken part-time over a period not exceeding 2 years, or
  - (c) may be taken partly full-time and partly part-time over a proportionate period, as the Commissioner may permit.
- (4) A member of the NSW Police Force who has applied for or been granted maternity leave must, as soon as practicable after the end of her pregnancy (whether by the birth of a living child or otherwise), notify the Commissioner that her pregnancy has ended and the date on which it ended.

- (5) A member of the NSW Police Force who has been granted maternity leave and whose child is stillborn may elect to take available sick leave instead of maternity leave.
- (6) A member of the NSW Police Force who resumes duty immediately on the expiration of maternity leave:
  - (a) if the position occupied by her immediately before the commencement of that leave still exists, is entitled to be placed in that position, or
  - (b) if the position so occupied by her has ceased to exist, is entitled to be appointed (subject to the availability of other suitable positions) to another position for which she is qualified in accordance with the Act and this Regulation.
- (7) Except as otherwise provided by subclause (8), maternity leave is to be granted without pay.
- (8) A member of the NSW Police Force who:
  - (a) applies for maternity leave within such time and in such manner as the Commissioner may from time to time determine, and
  - (b) prior to the commencement of maternity leave, completes not less than 40 weeks' continuous service,is entitled to payment at her ordinary rate of pay for a period not exceeding 9 weeks of maternity leave or the period of maternity leave taken, whichever is the shorter period.

#### **117 Parental leave**

- (1) The Commissioner may, subject to such conditions as may from time to time be determined by the Commissioner, grant parental leave for a period not exceeding 12 months to a member of the NSW Police Force who becomes a parent but is not entitled to maternity leave or adoption leave.
- (2) Parental leave may commence at any time up to 2 years from the date of birth or adoption of the child.
- (3) Parental leave:
  - (a) may be taken full-time for a period not exceeding 12 months, or
  - (b) may be taken part-time over a period not exceeding 2 years, or
  - (c) may be taken partly full-time and partly part-time over a proportionate period.
- (4) A member of the NSW Police Force who resumes duty immediately on the expiration of parental leave:
  - (a) if the position occupied by him or her immediately before the commencement of that leave still exists—is entitled to be placed in that position, or
  - (b) if the position so occupied by him or her has ceased to exist—is entitled to be appointed (subject to the availability of other suitable positions) to another position for which he or she is qualified in accordance with the Act and this Regulation.
- (5) Parental leave is to be granted without pay.

#### **118 Accrual of leave while on maternity leave or adoption leave**

- (1) For the purpose of accrual of leave by a member of the NSW Police Force:
  - (a) any period of maternity leave or adoption leave in respect of which payment was made at the rate of full pay is to be counted as service, and

- (b) half of any period of maternity leave or adoption leave in respect of which payment was made at the rate of half pay is to be counted as service.
- (2) For the purpose of accrual of leave by a member of the NSW Police Force, any period of maternity leave, adoption leave or parental leave taken as leave without pay is not to be counted as service except as provided by Division 2.

**119 Incremental progression while on maternity leave, adoption leave or parental leave**

For the purpose of payment of any increment to a member of the NSW Police Force:

- (a) a period of maternity leave or adoption leave in respect of which payment was made at the rate of full pay or half pay is to be counted as service, and
- (b) a period of any maternity leave, adoption leave or parental leave without pay is not to be counted as service.

**Division 6 Family and community service leave**

**120 Commissioner may grant family and community service leave**

- (1) The Commissioner may grant family and community service leave to a member of the NSW Police Force:
  - (a) for reasons related to the family responsibilities of the member, or
  - (b) for reasons related to the performance of community service by the member, or
  - (c) in a case of pressing necessity.
- (2) A member of the NSW Police Force is not to be granted family and community service leave for attendance at court to answer a criminal charge unless the Commissioner approves the grant of leave in the particular case.

**121 Maximum amount of family and community service leave**

- (1) The maximum amount of family and community service leave on full pay that may be granted to a member of the NSW Police Force is:
  - (a) two and a half working days during the first year of service, and 5 working days in any period of 2 years after the first year of service, or
  - (b) one working day for each year of service after 2 years' continuous service, minus any period of family and community service already taken by the member,whichever is the greater.
- (2) The Commissioner may grant up to 5 days' family and community service leave without pay to a member of the NSW Police Force in any period of one year if the amount of paid family and community service leave available to the member for that period has been used.
- (3) The amount of any family and community service leave without pay that may be granted under subclause (2) in any period of one year is to be reduced by the amount of any paid family and community service leave already taken by the member in the same period.
- (4) Additional paid family and community service leave may be granted to a member of the NSW Police Force to care for a person for whose care the member is responsible if the grant of such leave is authorised by the Commissioner.
- (5) Family and community service leave may be granted under subclause (4) only if the member has accrued sick leave since 12 May 1995 for the period of leave and, if granted, the family and community service leave so granted replaces that sick leave.

- (6) A reference in this clause to family and community service leave granted to a member of the NSW Police Force includes a reference to short leave granted to the member before the commencement of this clause.

## **Division 7 Leave without pay**

### **122 Leave without pay for police officers**

- (1) The Commissioner may grant leave without pay to a police officer for a period not exceeding 3 consecutive years if good and sufficient reason is shown.
- (2) Leave without pay is subject to such conditions as the Commissioner may from time to time determine.
- (3) Leave without pay may be granted on a full-time or a part-time basis.
- (4) Leave without pay is not to be counted as service for the purposes of:
  - (a) accrual of annual leave or sick leave, or
  - (b) the payment of any increment.
- (5) Leave without pay is not to be counted as service for the purposes of:
  - (a) any qualification for promotion within the rank of constable, or
  - (b) the period of any probation.
- (6) This clause does not apply to leave without pay that is sick leave, maternity leave, adoption leave or parental leave.

### **123 Leave without pay for administrative officers and temporary employees**

- (1) The Commissioner may grant leave without pay to an administrative officer or temporary employee if good and sufficient reason is shown.
- (2) Leave without pay is subject to such conditions as the Commissioner may from time to time determine.
- (3) Leave without pay may be granted on a full-time or a part-time basis.
- (4) If an administrative officer or temporary employee is granted leave without pay for a period not exceeding 14 consecutive calendar days, pay may be allowed by the Commissioner for such days occurring during that leave as are public holidays throughout the State.
- (5) An administrative officer or temporary employee who has been granted leave without pay may, with the approval of the Commissioner, elect to take available annual or extended leave instead of leave without pay.

## **Division 8 Sick leave**

### **124 Authority to grant sick leave**

- (1) If the Commissioner is satisfied that a member of the NSW Police Force is unable to perform his or her duty because of illness, the Commissioner:
  - (a) must, subject to this Division, grant to the member sick leave on full pay, and
  - (b) may, subject to this Division, grant to the member sick leave without pay if the absence of the member exceeds the entitlement of the member under this Division to sick leave on full pay.
- (2) A member of the NSW Police Force may elect to take available annual or extended leave instead of sick leave without pay.

### **125 Requirements for medical certificate**

- (1) A member of the NSW Police Force absent from duty because of illness:
  - (a) in respect of any such absence in excess of 3 consecutive working days, must furnish a medical certificate to the Commissioner, or
  - (b) in respect of any such absence of 3 consecutive working days or less, must if required to do so by the Commissioner, furnish a medical certificate to the Commissioner.
- (2) Despite subclause (1), the Commissioner may at any time require a member of the NSW Police Force who has been granted sick leave to furnish medical evidence of the inability of the member to resume duty.
- (3) If a member of the NSW Police Force applying for sick leave furnishes a medical certificate which appears to the Commissioner to indicate that the condition of the member does not warrant the grant of sick leave, that application together with that medical certificate is to be referred immediately by the Commissioner to a medical practitioner for consideration.
- (4) The nature of the leave to be granted to a member of the NSW Police Force in respect of an application referred to in subclause (3) is to be determined by the Commissioner on the advice of a medical practitioner.
- (5) If sick leave is not granted to a member of the NSW Police Force in respect of an application referred to in subclause (3), the Commissioner is, as far as practicable, to take into account the wishes of the member concerned when determining the nature of the leave to be granted in respect of the application.
- (6) A member of the NSW Police Force may elect to have an application for sick leave dealt with confidentially by a medical practitioner in accordance with such procedures as may be determined from time to time by the Commissioner.
- (7) If a member of the NSW Police Force who is on annual leave or extended leave furnishes to the Commissioner a satisfactory medical certificate in respect of illness occurring during that leave, the Commissioner may, subject to the provisions of this Division relating to sick leave, grant sick leave to the member for the following period:
  - (a) in the case of a member of the NSW Police Force on annual leave, the period set out in the medical certificate,
  - (b) in the case of a member of the NSW Police Force on extended leave, the period set out in the medical certificate, unless that period is less than 7 calendar days.
- (8) Subclause (7) applies to all members of the NSW Police Force other than those on leave prior to resignation or termination of services, unless the resignation or termination of services amounts to a retirement.

### **126 Sick leave entitlements**

- (1) Sick leave on full pay accrues to a member of the NSW Police Force at the rate of 15 days each calendar year, and any such accrued leave which is not taken is cumulative.
- (2) Sick leave on full pay accrues at the beginning of the calendar year, but if a member of the NSW Police Force is appointed during a calendar year, sick leave on full pay accrues on the date the member commences duty at the rate of one and a quarter days for each complete month before the next 1 January.



- (3) In the case of a member of the NSW Police Force employed as a public servant on 1 May 1988:
  - (a) sick leave on full pay for the calendar year commencing 1 January 1988 accrues at the rate of 10 days, and
  - (b) in addition to that 10 days, the member is to be credited with sick leave on full pay in relation to service before 1 May 1988 for the following number of days less the number of days of sick leave on full pay previously granted to the member:
    - (i) after completion of the first year of service and before completion of the second year of service—20 working days,
    - (ii) after completion of the second year of service and before completion of the fifth year of service—40 working days,
    - (iii) after completion of the fifth year of service—60 working days plus an additional 10 working days for each completed year of service thereafter.
- (4) Except as otherwise provided by this Division or otherwise determined by the Commissioner, only service as a member of the NSW Police Force or as a public servant is to be taken into account for the purpose of calculating sick leave due.
- (5) For the purposes of determining the amount of sick leave accrued where sick leave is granted on less than full pay, the amount of sick leave granted is to be converted to its full pay equivalent.

#### **127 Payment during initial period of service**

- (1) No more than 5 days' sick leave on full pay is to be granted to a member of the NSW Police Force during the first 3 months of service unless a satisfactory medical certificate in respect of each absence is furnished.
- (2) On completion of the first 12 months' service, payment may be made to a member of the NSW Police Force for such portion of sick leave taken without pay during the first 3 months of that service as, with the addition of all sick leave on full pay granted during that period of 12 months, does not exceed a total of 15 working days.

#### **128 Procedure where workers compensation claimed**

- (1) This clause applies where a member of the NSW Police Force is or becomes unable to attend for duty or to continue on duty in circumstances that may give the member a right to claim compensation under the *Workers Compensation Act 1987*.
- (2) If a member of the NSW Police Force has made a claim for any such compensation, the member may, pending the determination of that claim and subject to the provisions of this Division relating to sick leave and to subclauses (3) and (6), be granted by the Commissioner sick leave on full pay for which the member is eligible, and if that claim is accepted the equivalent period of any such sick leave is to be restored to the credit of the member.
- (3) If a member of the NSW Police Force referred to in subclause (1) notifies the Commissioner that he or she does not intend to make a claim for any such compensation, sick leave on full pay is not to be granted unless the Commissioner determines that in the circumstances of the case sick leave on full pay should be granted.
- (4) If a member of the NSW Police Force who is required to submit to a medical examination under the *Workers Compensation Act 1987* in relation to a claim for compensation under that Act refuses to submit to or in any way obstructs any such examination, the member is not to be granted sick leave on full pay until that

examination has taken place and a medical certificate has been given indicating that the member is not fit to resume duty.

- (5) If, as a result of any such medical examination in relation to a member of the NSW Police Force:
  - (a) a certificate is given under the *Workers Compensation Act 1987* setting out the condition and fitness for employment of the member or the kind of employment for which the member is fit, and
  - (b) the Commissioner makes available to the member employment falling within the terms of that certificate, and
  - (c) the member refuses or fails to resume or perform the employment so provided, all payments in accordance with this clause are to cease from the date of that refusal or failure.
- (6) Despite subclause (2), if there is a commutation of weekly payments of compensation by the payment of a lump sum pursuant to Division 9 of Part 3 of the *Workers Compensation Act 1987*, there will then be no further sick leave granted on full pay.

**129 Top-up of weekly workers compensation payments during first 6 months for police officers injured at work**

- (1) This clause applies to a police officer who is in receipt of weekly compensation payments under the *Workers Compensation Act 1987* in connection with employment as a police officer and who continues to be employed in the NSW Police Force.
- (2) The NSW Police Force is to pay any such police officer, during the first 26 weeks of incapacity referred to in section 36 of the *Workers Compensation Act 1987* (together with an additional period of the following 13 weeks), an amount representing the difference between the amount of weekly compensation payments received under that Act and the ordinary rate of pay of the police officer.

**Note.** For the application of section 36 of the *Workers Compensation Act 1987*, see clause 25 of Part 19H of Schedule 6 to that Act.
- (3) A police officer's entitlements to sick leave or other leave are not affected by the additional payments under this clause.
- (4) The ordinary rate of pay of a police officer for the purposes of this clause includes loadings and allowances in the nature of salary.

**130 Procedure where other claim has been made**

- (1) This clause applies if the circumstances of any injury to or illness of a member of the NSW Police Force may give rise to a claim for damages or to compensation, other than compensation under the *Workers Compensation Act 1987*.
- (2) Sick leave on full pay may, subject to and in accordance with this Division, be granted to a member of the NSW Police Force on completion by the member of an undertaking in a form approved by the Commissioner:
  - (a) that any such claim if made will include a claim for the value of any period of sick leave on full pay granted, and
  - (b) that, if the member receives or recovers damages or compensation pursuant to that claim for loss of salary or wages during any such period of sick leave, the member will repay to the Commissioner such money as is paid by the Commissioner in respect of any such period of sick leave.
- (3) Sick leave on full pay is not to be granted to a member of the NSW Police Force who refuses or fails to complete such an undertaking, except with the express approval of

the Commissioner given on the grounds that the refusal or failure is unavoidable in the circumstances.

- (4) On repayment made to the Commissioner pursuant to an undertaking given by a member of the NSW Police Force, sick leave equivalent to that repayment, calculated at the ordinary rate of pay of the member, is to be restored to the credit of the member.

### **131 Sick leave for police officers appointed before 1 January 1995**

- (1) This clause applies to police officers appointed before 1 January 1995 who are contributors to the Police Superannuation Fund.
- (2) Any such police officer who is absent from duty because of infirmity of body or mind is to be allowed full pay for the whole of the period of the absence if the Commissioner so approves:
  - (a) if the absence from duty is occasioned by infirmity arising from a wound or injury received in the actual execution of the duty of his or her office, or
  - (b) if the absence from duty is the result of an injury (within the meaning of the *Workers Compensation Act 1987*) for which compensation would be payable (if the officer were a worker under that Act) under section 10 or 11 of that Act.
- (3) A police officer is not to be allowed sick pay pursuant to this clause if the infirmity, wound or injury arises from his or her own misconduct.

## **Division 9 Miscellaneous**

### **132 Military leave for members**

- (1) The Commissioner may, during the period of 12 months commencing on 1 July each year, grant to a member of the NSW Police Force who is a volunteer part-time member of the Defence Forces military leave on full pay for such absence from duty as is necessarily involved in respect of periods of annual training not exceeding in the aggregate:
  - (a) in the case of a member of the Naval Forces, 13 calendar days, or
  - (b) in the case of a member of the Military Forces, 14 calendar days, or
  - (c) in the case of a member of the Air Force, 16 calendar days.
- (2) The Commissioner may, during the period of 12 months commencing on 1 July each year, grant to a member of the NSW Police Force who is a volunteer part-time member of the Defence Forces military leave on full pay for such absence from duty as is necessarily involved in respect of attendance at schools, classes or courses of instruction not exceeding in the aggregate:
  - (a) in the case of a member of the Naval Forces, 13 calendar days, or
  - (b) in the case of a member of the Military Forces, 14 calendar days, or
  - (c) in the case of a member of the Air Force, 16 calendar days.
- (3) Despite subclauses (1) and (2), if the commanding officer certifies in writing that it is necessary for a particular member of the NSW Police Force to attend on days additional to those specified in those subclauses, the Commissioner may grant to that officer military leave on full pay for a further period not exceeding in the aggregate 4 days in any 1 year.
- (4) Applications for military leave are to be accompanied by satisfactory evidence of the necessity for attendance.
- (5) At the expiration of military leave, a member of the NSW Police Force must furnish to the Commissioner a certificate of attendance signed by the commanding officer or other responsible officer.

### **133 Special leave generally**

- (1) Special leave on full pay is to be granted to police officers and administrative officers:
  - (a) for the purpose of attending at any examination under the Act or this Regulation, and
  - (b) up to a maximum of 5 days in any 1 year—for the purpose of attending at any other examination approved by the Commissioner for the purposes of this paragraph.
- (2) Special leave granted under subclause (1) for the purposes of attending at an examination is to include leave for any necessary travel to or from the place at which the examination is held.
- (3) Special leave on full pay may be granted to police officers and administrative officers for such other purposes and during such periods and subject to such conditions as may be determined from time to time by the Commissioner.

### **134 Special leave to attend as witness**

- (1) An administrative officer or temporary employee who is subpoenaed or called as a witness by the Crown (whether in right of the Commonwealth or in right of any State or a Territory of the Commonwealth) is:
  - (a) to be granted, for the whole of the period necessary to attend as such a witness, special leave on full pay, and
  - (b) to pay to the Commissioner all money paid to the administrative officer or temporary employee under or in respect of any such subpoena or call, other than any such money so paid in respect of reimbursement of necessary expenses properly incurred in answer to that subpoena or call.
- (2) An administrative officer or temporary employee who is subpoenaed or called as a witness otherwise than as referred to in subclause (1) is, for the whole of the period necessary to attend as such a witness, to be granted at the sole election of the administrative officer or temporary employee:
  - (a) subject to this Part, annual leave on full pay, or
  - (b) leave without pay.
- (3) This clause does not apply to an administrative officer or temporary employee who is subpoenaed or called as a witness in an official capacity.

### **135 Weekly rest days for police officers**

- (1) Police officers are to ensure that weekly rest days are equitably distributed among police officers in their charge.
- (2) Police officers are, as far as practicable, to be allowed off duty every alternate Sunday.

## Part 7 Death and disability payments

### 136 TPD minimum scale to be included in approved death and disability insurance policy

For the purposes of section 199G of the Act, an approved death and disability insurance policy must provide for payments for total and permanent disability for police officers that are not less than the payments determined in accordance with the following scale:

<b>Age at last birthday before total and permanent disablement</b>	<b>Lump sum as multiple of officer's salary on total and permanent disablement</b>
18	3.25
19	3.25
20	3.25
21	3.25
22	3.25
23	3.25
24	3.25
25	3.25
26	3.25
27	3.25
28	3.25
29	3.25
30	3.25
31	3.25
32	3.25
33	3.25
34	3.25
35	3.25
36	3.25
37	3.25
38	3.25
39	3.25
40	3.25
41	3.25
42	3.25
43	3.25
44	3.25
45	2.95
46	2.70
47	2.44

<b>Age at last birthday before total and permanent disablement</b>	<b>Lump sum as multiple of officer's salary on total and permanent disablement</b>
48	2.17
49	1.90
50	1.63
51	1.34
52	1.19
53	1.04
54	0.95
55	0.91
56	0.78
57	0.76
58	0.64
59	0.62
60	0.50
61	0.43
62	0.38
63	0.38
64	0.36

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**137 Transitional arrangements for partial and permanent disability payments to apply for limited period**

- (1) The provisions of the *Crown Employees (Police Officers Death and Disability) Award 2005* (rescinded by the *Police Amendment (Death and Disability) Act 2011*) relating to payments for partial and permanent disability continue to apply, despite the rescission of that Award, in respect of the disability of a police officer in any of the following cases if the police officer has not been discharged from the NSW Police Force before the commencement of Part 9B of the Act:
- (a) The police officer had been unfit for duty because of the disability for a total period of at least 4 months during the previous 8 months before 30 November 2011 and the NSW Police Force had, on or before that date, received a report or certificate from the police officer's nominated treating medical practitioner indicating that:
    - (i) the police officer had reached maximum medical improvement, and
    - (ii) the police officer should be discharged from the NSW Police Force.
  - (b) The NSW Police Force had, on or before 25 November 2011, arranged an independent medical examination of the police officer to determine whether the police officer was permanently incapacitated for work as a police officer as a result of the disability.
  - (c) The NSW Police Force had, on or before 30 November 2011, received a report of an independent medical examination of the police officer and the report indicated that the police officer was permanently incapacitated for work as a police officer as a result of the disability.
- (2) Subclause (1) applies instead of the provisions of section 199K (3) of the Act, and those provisions cease to have effect.

- (3) Subclause (1) ceases to have effect on 9 December 2012. This subclause does not apply to a police officer who has been discharged from the NSW Police Force before that date because of a disability.
- (4) In this clause, ***independent medical examination*** means a medical examination of a police officer by a medical practitioner who is engaged under arrangements made by the NSW Police Force with respect to the medical examination of police officers.

### **138 Salary sacrifice contributions by police officers**

- (1) Police officers who are contributors to the State Authorities Superannuation Fund and who are covered by the additional benefit under the *State Authorities Superannuation Act 1987* are required to contribute to the cost to the State of an approved death and disability insurance policy within the meaning of Part 9B of the Act.

The required contribution is:

- (a) to be the same as the contribution that police officers covered by the additional benefit would have been required to make under the *Crown Employees (Police Officers Death and Disability) Award 2005* if that Award had not been rescinded by the *Police Amendment (Death and Disability) Act 2011*, and
- (b) to be made by way of salary sacrifice.

**Note.** On the rescission of the Award, the contribution required to be made by police officers was 0.88% of their remuneration.

- (2) The contribution required by section 199F of the Act or subclause (1) is also required to be made from the commencement of Part 9B of the Act and until there is an approved death and disability insurance policy in force under that Part.

### **139 Death and disability payments for contributors to SASS who are covered by the additional benefit**

- (1) In this clause, ***SASS additional benefit contributor*** means a police officer who is a contributor to the State Authorities Superannuation Fund and who is covered by the additional benefit under the *State Authorities Superannuation Act 1987*.
- (2) The payments to which a police officer who is not a SASS additional benefit contributor is entitled under clause 137 or under section 199K (5), (6) and (7) of the Act are also payable to a police officer who is a SASS additional benefit contributor.
- (3) If the amount payable as the additional benefit under the *State Authorities Superannuation Act 1987* to or in respect of a police officer who dies or is totally and permanently disabled is less than the amount that would have been payable if the police officer was not a SASS additional benefit contributor, the NSW Police Force is required to supplement the additional benefit by the amount of the difference.
- (4) Subclause (3) ceases to have effect if the police officer concerned is given the right to elect to cease being covered by the additional benefit (and to be fully covered by Part 9B of the Act) and the police officer does not make that election by the due date.

## **Part 8 Allowances**

### **140 Travelling, subsistence and other allowances**

The travelling and subsistence allowances and other allowances for members of the NSW Police Force are those provided in awards, agreements under section 87 of the Act or determinations under section 86 of the Act.



## Part 9 Recognised law enforcement officers

### 141 Oath or affirmation of office for recognised law enforcement officers

- (1) The form of the oath required to be taken by a recognised law enforcement officer under section 207D of the Act is as follows:

I, \_\_\_\_\_, do swear that I will well and truly serve our Sovereign Lady the Queen as a recognised law enforcement officer without favour or affection, malice or ill-will until I am legally discharged, that I will cause Her Majesty's peace to be kept and preserved, and that I will prevent to the best of my power all offences against that peace, and that while I continue to be a recognised law enforcement officer I will to the best of my skill and knowledge discharge all my duties faithfully according to law. So help me God.
- (2) The form of the affirmation is the same as the form of the oath, except that:
  - (a) the words "solemnly, sincerely and truly declare and affirm" are to be substituted for the word "swear", and
  - (b) the words "So help me God" are to be omitted.
- (3) An oath may be administered, or an affirmation may be made, in New South Wales or elsewhere.
- (4) An oath is to be administered by, and an affirmation is to be made before:
  - (a) in a case where the recognised law enforcement officer taking the oath or making the affirmation is a police officer in the Police Force of another jurisdiction:
    - (i) a commissioned police officer in that Police Force who is above the rank of the recognised law enforcement officer, or
    - (ii) a person who has the authority to administer an oath in that jurisdiction, or
  - (b) in any other case, a commissioned police officer in the NSW Police Force who is above the rank of the recognised law enforcement officer.
- (5) In subclause (4) (a), **commissioned police officer** means:
  - (a) in relation to the Commonwealth or the Australian Capital Territory, a person declared to be a commissioned police officer under section 40D of the *Australian Federal Police Act 1979* of the Commonwealth, or
  - (b) in relation to any other State or Territory (except New South Wales), a police officer of or above the rank of Inspector.
- (6) A person who was appointed as a special constable under section 101 (1A) (a) of the *Police (Special Provisions) Act 1901* and holds that position at the commencement of this clause is exempt from the operation of section 207D of the *Police Act 1990* if the person is appointed as a recognised law enforcement officer.
- (7) A person who was appointed as a recognised law enforcement officer and ceased to be so appointed is exempt from the operation of section 207D of the Act if the person:
  - (a) is reappointed as a recognised law enforcement officer, and
  - (b) had previously taken the oath or made the affirmation in accordance with this clause.

### 142 Supplying officer's details and giving warnings

- (1) The provisions of Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002* apply to a recognised law enforcement officer in the same way as they apply to

a police officer in his or her capacity as a police officer subject to the modifications prescribed by this clause.

- (2) Section 202 (1) of the *Law Enforcement (Powers and Responsibilities) Act 2002* is modified in its application to recognised law enforcement officers by omitting paragraphs (a) and (b) and by inserting instead the following paragraphs:
- (a) evidence that the recognised law enforcement officer is a police officer from another jurisdiction or is a recognised law enforcement officer (unless the officer is wearing his or her uniform as a police officer of another jurisdiction),
  - (b) the name of the recognised law enforcement officer and his or her place of duty as a police officer in another jurisdiction.

## Part 10 Miscellaneous

### 143 Capitalisation factors

For each age specified in Column 1 of Schedule 1, the capitalisation factors specified in Column 2 of that Schedule (for males) and Column 3 of that Schedule (for females) are prescribed for the purposes of section 216AA of the Act.

### 144 Fees and charges payable to Commissioner under section 208

- (1) The Commissioner is entitled to demand from a person (including a public authority or local council) such fees and charges as the Commissioner may from time to time determine with respect to the following services provided to the person, at the person's request, by a member of the NSW Police Force:
  - (a) the processing, on behalf of the person, of penalty notices issued by or on behalf of the person,
  - (b) the provision to the person of training services in connection with the procedures to be followed in relation to the issuing of penalty notices.
- (2) The Commissioner is entitled to demand from a person (including a public authority or local council) amounts for the provision of supplementary policing services calculated in the manner agreed between the Commissioner and the person if:
  - (a) the services are provided at the request of the person, and
  - (b) the services are provided in accordance with conditions agreed between the Commissioner and the person.
- (3) In this clause:

*penalty notice* has the same meaning as it has in the *Fines Act 1996*.

*supplementary policing service* means a service (other than a service described in section 208 (1) of the Act) that is provided by a police officer who would not otherwise be rostered for duty.

### 145 Bodies authorised to carry on business under operating name that includes "police"

The following bodies of persons are declared to be bodies to which section 204A of the Act does not apply:

- (a) Justice and Police Museum,
- (b) Police Citizens Youth Clubs NSW Ltd,
- (c) New South Wales Police Legacy Limited,
- (d) Police Bank,
- (e) any body that has, among its primary objects, the object of providing public entertainment (other than a body that also has, among its primary objects, the object of promoting or conducting any sporting activity).

### 146 Savings

Any act, matter or thing that, immediately before the repeal of the *Police Regulation 2008*, had effect under that Regulation, is taken to have effect under this Regulation.

## Schedule 1 Capitalisation factors

(Clause 143)

Column 1	Column 2	Column 3	Column 1 continued	Column 2 continued	Column 3 continued
Age	Male	Female	Age	Male	Female
19	3.568	3.626	45	2.865	2.966
20	3.552	3.610	46	2.824	2.928
21	3.534	3.594	47	2.782	2.888
22	3.516	3.576	48	2.738	2.847
23	3.498	3.559	49	2.693	2.805
24	3.478	3.540	50	2.647	2.762
25	3.458	3.522	51	2.599	2.717
26	3.438	3.502	52	2.550	2.671
27	3.416	3.482	53	2.500	2.624
28	3.394	3.460	54	2.449	2.575
29	3.371	3.439	55	2.396	2.525
30	3.347	3.416	56	2.342	2.473
31	3.322	3.393	57	2.286	2.420
32	3.296	3.368	58	2.230	2.365
33	3.269	3.343	59	2.172	2.309
34	3.241	3.317	60	2.112	2.251
35	3.213	3.290	61	2.050	2.192
36	3.183	3.262	62	1.987	2.131
37	3.152	3.234	63	1.923	2.069
38	3.120	3.204	64	1.858	2.006
39	3.087	3.173	65	1.792	1.941
40	3.053	3.141	66	1.725	1.876
41	3.018	3.108	67	1.657	1.811
42	2.982	3.074	68	1.589	1.744
43	2.944	3.039	69	1.521	1.678
44	2.905	3.003	70	1.453	1.611