



New South Wales

Police Amendment (Police Officer Support Scheme) Regulation 2024

under the

Police Act 1990

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

YASMIN CATLEY, MP
Minister for Police and Counter-terrorism

Explanatory note

The object of this regulation is to provide for an enhanced police officer support scheme regarding—

- (a) payments to or in relation to police officers that constitute death benefits, and
- (b) payments to or in relation to police officers who become permanently or temporarily incapacitated for work because of an on-duty injury, and
- (c) payments to or in relation to police officers who become permanently or temporarily incapacitated for work because of an off-duty injury.

This regulation is made under the *Police Act 1990*, including Part 9B and section 219, the general regulation-making power.

Police Amendment (Police Officer Support Scheme) Regulation 2024

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1 Name of regulation

This regulation is the *Police Amendment (Police Officer Support Scheme) Regulation 2024*.

2 Commencement

This regulation commences on the day on which the *Police Amendment (Police Officer Support Scheme) Act 2024* commences.*

* The regulation (statutory rule) specified the day on which the *Police Amendment (Police Officer Support Scheme) Act 2024* commences as the date of commencement. Under the *Interpretation Act 1987*, section 39(2A), the regulation is not invalid merely because the regulation was published on the NSW legislation website after the day on which one or more of its provisions is or are expressed to commence but provides, in that case, for that or those provisions to commence on the day on which it is published on the NSW legislation website, instead of on the earlier day.

Schedule 1 Amendment of Police Regulation 2015

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

Omit the clause.

[2] **Part 6A**

Insert after clause 135—

Part 6A Police officer support scheme

Division 1 Preliminary

135A Definitions

In this part—

7-year period, for an incapacitated police officer, means the period, up to 7 years—

- (a) starting after—
 - (i) the 39-week period for the police officer ends, and
 - (ii) the amount of weekly compensation payments payable in addition to the police officer's income is less than 75% of the police officer's salary, and
- (b) ending on the earlier of the following—
 - (i) the day that is 7 years after the period starts,
 - (ii) if clause 135I(3)(b)(i) applies to the police officer—the day referred to in subparagraph (i) as adjusted under clause 135I(3)(b)(i),
 - (iii) if the incapacitated police officer ceases to be eligible for weekly compensation payments—the day the eligibility ceases.

39-week period, for an incapacitated police officer, means the period, up to 39 weeks, in which the police officer is eligible for—

- (a) weekly compensation payments on the basis of total incapacity, or
- (b) weekly compensation payments on the basis of partial incapacity, if the total income received from weekly compensation payments and any income earned by the police officer is less than the police officer's ordinary rate of pay.

catastrophic injury has the meaning given by the *Workers Compensation Guidelines*, Part 9.1.

CEEP panel—see clause 135M(1).

CPI means the consumer price index (All Groups Index) for Sydney issued by the Australian Bureau of Statistics.

exceptional injury—see clause 135B(1).

ICNSW has the same meaning as in the *State Insurance and Care Governance Act 2015*.

incapacitated current police officer—see clause 135F(1)(a).

incapacitated former police officer—see clause 135F(1)(b).

incapacitated police officer means—

- (a) an incapacitated current police officer, or

(b) an incapacitated former police officer.

off-duty injury means an injury or terminal illness that was not sustained or suffered while performing duties in the course of appointment as a police officer.

on-duty injury means an injury, within the meaning of the *Workers Compensation Act 1987*, section 4, sustained or suffered while performing duties in the course of appointment as a police officer.

ordinary rate of pay, for an incapacitated police officer means the base salary, including any loadings, payable under the industrial instrument applicable to a police officer of the incapacitated police officer's rank and increment level on the date the incapacitated police officer starts receiving weekly compensation payments.

President means the President of the Personal Injury Commission.

salary means—

- (a) for a non-commissioned police officer—the total of—
 - (i) the base salary payable under the industrial instrument applicable to the police officer, and
 - (ii) 17% loading, or
- (b) for a commissioned police officer—the base salary.

scheme means the police officer support scheme.

supplementary support benefit arrangement means the arrangement described in Division 3.

weekly compensation payment means the total of the following amounts—

- (a) the amount of a weekly payment payable under the *Workers Compensation Act 1987*, section 33,
- (b) the amount of any reductions, offsets or other adjustments of the maximum weekly payment payable under the *Workers Compensation Act 1987*.

Workers Compensation Guidelines means the *Workers Compensation Guidelines* published by the State Insurance Regulatory Authority on 1 March 2021.

workers compensation legislation has the same meaning as in the *Workplace Injury Management and Workers Compensation Act 1998*.

135B Meaning of exceptional injury

- (1) An **exceptional injury** for a person who is or was a police officer is an injury that renders the person—
 - (a) totally incapacitated, and
 - (b) unlikely ever to engage in any gainful profession, trade or occupation for which the person is reasonably qualified by reason of education, training or experience.
- (2) To avoid doubt, in assessing whether a person who is or was a police officer is unlikely to ever engage in a gainful profession, trade or occupation for which the person is reasonably qualified by reason of education, training or experience, the assessment—
 - (a) is not confined to an assessment of the person's capacity to be a police officer, and
 - (b) will consider the person's broader ability to engage in any profession, trade or occupation to earn an income.

Division 2 Structure of scheme

135C Categories of payments under scheme

The scheme must provide for the following—

- (a) payments to or in relation to police officers that constitute death benefits,
- (b) payments to or in relation to police officers who become permanently or temporarily incapacitated for work because of an on-duty injury,
- (c) payments to or in relation to police officers who become permanently or temporarily incapacitated for work because of an off-duty injury.

135D Types of arrangements

The scheme comprises—

- (a) for payments to or in relation to police officers who die—an insurance policy arranged by the Commissioner, and
- (b) for payments to or in relation to police officers who become permanently or temporarily incapacitated for work because of an on-duty injury—the supplementary support benefit arrangement, and
- (c) for payments to or in relation to police officers who become permanently or temporarily incapacitated for work because of an off-duty injury—an insurance policy arranged by the Commissioner.

Division 3 Supplementary support benefit arrangement

135E Supplementary support benefits

- (1) Under the supplementary support benefit arrangement provided for in this division, police officers to whom this division applies may receive payments—
 - (a) under clause 135H, for up to 39 weeks, and
 - (b) under clause 135I, for up to 7 years, and
 - (c) under clause 135J, for up to 3 years.
- (2) Payments referred to in subclause (1)(a)–(c) may be made only in certain circumstances in accordance with this part.

135F Police officers to whom division applies

- (1) This division applies to—
 - (a) a police officer (an *incapacitated current police officer*) who—
 - (i) suffers a total or partial incapacity for work as a result of an injury, and
 - (ii) is eligible to receive a weekly compensation payment for an on-duty injury, or
 - (b) a person (an *incapacitated former police officer*) who—
 - (i) was a police officer, and
 - (ii) while a police officer, suffered a total or partial incapacity for work as a result of an on-duty injury for which the person was receiving a payment under this division.
- (2) Despite subclause (1), this division does not apply, or ceases to apply, to the following persons—

- (a) a person who has been removed from the NSW Police Force under the Act, section 181D,
 - (b) a person who has been dismissed from the NSW Police Force under the Act, section 80(3),
 - (c) a person who has ceased to be eligible for weekly compensation payments,
 - (d) a person who would, but for the person's appointment as a police officer ceasing, be eligible to receive a weekly compensation payment for an on-duty injury,
 - (e) a person who has reached retiring age, within the meaning of the *Workers Compensation Act 1987*, section 52(1),
 - (f) a person who does not comply with an injured worker's obligations under workers compensation legislation,
 - (g) a person—
 - (i) whose appointment as a police officer has ceased, and
 - (ii) who has been convicted of a criminal offence, and
 - (iii) who is serving a custodial sentence in relation to the conviction.
- (3) Subclause (2)(a) does not apply in relation to a person if the person's injury is unrelated to the reason for the person's removal from the NSW Police Force under the Act, section 181D.

135G No payments to be made to incapacitated police officers receiving work injury damages

- (1) If an incapacitated police officer receives work injury damages in relation to an injury, the police officer cannot also receive payments under the scheme.
Note— See also clause 135ZK which provides that any payments made under this part in relation to an injury are to be deducted from any compensation, damages or another remedy in a claim made by a police officer.
- (2) In this clause—
work injury damages has the same meaning as in the *Workplace Injury Management and Workers Compensation Act 1998*.

135H Payments during 39-week period

- (1) During the 39-week period for an incapacitated current police officer, the Commissioner must pay the police officer an amount representing any shortfall between—
 - (a) the amount of the weekly compensation payments, and
 - (b) the amount of the ordinary rate of pay the police officer would have received in the 39-week period if the police officer had not sustained a total or partial incapacity for work during that period as a result of an injury.**Note—** Police officers to whom this division applies may receive payments under this clause for up to 39 weeks in certain circumstances but may receive payments for a lesser period depending on entitlement to payments under workers compensation legislation.
- (2) To avoid doubt, if the incapacitated current police officer ceases receiving weekly compensation payments in relation to the injury during the 39-week period—
 - (a) payments under this clause cease, and

- (b) if the 39-week period was not exhausted—the 39-week period and payments under this clause may resume if the police officer resumes receiving weekly compensation payments in relation to the injury, and
- (c) any period during which payments under this clause in relation to the injury cease is not taken to be part of the 39-week period.

135I Payments during 7-year period

- (1) During the 7-year period for an incapacitated police officer, the Commissioner must pay the police officer an amount representing any shortfall between—
 - (a) the amount of the weekly compensation payments, and
 - (b) the amount that is equal to the following—
 - (i) for the first year starting on 1 October in a calendar year and ending on 30 September in the following calendar year in which the incapacitated police officer receives a payment—75% of the salary the incapacitated police officer was receiving immediately before the 7-year period started,
 - (ii) for subsequent years starting on 1 October in a calendar year and ending on 30 September in the following calendar year—the amount calculated in accordance with clause 135K.
- Note—** Police officers or former police officers may receive payments under this clause for up to 7 years in certain circumstances but may receive payments for a lesser period depending on entitlement to payments under workers compensation legislation.
- (2) The maximum amount that may be paid to an incapacitated police officer under subclause (1) per month is—
 - (a) \$14,532 for the period from 1 October 2024 until 30 September 2025, and
 - (b) for each subsequent year starting on 1 October in a calendar year and ending on 30 September in the following calendar year—the amount that is—
 - (i) equal to the maximum amount calculated under this subclause for the previous year, adjusted in accordance with movements in CPI, and
 - (ii) declared by the Commissioner by order published in the Gazette.
 - (3) To avoid doubt, if the incapacitated police officer ceases receiving weekly compensation payments in relation to the injury during the 7-year period—
 - (a) payments under this clause cease, and
 - (b) any period during which payments under this clause in relation to the injury cease is taken to be—
 - (i) for a period during which payments under this clause in relation to the injury cease because the police officer returns to the full duties of the police officer's rank or to a grade within that rank for a continuous period of 7 days or more—not part of the 7-year period, and
 - (ii) otherwise—part of the 7-year period.

135J Catastrophic or exceptional extension payments

- (1) This clause applies if—
 - (a) an incapacitated police officer is receiving payments under clause 135I for—
 - (i) a catastrophic injury, or

- (ii) an exceptional injury, and
 - (b) the incapacitated police officer has had a total incapacity for any work, whether or not as a police officer and whether or not for payment, because of the same injury for a continuous period of 3 years before making an application under paragraph (c), and
 - (c) the incapacitated police officer applies to the Commissioner for payments (*catastrophic or exceptional extension payments*) to be made under this clause, and
 - (d) the application under paragraph (c) is made not more than 6 months before the 7-year period for the incapacitated police officer ends, and
 - (e) the incapacitated police officer is not a contributor to the State Authorities Superannuation Fund, whether or not the police officer is covered by the additional benefit under *State Authorities Superannuation Act 1987*.
- (2) As soon as practicable after receiving an application for catastrophic or exceptional extension payments, the Commissioner must refer the application to the CEEP panel.
- (3) The CEEP panel may ask the incapacitated police officer to provide further information, or to undergo further assessment, to assist the CEEP panel in making the CEEP panel's decision.
- (4) If the incapacitated police officer fails to comply with a request under subclause (3)—
 - (a) the application by the incapacitated police officer is taken to have been suspended until the incapacitated police officer complies with the request, and
 - (b) if the incapacitated police officer subsequently complies with the request—any payments under this division to which the incapacitated police officer would have been entitled but for the failure to comply may be reinstated to the day the payments ceased to be made.
- (5) After considering the application and any relevant information in relation to the incapacitated police officer, the panel must make a recommendation to the Commissioner to—
 - (a) approve the catastrophic or exceptional extension payments to the police officer for the following period (the *catastrophic or exceptional extension payment period*)—
 - (i) if the incapacitated police officer is receiving payments for a catastrophic injury—3 years,
 - (ii) if the incapacitated police officer is receiving payments for an exceptional injury—up to 3 years, or
 - (b) decline to approve the catastrophic or exceptional extension payments to the incapacitated police officer.
- (6) The Commissioner must decide to approve or decline to approve the catastrophic or exceptional extension payments as recommended by the panel.
- (7) As soon as practicable after making a decision under subclause (6), the Commissioner must give the incapacitated police officer written notice of the decision.
- (8) If a catastrophic or exceptional extension payment is approved for an incapacitated police officer, the amount of the payment is the amount representing any shortfall between—

- (a) the amount of the weekly compensation payments, and
 - (b) the amount that is equal to—
 - (i) for the first year starting on 1 October in a calendar year and ending on 30 September in the following calendar year in which the incapacitated police officer receives a catastrophic or exceptional extension payment—the amount calculated in accordance with clause 135K, and
 - (ii) for subsequent years starting on 1 October in a calendar year and ending on 30 September in the following calendar year—the amount calculated in accordance with clause 135K.
- (9) To avoid doubt, if the incapacitated police officer ceases receiving weekly compensation payments in relation to the injury during the catastrophic or exceptional extension payment period—
- (a) payments under this clause cease, and
 - (b) any period during which payments under this clause in relation to the injury cease is taken to be part of the catastrophic or exceptional extension payment period.
- (10) In this clause—
- relevant information**, in relation to an incapacitated police officer, means the following—
- (a) the incapacitated police officer’s pay or other income slips,
 - (b) medical or health assessments of the incapacitated police officer, including assessments provided by the NSW Police Force’s workers compensation insurer,
 - (c) vocational assessments of the incapacitated police officer,
 - (d) whole person impairment assessments, in accordance with the Workers Compensation Guidelines, of the incapacitated police officer that the police officer has a degree of permanent impairment,
 - (e) other information or assessments relating to the incapacitated police officer requested under subclause (3).

135K Indexation—weekly payments

- (1) The amount of a weekly payment to an incapacitated police officer under clause 135I(1)(b)(ii) or 135J(8)(b)(i) or (ii) in relation to an injury is to be varied on each review date after the day on which the police officer became entitled to payments under clause 135I or 135J in relation to the injury in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount of the incapacitated police officer’s weekly payment immediately before the review date.

B is the CPI for the June quarter immediately before the review date.

C is the CPI for the December quarter immediately before the review date.

- (2) For subclause (1), if the figure to be used for *B* or *C* would be more than 5% because CPI in the June or December quarter was more than 5%, the figure to be used is 5%.

- (3) The Commissioner must declare, by order published in the Gazette on or before each review date, the number that equates to the factor $\frac{B}{C}$ for the purposes of the variation required for the review date.
- (4) A declaration made by an order published in the Gazette after a review date for the purposes of the variation required for the review date has effect as if the order were published before the review date.
- (5) In this clause—
review date means 1 October in each year.

135L Maintaining eligibility for catastrophic or exceptional extension payments

- (1) The Commissioner may decide to cease making catastrophic or exceptional extension payments to an incapacitated police officer if—
 - (a) the Commissioner is satisfied the police officer is no longer totally incapacitated for any work, whether or not as a police officer and whether or not for payment, because of the police officer's injury, or
 - (b) the police officer fails to comply with a notice under subclause (2).
- (2) The Commissioner may, at any time by written notice given to an incapacitated police officer who is receiving catastrophic or exceptional extension payments, require the police officer to give the Commissioner information that relates to the police officer's injury or eligibility for or receipt of catastrophic or exceptional extension payments.

135M CEEP panel

- (1) The Minister must establish a panel (the *CEEP panel*) to consider applications by incapacitated police officers for catastrophic or exceptional extension payments.
- (2) The panel must consist of the following members appointed by the Minister—
 - (a) a person nominated by the Minister to be the chairperson of the panel,
 - (b) a person nominated by the Commissioner,
 - (c) a person nominated by the Police Association of NSW.
- (3) A member of the panel is appointed—
 - (a) for the period, not more than 12 months, specified in the member's instrument of appointment and may be reappointed, and
 - (b) on other terms decided by the Minister.
- (4) The procedure for calling meetings of the panel and conducting business at the meetings must be determined by the panel.

135N Reviews of certain decisions under part

- (1) If any of the following decisions are made in relation to a police officer, the police officer may apply to ICNSW for a review of the decision—
 - (a) a decision under clause 135J to decline to make catastrophic or exceptional extension payments,
 - (b) a decision under clause 135L(1)(a) to cease making catastrophic or exceptional extension payments.
- (2) The review must be conducted by a registered health practitioner, chosen by ICNSW, within 21 days after the application for review is made.

- (3) As soon as practicable after the review is completed, ICNSW must give a report to the CEEP panel and the Commissioner that sets out recommendations about whether catastrophic or exceptional extension payments should be made to the incapacitated police officer.
- (4) The CEEP panel and the Commissioner must follow the recommendations in the report unless the CEEP panel is satisfied exceptional circumstances apply.

Division 4 Role of Commission

Subdivision 1 Jurisdiction

135O Jurisdiction of Commission in relation to disputed decisions

The following decisions (*disputed decisions*) are specified for the purposes of the *Personal Injury Commission Act 2020*, Schedule 3A, clause 3(2)—

- (a) a decision under this part to decline to make a payment to a police officer,
- (b) a decision under this part about the amount of a payment to be made to an incapacitated police officer,
- (c) a decision about the length of a catastrophic or exceptional extension payment period for an exceptional injury, if the period is less than 3 years.

Subdivision 2 Determination of disputes by Commission

135P Commissioner to give notice of decisions

- (1) The Commissioner must give notice in accordance with clause 135Q of any decision of the Commissioner—
 - (a) to dispute an incapacitated police officer's eligibility for a payment under the scheme, or
 - (b) to discontinue payment to an incapacitated police officer of an amount under the scheme, or to reduce the amount.
- (2) Notice of a decision of the Commissioner involving both an eligibility dispute and a discontinuation or reduction of an amount of a payment under the scheme may be combined into a single notice.

135Q How notice of decision is given

- (1) A notice required by clause 135P must be given to the incapacitated police officer.
- (2) The notice must contain a concise and readily understandable statement of the reason for the Commissioner's decision and of the issues relevant to the decision.
- (3) In addition, notice of a decision to dispute liability for a claim for compensation must identify any provision of the Act, Part 9B or this part.

135R Referral of disputes to Commission

- (1) An incapacitated police officer who is dissatisfied by a disputed decision may refer the dispute to the President of the Commission for determination by the Commission.

- (2) An incapacitated police officer may refer a dispute about a relevant decision to the President of the Commission only if the relevant decision has already been the subject of a review by ICNSW under clause 135N.
- (3) In this clause—
relevant decision means a decision referred to in clause 135N(1)(a) or (b).

135S Restrictions as to when dispute may be referred to Commission

- (1) A dispute must not be referred for determination by the Commission unless the dispute is about only matters previously notified as disputed.
- (2) A matter is taken to have been previously notified as disputed if it concerns a matter raised in writing between the Commissioner and the incapacitated police officer before the dispute is referred to the President of the Commission.
- (3) The Commission must not hear or otherwise deal with a dispute if this clause provides that the dispute must not be referred for determination by the Commission.
- (4) However, the Commission may hear or otherwise deal with a matter subsequently arising out of a dispute referred to in subclause (3).
- (5) Despite subclause (3), a dispute relating to previously unnotified matters may be heard or otherwise dealt with by the Commission if, in the Commission's opinion, it is in the interests of justice.

135T Information exchange between parties

- (1) If a dispute is referred for determination by the Commission, each party to the dispute must give the other party and the President, as and when required by the Commission rules, the documents and other information the Commission rules require.
- (2) A party to a dispute who fails, without reasonable excuse, to comply with a requirement of this clause commits an offence.
Maximum penalty—50 penalty units.
- (3) A document or other information that a party to a dispute has failed to provide in contravention of this clause cannot be admitted on behalf of the party in proceedings on the dispute before the Commission.
- (4) Subclauses (2) and (3) do not apply if the party is an incapacitated police officer unless it is established the police officer was represented by a legal practitioner or agent, within the meaning of the *Workplace Injury Management and Workers Compensation Act 1998*, section 131, at the relevant time.
- (5) The Commission rules may provide for exceptions to subclause (3).
- (6) Without limiting subclause (5), the Commission rules may authorise the Commission to permit the admission in proceedings before the Commission in specified circumstances of a document or other information that would otherwise not be admissible under subclause (3).
- (7) If the President is satisfied an applicant has failed, without reasonable excuse, to comply with a requirement of this clause, the President may do one or more of the following—
 - (a) refer the matter to the Authority,

- (b) note the matter in a certificate issued by the President in relation to the dispute, together with details of the documents or other information to which the failure relates,
- (c) order that a specified amount or proportion of the costs that would otherwise be recoverable by the party in connection with the referral of the matter to the Commission is not recoverable.

135U Certificate of Commission's determination

- (1) If a dispute is determined by the Commission, the Commission must, as soon as practicable after the determination of the dispute, give the parties to the dispute a certificate specifying the determination.
- (2) A brief statement must be attached to the certificate setting out the Commission's reasons for the determination.

135V Commission rules about medical evidence

- (1) The Commission rules may provide for matters relating to the following in relation to disputes under this part—
 - (a) the disclosure, by the giving of copies of reports or otherwise, of the nature of the expert medical evidence to be given in evidence before the Commission, including the exclusion of evidence for non-compliance with any requirement for the disclosure of the nature of the evidence,
 - (b) the disclosure of medical reports, including X-rays and the results of other tests, to medical assessors, including the exclusion of a medical report for non-compliance with any requirement for the disclosure of the medical report,
 - (c) limiting the number of medical reports in connection with a claim or any aspect of a claim and, in particular, limiting the number of medical reports that may be admitted in evidence in proceedings before the Commission,
 - (d) limiting the number of expert witnesses that may be called by a party and otherwise restricting the calling of expert witnesses by a party.
- (2) This clause only authorises Commission rules in connection with proceedings before the Commission.

Subdivision 3 Medical assessments

135W Definition

In this subdivision—

medical dispute means a dispute between the Commissioner and an incapacitated police officer about any of the following matters, or a question about any of the following matters, in connection with a disputed decision in relation to a catastrophic or exceptional extension payment—

- (a) the incapacitated police officer's condition, including the police officer's prognosis, the aetiology of the condition and the treatment proposed or provided,
- (b) the incapacitated police officer's fitness for employment, whether as a police officer or otherwise,
- (c) whether the incapacitated police officer is totally or partially incapacitated for work as a result of an injury,

- (d) whether the incapacitated police officer's total or partial incapacity for work as a result of an injury is permanent or temporary,
- (e) whether an injury suffered by the incapacitated police officer is an exceptional injury.

135X Referral of medical dispute for assessment

- (1) A medical dispute may be referred for assessment under this subdivision by the Commission, the President or the Court of Appeal—
 - (a) on the motion of the Commission, the President or the Court of Appeal, or
 - (b) at the request of a party to the dispute.
- (2) The President must give the parties notice of the referral.
- (3) The parties to the dispute may agree on the medical assessor who is to assess the dispute but if the parties have not agreed within 7 days after the dispute is referred, the President must choose the medical assessor who is to assess the dispute.
- (4) The President may arrange for a medical assessor to assess the dispute outside the State—
 - (a) if requested by a party to the dispute, or
 - (b) with the consent of the parties to the dispute.
- (5) In deciding whether to make an arrangement under subclause (4), the President must consider the following—
 - (a) the interests and wishes of the parties to the dispute,
 - (b) the nature and complexity of the dispute,
 - (c) whether the arrangement is necessary for the timely and cost-effective assessment of the dispute,
 - (d) other matters the President considers relevant.

135Y Powers of medical assessor on assessment

- (1) The medical assessor assessing a medical dispute may—
 - (a) consult with any medical practitioner or other health care professional who is treating or has treated the incapacitated police officer, and
 - (b) call for the production of medical records, including x-rays and the results of other tests, and other information the medical assessor considers necessary or desirable for the purposes of assessing a medical dispute referred to the medical assessor, and
 - (c) require the incapacitated police officer to submit to an examination by the medical assessor.
- (2) If an incapacitated police officer refuses to submit to an examination by the medical assessor if required, or in any way obstructs the examination, the incapacitated police officer's right to payments under the scheme is suspended until the examination has taken place.
- (3) This clause extends to the assessment of a medical dispute in the course of an appeal or further assessment under the Act, Part 9B or this division.
- (4) A medical assessor hearing the appeal or who is assessing the matter by way of further assessment has all the powers of a medical assessor under this clause on an assessment of a medical dispute.

135Z Medical assessment certificate

- (1) The medical assessor to whom a medical dispute is referred must give a certificate (a *medical assessment certificate*) about the matters referred for assessment.
- (2) A medical assessment certificate must be in a form approved by the President and must—
 - (a) set out details of the matters referred for assessment, and
 - (b) certify the medical assessor's assessment in relation to the matters, and
 - (c) set out the medical assessor's reasons for the assessment, and
 - (d) set out the facts on which the assessment is based.
- (3) If the President is satisfied a medical assessment certificate contains an obvious error, the President may issue, or approve the medical assessor issuing, a replacement medical assessment certificate to correct the error.
- (4) A medical assessor is competent to give evidence as to matters in a certificate given by the assessor under this clause, but may not be compelled to give evidence.

135ZA Status of medical assessments

- (1) An assessment certified in a medical assessment certificate under a medical assessment under this subdivision is conclusively presumed to be correct as to the following matters in any proceedings before the Commission or the Court of Appeal—
 - (a) whether any proportion of permanent total or partial incapacity is due to any previous injury or pre-existing condition or abnormality,
 - (b) whether incapacity is permanent.
- (2) In relation to any other matter, the assessment certified is evidence, but not conclusive evidence, in proceedings before the Commission or the Court of Appeal.

135ZB Appeal against medical assessment

- (1) A party to a medical dispute may appeal against a medical assessment under this subdivision, but only in relation to a matter that is appellable under this clause and only on the grounds for appeal under this clause.
- (2) A matter is appellable under this clause if the matter is a matter about which the assessment of a medical assessor certified in a medical assessment certificate under this subdivision is conclusively presumed to be correct in proceedings before the Commission or the Court of Appeal.
- (3) The grounds for appeal under this clause are any of the following grounds—
 - (a) the deterioration of the incapacitated police officer's condition that results in an injury becoming an exceptional injury,
 - (b) the availability of additional relevant information, but only if the additional information was not available to, and could not reasonably have been obtained by, the appellant before the medical assessment appealed against,
 - (c) the assessment having been made on the basis of incorrect criteria,
 - (d) the medical assessment certificate containing a demonstrable error.
- (4) An appeal must be made by application to the President.

- (5) The appeal must not proceed unless the President is satisfied that, on the face of the application and any submissions made to the President, at least one of the grounds for appeal specified in subclause (3) has been made out.
- (6) If the appeal is on a ground referred to in subclause (3)(c) or (d), the appeal must be made within 28 days after the medical assessment appealed against, unless the President is satisfied special circumstances justify an increase in the period for an appeal.
- (7) The President may refer a medical assessment for further assessment under clause 135ZD as an alternative to an appeal against the assessment, but only if the matter could otherwise have proceeded on appeal under this clause.
Note— Clause 135ZD also allows the President to refer a medical assessment back to the medical assessor for reconsideration, whether or not the medical assessment could be appealed under this clause.
- (8) There is no appeal against a medical assessment once the dispute has been the subject of a determination by the Commission or the Court of Appeal.
- (9) The *Legal Profession Uniform Law Application Act 2014*, Schedule 2, clause 2 applies to and in relation to the provision of legal services in connection with an appeal under this clause in the same way it applies to and in relation to the provision of legal services in connection with a claim or defence of a claim for damages referred to in that clause.
Note— The *Legal Profession Uniform Law Application Act 2014*, Schedule 2, clause 2 prohibits a law practice from providing legal services in connection with a claim or defence unless a legal practitioner associate responsible for the provision of the services believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

135ZC Procedure on appeal

- (1) An appeal against a medical assessment must be heard by an Appeal Panel constituted by 3 persons chosen by the President as follows—
 - (a) 2 medical assessors,
 - (b) 1 member of the Commission who is a member assigned to the Police Officer Support Scheme Division of the Commission.
- (2) The appeal must be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made.
- (3) To avoid doubt, any medical re-examination of the incapacitated police officer for the purposes of the review need not be conducted by all the members of the Appeal Panel if the members agree for the medical re-examination to be conducted by only some of the members.
- (4) Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the medical assessment appealed against may not be given on an appeal by a party to the appeal unless the evidence was not available to the party, and could not reasonably have been obtained by the party, before that medical assessment.
- (5) When attending an Appeal Panel for the purposes of an assessment, an incapacitated police officer is entitled to be accompanied by a person, whether or not a legal adviser or agent, to act as the police officer's advocate and assist the police officer to present the police officer's case to the Appeal Panel.
- (6) The Appeal Panel may—
 - (a) confirm the certificate of assessment given in connection with the medical assessment appealed against, or

- (b) revoke the certificate of assessment and issue a new certificate of assessment.
- (7) Clause 135Z applies to a new certificate of assessment.
- (8) The decision of a majority of the members of an Appeal Panel is the decision of the Appeal Panel.

135ZD Referral of matter for further medical assessment or reconsideration

- (1) A matter referred for assessment under this subdivision may be referred again on one or more further occasions for assessment in accordance with this subdivision, but only by—
 - (a) the President as an alternative to an appeal against the assessment as provided by clause 135ZB, or
 - (b) the Commission or the Court of Appeal.
- (2) A matter referred for assessment under this subdivision may be referred again on one or more further occasions by the President to the medical assessor for reconsideration.
- (3) A certificate about a matter referred again for further assessment or reconsideration prevails over any previous certificate about the matter to the extent of any inconsistency.

135ZE Costs of medical assessment

- (1) The costs of medical assessments under this subdivision, including the remuneration of medical assessors, are payable by the Commissioner, except as otherwise provided by the regulations.
- (2) If an incapacitated police officer is required to submit to an examination under this subdivision, the police officer is entitled to recover from the Commissioner, in addition to any compensation otherwise provided—
 - (a) the amount of any wages lost by the incapacitated police officer by submitting to the examination, and
 - (b) the cost to the incapacitated police officer of fares, travelling expenses and maintenance necessarily and reasonably incurred in submitting to the examination.
- (3) If it is necessary for an incapacitated police officer to travel to submit to an examination but the police officer is not reasonably able to travel unescorted, the fares, travelling expenses and maintenance referred to in this clause include fares, travelling expenses and maintenance necessarily and reasonably incurred by an escort for the police officer provided to enable the police officer to submit to the examination.
- (4) If the cost of fares, travelling expenses and maintenance referred to in this clause includes the cost of travel by private motor vehicle, that cost must be calculated at the rate fixed by the Commissioner.
- (5) A reference in this clause to a medical assessment includes a reference to a further medical assessment and an appeal against a medical assessment.

135ZF Commission rules

Medical assessments, appeals and further assessments under this subdivision are subject to relevant provisions of the Commission rules relating to the procedures for the referral of matters for assessment or appeal, the procedure on appeals and the procedure for assessments.

Division 5 Other provisions

135ZG Payments under part not to affect sick leave or other leave entitlements

A police officer's entitlements to accrue sick leave or other leave are not affected by any payment made under this part.

135ZH Payments to cease if weekly compensation payments cease

- (1) This clause applies if an incapacitated police officer who is receiving payments under the scheme for an injury ceases receiving weekly compensation payments in relation to the same injury.
- (2) The incapacitated police officer becomes ineligible to receive payments under the scheme for the injury at the time the weekly compensation payments cease.

135ZI Maintaining eligibility for payments other than catastrophic or exceptional extension payments

- (1) The Commissioner may, at any time by written notice given to an incapacitated police officer who is receiving a payment under the scheme, other than a catastrophic or exceptional extension payment, require the police officer to give the Commissioner information that relates to the police officer's injury or eligibility or receipt of payments.
- (2) The Commissioner may decide to cease payments to an incapacitated police officer if the police officer fails to comply with a notice under subclause (1).

135ZJ Payments under part to be reduced by income from other sources

- (1) If a payment is made under this part by the Commissioner to an incapacitated police officer, the Commissioner may reduce the amount of the payment by the amount of any income the Commissioner is satisfied the police officer receives from another source.
- (2) For subclause (1), the following payments are not income—
 - (a) superannuation payments,
 - (b) payments for annual leave or extended leave that are not paid in relation to, or arising from, the incapacitated police officer's injury,
 - (c) a payment relating to or arising from the loss of a part, or the use of a part, of the incapacitated police officer's body to the extent the compensation is not compensation for—
 - (i) loss of income, or
 - (ii) loss of earning capacity.
- (3) A payment may be income for this clause whether it is—
 - (a) a lump sum, a periodic payment or a combination of a lump sum and a periodic payment, or
 - (b) in the nature of a capital payment or an income payment.

135ZK Payments under part to be deducted from compensation, damages or other remedy

- (1) If a payment is or will be made under this part by the Commissioner to an incapacitated police officer and a payment of compensation, damages or another payment or remedy in a claim made by the police officer in relation to or arising from an injury has been or will be made to the police officer, the amount of the payment made, or to be made, under this part must be—

- (a) deducted from the payment of compensation, damages or another payment or remedy in a claim made by the police officer against the Crown, or
 - (b) otherwise repaid to the Commissioner.
- (2) In this clause—
- another payment** means a lump sum amount or a commuted lump sum amount, including an amount for work injury damages or another payment under workers compensation legislation.
- Crown**—
- (a) means—
 - (i) the Crown within the meaning of the *Crown Proceedings Act 1988*, or
 - (ii) the Crown in right of the Commonwealth, of each of the other States or of the Territories, and
 - (b) includes—
 - (i) an officer, employee or agent of the Crown, and
 - (ii) an officer, employee or agent of the Crown in right of the Commonwealth, of any of the other States or of the Territories, and
 - (iii) a statutory corporation or other body representing the Crown in right of the Commonwealth, of any of the other States or of the Territories.

135ZL Information sharing about incapacitated police officers

- (1) A relevant person must give the Commissioner relevant information requested by the Commissioner in relation to an incapacitated police officer that is within the relevant person's possession or control.
- Note**— The *Workplace Injury Management and Workers Compensation Act 1998*, section 243(1)(f) provides that information obtained in connection with or administration of that Act may be disclosed with lawful excuse.
- (2) The Commissioner may give information about an incapacitated police officer to a relevant person for the administration or operation of the scheme and any associated workers compensation claims.
- (3) In this clause—
- relevant information** means information about an incapacitated police officer's injury or earnings or other income.
- relevant person**, in relation to relevant information about an incapacitated police officer, means the following—
- (a) the incapacitated police officer,
 - (b) if the incapacitated police officer has a guardian under the *Guardianship Act 1987*—the incapacitated police officer's guardian,
 - (c) if the incapacitated police officer has appointed another person to represent the police officer—the person appointed by the incapacitated police officer,
 - (d) ICNSW or an agent of ICNSW,
 - (e) the NSW Self Insurance Corporation or an agent of the NSW Self Insurance Corporation,
 - (f) another entity that holds any of the following information—

- (i) relevant information,
- (ii) health information,
- (iii) other information relevant to the scheme or an approved death and disability insurance policy in force under the Act, section 199C before the commencement of this clause.

135ZM Contribution to approved on-duty injury policy by police officers covered by additional benefit under State Authorities Superannuation Act 1987—the Act, s 199C

- (1) For the Act, section 199C(3), definition of *prescribed contribution*, 0.88% of the police officer's remuneration is prescribed for a police officer who is a contributor to the State Authorities Superannuation Fund and covered by the additional benefit under *State Authorities Superannuation Act 1987*.

Note— A police officer who is a contributor to the State Authorities Superannuation Fund and covered by the additional benefit under the *State Authorities Superannuation Act 1987* is covered only for on-duty injuries, not death or off-duty injuries, under the scheme.

- (2) In this clause—
remuneration includes—
- (a) base salary, and
 - (b) if loadings are paid to a police officer—the loadings.

135ZN Contribution to approved death, on-duty injury and off-duty injury policy by police officers—the Act, s 199C

- (1) For the Act, section 199C(3), definition of *prescribed contribution*, 1.8% of the police officer's remuneration is prescribed for a police officer who is not a police officer referred to in clause 135ZM.

Note— A police officer who is not a contributor to the State Authorities Superannuation Fund and covered by the additional benefit under the *State Authorities Superannuation Act 1987* is covered for death, on-duty injuries and off-duty in juries under the scheme.

- (2) In this clause—
remuneration includes—
- (a) base salary, and
 - (b) if loadings are paid to a police officer—the loadings.

135ZO Monitoring costs of scheme

- (1) A committee is established to conduct an annual review of, and provide a report to the Minister and the Treasurer about, the following matters—
- (a) the cost to the State of the scheme,
 - (b) the number of claims made under the scheme,
 - (c) fairness to police officers of the scheme.
- (2) The committee consists of the following members—
- (a) a representative of the Commissioner nominated by the Commissioner,
 - (b) a representative of the Police Association of NSW nominated by the Association,
 - (c) a representative of ICNSW nominated by the chief executive of ICNSW.

- (3) If a report under subclause (1) advises that the cost of the scheme in a year exceeds the amount budgeted for the scheme, the Minister and the Treasurer must review the operation of this part in consultation with the following—
 - (a) the Commissioner,
 - (b) the Police Association of NSW,
 - (c) the Auditor-General.
- (4) The Minister and the Treasurer may consult with any insurers providing cover under the scheme.
- (5) The Commissioner must ensure the Police Association of NSW and the Auditor-General have access to the information necessary for the committee to conduct a review under this clause.