

[Act 2001 No 79]



New South Wales

## **Police Service Amendment (Complaints) Bill 2001**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to amend the *Police Service Act 1990* (“the Principal Act”):

- (a) to provide that Category 2 complaints under that Act (complaints that are not required to be referred to the Police Integrity Commission) against police officers need only be notified to the Ombudsman in accordance with guidelines agreed between the Police Integrity Commission and the Ombudsman, and
  - (b) to limit the circumstances in which members of the Police Service may disclose the identity of a person making a complaint about the conduct of a police officer, and
  - (c) to include specific offences in relation to the making of false complaints and giving of false information in the course of investigations into complaints, and
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- (d) to bring the provisions relating to the protection of police officers against reprisals for making protected allegations more into line with similar provisions in the *Protected Disclosures Act 1994*, and
- (e) to extend the time in which proceedings may be brought for an offence of taking detrimental action against a police officer in reprisal for the police officer making a protected allegation.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Police Service Act 1990* set out in Schedule 1.

## Schedule 1 Amendments

**Schedule 1 [1]** substitutes the definition of *notifiable complaint* in Part 8A of the Principal Act. Notifiable complaints are complaints that must be referred to the Ombudsman. Currently, notifiable complaints are all Category 2 complaints made by the public and Category 2 complaints made by police officers that in accordance with certain guidelines are to be notified to the Ombudsman. Category 2 complaints are complaints that do not need to be referred to the Police Integrity Commission. The new definition will provide that those guidelines will determine which Category 2 complaints, whether made by a member of the public or a police officer, are to be notified to the Ombudsman.

**Schedule 1 [3]** makes it an offence for a person to make a false complaint about the conduct of a police officer or to provide false or misleading information in the course of the investigation of such a complaint to specified persons or bodies that may be involved in receiving complaints or in the complaints procedure.

**Schedule 1 [4]** provides that a member of the Police Service must not disclose the identity of a person who makes a complaint about the conduct of a police officer, except in certain authorised circumstances. Currently, section 145 (3) of the Principal Act limits such disclosures by police officers, but only while investigation of the complaint is being undertaken. **Schedule 1 [2]** makes a consequential amendment to remove section 145 (3).

**Schedule 1 [5]** provides that a defendant in proceedings for an offence of taking detrimental action against a police officer in reprisal for the police officer making a protected allegation has the onus of proving that the action was not taken in reprisal. The protected allegation must also be a protected disclosure under the *Protected Disclosures Act 1994*. The new provision mirrors section 20 (1A) of that Act.

**Schedule 1 [6]** extends the time within which proceedings for an offence referred to in the previous paragraph may be instituted from 6 months to 2 years.

**Schedule 1 [7]** and **[8]** contain savings and transitional provisions.