

[Act 1997 No 23]



New South Wales

# Police Service Amendment Bill 1997

## 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* so as to provide that an order made by the Commissioner of Police under section 181D of that Act (that is, an order by which the Commissioner removes a police officer from the Police Service) is to be reviewable by the Industrial Relations Commission, both as to its validity and as to its merits.

The Bill also makes a consequential amendment to the *Police Integrity Commission Act 1996*.

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## Outline of provisions

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

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

**Clause 3** is a formal provision giving effect to a Schedule of amendments to the *Police Service Act 1990*.

**Clause 4** is a formal provision giving effect to a Schedule of amendments to the *Police Integrity Commission Act 1996*.

### **Schedule 1    Amendment of Police Service Act 1990**

Schedule 1 amends the *Police Service Act 1990* in relation to the removal of police officers from the Police Service. Under the existing section 181D, the Commissioner of Police (the *Commissioner*) may, by order in writing, remove a police officer from the Police Service if the Commissioner does not have confidence in the police officer's suitability to continue as a police officer, having regard to the police officer's competence, integrity, performance or conduct. Under section 181D (6), such an order is open to review by the Supreme Court, to the exclusion of any other court or tribunal.

It is proposed that an order under section 181D be open to review by the Industrial Relations Commission (the *Commission*) instead of the Supreme Court. This is effected by repealing section 181D (6) (Schedule 1 [1]) and by inserting new Divisions 1C and 1D into Part 9 to provide for the conduct of reviews by the Commission (Schedule 1 [4]). The new Division 1C is to be flagged within section 181D (Schedule 1 [2]). Further amendments to section 181D will preserve the jurisdiction of the Supreme Court to review administrative action apart from the Act (Schedule 1 [3], proposed section 181D (7A)) and make it clear that nothing in proposed Division 1C affects the power of the Commissioner to vary or revoke an order that has been made under section 181D (Schedule 1 [3], proposed section 181D (7B)).

The new Division 1C contains the following provisions:

**Proposed section 181E** entitles a police officer who has been removed from the Police Service by an order under section 181D to apply to the Commission for a review of the removal on the ground that it is harsh, unreasonable or unjust. The Commissioner will be required to make available to the applicant all documents and other material relevant to the Commissioner's decision to make the order, except to the extent to which regulations under the Act otherwise provide.

**Proposed section 181F** dictates how the Commission is to conduct such a review. Briefly, it must first consider the Commissioner's reasons for removing the police officer, then it must consider the police officer's case and finally it must consider the Commissioner's case in reply. The police officer has at all times the burden of establishing that his or her removal from the Police Service is harsh, unreasonable or unjust.

**Proposed section 181G** applies the provisions of the *Industrial Relations Act 1996* to the conduct of proceedings on a review, subject to specified modifications.

**Proposed section 181H** provides that neither the Commissioner nor any member of a Commissioner's Advisory Panel (being a panel established by the Commissioner to advise on the exercise of the functions conferred on the Commissioner by section 181D) is compellable to give evidence as to the Commissioner's exercise of those functions.

**Proposed section 181I** makes it clear that the protection of section 128 of the *Evidence Act 1995* with respect to self-incriminating evidence applies to witnesses giving evidence in hearings before the Commission under the proposed Division, and that nothing in the proposed Division limits or otherwise affects the admissibility in evidence of the transcripts of proceedings of other courts and tribunals.

**Proposed section 181J** makes it clear that the proposed Division applies not only to proceedings before the Commission at first instance but also to proceedings before the Full Bench of the Commission on appeal from decisions of the Commission at first instance.

The new Division 1D provides for the constitution of the Commission when hearing proceedings under Part 9. The new Division contains the following provision:

**Proposed section 181K** provides for reviews conducted under Part 9 of the *Police Service Act 1990*, and appeals from such reviews, to be conducted before judicial members of the Commission, and further provides that proceedings before the Commission under Part 9 are taken not to be proceedings of the Commission in Court Session for the purposes of the *Industrial Relations Act 1996*.

A new Part 12 is proposed to be added to Schedule 4 (Savings, transitional and other provisions) (Schedule 1 [6]). The savings and transitional regulation making power contained in clause 2 of that Schedule is extended to cover matters arising under the proposed Act (Schedule 1 [5]).

**Schedule 2      Amendment of Police Integrity Commission  
Act 1996**

Schedule 2 amends section 40 of the *Police Integrity Commission Act 1996* so as to make it clear that evidence given in accordance with that section in proceedings before the Police Integrity Commission (being evidence that is generally inadmissible in proceedings before any other court or tribunal) is admissible in proceedings before the Industrial Relations Commission under proposed Division 1C of Part 9 of the Police Service Act 1990 in the same way as it is admissible in disciplinary proceedings under Division 1 of that Part.