

[Act 1998 No 123]



New South Wales

Police Service Amendment (Complaints and Management Reform) Bill 1998

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*:

- (a) to replace the existing scheme for handling complaints against police officers with a new simplified scheme, and
- (b) to replace the existing scheme for taking disciplinary action against police officers with a new scheme for dealing with police officers' misconduct and unsatisfactory performance, and
- (c) to provide for the review by the Industrial Relations Commission of certain orders made in connection with the new scheme referred to in paragraph (b), and
- (d) as a consequence of the new scheme referred to in paragraph (b), to abolish the Police Tribunal.

The Bill also makes consequential amendments to the *Ombudsman Act 1974* and the *Police Integrity Commission Act 1996*.

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 Schedule 1 (which amends the *Police Service Act 1990*).

Clause 4 is a formal provision giving effect to Schedule 2 (which amends the *Ombudsman Act 1974* and the *Police Integrity Commission Act 1996*).

Schedule 1 Amendment of Police Service Act 1990

Schedule 1 [1] and **[2]** amend sections 3 and 44 as a consequence of the proposed abolition of the Police Tribunal.

Schedule 1 [3] repeals Part 8A and replaces it with a new Part 8A. The new Part 8A deals with complaints about the conduct of police officers.

Division 1 (Preliminary) defines certain words for the purposes of the proposed Part, restricts the application of the Part to certain kinds of conduct, extends the application of the Part to former police officers, provides for the application of the Part to anonymous complaints and subordinates the Part to the *Police Integrity Commission Act 1996* (proposed sections 121–125).

Division 2 (Procedure for making complaints) confers on all persons the right to make complaints about police officers and provides for the manner in which complaints are to be made (proposed sections 126 and 127). Complaints may be made to the Commissioner of Police, the Police Integrity Commission or the Ombudsman, and may be made either directly or indirectly through a Local Court, the Minister administering the Act, the Independent Commission Against Corruption or the New South Wales Crime Commission. A complaint may be made on the complainant's behalf by a member of Parliament.

Division 3 (Complaints information system) provides for the establishment of a complaints information system, requires complaints to be registered in that system and regulates how access to information in that system is to be given to the Police Integrity Commission, the Ombudsman and other persons (proposed sections 123 and 129).

Division 4 (Reference of complaints between authorities) provides for the notification and reference to the Commissioner of Police, the Police Integrity Commission and the Ombudsman of complaints received by them and by Local Courts, the Independent Commission Against Corruption and the New South Wales Crime Commission, deals with complaints referred by the Minister administering the Act and complaints made by members of Parliament, prevents the need for multiple handling of the same complaint and prohibits the handling of a complaint from being called into question because of a failure to comply with the requirements of the proposed Division (proposed sections 130–138).

Division 5 (Investigation by Commissioner) provides for the circumstances in which a complaint should or should not be investigated by the Commissioner of Police and the matters to which the Commissioner and the Ombudsman are to have regard in deciding whether a complaint should or should not be investigated, empowers the Ombudsman to request further information from a complainant and other persons in order to determine whether a complaint should or should not be investigated, provides for the manner in which a complaint is to be investigated, for the monitoring of investigations by the Ombudsman. for reports on an investigation to be given to the complainant and for the institution of prosecutions as a consequence of evidence arising from an investigation and preserves the power of police to carry out investigations otherwise than under the proposed Division (proposed sections 139–149).

Division 6 (Procedures following investigation by Commissioner) provides for the information to be given to the complainant and the Ombudsman after an investigation has been concluded, empowers the Ombudsman to require the Commissioner of Police to provide the Ombudsman with certain information concerning the investigation of a complaint and the timeliness of the investigation and to request further investigation of a complaint or the review of action taken as a result of an investigation and provides for the preparation of reports by the Ombudsman on the Commissioner's response to requests under the proposed Division (proposed sections 150–155).

Division 7 (Investigation by Ombudsman) empowers the Ombudsman to make a complaint the subject of an investigation under the *Ombudsman Act 1974*, requires the Ombudsman to prepare a report on any such investigation. empowers the Commissioner of Police to notify the Ombudsman of the action taken as a result of any such report and empowers the Ombudsman to carry out an investigation under the *Ombudsman Act 1974* of conduct that could be. but has not been. the subject of a complaint under the proposed Part (proposed sections 156–159).

Division 8 (Additional provisions concerning Ombudsman) requires the Ombudsman to carry out periodic inspections of police records to ascertain compliance with the proposed Part and to prepare pamphlets for public distribution as to the rights and duties of police officers and the public under the Part, provides for consultation between the Ombudsman and the Minister administering the Act in connection with complaints, prohibits the publication by the Ombudsman of certain police information, provides for the way in which section 34 of the *Ombudsman Act 1974* (dealing with disclosure of information) is to be construed in its application to information received by the Ombudsman under the Part, prevents the Ombudsman and any officer of the Ombudsman from being called as a witness in any legal proceedings to give evidence or produce documents arising from the operation of the Part. restricts the Ombudsman's powers of delegation with respect to certain functions under the Part and provides for the exercise by officers of the Ombudsman of the Ombudsman's functions under the Part (proposed sections 160–167).

Division 9 (Miscellaneous) enables the Police Integrity Commission to take over the investigation of a complaint that would normally be investigated by the Commissioner of Police. prescribes certain matters relating to reports furnished to Parliament. deals with the admissibility in evidence of certain documents brought into existence for the purposes of the proposed Part, preserves the powers and duties of police officers with respect to the action to be taken as a result of a complaint and provides for the use of Federal and interstate police to assist in the conduct of investigations under the Part (proposed sections 168–172).

Schedule 1 [4] substitutes the heading to Part 9 as a consequence of the amendments to be made to that Part by Schedule 1 [5], [6] and [7].

Schedule 1 [5] repeals Divisions 1 and 1A of Part 9 and replaces them with new Divisions 1 and 1A.

Division 1 (Misconduct and unsatisfactory performance) empowers the Commissioner of Police to order that certain kinds of action be taken with respect to a police officer who engages in misconduct or whose performance is unsatisfactory (proposed section 173). The more serious action (referred to as reviewable action) can only be taken following a "show cause" process. Reviewable action is reviewable only in accordance with Division 1A or by the Supreme Court in the exercise of its jurisdiction to review administrative action. Non-reviewable action (which comprises action referred to in proposed Schedule 1) is reviewable only by the Supreme Court in the exercise of its jurisdiction to review administrative action.

Explanatory note

Division 1A (Review of Commissioner's order under Division 1) empowers a police officer to apply to the Industrial Relations Commission for a review of an order for reviewable action, provides for the conduct of proceedings on such a review, requires the Industrial Relations Commission to settle a claim by conciliation, provides for the determination of a claim in the event that conciliation is not achieved, provides that proceedings under the proposed Division are to be informal, modifies the application of Part 5 of Chapter 4 of the *Industrial Relations Act 1996* to proceedings under the Division, deals with certain evidentiary matters and provides for the application of the Division to proceedings before the Full Bench of the Industrial Commission on appeal from decisions of the Commission under the Division (proposed sections 174–181).

Schedule 1 [6] amends section 181K so as to restrict the operation of that section (which deals with the constitution of the Industrial Relations Commission for the purposes of Part 9) to reviews conducted under Division 1C. That section will consequently not apply to reviews conducted under proposed Division 1A.

Schedule 1 [7] repeals Division 2 of Part 9, so abolishing the right of police officers to appeal to the Government and Related Employees Appeal Tribunal against disciplinary action, and replaces that Division with what is currently Division 1A of Part 9 (to be repealed by Schedule 1 [5]).

Schedule 1 [8] repeals Part 9A (which establishes the Police Tribunal of New South Wales).

Schedule 1 [9] augments the Governor's power to make regulations. The amendment is consequential on proposed Division 1 of Part 9.

Schedule 1 [10] inserts a new Schedule 1 containing a list of those kinds of actions that are to be "non-reviewable action" for the purposes of proposed section 173.

Schedule 1 [11] amends Schedule 4 (Savings, transitional and other provisions) so as to enable the regulations to make provisions of a saving or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [12] amends Schedule 4 so as to include further provisions of a saving or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends sections 34 and 35 of the *Ombudsman Act 1974* as a consequence of the proposed abolition of the Police Tribunal.

Schedule 2.2 amends the *Police Integrity Commission Act 1996* as a consequence of the proposed substitution of Part 8A of the *Police Service Act 1990*.