



New South Wales

Police Amendment Bill 2007

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Police Act 1990* and the *Police Integrity Commission Act 1996* arising out of a statutory review of the *Police Act 1990*.

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 that gives effect to the amendments to the *Police Act 1990* (the ***Police Act***) set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Police Integrity Commission Act 1996* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the

proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Police Act 1990

Consistency with Public Sector Employment and Management Act 2002

The statutory review of the Police Act recommended that certain provisions of that Act be amended to align them with similar provisions in the *Public Sector Employment and Management Act 2002*, including provisions about the appointment of staff. The amendments set out below generally make changes so as to reflect provisions of that Act.

Schedule 1 [1] amends section 25 of the Police Act to provide that an acting Commissioner of Police is to be appointed by the Minister, rather than by the Governor on the recommendation of the Minister. The amendment also enables an acting Commissioner to be appointed if the Commissioner is suspended. **Schedule 1 [2]** makes a consequential amendment.

Schedule 1 [3] amends section 26 of the Police Act to enable the Commissioner to be re-appointed before his or her term of office expires.

Schedule 1 [4] amends section 37 of the Police Act to enable an allowance to be paid to a police officer who is exercising all or any of the functions of a position, even though the person has not been appointed to act in the position.

Schedule 1 [5] amends section 40 of the Police Act to enable an executive officer to be re-appointed before his or her term of office expires.

Schedule 1 [6] amends section 41 of the Police Act to provide that a contract of employment of an executive officer may constitute an instrument of appointment.

Schedule 1 [7] inserts proposed section 50 into the Police Act to empower the Commissioner to retire an executive officer who is found on medical grounds to be unfit to discharge or incapable of discharging the duties of the officer's position.

Schedule 1 [8] inserts proposed section 66A into the Police Act. The proposed section provides for the appointment of officers to act in non-executive police officer positions if the positions are vacant or the holders are suspended, sick or absent. Currently, this situation is dealt with by way of temporary appointments.

Schedule 1 [12] amends section 72 of the Police Act to provide that the position of a non-executive police officer becomes vacant if the officer abandons his or her employment in the NSW Police Force.

Schedule 1 [13] inserts proposed section 72A into the Police Act to empower the Commissioner to retire a non-executive police officer who is found on medical grounds to be unfit to discharge or incapable of discharging the duties of the officer's position.

Schedule 1 [14] substitutes section 82D of the Police Act. The proposed section provides for the appointment of officers to act in non-executive administrative

officer positions if the positions are vacant or the holders are suspended, sick or absent. Currently, this situation is dealt with by way of temporary appointments.

Schedule 1 [15] amends section 82H of the Police Act to provide that the position of a non-executive administrative officer becomes vacant if the officer abandons his or her employment in the NSW Police Force.

Schedule 1 [16] inserts proposed section 82HA into the Police Act to empower the Commissioner to retire a non-executive administrative officer who is found on medical grounds to be unfit to discharge or incapable of discharging the duties of the officer's position.

Schedule 1 [17] amends section 90 of the Police Act to set out circumstances when a person may be employed as a temporary employee and to make it clear that such employment is subject to any other provisions of the Act concerning the employment of temporary employees. **Schedule 1 [9]–[11]** make consequential amendments.

Schedule 1 [18] inserts proposed sections 91 and 91AA into the Police Act. Proposed section 91 stipulates a maximum period for temporary employment at any one time of 3 years (rather than the current period of 4 months) and provides for re-employment of a temporary employee to be in accordance with guidelines issued by the Commissioner. Proposed section 91AA limits the employment of temporary employees for periods of 12 months or more to employees selected on merit.

Schedule 1 [19] inserts a note to Part 8 of the Police Act relating to provisions of the *Public Sector Employment and Management Act 2002* that apply to members of the NSW Police Force.

Complaints against police

Schedule 1 [20] amends section 129 of the Police Act to make it clear that complaints made directly to the Police Integrity Commission (the *PIC*) or the Ombudsman are not required to be entered into the complaints information system unless the PIC or the Ombudsman so directs.

Schedule 1 [21] amends section 144 of the Police Act to make it clear that the power to investigate a complaint includes the power to take any action necessary to resolve the complaint in the manner that the Commissioner thinks fit, including using alternative dispute management procedures.

Schedule 1 [22] substitutes section 148A of the Police Act. The proposed section confers on the Commissioner an express power to decide to take no further action in relation to a complaint.

Schedule 1 [23] amends section 154 of the Police Act to enable the Ombudsman to request the Commissioner to review a decision to take no further action in relation to a complaint.

Functions of Ombudsman relating to complaints

Currently, the Ombudsman may make a special report to Parliament at any time about any matter connected with the exercise of the Ombudsman's functions under the Police Act relating to complaints.

Schedule 1 [24] amends section 160 of the Police Act to enable the Ombudsman to report to the Minister and the Commissioner on any such matter.

Schedule 1 [25] inserts proposed sections 161 and 161A into the Police Act. Proposed section 161 re-enacts the provisions relating to special reports to Parliament. Proposed section 161A enables the Ombudsman to omit police information, and requires the Ombudsman to omit critical police information, from copies of reports given to complainants or police officers. The amendment also removes a requirement that the Ombudsman prepare and supply certain pamphlets.

Schedule 1 [26] amends section 162 of the Police Act to enable the Ombudsman to consult with the Minister about other matters, in addition to complaints, related to the exercise of the Ombudsman's functions under Part 8A of that Act.

Schedule 1 [27] amends section 163 of the Police Act to enable the Ombudsman to publish police information (including critical police information) to the Minister as well as the Commissioner.

Savings and transitional provisions

Schedule 1 [28] amends Schedule 4 to the Police Act to enable the making of regulations containing savings and transitional provisions consequential on the enactment of the proposed Act.

Schedule 1 [29] amends Schedule 4 to the Police Act to insert a transitional provision consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Police Integrity Commission Act 1996

The Schedule amends the *Police Integrity Commission Act 1996* to make the following amendments consequential on the amendments made to the Police Act by Schedule 1:

- (a) an amendment providing for the Police Integrity Commission to notify the Commissioner of Police instead of the Ombudsman of the completion of an investigation into a police complaint or a decision to discontinue an investigation (**Schedule 2 [1]**),
- (b) an amendment enabling the making of regulations containing savings and transitional provisions consequential on the enactment of the proposed Act (**Schedule 2 [2]**),
- (c) an amendment inserting a transitional provision consequent on the enactment of the proposed Act (**Schedule 2 [3]**).



New South Wales

Police Amendment Bill 2007

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New South Wales

Police Amendment Bill 2007

No. , 2007

A Bill for

An Act to amend the *Police Act 1990* and the *Police Integrity Commission Act 1996* with respect to employment matters and complaints made against police.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Police Amendment Act 2007</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Police Act 1990 No 47	6
The <i>Police Act 1990</i> is amended as set out in Schedule 1.	7
4 Amendment of Police Integrity Commission Act 1996 No 28	8
The <i>Police Integrity Commission Act 1996</i> is amended as set out in Schedule 2.	9 10
5 Repeal of Act	11
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	12 13
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	14 15

Schedule 1	Amendment of Police Act 1990	1
	(Section 3)	2
[1]	Section 25 Acting Commissioner	3
	Omit section 25 (1). Insert instead:	4
	(1) The Minister may appoint a member of the NSW Police Force to act as Commissioner if the office of Commissioner is vacant or the Commissioner is suspended, sick or absent.	5 6 7
[2]	Section 25 (3)	8
	Omit the subsection. Insert instead:	9
	(3) The Minister may at any time terminate the appointment of any such member to act as Commissioner.	10 11
[3]	Section 26 Term of appointment of Commissioner	12
	Insert at the end of the section:	13
	(2) The Commissioner may be re-appointed with effect before the expiry of the Commissioner's term of office. In that case, the Commissioner's existing term of office expires.	14 15 16
[4]	Section 37 Acting appointments to executive positions	17
	Insert after section 37 (3):	18
	(4) This section does not prevent the payment of an allowance to a member of the NSW Police Force for exercising all or any of the functions of a position if a person is not appointed to act in the position under this section.	19 20 21 22
[5]	Section 40 Term appointments	23
	Insert at the end of the section:	24
	(2) An executive officer may, with the approval of the Commissioner, be re-appointed with effect before the expiry of the officer's term of office. In that case, the officer's existing term of office expires.	25 26 27 28
[6]	Section 41 Employment of executive officers to be governed by contract of employment	29 30
	Insert after section 41 (3):	31
	(3A) However, a contract of employment may constitute the instrument of appointment.	32 33

[7] Section 50	1
Insert after section 49:	2
50 Incapable executive officer may be retired	3
If:	4
(a) an executive officer is found on medical grounds to be unfit to discharge or incapable of discharging the duties of the officer's position, and	5 6 7
(b) the officer's unfitness or incapacity:	8
(i) appears likely to be of a permanent nature, and	9
(ii) has not arisen from actual misconduct on the part of the officer, or from causes within the officer's control,	10 11 12
the Commissioner may cause the officer to be retired.	13
[8] Section 66A	14
Insert after section 66:	15
66A Acting appointments to non-executive police officer positions	16
(1) The Commissioner may appoint an officer to act in a non-executive police officer position that is vacant or the holder of which is suspended, sick or absent.	17 18 19
(2) A person, while acting in a position under this section, has all the functions of the holder of the position.	20 21
(3) The Commissioner may, at any time, terminate the appointment of a person to act in a position under this section.	22 23
(4) This section does not prevent the payment of an allowance to an officer for exercising all or any of the functions of a non-executive police officer position if a person is not appointed to act in the position under this section.	24 25 26 27
[9] Section 67 Temporary appointments	28
Omit section 67 (1).	29
[10] Section 67 (2)	30
Omit "Without limiting subsection (1)".	31
Insert instead "Without limiting section 90".	32
[11] Section 67 (3)	33
Omit "in accordance with subsection (1)".	34

[12] Section 72 Vacation of non-executive police officer positions	1
Insert at the end of section 72 (1) (d):	2
, or	3
(e) abandons his or her employment in the NSW Police Force.	4
[13] Section 72A	5
Insert after section 72:	6
72A Incapable non-executive police officer may be retired	7
If:	8
(a) a non-executive police officer is found on medical grounds to be unfit to discharge or incapable of discharging the duties of the officer's position, and	9 10 11
(b) the officer's unfitness or incapacity:	12
(i) appears likely to be of a permanent nature, and	13
(ii) has not arisen from actual misconduct on the part of the officer, or from causes within the officer's control,	14 15 16
the Commissioner may cause the officer to be retired.	17
[14] Section 82D	18
Omit the section. Insert instead:	19
82D Acting appointments to non-executive administrative officer positions	20 21
(1) The Commissioner may appoint an officer to act in a non-executive administrative officer position that is vacant or the holder of which is suspended, sick or absent.	22 23 24
(2) A person, while acting in a position under this section, has all the functions of the holder of the position.	25 26
(3) The Commissioner may, at any time, terminate the appointment of a person to act in a position under this section.	27 28
(4) This section does not prevent the payment of an allowance to an officer for exercising all or any of the functions of a non-executive administrative officer position if a person is not appointed to act in the position under this section.	29 30 31 32

[15] Section 82H Vacation of non-executive administrative officer positions	1
Insert at the end of section 82H (1) (c):	2
, or	3
(d) abandons his or her employment in the NSW Police Force.	4
[16] Section 82HA	5
Insert after section 82H:	6
82HA Incapable non-executive administrative officer may be retired	7
If:	8
(a) a non-executive administrative officer is found on medical grounds to be unfit to discharge or incapable of discharging the duties of the officer's position, and	9 10 11
(b) the officer's unfitness or incapacity:	12
(i) appears likely to be of a permanent nature, and	13
(ii) has not arisen from actual misconduct on the part of the officer, or from causes within the officer's control,	14 15 16
the Commissioner may cause the officer to be retired.	17
[17] Section 90 Appointment of temporary employees	18
Omit section 90 (2). Insert instead:	19
(2) A person may be employed as a temporary employee:	20
(a) for the duration of a specified task or project, or	21
(b) to carry out the duties of a position that is temporarily vacant, or	22 23
(c) to provide additional assistance in a particular work area, or	24 25
(d) in connection with the secondment or exchange of staff, or	26
(e) to undertake a traineeship or cadetship, or	27
(f) for any other temporary purpose.	28
(3) The employment of persons under this Part is subject to any other provision of this Act or the regulations concerning the employment of temporary employees.	29 30 31

[18] Sections 91 and 91AA	1
Omit section 91. Insert instead:	2
91 Period of employment	3
(1) The maximum period for which a temporary employee may be employed under this Part at any one time is 3 years.	4 5
(2) The re-employment of a temporary employee is to be in accordance with such guidelines as are issued by the Commissioner from time to time.	6 7 8
(3) The Commissioner may dispense with the services of a temporary employee at any time.	9 10
91AA Employment after selection on merit	11
(1) In this section, the <i>selection on merit</i> of a temporary employee means employment after some form of open competition involving the selection of the employee as the person who, in the opinion of the Commissioner, has the greatest merit among candidates for employment.	12 13 14 15 16
(2) A temporary employee may be employed for a period exceeding 12 months at any one time only if the employee is selected on merit.	17 18 19
(3) The Commissioner may exempt the employment of a person from subsection (2) if the Commissioner determines that the special circumstances of the case justify the exemption.	20 21 22
[19] Part 8, Note	23
Insert after the heading to Part 8:	24
Note. Other provisions relating to members of the NSW Police Force are to be found in the <i>Public Sector Employment and Management Act 2002</i> . In particular, the following provisions of that Act apply:	25 26 27
(a) Part 3.2 (Staff mobility), which contains provisions relating to temporary inter-agency staff transfers and assignments, employer-sponsored staff transfers and provisions for the transfer of leave in the event of employment with another agency,	28 29 30 31
(b) sections 100–103, which enable cross-agency employment and provide for the effect of nominating for election to Parliament and failing to be elected to Parliament.	32 33 34
[20] Section 129 Registration of complaints	35
Insert after section 129 (2):	36
(2A) Information about a complaint (or part of a complaint) received by the Police Integrity Commission or the Ombudsman that is not	37 38

referred to the Commissioner is not required to be registered in the complaints information system, unless the Police Integrity Commission or Ombudsman directs that a complaint received by them be entered in the system.

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[21] Section 144 Investigation of complaints

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Insert at the end of the section:

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- (2) The powers of the Commissioner to cause a complaint to be investigated include the power to cause any action to be taken to resolve the complaint in the manner that the Commissioner thinks fit, subject to this Act or any other law.
- (3) Without limiting subsection (2), a person conducting an investigation may attempt to resolve a complaint by means of alternative dispute management procedures.

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[22] Section 148A

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Omit the section. Insert instead:

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148A Commissioner or Ombudsman may decide to take no further action

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- (1) The Commissioner or the Ombudsman may, at any stage during an investigation of a complaint, decide to conclude the investigation by taking no further action with respect to the complaint.
- (2) If the Commissioner or Ombudsman decides, at any stage during an investigation of a complaint referred to in section 140 (1), that the investigation should be concluded by taking no further action with respect to the complaint, each must notify the other of that decision.
- (3) In deciding whether no further action should be taken with respect to a complaint, the Commissioner or Ombudsman may have regard to such matters as the Commissioner or Ombudsman thinks fit, including the matters referred to in section 141 (1).
- (4) The Commissioner or Ombudsman must notify the complainant of a decision made by them under this section.
- (5) The Commissioner may, if of the opinion that it is appropriate to do so, notify the police officer whose conduct is the subject of a complaint of a decision by the Commissioner or the Ombudsman under this section concerning the complaint.

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[23] Section 154 Ombudsman may request review of Commissioner's decision on action to be taken on complaint	1
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Insert "(including a decision to take no further action)" after "investigation" in section 154 (1).	3
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[24] Section 160 Inspection of records and reports	5
Omit section 160 (3) and (4). Insert instead:	6
(3) The Ombudsman may, at any time, prepare a report on matters arising out of the exercise of his or her functions under this section.	7
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(4) The report may include such comments and recommendations as the Ombudsman thinks fit.	10
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(5) The Ombudsman is to provide a copy of the report to the Minister and the Commissioner.	12
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[25] Sections 161 and 161A	14
Omit section 161. Insert instead:	15
161 Special reports by Ombudsman	16
(1) The Ombudsman:	17
(a) may, at any time, make a special report to the Presiding Officer of each House of Parliament on any matter arising in connection with the exercise of his or her functions under this Part, and	18
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(b) in that event, must provide the Minister with a copy of the report.	22
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(2) The Ombudsman may include in such a report a recommendation that the report be made public as soon as practicable.	24
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161A Ombudsman may omit matter from reports	26
(1) The Ombudsman may omit any matter from a copy of a report given to a complainant or a police officer (other than the Commissioner) under this Part if the Ombudsman thinks it is in the public interest to do so.	27
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(2) The Ombudsman must omit critical police information (as referred to in section 163) from a copy of a report given to a complainant or a police officer (other than the Commissioner) under this Part.	31
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[26] Section 162 Consultation with Minister	1
Insert at the end of the section:	2
(2) The Ombudsman may consult with the Minister about any other matter related to the exercise of the Ombudsman’s functions under this Part.	3 4 5
[27] Section 163 Ombudsman not to publish certain information	6
Insert “Minister or the” before “Commissioner” where firstly occurring in section 163 (6).	7 8
[28] Schedule 4 Savings, transitional and other provisions	9
Insert at the end of clause 2 (1):	10
<i>Police Amendment Act 2007</i>	11
[29] Schedule 4	12
Insert at the end of the Schedule with appropriate Part and clause numbering:	13
Part Provision consequent on enactment of Police Amendment Act 2007	14 15
Existing complaints	16
Section 144, as amended by the <i>Police Amendment Act 2007</i> , and section 148A, as inserted by that Act, extend to complaints made before the commencement of that amendment and that section.	17 18 19

Schedule 2	Amendment of Police Integrity Commission Act 1996	1
		2
	(Section 4)	3
[1]	Section 74 Termination of police investigations	4
	Omit “Ombudsman” from section 74 (3).	5
	Insert instead “Commissioner of Police”.	6
[2]	Schedule 3 Savings, transitional and other provisions	7
	Insert at the end of clause 1 (1):	8
	<i>Police Amendment Act 2007</i> (but only to the extent that it amends this Act)	9
		10
[3]	Schedule 3	11
	Insert at the end of the Schedule with appropriate Part and clause numbering:	12
Part	Provision consequent on enactment of Police Amendment Act 2007	13
		14
	Complaints	15
	Section 74, as amended by the <i>Police Amendment Act 2007</i> , applies to complaints made before the commencement of that amendment.	16
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