

Act No. 109 of 1990

**POLICE REGULATION (ALLEGATIONS OF MISCONDUCT)  
AMENDMENT BILL 1990 \***

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Police Regulation (Allegations of Misconduct) Act 1978 with respect to:

- (a) the constitution of the Internal Affairs Branch of the Police Service; and
- (b) the constitution, jurisdiction and powers of the Police Tribunal of New South Wales.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a proclaimed day or days.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

**Clause 4** is a formal provision that gives effect to the Schedule of savings and transitional provisions.

**SCHEDULE 1 - AMENDMENTS**

**Meaning of "Registrar"**

Schedule 1 (1) inserts a definition of this term into the Principal Act.

**Increased terms of appointment to Internal Affairs Branch**

Schedule 1 (2) (a) repeals and substitutes section 34 (6) of the Principal Act. The effect is to increase from 3 years to 5 years the maximum renewable term of a member's appointment to the investigative staff of the Internal Affairs Branch, and to increase from 5 years to 10 years the maximum total period during which a member may hold office.

Schedule 1 (2) (b) makes a consequential amendment.

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\* Amended in committee — see table at end of volume.

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### **Constitution of the Police Tribunal**

Schedule 1 (3) amends section 36 of the Principal Act in order to include the President and Deputy President as members of the Tribunal. (At present the word “member” is understood as not including them - see section 36 (3).)

As a consequence of the amendment, the original jurisdiction of the Tribunal (i.e. its jurisdiction under sections 41 and 45A of the Principal Act) may now be exercised by the President and Deputy President as well as by other members. Another consequence is that the Deputy President may sit, together with the President and another member, as the Review Division of the Tribunal.

### **Functions of the Deputy President**

Schedule 1 (4) amends section 38 of the Principal Act with respect to the functions of the Deputy President of the Tribunal. At present, the section provides that the Deputy President becomes the President "where the President is unable to act as such". The intent of the amendment is to free the section from doubt as to what constitutes an “inability to act” on the part of the President.

As amended, the section will provide that the Deputy President is to act as President during the illness or absence of the President and on other occasions when required to do so by the President. When so acting, the Deputy President will be able to exercise any power and perform any function which is ordinarily reserved for the President. In particular, the Deputy President may, with 2 other members, constitute the Review Division of the Tribunal or may, sitting alone, conduct an inquiry under section 45.

### **Appellate jurisdiction of the Police Tribunal**

Schedule 1 (5) amends section 43 of the Principal Act to make it clear that appeal proceedings before the Tribunal are not in the nature of a re-trial. The section, as amended, specifies that the appeal proceedings are in the nature of a review of the evidence given in the relevant proceedings in the Tribunal's original jurisdiction. It allows the consideration in the appeal proceedings of new evidence only if it was not reasonably available at the time of the original proceedings.

In addition, section 43 (3) of the Principal Act (which provides members of the Tribunal with a right to abstain from voting on a decision of the Tribunal, and provides for the effect of such abstentions) is repealed.

### **Orders prohibiting publication**

Schedule 1 (6) inserts a new section 43A. The proposed provision empowers the Tribunal to make orders prohibiting the publication of names and addresses of witnesses and complainants.

### **Subpoenas issued by the Police Tribunal and contempt of the Tribunal**

Schedule 1 (7) inserts new sections 44A, 44B and 44C. At present, while the Tribunal may issue summonses for the appearance of persons to give evidence at hearings before it, it lacks the power to issue warrants to compel attendance.

Proposed section 44A requires the Registrar of the Tribunal, at the request of a party to the proceedings, to issue subpoenas to attend and give evidence at the proceedings or to attend and produce documents or things.

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Proposed section 44B empowers the Tribunal to issue warrants for the arrest of persons who fail to comply with subpoenas.

Proposed section 44C details certain acts and omissions which will constitute contempt of the Tribunal. These are:

- (a) publication of any matter in contravention of an order under proposed section 43A (prohibiting publication of names and addresses of witnesses or complainants); and
- (b) failure to produce (or to give a satisfactory undertaking to produce) a document or thing required by a subpoena when brought before the Tribunal pursuant to a warrant issued for want of compliance with the subpoena; and
- (c) failure to honour an undertaking to comply with the requirements of a subpoena.

The section provides that contempt of the Tribunal (whether arising under section 44C or arising from the fact that, in certain cases, the Tribunal has the powers of a royal commission) may be punished in the same way as contempt of a royal commission.

**Inquiries by the Police Tribunal**

Schedule 1 (8) amends section 45 of the Principal Act to widen the scope of an inquiry that the Tribunal may undertake at the request of the Minister.

At present such an inquiry may only relate to a matter relating to police discipline (see section 45 (1)). The section, as amended, will permit an inquiry into any matter relating to discipline or to the exercise by police of their powers and functions and any other matter which, in the opinion of the Minister, is relevant to a matter of discipline or of the exercise of police powers and functions.

Schedule 1 (9) makes a consequential amendment.

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS**

This Schedule enacts savings and transitional provisions in relation to the amendments contained in the Bill, to the effect that:

- (a) the new maximum term of office of a member of the Internal Affairs Branch is applied to existing members of the Branch as well as future members (clause 2); and
- (b) any right of a police officer to appeal, under section 43 of the Principal Act, to the Police Tribunal on a departmental charge is preserved if the member concerned denied the charge before the amendment to that section takes effect (clause 3); and
- (c) the new, larger scope of an inquiry that the Police Tribunal may be asked to undertake at the Minister's request under section 45 of the Principal Act may relate to events that took place before the commencement of the amendment made to that section by the proposed Act as well as to later events (clause 4).