

Act 1994 No. 9

POLICE SERVICE (COMPLAINTS) AMENDMENT BILL 1994

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 Service Act 1990 so as to put beyond any doubt the power of the Commissioner of Police and the Ombudsman to deal with a complaint about the conduct of a police officer that involves the commission of a criminal offence or other conduct outside the usual functions of a police officer.

The Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 repealed the previous legislation on complaints about police conduct. That Act (as indicated in the explanatory note to the Bill for that Act) implemented recommendations in the report of a Parliamentary Joint Committee on the role of the Ombudsman in investigating complaints against the police (dated April 1992). The report included a recommendation (No. 28 at page 152) that "Complaints regarding off-duty conduct should continue to be notified to the Ombudsman and dealt with in the same manner as any other allegation of misconduct, provided that the Ombudsman shall take no action where off-duty conduct bears no relationship to an officer's status as a member of the Police Service". The amending Act inserted a definition of "conduct" of a police officer using the expression used in the Ombudsman Act 1974 of conduct of a police officer "when acting as a constable" (see section 121 of the Police Service Act 1990).

The Ombudsman, in a special report to Parliament on 1 December 1993, drew attention to advice he received from counsel that the effect of the amending Act is that "it is not possible to investigate complaints that a police officer has committed a crime, if that allegation is one which accuses the police officer of conduct which would not have been an honest attempt to exercise his or her powers and duties as a constable". Crown law officers have advised, however, that any complaint against a police officer may be investigated so long as it has some connection with the fact that the person is a police officer.

The Ombudsman, in a further report to Parliament on 16 December 1993, drew attention to a legal challenge on the matter and reiterated his previous recommendation that the words "when acting as a constable" be deleted from the definition of "police conduct" and that the amendment should apply retrospectively. In that report, the Ombudsman indicated that the changes sought would be consistent with the recommendation of the Joint Parliamentary Committee that complaints about off-duty

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police continue to be notified and declined when they are trivial or do not relate to police duties.

The Bill makes the changes recommended by the Ombudsman in order to remove any doubt about the matter.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on the date of assent.

Clause 3 gives effect to the Schedule of amendments to the Police Service Act 1990.

Clause 4 gives effect to the Schedule of consequential amendments to the Ombudsman Act 1974.

SCHEDULE 1—AMENDMENT OF *POLICE SERVICE ACT 1990*

Schedule 1 (1) substitutes the definition of “conduct” of a police officer in Part 8A of the Principal Act. The substituted definition deletes the words “when acting as a constable” and expressly puts beyond any doubt the power of the Commissioner of Police and the Ombudsman to deal with complaints about the conduct of a police officer:

- (a) that occurs while the police officer is not officially on duty; or
- (b) that involves the commission of an offence; or
- (c) that is otherwise outside the usual functions of a police officer.

Schedule 1 (2) inserts proposed section 141A into the Principal Act to give effect expressly to the Joint Parliamentary Committee’s recommendation that complaints notified to the Ombudsman should not be pursued under Part 8A of the Principal Act if they have no connection with the fact that the person concerned is a police officer.

Schedule 1 (3) amends the savings and transitional provisions of the Principal Act to ensure that the above amendments apply to past conduct and pending complaints (and so apply despite pending legal proceedings). The item also authorises the making of further savings and transitional provisions by regulation if necessary.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OMBUDSMAN ACT 1974

Schedule 2 (1) makes a consequential amendment to the definition of “police conduct” in the Ombudsman Act 1974 so that it continues to reflect the meaning of that expression in Part 8A of the Police Service Act 1990.

Schedule 2 (2) amends the list that excludes certain police conduct from investigation under the Ombudsman Act 1974. The expression “when exercising the functions of a police officer with respect to crime and the preservation of the peace” is to be used instead of the expression “when acting as a constable”. The amendment maintains the current provisions that enable the investigation of complaints under the Ombudsman Act 1974 of any matter relating to administration but ensures that conduct in respect of operational police matters is subject to investigation under Part 8A of the Police Service Act 1990.
