

Passed by both Houses



New South Wales

Police Amendment Bill 2007

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2007*



New South Wales

Police Amendment Bill 2007

Act No , 2007

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Amendment Act 2007*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Police Act 1990 No 47

The *Police Act 1990* is amended as set out in Schedule 1.

4 Amendment of Police Integrity Commission Act 1996 No 28

The *Police Integrity Commission Act 1996* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Police Act 1990

(Section 3)

[1] Section 25 Acting Commissioner

Omit section 25 (1). Insert instead:

- (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.

[2] Section 25 (3)

Omit the subsection. Insert instead:

- (3) The Minister may at any time terminate the appointment of any such member to act as Commissioner.

[3] Section 26 Term of appointment of Commissioner

Insert at the end of the section:

- (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.

[4] Section 37 Acting appointments to executive positions

Insert after section 37 (3):

- (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.

[5] Section 40 Term appointments

Insert at the end of the section:

- (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.

[6] Section 41 Employment of executive officers to be governed by contract of employment

Insert after section 41 (3):

- (3A) However, a contract of employment may constitute the instrument of appointment.

[7] Section 50

Insert after section 49:

50 Incapable executive officer may be retired

If:

- (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
- (b) the officer's unfitness or incapacity:
 - (i) appears likely to be of a permanent nature, and
 - (ii) has not arisen from actual misconduct on the part of the officer, or from causes within the officer's control,

the Commissioner may cause the officer to be retired.

[8] Section 66A

Insert after section 66:

66A Acting appointments to non-executive police officer positions

- (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.
- (2) A person, while acting in a position under this section, has all the functions of the holder of the position.
- (3) The Commissioner may, at any time, terminate the appointment of a person to act in a position under this section.
- (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.

[9] Section 67 Temporary appointments

Omit section 67 (1).

[10] Section 67 (2)

Omit "Without limiting subsection (1)".

Insert instead "Without limiting section 90".

[11] Section 67 (3)

Omit "in accordance with subsection (1)".

[12] Section 72 Vacation of non-executive police officer positions

Insert at the end of section 72 (1) (d):

, or

- (e) abandons his or her employment in the NSW Police Force.

[13] Section 72A

Insert after section 72:

72A Incapable non-executive police officer may be retired

If:

- (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
- (b) the officer's unfitness or incapacity:
- (i) appears likely to be of a permanent nature, and
 - (ii) has not arisen from actual misconduct on the part of the officer, or from causes within the officer's control,

the Commissioner may cause the officer to be retired.

[14] Section 82D

Omit the section. Insert instead:

82D Acting appointments to non-executive administrative officer positions

- (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.
- (2) A person, while acting in a position under this section, has all the functions of the holder of the position.
- (3) The Commissioner may, at any time, terminate the appointment of a person to act in a position under this section.
- (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.

[15] Section 82H Vacation of non-executive administrative officer positions

Insert at the end of section 82H (1) (c):

, or

- (d) abandons his or her employment in the NSW Police Force.

[16] Section 82HA

Insert after section 82H:

82HA Incapable non-executive administrative officer may be retired

If:

- (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
- (b) the officer's unfitness or incapacity:
- (i) appears likely to be of a permanent nature, and
 - (ii) has not arisen from actual misconduct on the part of the officer, or from causes within the officer's control,

the Commissioner may cause the officer to be retired.

[17] Section 90 Appointment of temporary employees

Omit section 90 (2). Insert instead:

- (2) A person may be employed as a temporary employee:
- (a) for the duration of a specified task or project, or
 - (b) to carry out the duties of a position that is temporarily vacant, or
 - (c) to provide additional assistance in a particular work area, or
 - (d) in connection with the secondment or exchange of staff, or
 - (e) to undertake a traineeship or cadetship, or
 - (f) for any other temporary purpose.
- (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.

[18] Sections 91 and 91AA

Omit section 91. Insert instead:

91 Period of employment

- (1) The maximum period for which a temporary employee may be employed under this Part at any one time is 3 years.
- (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.
- (3) The Commissioner may dispense with the services of a temporary employee at any time.

91AA Employment after selection on merit

- (1) In this section, the *selection on merit* 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.
- (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.
- (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.

[19] Part 8, Note

Insert after the heading to Part 8:

Note. Other provisions relating to members of the NSW Police Force are to be found in the *Public Sector Employment and Management Act 2002*. In particular, the following provisions of that Act apply:

- (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,
- (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.

[20] Section 129 Registration of complaints

Insert after section 129 (2):

- (2A) Information about a complaint (or part of a complaint) received by the Police Integrity Commission or the Ombudsman that is not

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.

[21] Section 144 Investigation of complaints

Insert at the end of the section:

- (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.

[22] Section 148A

Omit the section. Insert instead:

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

- (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.

[23] Section 154 Ombudsman may request review of Commissioner's decision on action to be taken on complaint

Insert "(including a decision to take no further action)" after "investigation" in section 154 (1).

[24] Section 160 Inspection of records and reports

Omit section 160 (3) and (4). Insert instead:

- (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.
- (4) The report may include such comments and recommendations as the Ombudsman thinks fit.
- (5) The Ombudsman is to provide a copy of the report to the Minister and the Commissioner.

[25] Sections 161 and 161A

Omit section 161. Insert instead:

161 Special reports by Ombudsman

- (1) The Ombudsman:
 - (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
 - (b) in that event, must provide the Minister with a copy of the report.
- (2) The Ombudsman may include in such a report a recommendation that the report be made public as soon as practicable.

161A Ombudsman may omit matter from reports

- (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.
- (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.

[26] Section 162 Consultation with Minister

Insert at the end of the section:

- (2) The Ombudsman may consult with the Minister about any other matter related to the exercise of the Ombudsman's functions under this Part.

[27] Section 163 Ombudsman not to publish certain information

Insert "Minister or the" before "Commissioner" where firstly occurring in section 163 (6).

[28] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Police Amendment Act 2007

[29] Schedule 4

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provision consequent on enactment of
Police Amendment Act 2007**

Existing complaints

Section 144, as amended by the *Police Amendment Act 2007*, and section 148A, as inserted by that Act, extend to complaints made before the commencement of that amendment and that section.

Schedule 2 Amendment of Police Integrity Commission Act 1996

(Section 4)

[1] Section 74 Termination of police investigations

Omit “Ombudsman” from section 74 (3).

Insert instead “Commissioner of Police”.

[2] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Police Amendment Act 2007 (but only to the extent that it amends
this Act)

[3] Schedule 3

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provision consequent on enactment of Police Amendment Act 2007

Complaints

Section 74, as amended by the *Police Amendment Act 2007*,
applies to complaints made before the commencement of that
amendment.