

New South Wales

Police Amendment (Death and Disability) Bill 2011

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to terminate the existing industrial award-based scheme for death and disability payments to police officers injured at work or off-duty, and
- (b) to replace that scheme with entitlements to death and disability payments in accordance with an approved insurance policy, and
- (c) to amend the *Industrial Relations Act 1996* to remove the jurisdiction of the Industrial Relations Commission to make or vary industrial instruments that provide for death and disability payments in respect of police officers, and
- (d) to make other consequential or ancillary amendments.

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.

Schedule 1 Amendment of Police Act 1990 No 47

Schedule 1 [1] inserts a new Part 9B into the *Police Act 1990* which provides for death and disability payments to police officers in accordance with an approved insurance policy. The new Part 9B contains the following provisions:

Proposed section 199A sets out the definitions for the purposes of the proposed Part. ***Death and disability payments*** is defined to include lump sum payments or income support in relation to death or incapacity for work arising from a work-related injury or an off-duty injury (and includes workers compensation top-up weekly payments).

Proposed section 199B excludes from the operation of the proposed Part police officers who are contributors to the Police Superannuation Fund or the State Superannuation Fund and (with an exception) police officers who are contributors to the State Authorities Superannuation Fund and are covered by the additional benefit for incapacity under the *State Authorities Superannuation Act 1987*.

Proposed section 199C requires the NSW Police Force or FSS Trustee Corporation to take out an approved death and disability insurance policy on behalf of police officers.

Proposed section 199D provides that an ***approved death and disability insurance policy*** is an insurance policy approved by the Minister, with the concurrence of the Treasurer, that provides death and disability payments for police officers. An approved death and disability insurance policy must provide for payments for police officers who die, or who are incapacitated for work as police officers, as a result of being injured at work. An approved death and disability insurance policy may also include provision for payments in respect of injuries that did not occur at work. It may also provide for payments in the form of income protection to a police officer who is a contributor to the State Authorities Superannuation Fund and is covered by the additional benefit for incapacity under the *State Authorities Superannuation Act 1987*.

Proposed section 199E requires the Minister, in approving an insurance policy under the proposed Part, to be satisfied that the cost to the State of the policy (after deducting the contribution made by police officers under proposed section 199F) will be approximately 4.6% of the remuneration of police officers covered by the policy. The regulations may vary that cost to the State.

Proposed section 199F requires police officers to make the contribution prescribed by the regulations to the costs of the approved death and disability insurance policy. Until a contribution rate is prescribed, the rate will be the same as the contribution required to be made by police officers under the *Crown Employees (Police Officers Death and Disability) Award 2005* before its rescission by the proposed Act (namely 1.8% of their remuneration).

Proposed section 199G sets out the matters that may be dealt with by the regulations, including the provisions that must or may be included in an approved death and disability insurance policy, savings and transitional provisions and injury management.

Proposed section 199H provides that the proposed Part does not affect workers compensation or superannuation entitlements.

Proposed section 199I rescinds the *Crown Employees (Police Officers Death and Disability) Award 2005*.

Proposed section 199J rescinds clause 9 of the *Crown Employees (Police Officers - 2009) Award* (relating to top-up of weekly workers compensation).

Proposed section 199K provides for savings and transitional arrangements in respect of death and disability payments to police officers. Under the proposed section, the provisions of the *Crown Employees (Police Officers Death and Disability) Award 2005 (the former award)* relating to temporary or partial incapacity will continue to apply to a police officer who has been assessed by an independent medical practitioner as suffering a disability resulting in the police officer being incapacitated for work as a police officer, but who has not yet been discharged from the NSW Police Force. A police officer who is injured before being covered by an approved death and disability insurance policy (but who would have been entitled to a payment under the former award in respect of death or incapacity arising from that injury) is entitled to payments equivalent to those that the police officer would have been paid under the approved policy if it had covered the police officer. The proposed section preserves entitlements under an insurance policy taken out on behalf of police officers before the commencement of the proposed Part in relation to death or total and permanent incapacity. Police officers will also continue to be entitled to workers compensation top-up payments under clause 9 of the *Crown Employees (Police Officers - 2009) Award* for a period of 6 months after the commencement of the proposed Part, despite the rescission of that provision.

Proposed section 199L provides for the cost of death and disability payments for police officers to be kept under review and for the Minister and Treasurer to be advised of that cost.

Proposed section 199M provides for a review by the Auditor-General after the enactment of the proposed Act of whether the proposed Part and the injury management practices for police officers have improved the performance of the NSW Police Force in securing the return of injured police officers to duty.

Schedule 1 [2] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [3] makes a consequential amendment to the savings and transitional provisions relating to the former special risk benefits to ensure that those provisions are not affected by the replacement of the existing death and disability scheme under the proposed Act.

Schedule 2 Amendment of Police Regulation 2008

Schedule 2 [2] provides for a top-up of weekly workers compensation payments to injured police officers to ensure that, during the first 6 months of incapacity, the officers are paid their full ordinary rate of pay (that will include loadings and allowances in the nature of salary).

Schedule 2 [1] and [3] make consequential amendments.

Schedule 3 Amendment of State Authorities Superannuation Act 1987 No 211

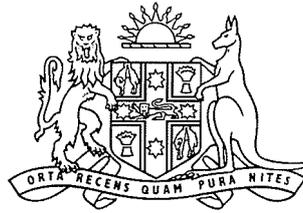
The Schedule inserts a new Part 5D into the *State Authorities Superannuation Act 1987* which provides for the making of regulations to enable police officers to elect to be covered for lump sum payments by an approved death and disability insurance policy under the *Police Act 1990* instead of the additional superannuation benefit.

Schedule 4 Amendment of Industrial Relations Act 1996 No 17

Schedule 4 [2] removes the jurisdiction of the Industrial Relations Commission to make or vary industrial instruments that provide for death and disability payments in respect of police officers. It also provides that the Commission cannot treat any savings attributable to the operation of the proposed Act as employee-related cost savings that may offset increased employee-related costs arising from proposed salary increases.

Schedule 4 [1] makes an ancillary amendment to the jurisdiction of the Industrial Relations Commission in relation to unfair contracts.

First print



New South Wales

Police Amendment (Death and Disability) Bill 2011

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New South Wales

Police Amendment (Death and Disability) Bill 2011

No. , 2011

A Bill for

An Act to amend the *Police Act 1990* with respect to the death or disability of police officers; to amend consequentially the *State Authorities Superannuation Act 1987* and the *Industrial Relations Act 1996*; to rescind consequentially industrial award provisions relating to payments for the death or disability of police officers; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Police Amendment (Death and Disability) Act 2011</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Police Act 1990 No 47	1
[1]	Part 9B	2
	Insert before Part 10:	3
	Part 9B Police officers—death and disability	4
	199A Definitions	5
	In this Part:	6
	<i>approved death and disability insurance policy</i> —see	7
	section 199D.	8
	<i>death and disability payments</i> means payments (whether	9
	periodic or lump sum) to or in respect of a police officer who dies	10
	or who becomes permanently or temporarily incapacitated for	11
	work:	12
	(a) as a result of being injured at work, or	13
	(b) as a result of being injured while employed as a police	14
	officer (whether or not on duty),	15
	and, without limiting the generality of the foregoing, includes	16
	payments to or in respect of a police officer by way of the top-up	17
	of workers compensation payments.	18
	<i>injured at work</i> , in relation to a police officer, means injured in	19
	such circumstances as entitles the police officer to compensation	20
	under the <i>Workers Compensation Act 1987</i> .	21
	199B Police officers excluded from this Part	22
	(1) This Part does not apply to or in respect of a police officer who is	23
	a contributor to the Police Superannuation Fund under the <i>Police</i>	24
	<i>Regulation (Superannuation) Act 1906</i> or to the State	25
	Superannuation Fund under the <i>Superannuation Act 1916</i> .	26
	(2) This Part does not apply to or in respect of a police officer who is	27
	a contributor to the State Authorities Superannuation Fund and	28
	who is covered by the additional benefit under the <i>State</i>	29
	<i>Authorities Superannuation Act 1987</i> , except as provided by	30
	section 199D (3).	31
	199C Approved death and disability insurance policy to be taken out on	32
	behalf of police officers	33
	An approved death and disability insurance policy is required to	34
	be taken out on behalf of police officers by the NSW Police Force	35
	or by FSS Trustee Corporation.	36

199D Approved death and disability insurance policy	1
(1) For the purposes of this Part, an <i>approved death and disability insurance policy</i> is an insurance policy approved by the Minister, with the concurrence of the Treasurer, that provides death and disability payments to or in respect of police officers. An approved policy may comprise a number of separate policies.	2 3 4 5 6
(2) An approved death and disability insurance policy:	7
(a) must include provision for payments to or in respect of police officers who die, or who are incapacitated for work, as a result of being injured at work, and	8 9 10
(b) may also include provision for payments to or in respect of police officers where their death or incapacity does not result from being injured at work.	11 12 13
(3) An approved death and disability insurance policy may provide for payments in the form of income protection in connection with an injury to a police officer despite the police officer being a contributor to the State Authorities Superannuation Fund and covered by the additional benefit under the <i>State Authorities Superannuation Act 1987</i> .	14 15 16 17 18 19
199E Contribution by State to cost of approved insurance policy	20
The Minister may approve an insurance policy under this Part only if satisfied that the cost to the State of the policy (after deducting the contribution to that cost of police officers under section 199F) will be:	21 22 23 24
(a) subject to paragraph (b), approximately 4.6% of the remuneration of police officers covered by the policy, or	25 26
(b) such other amount as the regulations prescribe.	27
199F Contributions by police officers to cost of approved insurance policy	28 29
(1) Police officers are required to make the contribution prescribed by the regulations to the cost to the State of an approved death and disability insurance policy.	30 31 32
(2) The required contribution is to be a percentage of the remuneration of the police officers and is to be made by way of salary sacrifice.	33 34 35
(3) Until the regulations otherwise provide, the required contribution is to be the same as the contribution police officers would have been required to make under the <i>Crown Employees (Police Officers Death and Disability) Award 2005</i> if that Award had not	36 37 38 39

been rescinded by the <i>Police Amendment (Death and Disability) Act 2011</i> .	1
	2
Note. On the rescission of the Award, the contribution required to be made by police officers was 1.8% of their remuneration.	3
	4
199G Regulations relating to death or disability of police officers	5
The regulations may make provision for or with respect to the death or disability of police officers, including the following:	6
	7
(a) the provisions that must or may be included in an approved death and disability insurance policy,	8
	9
(b) the savings and transitional provisions applying to police officers on the commencement of this Part in relation to death and disability payments (including the provisions applying after that commencement during any period in which an approved death and disability insurance policy is not in force),	10
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(c) the obligations of the NSW Police Force and police officers or former police officers with respect to rehabilitation, retraining and redeployment of incapacitated police officers or former police officers,	16
	17
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	19
(d) the establishment by the NSW Police Force of injury management and prevention and other programs to facilitate or promote the health and fitness of police officers, and the obligation of police officers to participate in those programs.	20
	21
	22
	23
	24
199H Other entitlements not affected	25
The provisions of this Part do not affect:	26
(a) any compensation payable under the <i>Workers Compensation Act 1987</i> , or	27
	28
(b) any superannuation entitlements.	29
199I Rescission of Crown Employees (Police Officers Death and Disability) Award 2005	30
	31
The <i>Crown Employees (Police Officers Death and Disability) Award 2005</i> of the Industrial Relations Commission of New South Wales is rescinded.	32
	33
	34
199J Rescission of workers compensation top-up provisions of Crown Employees (Police Officers - 2009) Award	35
	36
Clause 9 of the <i>Crown Employees (Police Officers - 2009) Award</i> of the Industrial Relations Commission of New South Wales is rescinded.	37
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	39

199K Savings and transitional arrangements

- (1) In this section: 1
2
former death and disability award means the award referred to 3
in section 199I that is rescinded by that section. 4
former workers compensation top-up award provision means 5
the provision of the award referred to in section 199J that is 6
rescinded by that section. 7
new insurance policy commencement date, in relation to an 8
injury to a police officer, means the date on and from which the 9
police officer is covered in respect of death or disability arising 10
from any such injury under an approved death and disability 11
insurance policy. 12
- (2) Except as provided by this section, a police officer who dies or is 13
discharged from the NSW Police Force after the commencement 14
of this Part is not entitled to any payments under the former death 15
and disability award. 16
- (3) If: 17
- (a) the NSW Police Force had, before the commencement of 18
this Part, received a report of a medical examination of a 19
police officer by an independent medical practitioner 20
agreed to by the Commissioner and the police officer, and 21
 - (b) the report indicates that the police officer suffers a 22
disability that results in the police officer being 23
incapacitated for work as a police officer, and 24
 - (c) the police officer had not been discharged from the NSW 25
Police Force before the commencement of this Part 26
because of that disability, 27
- the provisions of the former death and disability award relating to 28
payments for temporary or partial incapacity continue to apply in 29
respect of that disability of that police officer despite the 30
rescission of the award. 31
- Note.** See subsection (6) for preservation of entitlements relating to 32
death or permanent and total incapacity under insurance policies taken 33
out pursuant to the award. 34
- (4) A police officer: 35
- (a) who suffers a disability arising from an injury before the 36
new insurance policy commencement date, and 37
 - (b) who is not covered by the approved death and disability 38
insurance policy (or by an insurance policy referred to in 39
subsection (6)) in respect of that disability, and 40

(c) who is not entitled to a payment under subsection (3) in respect of that disability, and	1 2
(d) who would have been covered in respect of that disability under the former death and disability award, but for its rescission,	3 4 5
is entitled to be paid by the NSW Police Force in respect of that disability such amounts as are equivalent to the amounts that the police officer would have been paid under the approved death and disability insurance policy if that policy had covered the police officer.	6 7 8 9 10
(5) Despite the rescission of the former workers compensation top-up award provision, police officers in receipt of weekly compensation payments under the <i>Workers Compensation Act 1987</i> on the commencement of this Part continue to be entitled to payments under that provision for a period of 6 months after the commencement of this Part.	11 12 13 14 15 16
(6) This section does not affect any entitlements under an insurance policy that has been taken out on behalf of police officers before the commencement of this Part.	17 18 19
Note. Existing insurance policies taken out with First State Super cover police officers for death and for total and permanent incapacity and will continue to apply until replaced by coverage under an approved death and disability insurance policy.	20 21 22 23
(7) The rescission of the former death and disability award does not affect any entitlement to payments under that award in relation to the death or discharge of a police officer from the NSW Police Force before the rescission of the former award.	24 25 26 27
(8) This section is subject to the regulations made under clause 2 of Schedule 4.	28 29
199L Review of costs of scheme and advice to Minister and Treasurer	30
(1) The Commissioner is to keep under review the cost to the State of securing death and disability payments to or in respect of police officers under this Part.	31 32 33
(2) The Commissioner is to advise the Minister and the Treasurer from time to time of that cost to the State and of the percentage of the remuneration of police officers that it represents.	34 35 36
199M Review of effectiveness of scheme by Auditor-General	37
(1) The Auditor-General is to review whether the provisions of this Part and the injury management practices for police officers have	38 39

	improved the performance of the NSW Police Force in securing the return of injured police officers to duty.	1 2
(2)	The review is to be conducted within 12 months after the commencement of this Part (or within such further period as the Minister may approve on the recommendation of the Auditor-General).	3 4 5 6
(3)	The Commissioner is to ensure that the Auditor-General has access to such information as may be necessary to enable the Auditor-General to conduct the review.	7 8 9
(4)	The Auditor-General is to report to the Minister and to each House of Parliament on the results of the review as soon as practicable after the review is completed.	10 11 12
(5)	If a House of Parliament is not sitting when the Auditor-General seeks to present the report, the Auditor-General is to present the report to the Clerk of the House concerned.	13 14 15
[2]	Schedule 4 Savings, transitional and other provisions	16
	Insert at the end of clause 2 (1):	17
	<i>Police Amendment (Death and Disability) Act 2011</i>	18
[3]	Schedule 4, Part 22, clause 68	19
	Omit the definition of <i>police officers award</i> . Insert instead:	20
	<i>police officers award</i> means:	21
(a)	the <i>Crown Employees (Police Officers Death and Disability) Award 2005</i> , until its rescission by the <i>Police Amendment (Death and Disability) Act 2011</i> , and	22 23 24
(b)	after that rescission, the provisions of Part 9B of this Act and an approved death and disability insurance policy under that Part.	25 26 27

Schedule 2	Amendment of Police Regulation 2008	1
[1]	Clause 125 Procedure where workers compensation claimed	2
	Insert “(other than a police officer)” after “A member of the NSW Police Force” in clause 125 (3).	3 4
[2]	Clause 125A	5
	Insert after clause 125:	6
	125A Top-up of weekly workers compensation payments during first 6 months for police officers injured at work	7 8
	(1) This clause applies to a police officer who is in receipt of weekly compensation payments under the <i>Workers Compensation Act 1987</i> in connection with employment as a police officer and who continues to be employed in the NSW Police Force.	9 10 11 12
	(2) The NSW Police Force is to pay any such police officer, during the first 26 weeks of incapacity referred to in section 36 of the <i>Workers Compensation Act 1987</i> , an amount representing the difference between the amount of weekly compensation payments received under that Act and the ordinary rate of pay of the police officer.	13 14 15 16 17 18
	(3) A police officer’s entitlements to sick leave or other leave are not affected by the additional payments under this clause.	19 20
	(4) The ordinary rate of pay of a police officer for the purposes of this clause includes loadings and allowances in the nature of salary.	21 22
[3]	Clause 136 Prescription of police officers award	23
	Omit the clause.	24

Schedule 3	Amendment of State Authorities Superannuation Act 1987 No 211	1
		2
Part 5D		3
Omit the Part. Insert instead:		4
Part 5D	Death or disability benefits for police officers	5
		6
46AI	Definitions	7
	In this Part:	8
	<i>amending Act</i> means the <i>Police Amendment (Death and Disability) Act 2011</i> .	9
	<i>approved death and disability insurance policy</i> has the meaning it has in Part 9B of the <i>Police Act 1990</i> .	10
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		12
46AJ	Application of Part	13
	This Part has effect despite any other provision of this Act or the regulations.	14
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46AK	Death and disability of police officers	16
(1)	The regulations may make provision for or with respect to the following:	17
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(a)	the effect on coverage under this Act for an additional benefit, and liability to pay the additional benefit levy, of a contributor or former contributor who is or was a police officer and who is covered under an approved death and disability insurance policy,	19
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(b)	preventing the repayment of any additional benefit levy paid by a contributor or former contributor who is or was a police officer,	24
		25
		26
(c)	any other matter that is necessary or convenient for the purposes of complying with or giving effect to Part 9B of the <i>Police Act 1990</i> , an approved death and disability insurance policy or this Part.	27
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(2)	Any such regulations may take effect from the date of commencement of this Part, as inserted by the amending Act, or the date on which an approved death and disability insurance policy first applies to a police officer (whichever is earlier).	31
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- (3) Without limiting section 46AJ, regulations may be made under this Part that are inconsistent with Part 3, 4, 5 or 6 of this Act, or any regulations made under those Parts, but only to the extent that the inconsistency with any of those provisions is necessary for the purpose of compliance with or giving effect to Part 9B of the *Police Act 1990* or to an approved death and disability insurance policy.
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Schedule 4	Amendment of Industrial Relations Act	1
	1996 No 17	2
[1] Section 105 Definitions		3
Insert after section 105 (2):		4
(3) A contract relating to the employment of a police officer is not an unfair contract for the purposes of this Part merely because of a matter relating to payments of a kind to which section 146D applies.		5 6 7 8
[2] Section 146D		9
Insert after section 146C:		10
146D Commission has no jurisdiction in respect of death and disability payments for police officers		11 12
(1) The Commission does not have jurisdiction or power to make or vary any award or order that provides for death and disability payments to or in respect of police officers.		13 14 15
(2) The Commission cannot, in any proceedings relating to the remuneration or other conditions of employment of police officers, treat any savings attributable to the operation of the <i>Police Amendment (Death and Disability) Act 2011</i> as employee-related cost savings that may offset increased employee-related costs arising from any award or order in those proceedings.		16 17 18 19 20 21 22
(3) This section does not apply to awards or orders:		23
(a) with respect to payments for accrued annual, extended or other leave on the death or termination of employment of police officers, or		24 25 26
(b) in proceedings to enforce accrued entitlements (including under an award, or provision of an award, rescinded by the <i>Police Amendment (Death and Disability) Act 2011</i>), or		27 28 29
(c) in proceedings on an appeal under section 186 of the <i>Police Act 1990</i> .		30 31
(4) An award or order of the Commission does not have effect to the extent that it is inconsistent with this section.		32 33
(5) This section extends to appeals or references to the Full Bench of the Commission.		34 35
(6) This section does not apply to the Commission in Court Session.		36

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- (7) This section extends to proceedings that are pending in the Commission on the commencement of this section, and to awards or orders made or varied by the Commission after the date on which the Bill for the *Police Amendment (Death and Disability) Act 2011* was introduced into Parliament. 1
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- (8) This section has effect despite section 10 or 146 or any other provision of this or any other Act. 6
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- (9) In this section: 8
award or order includes: 9
- (a) an award (as defined in the Dictionary) or an exemption from an award, and 10
11
 - (b) a decision to approve an enterprise agreement under Part 2 of Chapter 2, and 12
13
 - (c) the adoption under section 50 of the principles or provisions of a National decision or the making of a State decision under section 51, and 14
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16
 - (d) anything done in arbitration proceedings or proceedings for a dispute order under Chapter 3. 17
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- death and disability payments** has the meaning it has in Part 9B of the *Police Act 1990*. 19
20