

# Police Act 1990 No 47

[1990-47]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Police Service Act 1990
- **Does not include amendments by**  
[Compensation Court Repeal Act 2002 No 23](#) (not commenced — to commence on 1.1.2004 or on a day appointed by proclamation published in the Gazette before 1.1.2004)  
[Police Service Amendment \(NSW Police\) Act 2002 No 51](#), Sch 1 [12] (not commenced — to commence on the commencement of Sch 1.7 to the [Compensation Court Repeal Act 2002](#))  
[Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)

### Authorisation

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File last modified 7 July 2003

# Police Act 1990 No 47



New South Wales

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# Police Act 1990 No 47



New South Wales

An Act to establish NSW Police, to provide for the management of NSW Police and for the employment of its members of staff, and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Police Act 1990*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**administrative officer** means a member of NSW Police other than a police officer or a temporary employee.

**Assistant Commissioner** means a member of NSW Police whose position is described in Schedule 2 as that of an Assistant Commissioner.

**commissioned police officer** means a police officer of or above the rank of inspector.

**Commissioner** means the Commissioner of Police.

**Deputy Commissioner** means a member of NSW Police whose position is described in Schedule 2 as that of a Deputy Commissioner.

**GREAT** means the Government and Related Employees Appeal Tribunal established under the *Government and Related Employees Appeal Tribunal Act 1980*.

**merit**, in relation to a decision of the Commissioner to appoint or recommend for appointment a person to a position in NSW Police, means:

- (a) the possession by the person of qualifications determined in respect of the position by the Commissioner, and

- (b) the aptitude of the person for the discharge of the duties of the position, and
- (c) the integrity, diligence and good conduct of the person.

**non-commissioned police officer** means a police officer under the rank of inspector.

**NSW Police** means NSW Police established by this Act.

**NSW Police Senior Executive Service** means the NSW Police Senior Executive Service established by this Act.

**PIC Commissioner** means the Commissioner for the Police Integrity Commission.

**Police Integrity Commission** means the body of that name constituted by the [Police Integrity Commission Act 1996](#).

**police officer** means a member of NSW Police holding a position which is designated under this Act as a position to be held by a police officer.

**temporary employee** means a person temporarily employed in NSW Police under Part 7.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Notes in the text of this Act do not form part of the Act.

(4) In this Act, a reference to a Presiding Officer of a House of Parliament is a reference to the President of the Legislative Council or the Speaker of the Legislative Assembly.

(5) If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council.

(6) If there is a vacancy in the office of Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

## **Part 2 NSW Police**

### **4 Establishment of NSW Police**

NSW Police is established by this Act.

### **5 Composition of NSW Police**

NSW Police comprises the following members:

- (a) the Commissioner,
- (b) members of NSW Police Senior Executive Service,
- (c) all other police officers and administrative officers employed under this Act,
- (d) temporary employees.

## **6 Mission and functions of NSW Police**

- (1) The mission of NSW Police is to have the police and the community working together to establish a safer environment by reducing violence, crime and fear.
- (2) NSW Police has the following functions:
  - (a) to provide police services for New South Wales,
  - (b) to exercise any other function conferred on it by or under this or any other Act,
  - (c) to do anything necessary for, or incidental to, the exercise of its functions.
- (3) In this section:
  - police services*** includes:
    - (a) services by way of prevention and detection of crime, and
    - (b) the protection of persons from injury or death, and property from damage, whether arising from criminal acts or in any other way, and
    - (c) the provision of essential services in emergencies, and
    - (d) any other service prescribed by the regulations.
- (4) A reference in this section to the functions of NSW Police includes a reference to the functions of members of NSW Police.
- (5) The provision of police services in emergencies and rescue operations is subject to the [State Emergency and Rescue Management Act 1989](#) and to the [Essential Services Act 1988](#).

## **7 Statement of values of members of NSW Police**

Each member of NSW Police is to act in a manner which:

- (a) places integrity above all,
- (b) upholds the rule of law,
- (c) preserves the rights and freedoms of individuals,
- (d) seeks to improve the quality of life by community involvement in policing,

- (e) strives for citizen and police personal satisfaction,
- (f) capitalises on the wealth of human resources,
- (g) makes efficient and economical use of public resources, and
- (h) ensures that authority is exercised responsibly.

## **8 Commissioner to manage and control NSW Police**

- (1) The Commissioner is, subject to the direction of the Minister, responsible for the management and control of NSW Police.
- (2) The responsibility of the Commissioner includes the effective, efficient and economical management of the functions and activities of NSW Police.
- (3) The Commissioner may classify the various duties that members of NSW Police are required to perform and allocate the duties to be carried out by each such member.
- (4) The Commissioner may issue (and from time to time amend or revoke) instructions to members of NSW Police with respect to the management and control of NSW Police.
- (5) This section is subject to the other provisions of this Act and the regulations.

## **9 (Repealed)**

## **10 Positions in NSW Police**

- (1) In addition to the position of Commissioner, the positions in NSW Police consist of such positions as the Commissioner may determine in accordance with this Act.
- (2) The Commissioner:
  - (a) may create, abolish or otherwise deal with any position in NSW Police, and
  - (b) must classify and grade each such position.
- (3) (Repealed)
- (4) Police officers of the rank of constable (or such of those police officers as the Commissioner determines) are to be appointed to that rank or to a grade within that rank, and not to a separate position in NSW Police.
- (5) Temporary employees are members of, but do not hold positions in, NSW Police.
- (6) The Commissioner may establish, or abolish, or change the name of, any branch or other part of NSW Police (other than NSW Police Senior Executive Service).

## **11 Designation of police officers**

- (1) The Commissioner is required to designate the positions in NSW Police which are to be



held by police officers.

- (2) A position in NSW Police is to be so designated if the Commissioner is satisfied that the holder will be required to carry out, or will be concerned in, operational police duties or that it is otherwise appropriate to do so.
- (3) The Commissioner may not designate such a position while it is being held by an administrative officer or remove the designation of such a position while it is being held by a police officer.
- (4) The Commissioner is a police officer.
- (5) A temporary employee is not eligible to be a police officer.

## **12 Ranks and grades of police officers**

- (1) The ranks of police officers within NSW Police are (in descending order) as follows:
  - (a) Commissioner.
  - (b) Member of NSW Police Senior Executive Service.
  - (c) Superintendent (other than a member of NSW Police Senior Executive Service).
  - (d) Inspector.
  - (e) Sergeant.
  - (f) Constable.
- (2) The Commissioner, with the approval of the Minister, may specify different ranks for police officers within NSW Police Senior Executive Service.
- (3) The regulations may specify grades within the ranks of superintendent, inspector, sergeant and constable.

## **13 Oath to be taken by persons exercising police functions**

- (1) Before a person exercises any of the functions of a police officer, the person must take the oath or make the affirmation of office as a police officer in accordance with the regulations.
- (2) A police officer is not required to take a further oath or make a further affirmation after a change in the officer's position in NSW Police, so long as the officer remains in NSW Police.

## **14 Additional functions of police officers**

In addition to any other functions, a police officer has the functions conferred or imposed on a constable by or under any law (including the common law) of the State.

## Part 3 Protective Security Group

### 15 Definitions

In this Part:

**charter** means the charter of the Group as determined from time to time by the Commissioner and approved by the Minister.

**Group** means the Protective Security Group of NSW Police.

### 16 Audit of Group

- (1) The Commissioner is required to carry out an annual audit of the operations, policies and procedures of the Group.
- (2) The audit is to include an examination of the following matters:
  - (a) whether the Group as a whole is adhering to its charter and is effectively performing its role as provided in its charter,
  - (b) whether the members of the Group are adhering to its charter,
  - (c) whether proper procedures exist and are being adhered to by the Group in connection with the use and payment of informants,
  - (d) whether proper procedures exist and are being adhered to by the Group for the recording and use of intelligence gathered by the Group.
- (3) An audit is to be made in respect of each calendar year commencing with the year in which this subsection commences.
- (4) A written report of the annual audit is to be furnished to the Police Integrity Commission as soon as practicable after the end of the year concerned.

### 17 Special review of Group

- (1) The Commissioner is required to cause to be carried out by a Deputy Commissioner a special review of the operations, policies and procedures of the Group as soon as practicable after the conclusion of the Sydney Olympic Games.
- (2) The special review is to include an examination of the following matters:
  - (a) whether the Group has adhered to its charter, particularly in relation to matters associated with the Sydney Olympic Games,
  - (b) whether the Group will have an effective role to perform in the future.
- (3) A written report of the special review is to be furnished to the Minister and the Police Integrity Commission as soon as practicable after the review has been carried out.

(4) In this section:

**Sydney Olympic Games** means the Olympic Games of the XXVII Olympiad in Sydney in the year 2000.

#### **18 Other functions not affected**

The provisions of this Part are additional to any other functions that are exercisable in relation to the Group, and in particular do not limit or affect any arrangements that may otherwise exist or be made regarding the oversight, supervision or control of the Group or its operations, policies and procedures.

#### **19-23 (Repealed)**

### **Part 4 The Commissioner of Police**

#### **24 Appointment of Commissioner**

- (1) The Commissioner of Police is to be appointed by the Governor on the recommendation of the Minister.
- (2) It does not matter whether the person appointed is or is not already a member of NSW Police.
- (3) In particular, it does not matter whether the person appointed is or is not a police officer at the time of appointment.
- (4) If it is proposed to make an appointment to the office of Commissioner, the Minister is required to invite applications for appointment to that office.
- (5) However, the Minister is not required to invite applications for appointment if the Minister proposes to recommend the re-appointment of the person currently holding office as Commissioner.
- (6) It is the duty of the Minister, before recommending the appointment of a person to the office of Commissioner:
  - (a) to make inquiries (from the Police Integrity Commission, and the Commander, Special Crime and Internal Affairs, and from any other person or body the Minister considers appropriate) as to the person's integrity, and
  - (b) to have regard to any information that comes to the Minister's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
- (7) The Police Integrity Commission, subject to the [Police Integrity Commission Act 1996](#), and the Commander, Special Crime and Internal Affairs, are required to furnish a report to the Minister (on the basis of the information available to the Commission or the Commander and without the need for any special investigation or inquiry) on the

person the subject of an inquiry referred to in subsection (6) (a).

- (8) The Minister must, before recommending the appointment of a person to the office of Commissioner:
  - (a) require the person to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the person has not knowingly engaged in specified misconduct or any other misconduct, and
  - (b) have regard to the statutory declaration so provided.
- (9) A person who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (8) is ineligible for appointment to the office of Commissioner.
- (10) The failure, refusal or inability of a person to provide the statutory declaration must not be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed to the office of Commissioner.

## **25 Acting Commissioner**

- (1) The Governor may appoint a member of NSW Police recommended by the Minister to act as Commissioner during the illness or absence of the Commissioner or during any vacancy in the office of Commissioner.
- (2) Any such member, while acting as Commissioner, has all the functions of the Commissioner.
- (3) The Governor, on the recommendation of the Minister, may at any time terminate the appointment of any such member to act as Commissioner.

## **26 Term appointment of Commissioner**

Subject to this Act, the Commissioner holds office for such period (not exceeding 5 years) as is specified in the Commissioner's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **27 Employment and remuneration of Commissioner**

- (1) The employment of the Commissioner is to be governed by a contract of employment between the Commissioner and the Minister.
- (2) Sections 41-47, 59 and 61 (relating to employment and remuneration of executive officers) apply to the Commissioner in the same way as they apply to an executive officer. However, in the application of those sections a reference to the Commissioner is to be read as a reference to the Minister.

## **28 Removal of Commissioner**

- (1) The Governor may remove the Commissioner from office on the recommendation of the Minister at any time for any or no reason and without notice.
- (2) The Governor, on the recommendation of the Minister:
  - (a) may declare the person so removed from office as Commissioner to be an unattached officer in the service of the Crown, and
  - (b) may revoke any such declaration.
- (3) A recommendation of the Minister under subsection (1) may be made only after the Minister:
  - (a) has notified the Police Integrity Commission that the Minister intends to recommend that the Commissioner be removed from office, and
  - (b) has given the Police Integrity Commission a reasonable opportunity to comment on the proposed recommendation.
- (4) While such a declaration remains in force, the person concerned is entitled to monetary remuneration and employment benefits as if the person had not been removed from office.
- (5) If:
  - (a) the Commissioner is removed from office and such a declaration is not made, or
  - (b) a declaration that is made is revoked,the person concerned ceases to be employed in the service of the Crown, unless appointed to another position in the service of the Crown.
- (6) A declaration under this section, unless sooner revoked, is revoked on the date on which the term of office of the person as Commissioner would have expired.
- (7) A person removed from office as Commissioner (except for misbehaviour after due inquiry) is entitled to the same compensation under section 53 as an executive officer removed from office as referred to in that section.
- (8) The Commissioner may be removed from office only under this section.

## **29 (Repealed)**

## **30 Vacation of office by Commissioner**

- (1) The office of Commissioner becomes vacant if the Commissioner:
  - (a) dies, or

- (b) completes a term of office and is not re-appointed, or
  - (c) is removed from office under section 28, or
  - (d) retires from office under this or any other Act, or
  - (e) resigns his or her office in writing addressed to the Minister.
- (2) The retirement or resignation of a Commissioner does not take effect until:
- (a) the Minister accepts the retirement or resignation, or
  - (b) the Commissioner has given the Minister at least 4 weeks' notice in writing of the day on which the Commissioner intends to retire or resign and the Commissioner is not on that day under official investigation for misbehaviour.
- (3) The Commissioner is under official investigation for misbehaviour if the Minister so certifies.

### **31 Delegation by Commissioner**

The Commissioner may delegate to another member of NSW Police any of the functions conferred or imposed on the Commissioner by or under this or any other Act, other than this power of delegation.

## **Part 5 NSW Police Senior Executive Service**

### **Division 1 Preliminary**

#### **32 Definitions**

- (1) In this Part:

**contract of employment** means a contract of employment under this Part between an executive officer and the Commissioner.

**executive officer** means a person holding a position referred to in Schedule 2.

**executive position** means a position referred to in Schedule 2.

**remuneration package** means the remuneration package for an executive officer determined for the time being under the [Statutory and Other Offices Remuneration Act 1975](#).

- (2) In this Part, a reference to the remuneration package for an executive officer is, if a range of amounts has been determined by the Statutory and Other Offices Remuneration Tribunal, a reference to:
- (a) the amount within that range nominated in the officer's contract of employment,
  - or

(b) in any other case—the minimum amount within that range.

## **Division 2 Composition of NSW Police Senior Executive Service**

### **33 Composition of NSW Police Senior Executive Service**

NSW Police Senior Executive Service comprises the persons holding the positions referred to in Schedule 2.

### **34 Amendment or substitution of Schedule 2**

- (1) The Governor may, by proclamation, amend Schedule 2 by inserting the description of any position, or by omitting or amending any such description.
- (2) The Governor may, by proclamation, omit Schedule 2 and insert instead a Schedule containing descriptions of positions.

### **35 Positions which may be included in Schedule 2**

- (1) The description of a position may be included in Schedule 2 by proclamation under this Division only if the position is a position in NSW Police recommended by the Commissioner for inclusion in NSW Police Senior Executive Service.
- (2) The position of either a police officer or an administrative officer may be included in Schedule 2.
- (3) The position of a police officer may not be included in Schedule 2 unless it is held or to be held by a police officer who is of or above the rank of superintendent.
- (4) The position of the Commissioner may not be included in Schedule 2.

## **Division 3 Appointment of executive officers**

### **36 Appointments to executive positions**

- (1) Appointments to vacant executive positions are to be made:
  - (a) by the Governor on the recommendation of the Commissioner, in the case of appointments to the position of Deputy Commissioner or Assistant Commissioner, or
  - (b) by the Commissioner, in any other case.
- (2) A recommendation referred to in subsection (1) (a) may not be submitted to the Governor except with the approval of the Minister.
- (3) It does not matter whether the person appointed is or is not already a member of NSW Police.
- (4) In particular, it does not matter whether a person appointed to a position designated

as a position to be held by a police officer is or is not a police officer at the time of appointment.

### **37 Acting appointments to executive positions**

- (1) The Commissioner may appoint a member of NSW Police to act in an executive position which is vacant or the holder of which is suspended, sick or absent.
- (2) A person, while acting in any such executive position, has all the functions of the holder of the position (but is not to be taken to be an executive officer for the purposes of this Part).
- (3) The Commissioner may, at any time, terminate the appointment of a person to act in any such executive position.

### **38 Advertising of vacancies**

If it is proposed to make an appointment under this Part to a vacant executive position, the Commissioner:

- (a) may advertise the vacancy (in such manner as the Commissioner thinks fit) generally or (with the approval of the Minister) among members of NSW Police only, or
- (b) may, in such cases as the Commissioner considers appropriate and with the approval of the Minister, recommend the appointment of, or appoint, a member of NSW Police without advertising the vacancy.

### **38A (Repealed)**

### **39 Appointment to be made on merit**

- (1) In deciding to make a recommendation for the appointment of, or to appoint, a person to a vacant executive position which has been duly advertised:
  - (a) the Commissioner may only select a person who has duly applied for appointment to the vacant position, and
  - (b) the Commissioner must, from among the applicants eligible for appointment to the position, select the applicant who has, in the opinion of the Commissioner, the greatest merit.
- (2) In deciding to make a recommendation for the appointment of, or to appoint, a person to a vacant executive position which has not been duly advertised:
  - (a) the Commissioner may only select a member of NSW Police who is a police officer or an administrative officer (as the case requires), and
  - (b) the Commissioner must, from among the eligible members of NSW Police, select the member who has, in the opinion of the Commissioner, the greatest merit.



- (3) It is the duty of the Commissioner, before recommending the appointment of, or appointing, a person to a vacant executive position:
- (a) to make inquiries (from the Police Integrity Commission, and the Commander, Special Crime and Internal Affairs, and from any other person or body the Commissioner considers appropriate) as to the person's integrity, and
  - (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
- (4) The Police Integrity Commission, subject to the *Police Integrity Commission Act 1996*, and the Commander, Special Crime and Internal Affairs, are required to furnish a report to the Commissioner (on the basis of the information available to the Commission or the Commander and without the need for any special investigation or inquiry) on the person the subject of an inquiry referred to in subsection (3) (a).
- (5) As soon as practicable after a person is appointed to a vacant executive position, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed.
- (5A) The Commissioner must, before recommending the appointment of, or appointing, a person to a vacant executive position:
- (a) require the person to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the person has not knowingly engaged in specified misconduct or any other misconduct, and
  - (b) have regard to the statutory declaration so provided.
- (5B) A person who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (5A) is ineligible for appointment to the position concerned.
- (5C) The failure, refusal or inability of a person to provide a statutory declaration in accordance with a requirement made under subsection (5A) must not be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed to the position concerned.
- (5D) Subsections (5A)–(5C) do not apply in relation to a person who has applied for appointment to a vacant executive position who is not, and has never been, a police officer (whether a member of NSW Police, or the Police Force, by whatever name described, of another State or Territory, or of another country).
- (6) If the vacant executive position is that of the Commander, Special Crime and Internal Affairs, the functions of that Commander under this section are to be exercised by a Deputy Commissioner nominated by the Commissioner.

### **39A Eligibility lists**

- (1) When a vacant executive position is advertised in accordance with this Act, the Commissioner may, in connection with a determination of the merit of the persons eligible for appointment to the position, create an eligibility list for the position.
- (2) An eligibility list for a position is a list of eligible applicants (namely, the persons who duly applied for appointment to the position and, subject to section 39 (5A) and (5B), are eligible for appointment) arranged in order of merit as determined by the Commissioner.
- (3) An eligibility list for a position remains current for 6 months after the list was created.
- (4) An eligibility list need not comprise all the eligible applicants so long as the applicants on the list are those of greatest merit. An eligibility list may even comprise only one eligible applicant so long as that applicant is the applicant of greatest merit.
- (5) In deciding to make an appointment of a person to a vacant position that has not been advertised in accordance with this Act, the Commissioner may (despite section 38 (b)) select from the persons who are on an eligibility list that is current and applicable to the position (and who are available for appointment) the person with the greatest merit according to the order of merit in the eligibility list.
- (6) An eligibility list is applicable not only to the position in relation to which it was created but also to any other position that the Commissioner determines it should be applicable to on the basis that the position is substantially the same as the position in relation to which the list was created.

## **Division 4 Employment of executive officers**

### **40 Term appointments**

Subject to this Act, an executive officer holds office for such period (not exceeding 5 years) as is specified in the officer's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **41 Employment of executive officers to be governed by contract of employment**

- (1) The employment of an executive officer shall be governed by a contract of employment between the officer and the Commissioner.
- (2) A contract of employment may be made before or after the appointment of the executive officer concerned.
- (3) An executive officer is not appointed by, nor is an executive officer's term of office fixed by, the contract of employment.
- (4) A contract of employment may be varied at any time by a further contract between

the parties.

- (5) A contract of employment may not vary or exclude a provision of this Act or the regulations.
- (6) The Commissioner acts for and on behalf of the Crown in any contract of employment between the officer and the Commissioner.

#### **42 Matters regulated by contract of employment**

- (1) The matters to be dealt with in a contract of employment between an executive officer and the Commissioner include the following:
  - (a) the duties of the executive officer's position (including performance criteria for the purpose of reviews of the officer's performance),
  - (b) the monetary remuneration and employment benefits for the executive officer as referred to in Division 5 (including the nomination of the amount of the remuneration package if a range of amounts has been determined for the remuneration package),
  - (c) any election by the executive officer to retain a right of return to the public sector under section 52.
- (2) A contract of employment may provide for any matter to be determined:
  - (a) by further agreement between the parties, or
  - (b) by further agreement between the executive officer and some other person specified in the contract, or
  - (c) by the Commissioner or other person or body specified in the contract.

#### **43 Performance reviews**

- (1) An executive officer's performance must be reviewed, at least annually, by the Commissioner or by some person nominated by the Commissioner.
- (2) Any such review is to have regard to the agreed performance criteria for the position and any other relevant matter.

#### **44 Industrial arbitration and legal proceedings excluded**

- (1) In this section, a reference to the employment of an executive officer is a reference to:
  - (a) the appointment of, or failure to appoint, a person to a vacant executive position, or
  - (b) the removal, retirement, termination of employment or other cessation of office of an executive officer, or

- (c) any disciplinary proceedings or disciplinary action taken against an executive officer, or
  - (d) the remuneration or conditions of employment of an executive officer.
- (2) The employment of an executive officer, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (2A) Part 6 (Unfair dismissals) and Part 9 (Unfair contracts) of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of an executive officer.
- (3) Subsection (2) applies whether or not any person has been appointed to a vacant executive position.
- (4) Any award or industrial agreement (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of executive officers.
- (5) Subsection (4) does not prevent the regulations or other statutory instruments under this Act from applying the provisions of an award or industrial agreement to the employment of an executive officer.
- (6) An appeal does not lie to GREAT in relation to the employment of an executive officer.
- (7) No proceedings for an order in the nature of prohibition, certiorari or mandamus, or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to a vacant executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.
- (8) In this section, **industrial agreement** includes any determination under section 85 and any agreement under section 86.

## Division 5 Remuneration of executive officers

### 45 Definitions

In this Division:

**approved** means approved for the time being for the purposes of this Division by the Minister, either generally or in relation to any executive officer or class of executive officers.

**employment benefit** means:

- (a) contributions payable to a superannuation scheme by the Crown in respect of the

officer, including any liability of the Crown to make any such contributions or to pay approved costs associated with that scheme, or

- (b) the provision by the Crown of a motor vehicle for private use by the officer, or
- (c) the right of return to the public sector under section 52 by an executive officer who elects to retain that right, or
- (d) the entitlement of an executive officer to approved leave with pay, or
- (e) any other approved benefit provided to an executive officer at the cost of the Crown (being a benefit of a private nature).

**monetary remuneration** includes allowances paid in money, but does not include:

- (a) travelling or subsistence allowances, or
- (b) allowances in relation to relocation expenses, or
- (c) any other allowances in relation to expenses incurred in the discharge of an executive officer's duties.

**superannuation scheme** means a superannuation scheme established by or under an Act or approved for the purposes of this definition.

#### **46 Monetary remuneration and employment benefits for executive officers**

- (1) Executive officers are entitled to monetary remuneration at such rate, and employment benefits of such kinds, as are provided in their contracts of employment.
- (1A) Contributions payable to a superannuation scheme by an executive officer's employer in respect of the officer that are required to be made by the employer under a law of the State relating to superannuation are, until provided for by the officer's contract of employment, taken to be an employment benefit provided in the contract.
- (2) The total amount of:
  - (a) the annual rate of monetary remuneration for an executive officer, and
  - (b) the annual cost of employment benefits provided for the executive officer under the contract of employment,is to be equal to the amount of the remuneration package for the executive officer.
- (3) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner.
- (4) This section does not affect:
  - (a) any approved performance-related incentive payments made to an executive

officer, or

(b) any remuneration or benefits to which an executive officer is otherwise entitled by law (such as statutory or agreed fees for attendance at meetings or the like).

- (5) A contract of employment may provide for the payment of part of the monetary remuneration under the contract to be made in the form of a periodic leave loading.
- (6) An executive officer is entitled to be paid an amount equivalent to the cost of a part of any entitlement to take annual or extended leave with pay if:
- (a) the officer forgoes with the approval of the Commissioner the right to take that part of that leave, and
  - (b) the cost of that part of that leave has been included in the officer's contract of employment as an employment benefit.
- (7) Subsection (6) has effect despite anything to the contrary in the *Annual Holidays Act 1944* or any other Act.
- (8) During any period when the monetary remuneration and employment benefits for an executive officer cannot be determined under subsection (1), the officer is entitled to monetary remuneration at the rate of the amount of the remuneration package for the officer, subject to any subsequent adjustment of payments in accordance with the officer's contract of employment.
- (9) If the remuneration package for an executive officer is varied, the officer is entitled to monetary remuneration and employment benefits in accordance with the officer's contract of employment pending any necessary variation of the contract and adjustment of payments to comply with this section with effect from the date of the variation.

#### **47 Travelling and subsistence allowances etc**

- (1) An executive officer is entitled to be paid:
- (a) such travelling and subsistence allowances, and
  - (b) such allowances in relation to relocation expenses, and
  - (c) such other allowances in relation to expenses incurred in the discharge of the officer's duties,
- as the Commissioner may from time to time determine in respect of the officer.
- (2) An executive officer's contract of employment:
- (a) may provide for the payment to the officer of allowances of the kinds referred to in this section, and

(b) may regulate the payment of allowances to the officer under this section.

## **Division 6 Removal, retirement etc of executive officers**

### **48 Definitions**

A reference in this Division to:

- (a) employment in the public sector is a reference to employment as a member of NSW Police or as an officer in the Public Service or a Teaching Service or as an officer in the service of a public authority, and
- (b) engagement in the public sector is a reference to employment in the public sector or to the holding of a statutory office.

### **49 Vacation of executive positions**

- (1) The position of an executive officer becomes vacant if the officer:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) is removed from office, or retires or is retired from office, under this or any other Act, or
  - (d) resigns his or her position in writing addressed to the Commissioner.
- (2) The retirement or resignation of an executive officer does not take effect until:
  - (a) the Commissioner accepts the retirement or resignation, or
  - (b) the executive officer has given the Commissioner at least 4 weeks' notice in writing of the day on which the officer intends to retire or resign and the officer is not under suspension from office on that day.

### **50 (Repealed)**

### **51 Removal of executive officers from office**

- (1) An executive officer may be removed from office at any time for any or no reason and without notice:
  - (a) by the Governor on the recommendation of the Commissioner, in the case of a Deputy Commissioner or Assistant Commissioner, or
  - (b) by the Commissioner, in any other case.
- (1A) A recommendation referred to in subsection (1) (a) may not be submitted to the Governor except with the approval of the Minister.

- (2) The Commissioner:
  - (a) may declare an executive officer who is removed from an executive position under subsection (1) to be an unattached officer in NSW Police, and
  - (b) may revoke any such declaration.
- (3) While a declaration under subsection (2) remains in force, the person to whom the declaration relates:
  - (a) is to be regarded as an executive officer, although not holding an executive position, and
  - (b) is entitled to monetary remuneration and employment benefits as if the person had not been removed from his or her position.
- (4) If:
  - (a) an executive officer is removed from an executive position under subsection (1) and a declaration is not made in relation to the officer under subsection (2), or
  - (b) a declaration under subsection (2) made in relation to an executive officer is revoked,

the officer ceases to be an executive officer, unless appointed to another executive position.
- (5) A member of NSW Police who ceases to be an executive officer because of subsection (4) ceases to be a member of NSW Police, unless appointed to another position in NSW Police.
- (6) The making of a declaration under subsection (2) in relation to an executive officer does not prevent the officer from ceasing to be an executive officer because of the completion of the officer's term of office.
- (7) This section does not prevent an executive officer being removed from office apart from this section.

## **52 Right to return to public sector for certain executive officers**

- (1) An executive officer may elect to retain a right of return to the public sector if:
  - (a) the officer was engaged in the public sector on a full-time basis when he or she first became an executive officer, and
  - (b) for at least some part of that engagement the person was an employee in the public sector.
- (2) Any such election:



- (a) may be made in the first contract of employment entered into by the executive officer, but (unless made in that first contract) may not be made in any subsequent contract for the same or another executive position, and
  - (b) is revoked if the election is not made by the executive officer in a subsequent contract of employment, and
  - (c) may be revoked by the executive officer by notice in writing to the Commissioner, and
  - (d) if revoked, may not be made again.
- (2A) Despite any other provision of this section, an executive officer may not make an election under this section after the commencement of this subsection (as inserted by the *Police Legislation Further Amendment Act 1996*) unless an election by the executive officer under this section was in force immediately before the commencement of this subsection.
- (3) If an executive officer has elected to retain a right of return to the public sector, the officer's contract of employment must provide for the cost of that right as part of the officer's remuneration package under Division 5.
- (4) An executive officer who has elected to retain a right of return to the public sector is entitled to an engagement in the public sector if the person ceases to be an executive officer and is not re-appointed to the same or another executive position.
- (5) A person is not entitled to an engagement in the public sector under this section if the person ceased to be an executive officer because the person resigned, was (after due inquiry) removed from office for misbehaviour or was removed from NSW Police under section 181D.
- (6) The engagement in the public sector to which a person is entitled under this section is to be an engagement in any part of the public sector at a salary not lower than the current maximum salary for:
- (a) the previous engagement of the person as such an employee within the public sector, or
  - (b) a clerk (grade 12) in the Public Service,
- whichever is the lesser.
- (7) A person who is entitled to such an engagement is not entitled to any compensation for ceasing to hold office as an executive officer or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).
- (8) Subsection (7) does not prevent the payment of additional remuneration to a person

who is engaged in the public sector under this section in order to maintain, in accordance with the Crown's redeployment policy, the level of the person's previous remuneration package for a period after the person ceases to be an executive officer.

- (9) If an executive officer has not entered into a contract of employment and is eligible to make an election under this section:
- (a) the officer is (until the officer enters into a contract of employment) to be taken to have made an election under this section, but may revoke that election, and
  - (b) the cost (under Division 5) of the right of return to the public sector in accordance with that election is to be deducted from the officer's remuneration.
- (10) A reference in this section to an executive officer ceasing to be an executive officer is, in the case of an executive officer removed from office under section 51, a reference to an executive officer ceasing to be such an officer as referred to in section 51 (4).

### **53 Compensation where executive officer has no right to return to public sector**

- (1) This section applies to:
- (a) an executive officer who is removed from office under section 51 and who ceases to be an executive officer as referred to in section 51 (4), or
  - (b) an executive officer who is otherwise removed from office (except for misbehaviour after due inquiry), or
  - (c) (Repealed)
  - (d) an executive officer who was employed in the public sector when first appointed as an executive officer, whose term of office as an executive officer expires and who is not re-appointed,
- being a person who is not entitled to be engaged in the public sector under section 52.
- (2) A person to whom this section applies is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.
- (3) The Statutory and Other Offices Remuneration Tribunal:
- (a) may determine that compensation is payable for the failure to re-appoint an executive officer only if the Tribunal is satisfied that the person had a reasonable expectation of being re-appointed, and
  - (b) must have regard to any general directions given to the Tribunal by the Minister administering the *Statutory and Other Offices Remuneration Act 1975* as to the matters to be taken into consideration when it makes determinations under this

section.

- (4) The maximum compensation payable is an amount equal to the person's remuneration package for the period of 38 weeks.
- (5) The person is not entitled to any other compensation for the removal or retirement from office or for the failure to re-appoint the person or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).
- (6) An executive officer who is removed from office or not re-appointed is not entitled to compensation under this section if:
  - (a) the person is appointed on that removal or expiry of the term of office to another executive position, and
  - (b) the remuneration package for the holder of that position is not less than the remuneration package for the holder of the former position.
- (7) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation relates.
- (8) The person may not be engaged in the public sector during the period so specified, unless arrangements are made for a refund of the proportionate amount of the compensation.

#### **54 Election to take compensation**

- (1) An executive officer who is entitled to be engaged in the public sector under section 52 may, before being so engaged, elect in writing to take compensation referred to in section 53.
- (2) On the election taking effect, the person ceases to be entitled to be engaged in the public sector under section 52.

### **Division 7 General**

#### **55 Appointment of incumbent officers to executive positions**

- (1) When a position becomes an executive position, the person (if any) holding the position is to continue to hold that position until the person or some other person is duly appointed to the position.
- (2) While the person continues to hold the position, the conditions of employment (including remuneration) of the person are to be the same as those that applied to the person immediately before the position became an executive position.

- (3) The person who continues to hold the position may be appointed to the position without the vacancy being advertised.
- (4) If the person who continues to hold the position is not appointed to the position or to any other executive position, sections 52–54 apply to the person as if he or she had elected to retain a right of return to the public sector.

#### **56 Incumbent officers—accrued leave**

- (1) A person who:
  - (a) was engaged in the public sector when appointed to an executive position (not being a person who held another executive position immediately before that appointment), and
  - (b) had a right to accrued extended or annual leave with pay immediately before that appointment, and
  - (c) has not taken that leave before taking up duties in the executive position, is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.
- (2) An election under this section is to be made within the time and in the manner determined by the Commissioner.
- (3) The money value of leave is to be calculated at the rate of pay of the person immediately before appointment to the executive position.
- (4) A person who was engaged in the public sector when appointed to an executive position retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the appointment (except any accrued leave which is paid out by a gratuity under subsection (1)).
- (5) A reference in this section to an engagement in the public sector is a reference to such an engagement as defined in Division 6.

#### **57 Change in status of positions**

- (1) If a position ceases to be an executive position because of its omission from Schedule 2 by a proclamation:
  - (a) the position is not thereby abolished, and
  - (b) any person holding the position is to be taken to have been appointed to the position in accordance with the relevant provisions.
- (2) However, the proclamation by which a position is omitted from Schedule 2 may direct

that the person holding the position is to cease to hold the position, but only if the person was not employed in the public sector (within the meaning of Division 6) immediately before last becoming an executive officer.

- (3) The person to whom any such direction relates ceases to hold the position concerned and has the same rights and obligations as the person would have if the person had ceased to be an executive officer as referred to in section 51 (4).
- (4) A proclamation that amends Schedule 2 may contain other provisions of a savings or transitional nature consequent on a position becoming or ceasing to be an executive position.

### **58 Change in title of positions**

A position referred to in Schedule 2 does not cease to be an executive position merely because of a change in the title of the position.

### **59 Approval to engage in other paid employment**

An executive officer must not engage in any paid employment outside the duties of the executive position without the consent of the Commissioner.

### **60 Transfer of executive officers**

- (1) If the Commissioner considers it to be in the interests of NSW Police to do so, the Commissioner may transfer an executive officer from one executive position to another executive position (being a position with the same remuneration package).
- (2) A transfer under this section may be made only if the executive officer possesses the qualifications determined by the Commissioner for the other position.

### **61 Operation of Part**

This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of or a contract with a person.

## **Part 6 Non-executive officers of NSW Police**

### **Division 1 Preliminary**

#### **62 Officers to whom Part applies**

This Part applies to all members of NSW Police (other than the Commissioner, members of NSW Police Senior Executive Service and temporary employees).

#### **63 Definitions**

In this Part:

***appointment*** means appointment by way of promotion or transfer or otherwise.

**non-executive commissioned police officer** means a commissioned police officer to whom this Part applies.

**non-executive officer** means a member of NSW Police to whom this Part applies.

**non-executive position** means the position of a member of NSW Police to whom this Part applies.

**vacant position**, in relation to a police officer position, means:

- (a) a position that is not held by a person, or
- (b) a position to which a person is temporarily appointed, or
- (c) a position that is held by a person who is temporarily appointed to another position in accordance with section 66 (1A), or
- (d) a position that is held by a person who has ceased to be temporarily appointed to another position in accordance with section 66 (1A) if that person has no right of return to the position because of section 66 (1B).

## **Division 2 Appointment of non-executive officers generally**

### **64 Appointments to non-executive positions**

- (1) An appointment (whether by way of transfer or promotion or otherwise) to a non-executive position is to be made by the Commissioner.
- (2) It does not matter whether the person appointed is or is not already a member of NSW Police.
- (3) In particular, it does not matter whether a person appointed to a position designated as a position to be held by a police officer is or is not a police officer at the time of appointment.
- (3A) It is the duty of the Commissioner, before appointing a person, by way of promotion, to a vacant non-executive police officer position:
  - (a) to make inquiries (from the Police Integrity Commission, and the Commander, Special Crime and Internal Affairs, and from any other person or body the Commissioner considers appropriate) as to the person's integrity, and
  - (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
- (4) It is the duty of the Commissioner, before appointing a person to a vacant non-executive administrative officer position:

- (a) to make inquiries (from any person or body the Commissioner considers appropriate) as to the person's integrity, and
- (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.

- (4A) The Police Integrity Commission, subject to the *Police Integrity Commission Act 1996*, and the Commander, Special Crime and Internal Affairs, are required to furnish a report to the Commissioner (on the basis of information available to the Commission or the Commander and without the need for any special investigation or inquiry) on any person the subject of an inquiry referred to in subsection (3A) (a).
- (5) The Police Integrity Commission is authorised (but not required) to furnish a report to the Commissioner on any person the subject of an inquiry referred to in subsection (4) (a).
- (6) As soon as practicable after a person is appointed to a vacant non-executive position, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed.

#### **65 Filling non-executive positions by either police or administrative officers**

- (1) If the Commissioner is satisfied that a non-executive position is suitable for either a police officer or an administrative officer, the position may, for the purpose of the selection process, be designated as a position available to both police and administrative officers.
- (2) Before a person is appointed to any such vacant non-executive position, the Commissioner must determine whether it is to be the position of a police officer or an administrative officer (and the provisions of this Part relating to the filling of such a vacancy apply accordingly).

#### **65A (Repealed)**

#### **66 Temporary appointments to non-executive positions**

- (1) The Commissioner may appoint an officer temporarily to a non-executive position which is vacant or the holder of which is suspended, sick or absent.
- (1A) The Commissioner may appoint temporarily to a police officer position that is a vacant position an officer who is selected for, or who is the preferred applicant for, the position, subject to the following:
  - (a) before the appointment can be made, the Commissioner and the officer must agree, in writing, as to the command in which the officer will serve if the officer is not permanently appointed to the position, and

- (b) if the officer is not permanently appointed to the position because another officer is selected for it, the officer may exercise any right of appeal the officer may have under Division 5A of Part 6, and
  - (c) if the officer has relocated his or her principal place of residence because of the temporary appointment, the officer is entitled to the costs and expenses of any further relocation agreed to under paragraph (a), those costs and expenses to be calculated in accordance with any relevant industrial award or enterprise agreement for transferred officers under the *Industrial Relations Act 1996*, and
  - (d) if the officer has relocated his or her principal place of residence because of the temporary appointment and has entered into an agreement, in writing, with the Commissioner to stay within the command to which the officer has been transferred if the officer is not permanently appointed to the position, the officer cannot be involuntarily transferred under section 67 (except in accordance with action taken under section 173 (2) (d)) within a period of 3 years after the relocation.
- (1AA) The Commissioner must, before appointing an officer temporarily to a police officer position under subsection (1A), require the officer to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the officer has not knowingly engaged in specified misconduct or any other misconduct.
- (1AB) An officer who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (1AA) is ineligible for appointment to the position concerned.
- (1AC) The failure, refusal or inability of an officer to provide a statutory declaration in accordance with a requirement made under subsection (1AA) must not be taken into consideration for a purpose other than the assessment of the officer's eligibility to be appointed to the position concerned.
- (1B) An officer who ceases to be temporarily appointed to a position in accordance with subsection (1A) and who is not permanently appointed to the position has no right of return to the position from which the officer was temporarily appointed, unless:
- (a) the officer has entered into an agreement under subsection (1A) (a) to return to the command from which the officer was temporarily appointed, and
  - (b) no other officer has been selected for, or is the preferred applicant for, the position from which the officer was temporarily appointed.
- (2) The Commissioner may, at any time, terminate a temporary appointment under this section.
- (3) The provisions of Divisions 3-5B do not apply to a temporary appointment under this section.



(4) An administrative officer may not be appointed under this section to the position of a police officer.

(5) In this section:

***preferred applicant***, in relation to a vacant police officer position, means a person who, subject to subsections (1AA) and (1AB), is eligible for appointment to the position and who, in the opinion of the Commissioner formed prior to the Commissioner considering all information as to the person's integrity, has the greatest merit, subject to subsections (6) and (7).

(6) A person cannot be the preferred applicant for a vacant police officer position if the person is the preferred applicant for, or the person selected for, another police officer position the maximum salary for which is the same as or greater than the maximum salary for the vacant police officer position.

(7) A person ceases to be the preferred applicant for a vacant police officer position when the person, or another person, is selected for the position.

## **67 Transfer of non-executive officers**

(1) If the Commissioner considers it to be in the interests of NSW Police to do so, the Commissioner may transfer a non-executive officer from one non-executive position to another non-executive position (being a position the holder of which is entitled to the same remuneration as the officer's former remuneration).

(1A) Despite subsection (1), the Commissioner may transfer a police officer from a non-executive position of the rank of superintendent to which the officer is permanently appointed to another non-executive position within that rank regardless of whether the position to which the officer is transferred entitles its holder to a remuneration that is the same as or different from the officer's former remuneration.

(1B) A police officer who, pursuant to subsection (1A), is transferred to a position that would ordinarily entitle its holder to a level of remuneration that is lower than the officer's former remuneration, is entitled to the same level of remuneration in respect of that position as the officer's former remuneration.

(1C) The entitlement to remuneration conferred on a police officer under subsection (1B) applies only in respect of the balance of the term for which the officer holds office pursuant to section 72A.

(1D) Subsection (1B) does not apply in relation to a police officer whose transfer to a position entitling its holder to a lower level of remuneration than the officer's former remuneration was made pursuant to a request by the officer or an order under section 173.

(2) A transfer under this section may be made only if the officer possesses the

qualifications determined by the Commissioner for the other position.

- (3) (Repealed)
- (4) The transfer under this section of a police officer to a position that is not that of a police officer may not be made without the approval of the police officer.
- (5) The provisions of Divisions 3-5B do not apply to a transfer under this section.

#### **67A Eligibility lists**

- (1) This section applies to non-executive positions other than a position of police officer of the rank of constable.
- (2) When a vacant position to which this section applies is advertised in accordance with this Act, the Commissioner may, in connection with a determination of the merit of the persons eligible for appointment to the position, create an eligibility list for the position.
- (3) An eligibility list for a position is a list of eligible applicants (namely the persons who duly applied for appointment to the position and, subject to sections 71 (2A) and (2B) and 77 (2A) and (2B), are eligible for appointment) arranged in order of merit as determined by the Commissioner.
- (4) An eligibility list for a position remains current:
  - (a) in the case of a list prepared for a non-executive police officer position or a base grade or entry level position of a non-executive administrative officer—for 12 months after the list was created, or
  - (b) in the case of a list prepared in relation to any other position—for 6 months after the list was created.
- (5) An eligibility list need not comprise all the eligible applicants so long as the applicants on the list are those of greatest merit. An eligibility list may even comprise only one eligible applicant so long as that applicant is the applicant of greatest merit.
- (6) An eligibility list is applicable not only to the position in relation to which it was created but also to any other position that the Commissioner determines it should be applicable to on the basis that the position is substantially the same as the position in relation to which the list was created.
- (7) In the case of positions of non-executive commissioned police officer or police officer of the rank of sergeant, the regulations may impose limitations on the positions that can be determined to be substantially the same as another position for the purposes of this section.
- (8) In this section:

***base grade or entry level position*** means a position of administrative officer to which no administrative officer, employed in the same classification of work as that to which the position relates, could be promoted.

### **Division 3 Appointment of non-executive commissioned police officers**

#### **68 (Repealed)**

#### **69 Advertising of vacancies**

- (1) If it is proposed to make an appointment under this Part to a vacant position of a non-executive commissioned police officer, the Commissioner is required to advertise the vacancy.
- (2) The vacancy need not be advertised if there is an eligibility list under section 67A that is current and applicable to the position.

#### **70 (Repealed)**

#### **71 Appointment to be made on merit**

- (1) In deciding to appoint a person to a vacant position of a non-executive commissioned police officer:
  - (a) the Commissioner may only select a person who has duly applied for appointment to the position, and
  - (b) the Commissioner must, from among the applicants who are eligible for appointment to the vacant position (excluding those who are excluded from selection by subsection (3)), select the applicant who has, in the opinion of the Commissioner, the greatest merit.
- (2) Despite subsection (1), in deciding to appoint a person to a vacant position of a non-executive commissioned police officer that has not been advertised in accordance with this Act because it is an eligibility list position, the Commissioner must, from among the persons who are on the relevant eligibility list and who are available for appointment (excluding those who are excluded from selection by subsection (3)), select the person with the greatest merit according to the order of merit in that eligibility list.
- (2A) The Commissioner must, before appointing a person to a vacant position of a non-executive commissioned police officer:
  - (a) require the person to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the person has not knowingly engaged in specified misconduct or any other misconduct, and
  - (b) have regard to the statutory declaration so provided.

- (2B) A person who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (2A) is ineligible for appointment to the position concerned.
- (2C) The failure, refusal or inability of a person to provide a statutory declaration in accordance with a requirement made under subsection (2A) must not be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed to the position concerned.
- (3) A person is excluded from selection for a vacant position if the person has been selected for appointment to another position in NSW Police the maximum salary for which is the same as or greater than the maximum salary for the vacant position.
- (4) In determining a person's entitlement to be appointed to a position under this section for the purposes of an appeal to GREAT, the fact that the person is excluded from selection for the position by subsection (3) is to be ignored.

**Note—**

The effect of subsection (4) is that an applicant for a position will have his or her rights of appeal to GREAT maintained, even if at the time of selection the applicant was excluded from selection because he or she had already been selected for appointment to a position of equal or greater salary.

- (5) In this section:

**eligibility list position** means a position to which a current eligibility list under section 67A is applicable.

**relevant eligibility list**, in relation to a position, means an eligibility list that is current and applicable to the position under section 67A.

**71A Circumstances in which a person ceases to be selected for appointment to a position**

A person ceases to be selected for appointment to a position of a non-executive commissioned police officer if:

- (a) the person is appointed to the position (otherwise than by way of temporary appointment), or
- (b) GREAT upholds a promotional appeal of another person with respect to the position, or
- (c) the person's selection is withdrawn on integrity grounds, or
- (d) the person indicates that he or she no longer wishes to be considered for appointment to the position.

**71B Withdrawal of selection on integrity grounds**

- (1) The Commissioner may change a decision to appoint a person to a non-executive commissioned police officer position:

(a) before the person is appointed, or

(b) where an appeal is made under Division 5A against the Commissioner's decision, before the appeal is commenced to be heard,

if the Commissioner receives information as to the person's integrity (being information that was not considered when the decision to appoint the person was made) which causes the Commissioner to form the opinion that the person does not have the greatest merit.

(2) If the Commissioner changes such a decision, the Commissioner may decide, in accordance with this Part, to select (from the applicants who are eligible for appointment to the vacant position, whether or not an eligibility list has been created for the position) the person who the Commissioner is of the opinion at that time has the greatest merit.

**Note—**

The provisions of Division 5A of Part 6 of this Act apply to a decision under subsection (2) and extend to a person whose selection is withdrawn on integrity grounds.

## **72 Appointment of inspectors subject to appeal**

(1) If a police officer has a right of appeal to GREAT against an officer to be appointed to a vacant position of the rank of inspector, the appointment must not be made (except by way of temporary appointment under Division 2) unless:

(a) notification of the decision of the Commissioner has been given to each applicant for the position, and

(b) the time for lodging an appeal under Division 5A against the decision of the Commissioner has expired or, if such an appeal has been lodged, the appeal has been withdrawn or determined.

(2) If any such appeal is allowed, the successful appellant is to be regarded as the person recommended for appointment by the Commissioner.

(3) A notification under this section may be given personally or by post, or by publication of the notification in any official publication which is circulated to police officers.

(4) (Repealed)

## **Division 3A Term of office of non-executive commissioned police officers**

### **72A Five year term contracts**

(1) Subject to this Act, a non-executive commissioned police officer holds office for the term of office specified in an instrument of appointment issued by the Commissioner

for the purposes of this section.

- (2) The instrument operates as an appointment of the officer for the term of office so specified. The appointment is separate and distinct from the appointment of the officer to the officer's position by the Commissioner under section 64.
- (3) The term of office is to be 5 years or the officer's balance of service to retirement (whichever is shorter).
- (4) An officer's **balance of service to retirement** is the period up to the officer's projected date of retirement from NSW Police, as determined by the Commissioner after consultation with the officer.

#### **72B Entitlement to further terms**

- (1) Until retirement, a non-executive commissioned police officer is entitled (if otherwise qualified) to appointment for a further term of office in accordance with section 72A on the expiration of each current term of office, unless the Commissioner has decided that the officer is not to be appointed for a further term and notified the officer of that decision at least 6 months before the expiration of the current term of office.
- (2) The appointment of an officer for a further term of office does not constitute an appointment to a vacant non-executive position for the purposes of Division 2 (Appointment of non-executive officers generally) of Part 6.

#### **72C Ground for decision not to re-appoint**

- (1) The only ground for a decision by the Commissioner that a non-executive commissioned police officer is not to be appointed for a further term of office is that the officer is unable to meet required standards of operational competence, discipline or integrity.
- (2) The regulations may make provision for a review of a decision of the Commissioner under this section.

#### **72D Performance reviews**

A non-executive commissioned police officer's performance must be reviewed, at least annually, by the Commissioner or by some person nominated by the Commissioner. The review is to have regard to performance criteria determined by the Commissioner for the officer's position and any other relevant matter.

#### **72E Promotion, transfer and re-appointment following resignation**

- (1) When a non-executive commissioned police officer is appointed by way of promotion to another position in NSW Police that is a non-executive commissioned police officer position, the officer is to be appointed for a new term of office in accordance with section 72A in the position to which the officer is promoted.

- (2) When a non-executive commissioned police officer is transferred to another position in NSW Police that is a non-executive commissioned police officer position, the officer is not to be appointed for a new term of office in the position to which the officer is transferred, and the officer's existing term of office continues in the transferred position.
- (3) When a non-executive commissioned police officer is re-appointed under section 93 (Re-appointment of member resigning to contest Commonwealth election) the officer is to be appointed for a new term of office that is equivalent to the balance of the officer's term of office as at resignation.

#### **72F Powers of dismissal, removal and suspension not affected**

Nothing in this Division limits or otherwise affects any power under this Act to dismiss, remove or suspend a non-executive commissioned police officer.

### **Division 4 Appointment of constables and sergeants**

#### **73 Appointment of constables**

- (1) The Commissioner may, subject to this Act and the regulations, appoint any person of good character and with satisfactory educational qualifications as a police officer of the rank of constable.
- (2) A person when first appointed as such a police officer is to be appointed on probation in accordance with the regulations.
- (3) The Commissioner may dismiss any such probationary police officer from NSW Police at any time and without giving any reason.

#### **74 Promotion of constables**

The promotion of police officers within the rank of constable is subject to the regulations.

#### **75 (Repealed)**

#### **76 Advertising of vacancies—sergeants**

- (1) If it is proposed to make an appointment under this Part to a vacant position of a police officer of the rank of sergeant, the Commissioner is required to advertise the vacancy.
- (2) The vacancy need not be advertised if there is an eligibility list under section 67A that is current and applicable to the position.

#### **76A (Repealed)**

## **77 Appointment of sergeants to be made on merit**

- (1) In deciding to appoint a person to a vacant position of a police officer of the rank of sergeant:
  - (a) the Commissioner may only select a person who has duly applied for appointment to the position, and
  - (b) the Commissioner must, from among the applicants who are eligible for appointment to the vacant position (excluding those who are excluded from selection by subsection (3)), select the applicant who has, in the opinion of the Commissioner, the greatest merit.
- (2) Despite subsection (1), in deciding to appoint a person to a vacant position of a police officer of the rank of sergeant that has not been advertised in accordance with this Act because it is an eligibility list position, the Commissioner must, from among the persons who are on the relevant eligibility list and who are available for appointment (excluding those who are excluded from selection by subsection (3)), select the person with the greatest merit according to the order of merit in that eligibility list.
- (2A) The Commissioner must, before appointing a person to a vacant position of a police officer of the rank of sergeant:
  - (a) require the person to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the person has not knowingly engaged in specified misconduct or any other misconduct, and
  - (b) have regard to the statutory declaration so provided.
- (2B) A person who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (2A) is ineligible for appointment to the position concerned.
- (2C) The failure, refusal or inability of a person to provide a statutory declaration in accordance with a requirement made under subsection (2A) must not be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed to the position concerned.
- (3) A person is excluded from selection for a vacant position if the person has been selected for appointment to another position in NSW Police the maximum salary for which is the same as or greater than the maximum salary for the vacant position.
- (4) In determining a person's entitlement to be appointed to a position under this section for the purposes of an appeal to GREAT, the fact that the person is excluded from selection for the position by subsection (3) is to be ignored.

**Note—**

The effect of subsection (4) is that an applicant for a position will have his or her rights of appeal to GREAT



maintained, even if at the time of selection the applicant was excluded from selection because he or she had already been selected for appointment to a position of equal or greater salary.

(5) In this section:

**eligibility list position** means a position to which a current eligibility list under section 67A is applicable.

**relevant eligibility list**, in relation to a position, means an eligibility list that is current and applicable to the position under section 67A.

#### **77A Circumstances in which a person ceases to be selected for appointment to a position**

A person ceases to be selected for appointment to a position of police officer of the rank of sergeant if:

- (a) the person is appointed to the position (otherwise than by way of temporary appointment), or
- (b) GREAT upholds a promotional appeal of another person with respect to the position, or
- (c) the person's selection is withdrawn on integrity grounds, or
- (d) the person indicates that he or she no longer wishes to be considered for appointment to the position.

#### **77B Withdrawal of selection on integrity grounds**

(1) The Commissioner may change a decision to appoint a person to a position of a police officer of the rank of sergeant:

- (a) before the person is appointed, or
- (b) where an appeal is made under Division 5A against the Commissioner's decision, before the appeal is commenced to be heard,

if the Commissioner receives information as to the person's integrity (being information that was not considered when the decision to appoint the person was made) which causes the Commissioner to form the opinion that the person does not have the greatest merit.

(2) If the Commissioner changes such a decision, the Commissioner may decide, in accordance with this Part, to select (from the applicants who are eligible for appointment to the vacant position, whether or not an eligibility list has been created for the position) the person who the Commissioner is of the opinion at that time has the greatest merit.

**Note—**

The provisions of Division 5A of Part 6 of this Act apply to a decision under subsection (2) and extend to a person whose selection is withdrawn on integrity grounds.

### **78 Appointment of sergeants subject to appeal**

- (1) If a police officer has a right of appeal to GREAT against an officer to be appointed to a vacant position of the rank of sergeant, the appointment must not be made (except by way of temporary appointment under Division 2) unless:
  - (a) notification of the decision of the Commissioner has been given to each applicant for the position, and
  - (b) the time for lodging an appeal under Division 5A against the decision of the Commissioner has expired or, if such an appeal has been lodged, the appeal has been withdrawn or determined.
- (2) If any such appeal is allowed, the successful appellant is to be regarded as the applicant who has the greatest merit for appointment.
- (3) A notification under this section may be given personally or by post, or by publication of the notification in any official publication which is circulated to police officers.
- (4) (Repealed)

## **Division 5 Appointment of non-executive administrative officers**

### **79 Eligibility for appointment**

In the case of a vacancy in the position of a non-executive officer (being an administrative officer), it does not matter whether the person appointed to fill the vacancy is or is not already a member of NSW Police.

### **80 Advertising of vacancies**

If it is proposed to make an appointment under this Part to a vacant non-executive position of an administrative officer, the Commissioner:

- (a) may advertise the vacancy (in such manner as the Commissioner thinks fit) among police or administrative officers (or only administrative officers) or generally, or
- (b) may, in such cases as the Commissioner considers appropriate and with the approval of the Minister, appoint an administrative officer without advertising the vacancy, or
- (c) may, if there is an eligibility list under section 67A that is current and applicable to the position, appoint an administrative officer from the list without advertising the vacancy.

### **81 Appointment on merit**

- (1) In deciding to appoint a person to a vacant non-executive position of administrative officer which has been duly advertised:

- (a) the Commissioner may only select a person who has duly applied for appointment to the vacant position, and
  - (b) the Commissioner must, from among the applicants eligible for appointment to the position, select the applicant who has, in the opinion of the Commissioner, the greatest merit.
- (2) In deciding to appoint a person to a vacant non-executive position of administrative officer which has not been duly advertised:
- (a) the Commissioner may only select an administrative officer, and
  - (b) the Commissioner must, from among the eligible officers, select the officer who has, in the opinion of the Commissioner, the greatest merit.
- (2A) Despite subsection (2), in deciding to appoint a person to a vacant non-executive position of administrative officer that has not been advertised in accordance with this Act because it is an eligibility list position, the Commissioner must, from among the persons who are on the relevant eligibility list and who are available for appointment, select the person with the greatest merit according to the order of merit in that eligibility list.
- (3) If an administrative officer has a right of appeal to GREAT against an officer to be appointed by the Commissioner, the appointment is not to be made (except by way of temporary appointment under Division 2):
- (a) until the expiration of the time for lodging notice of such an appeal, or
  - (b) if such a notice of appeal is lodged, until the Tribunal has determined the appeal or the appeal is withdrawn.
- (4) In this section:

**eligibility list position** means a position to which a current eligibility list under section 67A is applicable.

**relevant eligibility list**, in relation to a position, means an eligibility list that is current and applicable to the position under section 67A.

## **Division 5A Promotion appeals to GREAT by certain police officers**

### **81A (Repealed)**

### **81B Appeals to GREAT against promotions to sergeant or to higher grade of sergeant**

- (1) A police officer of the highest grade of the rank of constable may appeal to GREAT against a decision of the Commissioner to appoint another police officer of that grade and rank to a vacant position in the rank of sergeant if the police officer who appeals was an applicant for the vacant position and, subject to section 77 (2A) and (2B), is

eligible for appointment to the vacant position.

- (2) A police officer of the rank of sergeant (but not of the highest grade in that rank) may appeal to GREAT against a decision of the Commissioner to appoint another police officer of the rank of constable or of the rank of sergeant (but not of the highest grade in the rank of sergeant) to a vacant position in the highest grade of the rank of sergeant if the police officer who appeals was an applicant for the vacant position and, subject to section 77 (2A) and (2B), is eligible for appointment to the vacant position.
- (3) The only ground on which an appeal may be made under this section is that the merit of the appellant is greater than that of the other police officer.

#### **81C Appeal to GREAT against promotion to inspector**

- (1) A police officer may appeal to GREAT against a decision of the Commissioner to appoint another police officer to a vacant position in any rank of inspector if the police officer who appeals was an applicant for the vacant position and, subject to section 71 (2A) and (2B), is eligible for appointment to the vacant position.
- (2) The only ground on which an appeal may be made under this section is that the merit of the appellant is greater than that of the other police officer.

#### **81D Procedure for appeals**

The provisions of the [Government and Related Employees Appeal Tribunal Act 1980](#) relating to promotion appeals apply to appeals under this Division, subject to the following:

- (a) the sittings of GREAT for the hearing of appeals are to be informal,
- (b) a notice of appeal lodged under section 28 of that Act must contain a summary, in or to the effect of the form approved by the Senior Chairperson, of the grounds of the appeal and the particulars alleged to support those grounds,
- (c) the Senior Chairperson or a Chairperson may require an appellant to provide such further written particulars concerning the appeal as are specified by the Senior Chairperson or Chairperson,
- (d) GREAT, for the purpose of an appeal under this Division, is to be constituted by the Senior Chairperson sitting alone or a Chairperson selected by the Senior Chairperson sitting alone,
- (e) (Repealed)
- (f) evidence is to be given on oath,
- (g) any other modifications prescribed by the regulations.

### **81E Action following conclusion of successful appeal**

- (1) If an appeal to GREAT is upheld, the Commissioner must, at the Commissioner's discretion, and despite any other provision of this Act or any provision of the *Government and Related Employees Appeal Tribunal Act 1980*:
  - (a) appoint the successful appellant to the vacant position, or
  - (b) decline to appoint the successful appellant to the vacant position and recommence the selection process for the vacant position.
- (2) Despite section 54 of the *Government and Related Employees Appeal Tribunal Act 1980*, no right of appeal lies under that section for any person if the Commissioner recommences the selection process for a vacant position.

## **Division 5B Promotion appeals by non-executive administrative officers to GREAT**

### **81F Appeal to GREAT against promotions of administrative officers**

The provisions of the *Government and Related Employees Appeal Tribunal Act 1980* relating to promotion appeals apply to non-executive officers (being administrative officers) as if those officers were employees, and the Commissioner were their employer, within the meaning of that Act.

## **Division 6 Retirement etc of non-executive officers**

### **82 Vacation of non-executive positions**

- (1) The position of a non-executive officer becomes vacant if the officer:
  - (a) dies, or
  - (a1) completes a term of office and is not appointed for a further term, or
  - (b) is removed from office, or retires or is retired from office, under this or any other Act, or
  - (c) resigns his or her position in writing addressed to the Commissioner.
- (2) The retirement or resignation of a non-executive officer does not take effect until:
  - (a) the Commissioner accepts the retirement or resignation, or
  - (b) the non-executive officer has given the Commissioner at least 4 weeks' notice in writing of the day on which the officer intends to retire or resign and the officer is not under suspension from office on that day.

### **83 (Repealed)**

## **Division 7 Industrial matters relating to non-executive officers**

### **84 Commissioner to be employer for industrial matters**

The Commissioner is to be the employer of non-executive officers for the purposes of any proceedings relating to non-executive officers held before a competent tribunal having jurisdiction to deal with industrial matters.

### **85 Commissioner may determine salary, wages etc**

- (1) The salary, wages or other remuneration of a non-executive officer is, except in so far as provision is otherwise made by law, such as may be determined from time to time by the Commissioner.
- (2) A non-executive officer may sue for and recover the amount of the remuneration of the officer that is determined under this section.

### **86 Commissioner may enter into agreements**

- (1) The Commissioner may enter into an agreement with any association or organisation representing a group or class of non-executive officers with respect to industrial matters.
- (2) The Commissioner is not authorised to enter into such an agreement with respect to a matter if the Industrial Relations Commission does not have jurisdiction to make an award or order with respect to that matter because of section 405 of the *Industrial Relations Act 1996*.
- (3) An agreement under this section binds all non-executive officers in the class or group affected by the agreement, and no such officer (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.

## **Division 8 General provisions relating to non-executive officers**

### **87 Eligibility of administrative officers for appointment to Public Service**

- (1) A non-executive officer (being an administrative officer) may apply for a position in the Public Service as if the officer were an officer of the Public Service.
- (2) A non-executive officer (other than a police officer) who applies for such a position, or is appointed as an officer of the Public Service, is to be taken (for the purposes of the *Public Sector Management Act 1988*, the *Government and Related Employees Appeal Tribunal Act 1980* and the *Industrial Relations Act 1996* and for any other purposes) to be an officer of the Public Service in relation to the application or appointment.

### **88 Approval to engage in other paid employment**

A non-executive officer must not engage in any paid employment outside the duties of the position without the approval of the Commissioner.

### **89 Industrial arbitration or legal proceedings excluded in relation to appointments**

- (1) The appointment of or failure to appoint a person to a vacant non-executive position, or any matter, question or dispute relating to such an appointment or failure, is not an industrial matter for the purposes of the [Industrial Relations Act 1996](#).
- (2) Subsection (1) applies whether or not any person has been appointed to a vacant non-executive position.
- (3) No proceedings for an order in the nature of prohibition, certiorari or mandamus, or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to a vacant non-executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.
- (4) Subsection (3) does not affect the operation of the [Government and Related Employees Appeal Tribunal Act 1980](#).
- (5) The failure of a non-executive commissioned police officer to be appointed for a further term of office as provided by section 72B is for the purposes of this section taken to be a failure to appoint a person to a vacant non-executive position.

## **Part 7 Temporary employees of NSW Police**

### **90 Appointment of temporary employees**

- (1) The Commissioner may, if of the opinion that it is necessary to do so, employ temporarily a person who has appropriate qualifications to carry out work in NSW Police.
- (2) The employment of any such person is subject to the regulations (if any) concerning the employment of temporary employees.

### **91 Period of employment**

- (1) The Commissioner:
  - (a) may employ a person under this Part for a period not exceeding 4 months, and
  - (b) may from time to time employ the person at the end of that period, or at the end of any subsequent period, for a further period not exceeding 4 months.
- (2) The Commissioner may dispense with the services of a temporary employee at any time.

### **91A Appointment of long-term temporary employees to permanent positions**

(1) In this section:

**long-term temporary employee** is a temporary employee whose employment as such an employee falls within a continuous employment period of at least 2 years.

**non-executive administrative position** means a position of a non-executive officer (as defined in Part 6), being an administrative officer.

(2) A long-term temporary employee may be appointed to a non-executive administrative position under this section, if each of the following requirements is satisfied:

(a) the duties of the position concerned must be substantially the same as the duties performed by the employee at the time of the employee's initial employment on merit (that is, the employment referred to in paragraph (e)),

(b) the rate of salary or wages proposed to be payable to the holder of the position concerned at the time of appointment must not exceed the maximum rate payable for Grade 12, Administrative and Clerical Division, of the Public Service,

(c) the Commissioner must be satisfied that on-going work is available in respect of the employee,

(d) the Commissioner must be satisfied that the employee has the relevant skills, qualifications, experience, work performance standards and personal qualities to enable the employee to perform the duties of the position concerned,

(e) the employee must (initially or at some later stage) have been employed as a temporary employee in some form of open competition involving the selection of the person who, in the opinion of the then Commissioner, had the greatest merit among candidates for appointment.

(3) An appointment under this section is not an appointment to which section 81 (Appointment on merit) applies.

## **Part 8 General provisions relating to employment of all members of NSW Police**

### **92, 93 (Repealed)**

### **94 Requirements as to citizenship**

(1) A person is eligible to be appointed as a member of NSW Police only if the person is an Australian citizen or a permanent Australian resident.

(2) A member of NSW Police who ceases to be so eligible (or is not so eligible) for appointment as such a member is to be dismissed from NSW Police.



(3) In this section, **permanent Australian resident** means a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

(4) This section does not apply to temporary employees.

**94A (Repealed)**

**95 Arrangements for use by NSW Police of staff of other agencies**

The Commissioner may arrange for the use of the services of any staff (by way of secondment or otherwise) of a government agency (whether or not of New South Wales).

**95A Arrangements for use by other agencies of members of NSW Police**

- (1) The Commissioner may enter into arrangements with a government agency (whether or not of New South Wales) for the use, by such an agency, of the services of members of NSW Police (by way of secondment or otherwise).
- (2) While performing services for any such agency, a police officer retains rank, seniority and remuneration as a police officer and may continue to act as a constable. However, this subsection does not prevent the payment of additional remuneration to police officers in accordance with arrangements under this section.

**96 Attachment of wages or salary of members of NSW Police**

- (1) Schedule 6 to the [Public Sector Management Act 1988](#) applies to members of NSW Police in the same way as it applies to members of the Public Service.
- (2) For that purpose, a reference in that Schedule to:
  - (a) an officer is to be read as a reference to a police or administrative officer, or
  - (b) a Department Head is to be read as a reference to the Commissioner.

**96A Finger printing and hand printing of applicants—police officers**

- (1) The Commissioner may, before accepting an application for appointment as a police officer, require the applicant to consent to the taking of a finger print or hand print for use by the Commissioner in determining the applicant's suitability for employment.
- (2) Before a finger print or hand print is taken from an applicant for appointment as a police officer the applicant must be informed in writing that the print may be retained and used for the purpose of performing a check of the applicant's criminal history.
- (3) The Commissioner must destroy any finger print or hand print taken under this section from any person who is not appointed to a position as a police officer as soon as practicable after the decision is made not to appoint the person to the position.

- (4) A person who was not appointed to a position as a police officer may request that any finger print or hand print taken from the person in connection with an application for appointment as a police officer before the commencement of this section be destroyed. The Commissioner must ensure that such a request is complied with as soon as practicable after the request is made.
- (5) A person who ceases to be a police officer may request that any finger print or hand print taken from the person under this section be destroyed. The Commissioner must ensure that such a request is complied with as soon as practicable after the request is made.

**97 Periodic financial and integrity statements to be furnished**

- (1) A member of NSW Police may be required:
  - (a) by the Minister, in the case of the Commissioner, or
  - (b) by the Commissioner, in any other case,to furnish a financial statement or integrity statement to the Minister or Commissioner, as the case requires.
- (2) A member of NSW Police may also be required to furnish a financial statement or integrity statement on such other occasions as are prescribed by the regulations.
- (3) A financial statement or integrity statement must be verified by statutory declaration of the person who is required to furnish the statement.
- (4) The regulations:
  - (a) may provide for the nature of the information to be included in a financial statement or integrity statement, and
  - (b) may provide for the form in which a financial statement or integrity statement is to be prepared.
- (5) A member of NSW Police may be required:
  - (a) by the Minister, in the case of the Commissioner, or
  - (b) by the Commissioner, in any other case,to furnish an explanation to the Minister or Commissioner, as the case requires, of any matter arising out of a financial statement or integrity statement furnished by the member.
- (6) A member of NSW Police may be required to satisfy the Minister or Commissioner, as the case requires, that any assets or income in which the member has an interest, which are used by the member or which are available for the member's use, have

been lawfully acquired or gained.

(7) The Commissioner may furnish the Police Integrity Commission with any financial statement or integrity statement furnished under this section and any other information that has come to the Commissioner's attention under this section.

(8) In this section:

**financial statement** means a statement of:

- (a) assets and liabilities, or
  - (b) income and expenditure,
- or both.

**integrity statement** means a statement to the effect that the person by whom the statement is made has not engaged in any criminal activity or corrupt conduct during the period to which the statement relates.

#### **97A Confidentiality of financial statements**

(1) A person cannot be required to produce any protected document or to divulge any protected information, except with the written consent of a relevant authority.

(2) Subsection (1) applies whether the requirement:

- (a) relates to production or divulging to a court or relates to production or divulging to another body, party or person, and
- (b) is imposed by a subpoena, direction or order or is imposed in some other manner.

(3) In this section:

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

**produce** includes permit access to.

**protected document** means:

- (a) a document or thing comprising a financial statement that has been furnished under section 97, or
- (b) a document or thing comprising an explanation (furnished under section 97 (5)) of a matter arising out of a financial statement, or
- (c) a document or thing requiring such an explanation to be furnished, or
- (d) a document or thing comprising information that has otherwise come to attention under section 97 in relation to the financial affairs of a member of NSW Police, or

(e) a copy of any such document or thing.

**protected information** means information or other matters contained in a protected document, or any other information that has come to attention under section 97 in relation to the financial affairs of a member of NSW Police.

**relevant authority** means:

- (a) the Minister or the PIC Commissioner, in relation to a financial statement furnished by the Commissioner of Police or to matters in or arising from such a statement, or
- (b) the Commissioner of Police or the PIC Commissioner, in any other case.

## 98 (Repealed)

99-120 (Renumbered as secs 200-221)

# Part 8A Complaints about conduct of police officers

## Division 1 Preliminary

### 121 Definitions

In this Part:

**Category 1 complaint** has the same meaning as it has in the [Police Integrity Commission Act 1996](#).

**Note—**

The definition of **Category 1 complaint** in the [Police Integrity Commission Act 1996](#) is as follows:

**Category 1 complaint** means a police complaint:

- (a) that is of a class or kind that the Commissioner for the Police Integrity Commission and the Ombudsman have agreed should be referred to the Commission, or
- (b) that the Commissioner for the Police Integrity Commission has requested should be referred to the Commission, or
- (c) that is of a class or kind prescribed by the regulations.

**Category 2 complaint** means a complaint that is not a Category 1 complaint.

**complaints information system** means the system established by the regulations for recording information concerning complaints, as referred to in section 128.

**conduct** of a police officer means any action or inaction (or alleged action or inaction) of a police officer:

- (a) whether or not it also involves non-police participants, and
- (b) whether or not it occurs while the police officer is officially on duty, and

(c) whether or not it occurs outside the State or outside Australia.

**investigating authority** means the Commissioner, the Police Integrity Commission or the Ombudsman.

**notifiable complaint** means any Category 2 complaint that (in accordance with guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner) is required to be notified to the Ombudsman.

**Ombudsman's special report** means a special report referred to in section 160.

## 122 Application of Part to certain complaints

(1) This Part applies to and in respect of a complaint that alleges or indicates one or more of the following:

- (a) conduct of a police officer that constitutes an offence,
- (b) conduct of a police officer that constitutes corrupt conduct (including, but not limited to, corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988*),
- (c) conduct of a police officer that constitutes unlawful conduct (not being an offence or corrupt conduct),
- (d) conduct of a police officer that, although not unlawful:
  - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
  - (ii) arises, wholly or in part, from improper motives, or
  - (iii) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or
  - (iv) arises, wholly or in part, from a mistake of law or fact, or
  - (v) is conduct of a kind for which reasons should have (but have not) been given,
- (e) conduct of a police officer that is engaged in in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect.

(2) This Part does not apply to or in respect of a complaint of a kind that (in accordance with guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner) need not be dealt with in accordance with this Part.

## 123 Application of Part to former police officers

This Part applies to and in respect of a former police officer (in relation only to conduct

occurring while he or she was a police officer) in the same way as it applies to and in respect of a police officer, so that a complaint concerning a former police officer may be made and dealt with as if the former police officer were still a police officer.

#### **124 Application of Part to anonymous complainants**

The provisions of this Part that require a complainant to be notified of any matter do not apply to or in respect of a complainant who is not identified in the complaint.

#### **125 Relationship with [Police Integrity Commission Act 1996](#)**

This Part is subject to the [Police Integrity Commission Act 1996](#).

**Note—**

Section 70 (8) of the [Police Integrity Commission Act 1996](#) provides as follows:

- (8) A Category 1 complaint, to the extent that it is taken over by the Commission, cannot be dealt with as a complaint under Part 8A of the [Police Service Act 1990](#) and for that purpose is taken not to be a police complaint, except as directed by the Commission either generally or in any particular case or as directed by the regulations.

### **Division 2 Procedure for making complaints**

#### **126 Right to make complaint**

- (1) Any person may make a complaint about the conduct of a police officer.
- (2) This Part does not affect any other right of a person to complain about the conduct of a police officer.

#### **127 Making of complaints**

- (1) **How made** A complaint must be made in writing to an investigating authority.
- (2) It is made to the Commissioner if:
  - (a) it is delivered to a police officer personally, or
  - (b) it is received by a member of NSW Police by post, facsimile or electronic mail, or
  - (c) it is addressed to the Commissioner and lodged at a Local Court, or
  - (d) it is referred to the Commissioner by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission.
- (3) It is made to the Police Integrity Commission if:
  - (a) it is lodged or received at the office of the Commission, or
  - (b) it is received at the office of the Commission by post, facsimile or electronic mail,  
or

- (c) it is addressed to the Commission and lodged at a Local Court, or
  - (d) it is referred to the Commission by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission.
- (4) It is made to the Ombudsman if:
- (a) it is lodged or received at the office of the Ombudsman, or
  - (b) it is received at the office of the Ombudsman by post, facsimile or electronic mail, or
  - (c) it is addressed to the Ombudsman and lodged at a Local Court, or
  - (d) it is referred to the Ombudsman by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission.
- (5) **Exceptional circumstances where unwritten complaint acceptable** The Police Integrity Commission or the Ombudsman:
- (a) may, in exceptional circumstances, accept a complaint that is not in writing, and
  - (b) in that event, must reduce the complaint to writing as soon as practicable.
- (6) **Anonymous complaints** It is not necessary for the complainant to be identified in a complaint.
- (7) **MP may act for complainant** A complaint may, with the written consent of the complainant, be made on the complainant's behalf by a member of Parliament.
- (8) **Complaints by prisoners** If a prisoner informs a prison officer that the prisoner wishes to make a complaint, the prison officer:
- (a) must take all steps necessary to facilitate the making of the complaint, and
  - (b) must send immediately to the addressee, unopened, any written matter addressed to a police officer (whether by name or by reference to an office held by the officer), to the Police Integrity Commission or to the Ombudsman.

In this subsection, **prisoner** means any person in lawful detention or custody, and **prison officer** means any person by whom the prisoner is detained, or in whose custody the prisoner is, or who is in charge of the prisoner.

## Division 3 Complaints information system

### 128 Complaints information system

- (1) The regulations may make provision for or with respect to a system for recording information concerning complaints and, in particular, for or with respect to:

- (a) the establishment, control, operation and maintenance of the system, and
  - (b) the registration of complaints in the system, and
  - (c) the nature of the information about complaints that is to be registered in the system, and
  - (d) the form in which any such information is to be entered into the system, and
  - (e) access to information in the system, and
  - (f) retention, amendment and deletion of material in the system, and
  - (g) security arrangements for the system, and
  - (h) mechanisms for identifying, preventing and detecting abuse, misuse or corrupt use of the system or information in the system.
- (2) Protocols and memoranda of understanding may be entered into by the PIC Commissioner, by the Ombudsman and by the Commissioner regarding any matter for or with respect to which regulations may be made under this section.
- (3) Any such protocol or memorandum is subject to the provisions of the regulations.
- (4) A regulation made for the purposes of this section may create an offence punishable by a penalty not exceeding 50 penalty units.

### **129 Registration of complaints**

- (1) Information about all complaints received by members of NSW Police, by the Police Integrity Commission or by the Ombudsman must be registered in the complaints information system.
- (2) Despite subsection (1), the Police Integrity Commission may direct that information about a Category 1 complaint (or a specified class of Category 1 complaints):
- (a) is not to be entered in the complaints information system, or
  - (b) is to be removed from the complaints information system, or
  - (c) is to be entered or re-entered in the complaints information system.
- (3) The PIC Commissioner, and such officers of the Police Integrity Commission as are authorised in that regard by the PIC Commissioner, are to have unrestricted access to all information in the complaints information system.
- (4) The PIC Commissioner may place a caveat on particular information registered in the complaints information system and, in that event, access to that information by other agencies and other persons is to be restricted in accordance with the terms of the



caveat.

- (5) The Ombudsman, and such officers of the Ombudsman as are authorised in that regard by the Ombudsman, are to have unrestricted access to all information in the complaints information system, subject to the terms of any caveat under this section.
- (6) The Ombudsman may place a caveat on particular information registered in the complaints information system and, in that event, access to that information by other agencies and other persons, other than:
  - (a) the PIC Commissioner, and
  - (b) such officers of the Police Integrity Commission as are authorised in that regard by the PIC Commissioner,

is to be restricted in accordance with the terms of the caveat.

## **Division 4 Reference of complaints between authorities**

### **130 Complaints received by Commissioner**

- (1) As soon as practicable after receiving a complaint, a police officer or other member of NSW Police must forward the complaint to the Commissioner.
- (2) As soon as practicable after receiving a complaint, whether directly or as a result of it being forwarded as referred to in subsection (1), the Commissioner:
  - (a) in the case of a Category 1 complaint or a notifiable complaint, must cause a copy of the complaint to be sent to the Ombudsman, and
  - (b) in the case of a Category 1 complaint, must refer the complaint to the Police Integrity Commission.

### **131 Complaints received by Police Integrity Commission**

- (1) As soon as practicable after receiving a Category 2 complaint, the Police Integrity Commission:
  - (a) in the case of a notifiable complaint, must cause a copy of the complaint to be sent to the Ombudsman, and
  - (b) in any case, must refer the complaint to the Commissioner.
- (2) If of the opinion that there are reasonable grounds for not referring a Category 2 complaint to the Commissioner, the Police Integrity Commission may instead forward a summary or appropriate details of the complaint.

### **132 Complaints received by Ombudsman**

- (1) As soon as practicable after receiving a complaint, the Ombudsman must refer the

complaint:

- (a) in the case of a Category 1 complaint, to the Police Integrity Commission, or
- (b) in the case of a Category 2 complaint, to the Commissioner.

(2) If of the opinion that there are reasonable grounds for not referring a Category 2 complaint to the Commissioner, the Ombudsman may instead forward a summary or appropriate details of the complaint.

### **133 Complaints lodged at Local Courts**

- (1) As soon as practicable after a complaint is lodged at a Local Court, the Clerk of the Court:
  - (a) must give the Ombudsman, by telephone, facsimile or electronic mail, brief details of the complaint, and
  - (b) must forward the complaint to the Ombudsman, unless otherwise directed by the Ombudsman.
- (2) If directed to do so by the Ombudsman, the Clerk of the Court:
  - (a) must forward the complaint to the Commissioner, and
  - (b) must obtain a receipt for the complaint from the Commissioner, and
  - (c) must retain such records of the complaint as the Ombudsman directs, and
  - (d) must send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk.
- (3) If directed to do so by the Ombudsman, the Clerk of the Court:
  - (a) must forward the complaint to the Police Integrity Commission, and
  - (b) must obtain a receipt for the complaint from the Commission, and
  - (c) must retain such records of the complaint as the Ombudsman directs, and
  - (d) must send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk.
- (4) The Ombudsman may give a direction to the Clerk of the Court under subsection (3) only if the complaint appears to the Ombudsman to be likely to be a Category 1 complaint.
- (5) The Clerk of a Local Court is taken to be an officer of the Ombudsman in connection with any action of the Clerk under this section.

### **134 Complaints referred by ICAC or NSW Crime Commission**

The Independent Commission Against Corruption or New South Wales Crime Commission does not become the complainant merely because it refers a complaint to an investigating authority.

### **135 Complaints referred by Minister**

- (1) The Minister does not become the complainant merely because the Minister refers a complaint made by some other person (a **client**) to an investigating authority, except for the purposes of the provisions of this Act that require the complainant to be informed or notified of any matter or given or sent any matter.
- (2) If the Minister publishes to a client any matter with respect to the client's complaint that the investigating authority publishes to the Minister, the publication of that matter to the client by the Minister has the same effect, for all purposes, as a publication of that matter to the client by the investigating authority.

### **136 Complaints made by member of Parliament**

- (1) A member of Parliament does not become the complainant merely because the member of Parliament makes a complaint to an investigating authority on behalf of some other person (a **client**), except for the purposes of the provisions of this Act that require the complainant to be informed or notified of any matter or given or sent any matter.
- (2) If a member of Parliament publishes to a client any matter with respect to the client's complaint that the investigating authority publishes to the member of Parliament, the publication of that matter to the client by the member of Parliament has the same effect, for all purposes, as a publication of that matter to the client by the investigating authority.

### **137 Multiple handling of complaints**

Nothing in this Division requires a copy of a complaint to be referred to an investigating authority if it already has a copy (or a summary or appropriate details) of the complaint.

### **138 Action on complaint not affected by failure to comply with Division**

- (1) Action taken with respect to a complaint is not to be called into question in any legal proceedings merely because of any failure to comply with the requirements of this Division with respect to the referral of the complaint to an investigating authority or the notification of the complaint to the Ombudsman.
- (2) In particular:
  - (a) action taken on the basis that a complaint is a Category 2 complaint is not to be called into question merely because the complaint should have been dealt with as

a Category 1 complaint, and

- (b) action taken on the basis that a complaint is a Category 1 complaint is not to be called into question merely because the complaint should have been dealt with as a Category 2 complaint.

## **Division 5 Investigation by Commissioner**

### **139 Decision of Commissioner as to investigation of complaint**

- (1) This section applies to and in respect of complaints received by the Commissioner, including complaints referred to the Commissioner by some other person or body (other than the Ombudsman), but does not apply to or in respect of complaints that (in accordance with guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner) do not need to be investigated.
- (2) The Commissioner may decide that the complaint should be, or does not need to be, investigated.
- (3) If the Commissioner decides that the complaint should be investigated, the Commissioner:
  - (a) must notify the Ombudsman and the complainant of the decision, and
  - (b) must cause the complaint to be investigated.
- (4) If the Commissioner decides that the complaint does not need to be investigated, the Commissioner:
  - (a) must notify the Ombudsman and the complainant of the decision, and
  - (b) may, if of the opinion that it is appropriate to do so, notify the police officer whose conduct is the subject of the complaint of the decision.
- (5) If the Ombudsman disagrees with the Commissioner's decision that the complaint does not need to be investigated:
  - (a) the Ombudsman must notify the Commissioner and the complainant of that fact, and
  - (b) the Commissioner must cause the complaint to be investigated.

### **140 Decision of Ombudsman as to investigation of complaint**

- (1) This section applies to and in respect of complaints received by the Ombudsman, including complaints referred to the Ombudsman by some other person or body, but does not apply to or in respect of complaints that (in accordance with guidelines agreed between the Police Integrity Commission and the Ombudsman after

consultation with the Commissioner) do not need to be investigated.

- (2) The Ombudsman may decide that the complaint should be, or does not need to be, investigated.
- (3) If the Ombudsman decides that the complaint should be investigated:
  - (a) the Ombudsman must notify the Commissioner and the complainant of the decision, and
  - (b) the Commissioner must cause the complaint to be investigated.
- (4) If the Ombudsman decides that the complaint does not need to be investigated:
  - (a) the Ombudsman:
    - (i) must notify the complainant of the decision and of the Ombudsman's reasons for the decision, and
    - (ii) must send to the Commissioner a copy of the notification, and
  - (b) the Commissioner may, if of the opinion that it is appropriate to do so, notify the police officer whose conduct is the subject of the complaint of the decision.

#### **141 Factors affecting decision as to investigation of complaint**

- (1) In deciding whether a complaint should be, or does not need to be, investigated, the Commissioner or Ombudsman may have regard to such matters as he or she thinks fit, including whether, in his or her opinion:
  - (a) action has been, is being or will be taken to remedy the subject-matter of the complaint without the need for an investigation, or
  - (b) the complaint is frivolous, vexatious or not made in good faith, or
  - (c) the subject-matter of the complaint is trivial, or
  - (d) the conduct complained of occurred too long ago to justify investigation, or
  - (e) there is or was available to the complainant an alternative and satisfactory means of redress in relation to the conduct complained of, or
  - (f) the complainant does not or could not have an interest, or a sufficient interest, in the conduct complained of.
- (2) The Ombudsman is not to direct that a complaint be investigated if of the opinion that the conduct the subject of the complaint is unconnected with the fact that the person concerned is a police officer.

#### **142 Ombudsman may request further information from complainant**

- (1) For the purpose of determining whether a complaint should be investigated, the Ombudsman may do any one or more of the following:
  - (a) request the complainant to attend before the Ombudsman for the purpose of providing further information concerning the complaint,
  - (b) request the complainant to provide further written particulars concerning the complaint,
  - (c) request the complainant to verify by statutory declaration his or her complaint, or any particulars given by the complainant concerning his or her complaint.
- (2) The Ombudsman may withdraw the request if the complainant objects and the Ombudsman is satisfied that the grounds of the objection are well-founded.
- (3) If the Ombudsman makes a request (and it is not withdrawn), the Ombudsman is to take no further action in connection with the complaint concerned until the request is complied with or until a reasonable time for compliance with the request has elapsed.
- (4) If the request is not complied with within a reasonable time, the Ombudsman may treat the complaint concerned as having been dealt with in a manner acceptable to the complainant.
- (5) If the Ombudsman does so, the Ombudsman is to inform the Commissioner and the complainant accordingly.

#### **143 Ombudsman may request further information from other persons**

- (1) For the purpose of determining whether a complaint should be investigated, the Ombudsman may request information from persons other than the complainant.
- (2) This section does not authorise the Ombudsman:
  - (a) to investigate the complaint or to collect information for the purposes of the investigation of the complaint or of a report under this Part, or
  - (b) to interview the police officer the subject of the complaint, or
  - (c) to require persons to provide information.

#### **144 Investigation of complaints**

Complaints that under this Division the Commissioner is authorised or required to investigate are to be investigated in accordance with this Division.

#### **145 Conduct of investigation**

- (1) The police officer or police officers carrying out an investigation:

- (a) must carry out the investigation in a manner that, having regard to the circumstances of the case, is both effective and timely, and
  - (b) in carrying out the investigation, must have regard to any matters specified by the Commissioner or Ombudsman as needing to be examined or taken into consideration.
- (2) If the complaint under investigation is indicative of a systemic problem involving NSW Police generally, or a particular area of NSW Police, the investigation may extend beyond any police officer to whom the complaint relates:
- (a) to NSW Police generally, or that particular area of NSW Police, and
  - (b) to other police officers and other members of NSW Police.
- (3) (Repealed)

#### **146 Ombudsman may monitor investigation**

- (1) The Ombudsman may monitor the progress of an investigation if of the opinion that it is in the public interest to do so.
- (2) The Ombudsman may be present as an observer during interviews conducted by police officers for the purposes of an investigation, and may confer with those police officers about the conduct and progress of the investigation.
- (3) The powers of the Ombudsman under subsection (2) are to be exercised in accordance with arrangements agreed between the Ombudsman and the Commissioner as to the manner in which those powers are to be exercised.
- (4) The Commissioner, and any police officers involved in conducting an investigation, are to comply with any arrangements agreed between the Commissioner and the Ombudsman as to the monitoring of the investigation or of investigations generally.

#### **147 Ombudsman's and Commissioner's reports to complainant**

Both the Ombudsman and the Commissioner may from time to time report to the complainant on the progress of an investigation into a complaint.

#### **148 Proceedings to be instituted if warranted**

- (1) If it appears to a police officer conducting an investigation that sufficient evidence exists to warrant the prosecution of any person for an offence, the police officer is to cause appropriate proceedings to be instituted against the person.
- (2) The Commissioner must inform the Ombudsman of the institution of any such proceedings and of the particulars of the proceedings.
- (3) A police officer is not to institute any such proceedings against another police officer

without the approval of the Commissioner.

**148A Alternative dispute management procedures may be used if warranted**

If it appears to a police officer conducting an investigation that it is appropriate to do so, the police officer may attempt to resolve the relevant complaint by means of alternative dispute management procedures.

**149 Other police investigations not affected**

- (1) Nothing in this Part prevents the Commissioner or any other police officer from investigating, otherwise than under this Division, any matter relating to a complaint, and such an investigation may be made even though an investigation under this Division:
  - (a) is not commenced, or
  - (b) is deferred or discontinued, or
  - (c) is completed, or
  - (d) is made the subject of an investigation under the *Ombudsman Act 1974* or any other Act.
- (2) Without affecting the generality of section 70 (8) of the *Police Integrity Commission Act 1996*, a matter that is the subject of a Category 1 complaint must not be investigated as referred to in subsection (1), unless:
  - (a) it is referred or referred back under that Act to be dealt with in accordance with this Part, or
  - (b) such an investigation is authorised to be carried out by the regulations or by the Commission, either generally or in any particular case.

**Division 6 Procedures following investigation by Commissioner**

**150 Information to be sent to complainant and Ombudsman**

As soon as practicable after the investigation of a complaint has been concluded and a report of the investigation finalised, the Commissioner:

- (a) if practicable, must consult with the complainant before making a decision concerning any action to be taken as a result of the complaint, and
- (b) must provide the complainant with advice as to any action already taken, and as to the Commissioner's decision concerning any action to be taken, as a result of the complaint, and
- (c) must provide the Ombudsman with:



- (i) a copy of the finalised report, and
- (ii) advice as to any action already taken, and as to the Commissioner's decision concerning any action to be taken, as a result of the complaint, and
- (iii) advice as to whether or not the complainant is satisfied with the action taken, or to be taken, as a result of the complaint.

**151 Ombudsman may request information concerning complaint and conduct complained of**

- (1) For the purpose of determining whether a complaint has been properly dealt with, the Commissioner must, at the request of the Ombudsman, provide the Ombudsman with the following:
  - (a) an explanation of the policies, procedures and practices of NSW Police relevant to the conduct complained of, and
  - (b) such documentary and other information (including records of interviews) as the Ombudsman requests with respect to any inquiries made by the Commissioner or other police officers into the complaint, and
  - (c) to the extent to which the Commissioner is able to do so, any explanation, comment or information sought by the Ombudsman in connection with the complaint.
- (2) The Ombudsman may withdraw the request if the Commissioner objects to providing what has been requested and the Ombudsman is satisfied that the grounds of the objection are well-founded.
- (3) Instead of making such a request, the Ombudsman may, in accordance with arrangements agreed between the Ombudsman and the Commissioner, seek information from other police officers.

**152 Ombudsman may request information concerning investigation of complaint**

- (1) If the Ombudsman is not satisfied that a complaint is being investigated in a timely manner, the Ombudsman may request the Commissioner to provide the Ombudsman with information as to the investigation of the complaint.
- (2) On receiving such a request, the Commissioner must provide the Ombudsman with information that demonstrates that the complaint is being investigated, or explains why the complaint is not being investigated, in a timely manner.

**153 Ombudsman may request further investigation of complaint**

- (1) If the Ombudsman is not satisfied that a complaint has been properly investigated, the Ombudsman may request the Commissioner to cause a further investigation to be

conducted, specifying what are, in his or her opinion, the deficiencies in the earlier investigation.

- (2) If the Ombudsman makes such a request, the Commissioner:
  - (a) may, but is not obliged to, cause a further investigation to be conducted, and
  - (b) in either case, must notify the Ombudsman of the Commissioner's decision on the request and (if the decision is not to cause a further investigation to be conducted) of the Commissioner's reasons for the decision.
- (3) This Division and Division 5 apply to and in respect of a further investigation under this section in the same way as they apply to and in respect of the earlier investigation.

**154 Ombudsman may request review of Commissioner's decision on action to be taken on complaint**

- (1) If the Ombudsman is not satisfied with the Commissioner's decision concerning any action to be taken as a result of an investigation, the Ombudsman may request the Commissioner to review the decision.
- (2) If the Ombudsman makes such a request, the Commissioner:
  - (a) may, but is not obliged to, change the decision, and
  - (b) in either case, must notify the Ombudsman of the Commissioner's decision on the request and (if the decision is not to change the decision under review) of the Commissioner's reasons for the decision.

**155 Ombudsman may report on Commissioner's decision on Ombudsman's request**

- (1) Instead of or in addition to making a request under section 152, 153 or 154 in relation to an investigation or decision, the Ombudsman may prepare a report on the investigation or decision.
- (2) The report may include such comments and recommendations as the Ombudsman considers appropriate.
- (3) The Ombudsman is to provide a copy of the report to the complainant, to the Minister and to the Commissioner.
- (4) The Commissioner is then to provide a copy of the report to the police officer whose conduct was the subject of the complaint.
- (5) The issue may be the subject of an Ombudsman's special report.

**Division 7 Investigation by Ombudsman**

### **156 Investigation of complaint under *Ombudsman Act 1974***

- (1) If of the opinion that it is in the public interest to do so, the Ombudsman may make a complaint, together with any investigation of the complaint and any related issues, the subject of an investigation under the *Ombudsman Act 1974*.
- (2) The Ombudsman may take action under this section before the commencement of an investigation under Division 5, during the progress of such an investigation or after the conclusion of such an investigation.
- (3) The Ombudsman must notify the Commissioner of any action taken by the Ombudsman under this section.
- (4) On being so notified, the Commissioner is to discontinue any investigation under Division 5.
- (5) This section has effect despite anything to the contrary in this Part.

### **157 Report following Ombudsman's investigation**

- (1) At the conclusion of an investigation under the *Ombudsman Act 1974* of a complaint referred to in section 156, the Ombudsman must prepare a report on the investigation.
- (2) The report may include such comments and recommendations as the Ombudsman considers appropriate.
- (3) The Ombudsman is to provide a copy of the report to the complainant, to the Minister and to the Commissioner.
- (4) The Commissioner is then to provide a copy of the report to the police officer whose conduct was the subject of the complaint.

### **158 Notification of proposed action on reports**

- (1) As soon as practicable after receiving a report under section 157, the Commissioner must notify the Ombudsman of the nature of the action taken, or to be taken, as a result of the report.
- (2) If the Ombudsman has provided a copy of the report to the Commissioner and the Ombudsman is of the opinion:
  - (a) that the Commissioner has unreasonably delayed notifying the Ombudsman of the nature of the action taken, or to be taken, as a result of the report, or
  - (b) that the nature of the action taken, or to be taken, as a result of the report is, in the circumstances of the case, unreasonable or inadequate, or
  - (c) that the Commissioner has unreasonably delayed taking action as a result of the

report,

the Ombudsman is to advise the Commissioner accordingly by notice in writing served on the Commissioner.

- (3) If the Ombudsman and the Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (2), either or both of them may notify the Minister that the issue is unresolved.
- (4) The issue may be the subject of an Ombudsman's special report.

### **159 Investigation of conduct not the subject of a complaint**

- (1) If it appears to the Ombudsman that any conduct of a police officer could be, but is not, the subject of a complaint, the Ombudsman may make the conduct the subject of an investigation under the *Ombudsman Act 1974*.
- (2) The Ombudsman may make preliminary inquiries for the purpose of deciding whether to make any such conduct the subject of an investigation under the *Ombudsman Act 1974*.
- (3) Sections 157 and 158 apply to and in respect of such an investigation as if the Ombudsman had made a complaint about the conduct.

## **Division 8 Additional provisions concerning Ombudsman**

### **160 Inspection of records and special reports to Parliament**

- (1) The Ombudsman:
  - (a) must inspect the records of NSW Police at least once every 12 months, and
  - (b) may inspect the records of NSW Police at any time,for the purpose of ascertaining whether or not the requirements of this Part are being complied with.
- (2) The Ombudsman must also keep under scrutiny the systems established within NSW Police for dealing with complaints. For that purpose, the Ombudsman may require the Commissioner to provide information about those systems and their operation.
- (3) 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.

- (4) The Ombudsman may include in such a report a recommendation that the report be made public as soon as practicable.

### **161 Publicity**

- (1) The Ombudsman is to cause to be prepared pamphlets briefly explaining the rights and duties of police officers and the public under this Part.
- (2) The pamphlets are to be written in the English language and in such other languages as the Ombudsman considers necessary.
- (3) The Ombudsman:
  - (a) must supply the Commissioner with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at each police station in the State, and the Commissioner is to distribute the pamphlets accordingly, and
  - (b) must supply the Director-General of the Attorney General's Department with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at the office of each Local Court in the State, and the Director-General is to distribute the pamphlets accordingly, and
  - (c) must make such arrangements as the Ombudsman thinks fit with any government department or instrumentality or with any other body or organisation for making the pamphlets available, or distributing them, to any interested person, and
  - (d) must take such further or other action as the Ombudsman considers necessary to bring the provisions of this Part to the attention of interested persons.

### **162 Consultation with Minister**

The Ombudsman may consult with the Minister about a complaint at any stage and may for that purpose disclose to the Minister any information relating to or arising in connection with the complaint, including:

- (a) any matters arising from an investigation of the complaint, and
- (b) any report or proposed report relating to the complaint, and
- (c) any action taken or proposed to be taken in connection with the complaint.

### **163 Ombudsman not to publish certain information**

- (1) This section applies to information (referred to as **police information**):
  - (a) that is provided to the Ombudsman by the Commissioner or by some other police officer in accordance with a requirement under the [Ombudsman Act 1974](#), or
  - (b) that is provided to the Ombudsman by the Commissioner in accordance with a requirement under this Part.

- (2) The Commissioner may at any time notify the Ombudsman that specified police information (referred to in this section as **critical police information**) is information whose publication may, in the opinion of the Commissioner, prejudice the investigation or prevention of crime, or otherwise be contrary to the public interest.
- (3) Any notice under subsection (2) must include the reasons for which the Commissioner has formed the opinion referred to in that subsection.
- (4) The Ombudsman is not to publish critical police information at any time.
- (5) The Ombudsman is not to publish police information that is provided to the Ombudsman by the Commissioner or some other police officer in accordance with a requirement under the *Ombudsman Act 1974* (other than critical police information) before the expiry of 21 days after the date on which it was provided to the Ombudsman.

**Note—**

The 21 day period provides the Commissioner with an opportunity to notify the Ombudsman that the information is critical police information.

- (6) Nothing in this section prevents the Ombudsman from publishing police information (including critical police information) to the Commissioner or to any other person to whom the Commissioner authorises publication of the information.
- (7) Nothing in this section prevents the Ombudsman from including police information (including critical police information):
  - (a) in any report submitted to the Presiding Officer of each House of Parliament, or
  - (b) in the copy of any such report submitted to the Minister,if, in his or her opinion, the circumstances so warrant.

**164 Application of section 34 of *Ombudsman Act 1974***

- (1) In the application of section 34 (1) of the *Ombudsman Act 1974* to information received by the Ombudsman, or an officer of the Ombudsman, in the administration or execution of this Part:
  - (a) the reference in that subsection to a public authority is to be construed as a reference to a police officer, and
  - (b) the reference in that subsection to the head of that authority is to be construed as a reference to the Commissioner, and
  - (c) the reference in that subsection to the responsible Minister is to be construed as a reference to the Minister administering this Act.
- (2) This section does not limit the operation of section 34 (1) (a) of the *Ombudsman Act*

1974.

**165 Ombudsman and officers of Ombudsman not competent or compellable witnesses in respect of certain matters**

- (1) Neither the Ombudsman, nor an officer or special officer of the Ombudsman who is not a police officer, is competent or compellable, in any legal proceedings, to give evidence or produce documents in respect of any matter in which he or she is or was involved in the course of the administration or execution of this Part.
- (2) Subsection (1) does not apply to or in respect of any proceedings under section 37 of the *Ombudsman Act 1974* or Part 3 of the *Royal Commissions Act 1923*.
- (3) Subsections (1) and (2) do not prejudice or affect the operation of section 35 of the *Ombudsman Act 1974* in relation to the administration and execution of this Act.

**166 Limitation on delegation of functions by Ombudsman**

- (1) The functions of the Ombudsman that may, under section 10 of the *Ombudsman Act 1974*, be delegated to a special officer of the Ombudsman (other than an Assistant Ombudsman) do not include any power or duty to make a report under this Act.
- (2) The functions of the Ombudsman that may, under section 10 of the *Ombudsman Act 1974*, be delegated to an Assistant Ombudsman do not include any power or duty to make a report under this Act (other than a report under section 155 or 157).

**167 Exercise of Ombudsman's functions by officers of Ombudsman**

The functions of the Ombudsman under this Part are to be exercised by the Ombudsman or by such officer of the Ombudsman as the Ombudsman may nominate, either generally or in a particular case.

**Division 9 Miscellaneous**

**167A Offence of making false complaint about conduct of police officer or giving false information**

- (1) A person must not make a complaint under this Part knowing the complaint to be false.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A person must not, in the course of the investigation of a complaint made under this Part, provide information to any of the following knowing the information to be false or misleading in a material particular:
  - (a) the Minister,
  - (b) a member of NSW Police,

- (c) the Police Integrity Commission,
- (d) the Inspector of the Police Integrity Commission,
- (e) the Independent Commission Against Corruption,
- (f) the New South Wales Crime Commission,
- (g) the Ombudsman,
- (h) a member of Parliament,
- (i) a prison officer within the meaning of section 127 (8).

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (3) Proceedings for an offence against this section may be instituted at any time within 2 years after the offence is alleged to have been committed.

#### **168 Police Integrity Commission may take over Category 2 complaint**

- (1) The Police Integrity Commission may at any time direct that a Category 2 complaint be treated as a Category 1 complaint.
- (2) The complaint is then to be treated as a Category 1 complaint, even though it would not or may not otherwise be a Category 1 complaint.

#### **169 Provisions relating to reports furnished to Parliament**

- (1) **Tabling** A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this Act must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer.
- (2) **Public reports** If a report includes a recommendation by the Ombudsman that the report be made public forthwith, the Presiding Officer of a House of Parliament may make it public, whether or not that House is in session and whether or not the report has been laid before that House.
- (3) **Privileges and immunities** A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House.
- (4) **Report procedures** A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

#### **169A Identity of complainant not to be disclosed**

A member of NSW Police must not disclose to any person the identity of a complainant



unless the disclosure is made:

- (a) in accordance with guidelines established by the Commissioner, or
- (b) with the consent of the complainant, or
- (c) in accordance with a requirement of or made under this or any other Act, or
- (d) for the purposes of any legal proceedings before a court or tribunal.

**170 Certain documents privileged**

- (1) A document brought into existence for the purposes of this Part is not admissible in evidence in any proceedings other than proceedings:
  - (a) that concern the conduct of police officers, and
  - (b) that are dealt with by the Commissioner, by the Industrial Relations Commission or by the Supreme Court in the exercise of its jurisdiction to review administrative action.
- (2) Subsection (1) does not apply to or in respect of:
  - (a) a document comprising a complaint, or
  - (b) a document published by order of, or under the authority of, the Presiding Officer of a House of Parliament or either House, or both Houses, of Parliament, or
  - (c) a document that a witness is willing to produce.
- (3) Subsections (1) and (2) do not operate to render admissible in evidence in any proceedings any document that would not have been so admissible if this section had not been enacted.

**171 Part not to affect police officers' other powers and duties**

- (1) This Part does not operate to absolve a police officer who receives a complaint from liability to perform any duty imposed on the police officer otherwise than by this Part.
- (2) Action on a complaint may be taken otherwise than under this Part (including action involving criminal proceedings and action under Part 9) even if action on the complaint has yet to commence or is in progress under this Part.
- (3) This section has effect despite any other provision of this Part.

**172 Use of Federal and interstate police for investigations**

- (1) The Commissioner may arrange for:
  - (a) a member of the Australian Federal Police, or

(b) a member of the Police Force (by whatever name described) of another State or Territory,

to be seconded or otherwise engaged to assist in the conduct of any investigation under this Part.

(2) For the purpose only of assisting in the conduct of an investigation under this Part, a member of a Police Force who is seconded or otherwise engaged as referred to in subsection (1):

(a) has and may exercise all of the functions (including all of the powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable has and may exercise under any law of the State (including the common law and this Act), and

(b) in particular:

(i) is exempt from the requirement of the *Firearms Act 1996* to be authorised by a licence or permit to possess or use semi-automatic pistols (or to possess ammunition for any such pistol), and

(ii) for the purposes of section 6 of the *Prohibited Weapons Act 1989*, is authorised to possess handcuffs and body armour vests.

## **Part 9 Management of conduct within NSW Police**

### **Division 1 Misconduct and unsatisfactory performance**

#### **173 Commissioner may take action with respect to police officer's misconduct or unsatisfactory performance**

(1) In this section:

***non-reviewable action*** means action referred to in Schedule 1.

***reviewable action*** means action referred to in subsection (2), other than non-reviewable action.

(2) The Commissioner may order that the following action be taken with respect to a police officer who engages in misconduct:

(a) a reduction of the police officer's rank or grade,

(b) a reduction of the police officer's seniority,

(c) a deferral of the police officer's salary increment,

(d) any other action (other than dismissal or the imposition of a fine) that the Commissioner considers appropriate.

- (3) The Commissioner may also order that action referred to in subsection (2) be taken with respect to a police officer whom the Commissioner has required to participate in a remedial performance program prescribed by the regulations and whose performance as a police officer after having participated in that program is, in the Commissioner's opinion, still unsatisfactory.
- (4) The Commissioner may make an order under subsection (2) or (3) whether or not the misconduct or unsatisfactory performance has been the subject of a complaint under Part 8A and whether or not the police officer has been prosecuted or convicted for an offence in relation to the misconduct or unsatisfactory performance.
- (5) Before making an order for reviewable action, the Commissioner:
  - (a) must cause to be served on the police officer a notice that identifies the misconduct or unsatisfactory performance (including all relevant facts and circumstances) on the basis of which the Commissioner intends to make the proposed order, and
  - (b) must give the police officer 7 days from the date of service of the notice within which to serve notice on the Commissioner that he or she intends to make written submissions to the Commissioner in relation to the proposed order, and
  - (c) must take into consideration any written submissions received from the police officer:
    - (i) during the period of 7 days referred to in paragraph (b), or
    - (ii) if during that period the police officer serves notice on the Commissioner as referred to in paragraph (b), during the period of 21 days following the date on which that notice is served.
- (6) As soon as practicable after making an order for reviewable action, the Commissioner must cause written notice that the order has been made to be served on the police officer concerned. The notice must be served personally or (if personal service is impracticable) by post.
- (7) The written notice must contain the terms of the order and must indicate:
  - (a) the misconduct or unsatisfactory performance (including all relevant facts and circumstances) on the basis of which the order has been made, and
  - (b) whether the order results from a complaint that has been investigated, or is being investigated, under Division 5 of Part 8A, and
  - (c) the Commissioner's reasons for making the order.
- (8) An order for action referred to in subsection (2) takes effect:

- (a) in the case of non-reviewable action, when the order is made, or
  - (b) in the case of reviewable action, at the expiry of the time within which an application for a review of the order may be made under section 174 or, if such an application is made within that time, when the application is finally determined.
- (9) Except as provided by Division 1A:
- (a) no tribunal has jurisdiction or power to review or consider any decision or order of the Commissioner under this section, and
  - (b) no appeal lies to any tribunal in connection with any decision or order of the Commissioner under this section.
- In this subsection, **tribunal** means a court, tribunal or administrative review body, and (without limitation) includes GREAT and the Industrial Relations Commission.
- (10) Nothing in this section limits or otherwise affects the jurisdiction of the Supreme Court to review administrative action.
- (11) Nothing in Division 1A limits or otherwise affects the Commissioner's power to vary or revoke an order in force under this section.
- (12) Despite section 31, the Commissioner's functions under this section may only be delegated to a member of NSW Police who is senior to the police officer in respect of whom those functions are being exercised.

## **Division 1A Review of Commissioner's order under Division 1**

### **174 Review generally**

- (1) A police officer in respect of whom an order for reviewable action is made under section 173 may apply to the Industrial Relations Commission (referred to in this Division as the **Commission**) for a review of the order on the ground that the order is beyond power or is harsh, unreasonable or unjust.
- (2) An application may be made on behalf of the police officer by an industrial organisation of employees.
- (3) An industrial organisation of employees may make one application on behalf of a number of police officers in respect of whom orders for reviewable action have been made at the same time or for related reasons. However, this subsection does not prevent the Commission from hearing a number of applications together or individually.
- (4) An application may not be made by or on behalf of a police officer more than 21 days after the date on which written notice of the making of the order to which it relates was served on the police officer.

- (5) Except to the extent to which the regulations otherwise provide, it is the duty of the Commissioner to make available to the applicant, for inspection and copying, all of the documents and other material on which the Commissioner has relied, or to which the Commissioner has had regard, in deciding to make the order to which the application relates.

#### **175 Proceedings on a review**

- (1) The Commission is to commence hearing an application for a review under this Division within 4 weeks after the application is made.
- (2) The applicant has at all times the burden of establishing that the order to which the application relates is beyond power or is harsh, unreasonable or unjust. This subsection has effect despite any law or practice to the contrary.
- (3) In determining the applicant's claim, the Commission may take into account such matters as it considers relevant.
- (4) Without limiting the matters to which the Commission is otherwise required or permitted to have regard in making its decision, the Commission must have regard to:
  - (a) the interests of the applicant, and
  - (b) the public interest (which is taken to include the fact that the Commissioner made the order pursuant to section 173).

#### **176 Conciliation of applications**

The Commission must endeavour, by all means it considers proper and necessary, to settle the applicant's claim by conciliation.

#### **177 Arbitration where conciliation unsuccessful**

- (1) When, in the opinion of the Commission, all reasonable attempts to settle the applicant's claim by conciliation have been made but have been unsuccessful, the Commission is to determine the application:
  - (a) by revoking the order, or
  - (b) by revoking the order and making such other order as it considers appropriate, whether or not an order that the Commissioner is empowered to make under section 173, or
  - (c) by upholding the order, or
  - (d) by dismissing the application.
- (2) If the Commission revokes the order, it may also direct the payment of compensation for any loss suffered by the applicant as a consequence of the making of the order.

- (3) An order made by the Commission under subsection (1) (b) is to be given effect to in accordance with its terms.
- (4) Nothing in this section prevents further conciliation from being attempted at any time before the Commission makes an order or direction under this section.

### **178 Rules of evidence and legal formality**

- (1) The Commission:
  - (a) is not bound to act in a formal manner, and
  - (b) is not bound by the rules of evidence, but may inform itself on any matter in any way that it considers to be just, and
  - (c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (2) However, the rules of evidence and other formal procedures of a superior court of record apply to and in respect of the Commission in Court Session.

### **179 Application of [Industrial Relations Act 1996](#)**

- (1) In the application of Part 5 of Chapter 4 of the [Industrial Relations Act 1996](#) to proceedings under this Division, the provisions of sections 163, 167, 169 (4), 172, 181 and 184 of that Act do not have effect.
- (2) Proceedings under this Division are to be dealt with by a judicial member of the Commission unless the President of the Commission otherwise directs under section 159 of the [Industrial Relations Act 1996](#).
- (3) Despite section 160 of the [Industrial Relations Act 1996](#), the President of the Commission may not delegate the President's functions under section 159 of that Act in respect of proceedings under this Division.

### **180 Matters relating to evidence**

- (1) Section 128 (Privilege in respect of self-incrimination in other proceedings) of the [Evidence Act 1995](#) applies to and in respect of a witness giving evidence before the Commission in proceedings under this Division in the same way as it applies to and in respect of a witness giving evidence in proceedings before a court, and so applies as if a reference in that section to a court were a reference to the Commission.
- (2) Subject to section 178, nothing in this Division limits or otherwise affects the admissibility as evidence in proceedings under this Division of any transcript of the proceedings of any other court or tribunal.

### **181 Application of Division to both reviews and appeals from review decisions**

This Division applies not only to proceedings before the Commission on a review under this Division but also to proceedings before the Full Bench of the Commission on an appeal from a decision of the Commission under this Division.

### **181A-181C (Repealed)**

## **Division 1B Summary removal of police officers in whom Commissioner does not have confidence**

### **181D Commissioner may remove police officers**

- (1) The Commissioner may, by order in writing, remove a police officer from NSW Police if the Commissioner does not have confidence in the police officer's suitability to continue as a police officer, having regard to the police officer's competence, integrity, performance or conduct.
- (2) Action may not be taken under subsection (1) in relation to a Deputy Commissioner or Assistant Commissioner except with the approval of the Minister.
- (3) Before making an order under this section, the Commissioner:
  - (a) must give the police officer a notice setting out the grounds on which the Commissioner does not have confidence in the officer's suitability to continue as a police officer, and
  - (b) must give the police officer at least 21 days within which to make written submissions to the Commissioner in relation to the proposed action, and
  - (c) must take into consideration any written submissions received from the police officer during that period.
- (4) The order must set out the reasons for which the Commissioner has decided to remove the police officer from NSW Police.
- (5) The removal takes effect when the order is made.
- (6) (Repealed)
- (7) Except as provided by Division 1C:
  - (a) no tribunal has jurisdiction or power to review or consider any decision or order of the Commissioner under this section, and
  - (b) no appeal lies to any tribunal in connection with any decision or order of the Commissioner under this section.

In this subsection, **tribunal** means a court, tribunal or administrative review body,

and (without limitation) includes GREAT and the Industrial Relations Commission.

- (7A) Nothing in this section limits or otherwise affects the jurisdiction of the Supreme Court to review administrative action.
- (7B) Nothing in Division 1C limits or otherwise affects the Commissioner's power to vary or revoke an order in force under this section.
- (8) For the purposes of this Act, removal of a police officer from NSW Police under this section has the same effect as if the police officer had resigned (or, in the case of a police officer who is of or above the age of 55 years, had retired) from NSW Police.
- (9) The Commissioner may take action under this section despite any action with respect to the removal or dismissal of the police officer that is in progress under some other provision of this Act and despite the decision of any court with respect to any such action.

## **Division 1C Review of Commissioner's decision under Division 1B**

### **181E Review generally**

- (1) A police officer who is removed from NSW Police by an order under section 181D may apply to the Industrial Relations Commission (referred to in this Division as the **Commission**) for a review of the order on the ground that the removal is harsh, unreasonable or unjust.
- (2) An application under this section does not operate to stay the operation of the order in respect of which it is made.
- (3) Except to the extent to which the regulations otherwise provide, it is the duty of the Commissioner to make available to the applicant all of the documents and other material on which the Commissioner has relied in deciding that the Commissioner does not have confidence in the applicant's suitability to continue as a police officer, as referred to in section 181D (1).

### **181F Proceedings on a review**

- (1) In conducting a review under this Division, the Commission must proceed as follows:
  - (a) firstly, it must consider the Commissioner's reasons for the decision to remove the applicant from NSW Police,
  - (b) secondly, it must consider the case presented by the applicant as to why the removal is harsh, unreasonable or unjust,
  - (c) thirdly, it must consider the case presented by the Commissioner in answer to the applicant's case.



- (2) The applicant has at all times the burden of establishing that the removal of the applicant from NSW Police is harsh, unreasonable or unjust. This subsection has effect despite any law or practice to the contrary.
- (3) Without limiting the matters to which the Commission is otherwise required or permitted to have regard in making its decision, the Commission must have regard to:
  - (a) the interests of the applicant, and
  - (b) the public interest (which is taken to include the interest of maintaining the integrity of NSW Police, and the fact that the Commissioner made the order pursuant to section 181D (1)).

**181G Application of *Industrial Relations Act 1996* to reviews**

- (1) The provisions of the *Industrial Relations Act 1996* apply to an application for a review under this Division in the same way as they apply to an application under Part 6 (Unfair dismissals) of Chapter 2 of that Act, subject to this Division and to the following modifications:
  - (a) section 83 (Application of Part) is to be read as if subsection (3) were omitted,
  - (b) section 85 (Time for making applications) is to be read:
    - (i) as if a reference to 21 days in that section were instead a reference to 14 days, starting from the day on which the applicant is given a copy of the order to which the application relates, and
    - (ii) as if subsection (3) were omitted,
  - (c) section 86 (Conciliation of applications) is to be read as if it provided that a judicial member of the Commission who is involved in any endeavour to settle the applicant's claim by conciliation must not subsequently be involved in the conduct of proceedings on the review,
  - (d) section 89 is to be read as if subsection (7) (Threat of dismissal) were omitted,
  - (e) section 162 (Procedure generally) is to be read as if the requirement of subsection (2) (a) of that section that the Commission is to act as quickly as is practicable were instead a requirement for the Commission to commence hearing the application within 4 weeks after the application is made,
  - (f) section 163 (Rules of evidence and legal formality) is to be read as if it provided that new evidence may not be adduced before the Commission unless:
    - (i) notice of intention to do so, and of the substance of the new evidence, has been given in accordance with the regulations under this Act, or
    - (ii) the Commission gives leave.

- (2) The Commission may grant leave as referred to in subsection (1) (f) (ii) in such circumstances as it thinks fit and having regard to the nature of proceedings under section 181F, and without limiting the generality of the foregoing, the Commission must grant leave in the following circumstances:
- (a) where the Commission is satisfied that there is a real probability that the applicant may be able to show that the Commissioner has acted upon wrong or mistaken information,
  - (b) where the Commission is satisfied that there is cogent evidence to suggest that the information before the Commissioner was unreliable, having been placed before the Commissioner maliciously, fraudulently or vexatiously,
  - (c) where the Commission is satisfied that the new evidence might materially have affected the Commissioner's decision.

**181H Commissioner and members of Commissioner's Advisory Panels compellable witnesses only by leave**

- (1) In any proceedings before the Commission under this Division, neither the Commissioner nor any member of a Commissioner's Advisory Panel is compellable to give evidence in relation to the exercise of the Commissioner's functions under section 181D unless the Commission gives leave.
- (2) The Commission may give such leave only if it considers that extraordinary grounds exist that warrant leave being given.
- (3) In this section, **Commissioner's Advisory Panel** means a panel established by the Commissioner to assist in the exercise of the Commissioner's functions under section 181D.

**181I Matters relating to evidence**

- (1) Section 128 (Privilege in respect of self-incrimination in other proceedings) of the [Evidence Act 1995](#) applies to a witness giving evidence before the Commission in proceedings under this Division in the same way as it applies to a witness giving evidence in proceedings before a court, and so applies as if a reference in that section to a court were a reference to the Commission.
- (2) Subject to subsection (1) of section 163 (Rules of evidence and legal formality) of the [Industrial Relations Act 1996](#), nothing in this Division limits or otherwise affects the admissibility in evidence in proceedings before the Commission under this Division of any transcript of the proceedings of any other court or tribunal.

**181J Application of Division to both reviews and appeals from review decisions**

This Division applies not only to proceedings before the Commission on a review under this Division but also to proceedings before the Full Bench of the Commission on an

appeal from a decision of the Commission under this Division.

## **Division 1D Constitution of Industrial Relations Commission for the purposes of proceedings under this Part**

### **181K Constitution of Commission for the purposes of Division 1C**

- (1) A review under Division 1C is to be conducted before the Industrial Relations Commission (referred to in this Division as the **Commission**) constituted by a single judicial member.
- (2) An appeal from the decision of the Commission on a review under Division 1C is to be conducted before a Full Bench of the Commission constituted by 3 judicial members.
- (3) Proceedings on a review under Division 1C, or on an appeal from the decision of the Commission on a review under Division 1C, are taken not to be proceedings of the Commission in Court Session.

## **Division 2 Resignation of police officers on recommendation of Police Integrity Commission**

### **182 Acceptance of resignation of police officers in certain cases**

- (1) The Commissioner is required to accept the resignation of a police officer from NSW Police if:
  - (a) the officer tenders his or her resignation, and
  - (b) the Police Integrity Commission has recommended that the officer be allowed to resign.
- (2) This section prevails to the extent of any inconsistency with any other provision of this Act.

### **183 (Repealed)**

## **Division 2A Revocation of promotional appointment because of misconduct in obtaining promotion**

### **183A Revocation of promotional appointment by Commissioner**

The Commissioner may, by order (in this Division called a **revocation order**), revoke an appointment by way of promotion of an officer who, in the Commissioner's opinion, is found to have engaged in misconduct that has assisted the officer in obtaining the promotion and return the officer to the rank or grade held by the officer before his or her promotion.

### **183B Making of revocation orders**

- (1) The Commissioner may make a revocation order whether or not the misconduct has been the subject of a complaint under Part 8A and whether or not the police officer has been prosecuted or convicted for an offence in relation to the misconduct.
- (2) Before making a revocation order, the Commissioner:
  - (a) must cause to be served on the police officer a notice that identifies the misconduct (including all relevant facts and circumstances) on the basis of which the Commissioner intends to make the proposed order, and
  - (b) must give the police officer 7 days from the date of service of the notice within which to serve notice on the Commissioner that he or she intends to make written submissions to the Commissioner in relation to the proposed order, and
  - (c) must take into consideration any written submissions received from the police officer:
    - (i) during the period of 7 days referred to in paragraph (b), or
    - (ii) if during that period the police officer serves notice on the Commissioner as referred to in paragraph (b), during the period of 21 days following the date on which that notice is served.
- (3) As soon as practicable after making a revocation order, the Commissioner must cause written notice that the order has been made to be served on the police officer concerned. The notice must be served personally or (if personal service is impracticable) by post.
- (4) The written notice must contain the terms of the order and must indicate:
  - (a) the misconduct (including all relevant facts and circumstances) on the basis of which the order has been made, and
  - (b) whether the order results from a complaint that has been investigated, or is being investigated, under Division 5 of Part 8A, and
  - (c) the Commissioner's reasons for making the order.

### **183C Effect of revocation order**

- (1) A revocation order:
  - (a) has effect from the date on which it is made, and
  - (b) is not stayed by the lodging of an appeal against it.
- (2) The making of a revocation order does not prevent the Commissioner from taking action under section 173 or 181D.

### **183D Review of revocation orders**

- (1) Division 1A applies to and in respect of a revocation order in the same way as it applies to and in respect of a reviewable action (within the meaning of section 173).
- (2) Except as provided by Division 1A:
  - (a) no tribunal has jurisdiction or power to review or consider any decision or order of the Commissioner under this Division, and
  - (b) no appeal lies to any tribunal in connection with any decision or order of the Commissioner under this Division.
- (3) Nothing in this Division limits or otherwise affects the jurisdiction of the Supreme Court to review administrative action.
- (4) Nothing in Division 1A limits or otherwise affects the Commissioner's power to revoke a revocation order.
- (5) In this section, **tribunal** means a court, tribunal or administrative review body, and (without limitation) includes GREAT and the Industrial Relations Commission.

### **183E Restriction on delegation of Commissioner's functions**

Despite section 31, the Commissioner's functions under this Division may only be delegated to a member of NSW Police who is senior to the police officer in respect of whom those functions are being exercised.

## **Division 3 Miscellaneous provisions**

### **184 Conduct and performance of administrative officers**

- (1) The provisions of Part 2.7 of the [Public Sector Employment and Management Act 2002](#) apply to administrative officers in the same way as they apply to officers of the Public Service.
- (2) For that purpose:
  - (a) a reference to the appropriate Department Head is to be read as a reference to the Commissioner, and
  - (b) a reference to the Public Service is to be read as a reference to NSW Police.

### **185 Disciplinary appeals to GREAT by non-executive administrative officers**

The provisions of the [Government and Related Employees Appeal Tribunal Act 1980](#) relating to disciplinary appeals apply to administrative officers (not being members of NSW Police Senior Executive Service) as if those officers were employees, and the Commissioner were their employer, within the meaning of that Act.

### **186 Appeal to GREAT relating to leave when hurt on duty**

- (1) A police officer may appeal to GREAT against a decision of the Commissioner to grant or refuse leave of absence on full pay to the police officer during any period of absence caused by that officer being hurt on duty within the meaning of section 1 (2) of the *Police Regulation (Superannuation) Act 1906*.
- (2) The *Government and Related Employees Appeal Tribunal Act 1980* applies to and in respect of an appeal under this section in the same way as it applies to an appeal under Division 2 of Part 3 of that Act.
- (3) In order to determine the membership of and to constitute GREAT for the purpose of hearing and determining an appeal under this section, a police officer is taken to be an employee and the Commissioner the employer, within the meaning of the *Government and Related Employees Appeal Tribunal Act 1980*.

### **187 Transitional**

- (1) The provisions of this Act and the regulations relating to disciplinary proceedings against members of NSW Police apply to conduct before as well as to conduct after the commencement of this Act.
- (2) This section is subject to Parts 1 and 6 of Schedule 4.

## **Part 9A**

### **188-199 (Repealed)**

## **Part 10 Offences relating to NSW Police**

### **200 Bribery or corruption**

- (1) A member of NSW Police who receives or solicits any bribe, pecuniary or otherwise, is guilty of an offence.
- (2) A person (including a member of NSW Police) who:
  - (a) gives, or offers or promises to give, any bribe (pecuniary or otherwise) or any other benefit to a member of NSW Police, or
  - (b) makes any collusive agreement with a member of NSW Police,for the purpose of inducing the member to neglect his or her duty, of influencing the member in the exercise of his or her functions or of improperly taking advantage of the member's position is guilty of an offence.
- (3) Proceedings for an offence against this section may be taken within 2 years after the act or omission alleged to constitute the offence.

(4) An offence under this section is an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 7 years, or both.

### **201 Neglect of duty etc**

A police officer who neglects or refuses to obey any lawful order or carry out any lawful duty as a police officer is guilty of an offence.

Maximum penalty: 20 penalty units.

### **202 Admission to NSW Police as police officer under false pretences**

A person who gains admission to NSW Police as a police officer:

(a) without disclosing any previous dismissal of the person from NSW Police or the Police Force, or

(b) by any false representation or the use of any false document,

is guilty of an offence.

Maximum penalty: 5 penalty units or imprisonment for 3 months, or both.

### **203 Wearing or possession of police uniforms by others**

(1) A person (not being a police officer) who wears or possesses a police uniform is guilty of an offence.

(2) A person (including a police officer) who manufactures or sells police insignia is guilty of an offence.

(3) A person (including a police officer) who uses police insignia otherwise than in the course of, and for the purpose of, exercising the functions of a police officer is guilty of an offence.

(4) A person (including a police officer) who drives or possesses a motor vehicle that is not owned or leased by the State or an authority of the State and that has on it any police insignia is guilty of an offence.

(5) A person is not guilty of an offence under this section if:

(a) the act or omission constituting the offence is authorised by the regulations or by a licence granted to the person by the Commissioner, or

(b) the person establishes that the person otherwise had the permission of the Commissioner for the act or omission, or

(c) the person establishes that the person had a reasonable excuse for the act or omission.

- (6) Without limiting subsection (5), a person is not guilty of an offence under subsection (1) if the person wore or was in possession of the police uniform for the purposes of a public entertainment.
- (7) The Commissioner may grant licences for the purposes of this section, with or without conditions, and may vary or revoke any such licences.
- (8) In this section:

**motor vehicle** has the same meaning as in the [Traffic Act 1909](#).

**police insignia** means:

- (a) any items (being insignia, emblems, logos, devices, accoutrements and other things) that are generally recognised as pertaining to NSW Police or as being used by police officers, or
- (b) any parts of any such items, or
- (c) any reasonable imitation of any such items or parts, or
- (d) any thing or class of thing prescribed by the regulations as being within this definition (whether or not it may already be within this definition),

and includes police uniforms, but does not include any thing or class of thing prescribed by the regulations as being outside this definition.

**police uniform** means the uniform of a police officer, and includes:

- (a) any parts of such a uniform (or any accoutrements of a police officer) that are generally recognised as parts of the uniform or accoutrements of a police officer, or
- (b) any reasonable imitation of such a uniform, parts of a uniform or accoutrements.

**sell** means sell, exchange or let on hire, and includes:

- (a) offer, expose, possess, send, forward or deliver for sale, exchange or hire, or
- (b) cause, suffer or allow any of the above.

**use** of police insignia includes use of a reproduction or representation of police insignia.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

#### **204 Impersonation of police officers**

A person who impersonates a police officer is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.



#### **204A Use of word “police” in operating name**

- (1) A person or body of persons (whether incorporated or not) must not carry on any activity under an operating name that includes the word “police”.

Maximum penalty: 100 penalty units.

- (2) An offence under this section committed by an unincorporated body of persons is taken to have been committed by each person who has been a member of the body’s governing body at any time while the offence has been committed.

- (3) This section does not prevent a person or body of persons from doing anything in accordance with the terms of a consent in force under section 204B.

- (4) This section does not apply to:

(a) any body that has, among its primary objects, the object of commenting on, objecting to or protesting against the policies or practices of public authorities such as NSW Police, or

(b) any other body or class of bodies that is declared by the regulations to be a body or class of bodies to which this section does not apply.

- (5) In this section, **operating name** includes any name, style, title or designation under which a person or body carries on an activity, any name under which an association is incorporated under the [Associations Incorporation Act 1984](#) and any business name registered under the [Business Names Act 1962](#) in relation to a person, but does not include:

(a) in the case of an individual, the individual’s family name, either alone or together with:

(i) one or more of the individual’s given names, or

(ii) one or more of the initials of the individual’s given names, or

(iii) a combination of one or more of the individual’s given names and one or more of the initials of the individual’s remaining given names, or

(b) in the case of a corporation, the corporation’s corporate name, or

(c) in the case of an industrial organisation registered under the [Industrial Relations Act 1996](#), the name under which the industrial organisation is registered, or

(d) in the case of any other statutory body, the name under which the body is incorporated, constituted or established.

#### **204B Consents for the purposes of section 204A**

- (1) The Commissioner may grant consent to any person or body of persons to carry on

any activity under an operating name (within the meaning of section 204A) that includes the word “police”, either unconditionally or subject to such conditions as the Commissioner considers appropriate to impose on the consent.

- (2) A consent may be revoked by the Commissioner at any time.
- (3) In deciding whether or not to grant or revoke a consent, the Commissioner must have regard to such matters (if any) as are prescribed by the regulations.
- (4) Before revoking a consent, the Commissioner:
  - (a) must serve notice of the proposed revocation on the person or body of persons having the benefit of the consent, and
  - (b) must allow that person or body at least 14 days within which to make submissions with respect to the proposed revocation, and
  - (c) must have regard to any submissions that are duly made with respect to the proposed revocation.
- (5) As soon as practicable after revoking a consent, the Commissioner must cause notice of that fact to be given:
  - (a) to the person or body of persons concerned, and
  - (b) if the consent relates to:
    - (i) the name under which an association is incorporated under the *Associations Incorporation Act 1984*, or
    - (ii) a business name registered under the *Business Names Act 1962*,to the Director-General of the Department of Fair Trading.

**Note—**

Notification of the Director-General of Fair Trading will have the following effect:

- (a) In the case of the name under which an association is incorporated under the *Associations Incorporation Act 1984*, it will prompt the Director-General to exercise his or her powers under that Act to direct the association to change its name.
  - (b) In the case of a business name registered under the *Business Names Act 1962*, it will advise the Director-General that continued use of the name is unlawful and will prompt the Director-General to exercise his or her powers under that Act to refuse to re-register, or to cancel, a currently registered business name.
- (6) A consent that is revoked ceases to have effect:
- (a) except as provided by paragraph (b):
    - (i) at the end of 28 days after notice of the revocation is served on the person or

body of persons concerned, or

(ii) at such later time as may be specified in the notice of revocation, or

(b) in the case of a consent that relates to the name under which an association is incorporated under the *Associations Incorporation Act 1984*:

(i) on the date on which the Director-General of Fair Trading issues a certificate of incorporation in respect of the association's new name under section 14 (5) of that Act, or

(ii) on the date on which the Director-General of Fair Trading cancels the association's incorporation under section 54 (2A) of that Act,

as the case may be.

### **205 Use of police designations by others**

A person (not being a police officer) who, in connection with any business, occupation or employment uses:

(a) the designation of "detective", or

(b) the designation of "private detective" or any other designation that includes the word "detective", or

(c) any other designation, or any rank or description, implying that the person is a police officer (whether or not the designation, rank or description was previously applicable to the person as a police officer),

is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

### **206 Protection against reprisals**

(1) This section applies to an allegation of misconduct or criminal activity made by a police officer about one or more other police officers where the allegation (a ***protected allegation***) is made:

(a) in the performance of the duty imposed on the police officer by or under this or any other Act, or

(b) in accordance with the procedures for making allegations set out in this or any other Act,

and so applies even if the person who is the subject of the allegation is no longer a police officer.

(2) A police officer who takes detrimental action against another police officer or former

police officer (being action that is substantially in reprisal for the other police officer or former police officer making a protected allegation) is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2A) In any proceedings for an offence against this section, it lies on the defendant to prove that the detrimental action shown to be taken against a person was not substantially in reprisal for the person making a protected allegation.
- (2B) Subsection (2A) applies only in relation to a protected allegation that is a protected disclosure within the meaning of the *Protected Disclosures Act 1994*.
- (3) It is a defence to a prosecution under this section that the allegation was made frivolously, vexatiously or in bad faith.
- (4) This section does not limit or affect the operation of the *Protected Disclosures Act 1994*. In particular, nothing in this section prevents a police officer who makes a protected allegation from making a disclosure relating to the same conduct or activities under that Act.
- (4A) Proceedings for an offence against this section may be instituted at any time within 2 years after the offence is alleged to have been committed.
- (5) In this section:
- detrimental action** means action causing, comprising or involving any of the following:
- (a) injury, damage or loss,
  - (b) intimidation or harassment,
  - (c) discrimination, disadvantage or adverse treatment in relation to employment,
  - (d) dismissal from, or prejudice in, employment,
  - (e) disciplinary proceedings,
  - (f) the making of a complaint, or the furnishing of a report, under this Act or the regulations.

## 207 Proceedings for offences

- (1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act or the regulations may be dealt with summarily before a Local Court.
- (2) Nothing prevents proceedings for an offence against this Act or the regulations from being brought against a person who has ceased to be a member of NSW Police, but who was such a member when the offence was allegedly committed.

- (3) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.
- (4) If, in accordance with subsection (3), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is 50 penalty units or imprisonment for 2 years, or both.

## Part 10A Integrity testing of police officers

### 207A Commissioner may conduct integrity testing programs

- (1) The Commissioner may conduct, or authorise any police officer or other person to conduct, a program (an **integrity testing program**) to test the integrity of any particular police officer or class of police officers.
- (2) An integrity testing program may involve an act or omission (by a person who is participating in the program) that offers a police officer whose integrity is being tested the opportunity to engage in behaviour, whether lawful or unlawful, in contravention of the principles of integrity required of a police officer.
- (3) Any such act or omission is declared to be lawful, despite any other Act or law to the contrary, but to the extent only to which it occurs in the course of and for the purposes of the integrity testing program.
- (4) In particular, a police officer or other person who participates in any such act or omission is not guilty of any of the following:
  - (a) an offence against section 200 of this Act,
  - (b) an offence against section 89 or 90 of, or corrupt conduct within the meaning of, the *Independent Commission Against Corruption Act 1988*,
  - (c) an offence against section 109 or 110 of the *Police Integrity Commission Act 1996*,
  - (d) an offence against section 314, 319, 323, 325, 546A or 547B of the *Crimes Act 1900*,
  - (e) an offence of conspiring to commit an offence,
  - (f) an offence of aiding, abetting, urging, inciting, soliciting, encouraging, counselling or procuring the commission of an offence (in whatever terms expressed), including an offence against section 2 or 3 of the *Crimes Prevention Act 1916* or 351B or section 546 of the *Crimes Act 1900*.
- (5) Subsections (3) and (4) do not exempt a police officer or other person from liability in respect of any offence other than those referred to in subsection (4).

- (6) A certificate that is issued by the Commissioner, or by a Deputy Commissioner or Assistant Commissioner authorised by the Commissioner in that regard, being a certificate that states that, on a specified date or during a specified period, a specified police officer or other person was authorised to participate in an integrity testing program involving a specified act or omission is admissible in any legal proceedings and is conclusive evidence of the matters so specified.
- (7) The Commissioner is to furnish to the Police Integrity Commission, within 14 days after the end of each quarter, a report on all integrity testing programs conducted during that quarter. For the purposes of this subsection, **quarter** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.
- (8) Such a report must be prepared in accordance with any guidelines established by the Police Integrity Commission and notified to the Commissioner.

## **Part 11 Charges for police services**

### **208 Charges payable for attendance at sporting events, escorts and other services**

- (1) If a member of NSW Police (whether or not in compliance with any law):
  - (a) attends a sporting or entertainment event, at the request of the person conducting or organising that event, for the purpose of maintaining order, or
  - (b) provides, at the request of a person, an escort for a vehicle or trailer carrying a long or wide load, or
  - (c) provides any information to a person, at the person's request, in respect of a visa application,

the Commissioner is entitled to demand payment by the person of such amount as may be prescribed by the regulations or, if no amount is so prescribed, of such amount as the Commissioner thinks fit.

- (2) The regulations may make provision with respect to payment for such services provided by members of NSW Police as are specified in the regulations.
- (3) Without limiting the generality of subsection (2), the regulations may specify:
  - (a) a service whether or not it is provided in compliance with any law, and
  - (b) a service whether or not it is the same as or of a similar kind to a service referred to in subsection (1), and
  - (c) the circumstances in which the service is provided, and
  - (d) the amount which may be demanded for the provision of the service or the means by which the amount is to be calculated or assessed, and

(e) the person by whom the payment is to be made or from whom the payment may be demanded, whether or not the person requested the provision of the service concerned.

(4) Nothing in this section entitles the Commissioner to any payment for the performance of a service if a fee or other payment for the performance of that service is prescribed by or under any other Act.

### **209 Charges payable for false security alarms**

(1) If, within any period of 28 days, a member of NSW Police (whether or not the same member) responds on more than one occasion to false alarms from the same security device installed in respect of a building (not being a dwelling), the Commissioner is entitled to payment by an owner of the building of the prescribed charge for each occasion (except the first).

(2) For the purposes of this section, an alarm is to be taken to be a false alarm unless the owner of the building establishes that it was not a false alarm.

(3) The regulations may specify the matters which the Commissioner is to take into account in determining who is to pay the Commissioner the prescribed charge when there is more than one owner of the building.

(4) In this section:

**building** includes part of a building.

**owner**, in relation to a building, means:

(a) the owner of the building, or

(b) the occupier of the building.

**prescribed charge** means \$200 or such other amount as may be prescribed by the regulations.

### **210 Recovery of charges**

The Commissioner may recover an amount payable under this Part as a debt in a court of competent jurisdiction.

### **211 Waiver or reduction of charges**

The Commissioner or a person authorised by the Commissioner may, at the discretion of the Commissioner or the person, refund or waive any charge paid or payable under this Part or reduce any charge so payable by such proportion as the Commissioner or person thinks fit.

## **Part 12 Miscellaneous**

### **211A Testing of police officers for alcohol and prohibited drugs**

- (1) An authorised person may require any police officer who is on duty in accordance with a roster:
  - (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence of alcohol, or
  - (b) to provide a sample of the police officer's urine or hair for the purpose of testing for the presence of prohibited drugs,in accordance with the directions of the authorised person and the regulations.
- (2) The selection of a police officer for testing pursuant to subsection (1) may be conducted on a random or targeted basis.
- (2A) If an incident occurs in which a person is killed or seriously injured as a result of a police motor vehicle pursuit or the discharge of a firearm by a police officer, or in which a person is killed while in police custody, an authorised person may require any police officer directly involved in the incident while on duty:
  - (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence of alcohol, or
  - (b) to provide a sample of the police officer's urine or hair for the purpose of testing for the presence of prohibited drugs,in accordance with the directions of the authorised person and the regulations.
- (3) A police officer may be breath tested or required to undergo breath analysis whether or not there is any suspicion that the officer has recently consumed alcohol.
- (4) If a police officer is selected for testing because there is a suspicion that the officer has recently consumed alcohol, any authorised person may administer the breath test or breath analysis. However, if the police officer is selected on a random basis, the authorised person who administers the breath test or breath analysis must not be a police officer. This subsection applies only to testing pursuant to subsection (1).
- (4A) A requirement pursuant to subsection (2A) to undergo a test or to provide a sample is to be made by an authorised person as soon as practicable after the incident concerned. Any authorised person may administer the breath test or breath analysis in such a case.
- (4B) If a police officer involved attends or is admitted to a hospital for examination or treatment because of the incident, an authorised person may require the officer to provide a sample of the officer's blood, urine or hair in accordance with the directions



of a medical practitioner who attends the officer at the hospital.

- (4C) Any such medical practitioner must take the sample if informed by the authorised person that the sample is required to be taken by the practitioner, but not a sample of blood if such a sample is taken under Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999* instead. That Division applies to any taking of a sample pursuant to this subsection as if the sample were a sample of blood taken under that Division.
- (4D) Any sample taken under subsection (4C) is to be dealt with, and a report on the analysis of the sample is to be provided, in accordance with the regulations. However, nothing in this section or the regulations derogates from the operation of Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*.
- (5) The regulations may make provision for or with respect to the following:
- (a) the authorisation of persons:
    - (i) to administer breath tests, breath analyses or other tests for the purpose of detecting the presence of alcohol or prohibited drugs, and
    - (ii) to operate equipment for that purpose,
  - (b) the conduct of testing, which may include the taking of blood (but only with the consent of the person being tested) if a breath test or breath analysis indicates the presence of alcohol,
  - (c) the taking of samples of urine, hair or blood,
  - (d) the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,
  - (e) the accreditation of persons conducting analyses for the presence of prohibited drugs,
  - (f) the procedure for the handling and analysis of samples of urine, hair or blood,
  - (g) offences relating to interference with test results or the testing procedure,
  - (h) the confidentiality of test results.
- (6) The annual report of NSW Police prepared under the *Annual Reports (Departments) Act 1985* must include details of:
- (a) the number of breath tests, or drug tests involving the collection of samples, conducted during the relevant year, and
  - (b) the number of those tests in which a police officer tested positive for alcohol in the officer's blood, and

(c) the number of those tests that indicated that a police officer had a prohibited drug in the officer's body.

(7) In this section:

**authorised person** means a person authorised in accordance with the regulations to conduct breath tests, breath analyses or other tests for the purposes of this section and the regulations.

**breath test** means a test:

- (a) that is designed to indicate the concentration of alcohol present in a person's blood, and
- (b) that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the [Road Transport \(Safety and Traffic Management\) Act 1999](#).

**prohibited drug** has the same meaning as in the [Drug Misuse and Trafficking Act 1985](#).

#### **211AB Testing of police officers for gunshot residue**

- (1) A person authorised by the Commissioner may direct a police officer to submit to testing for gunshot residue if the officer has, or may have:
  - (a) discharged a firearm, or
  - (b) been present when another police officer has, or may have, discharged a firearm.
- (2) A direction under this section (a **relevant direction**) must be given as soon as practicable after the discharge, or suspected discharge, of the firearm.
- (3) A police officer given a relevant direction must submit to testing for gunshot residue in accordance with the direction and any regulations made for the purposes of this section.
- (4) The regulations may make provision for or with respect to the following matters:
  - (a) the conduct of testing for gunshot residue,
  - (b) the devices to be used in conducting testing for gunshot residue,
  - (c) the procedure for the handling and analysis of test samples,
  - (d) the accreditation of persons conducting analyses of gunshot residue,
  - (e) offences relating to interference with testing for gunshot residue or test results,

- (f) the confidentiality of test results.

**211B Code of behaviour regarding the consumption of alcohol and the use of prohibited drugs**

- (1) The regulations may establish a code of behaviour regarding the consumption of alcohol and the use of prohibited drugs by members of NSW Police.
- (2) Regulations under this section may make provision for or with respect to the following:
  - (a) the consequences for police officers of testing positive for alcohol or prohibited drugs, or of otherwise breaching the code of behaviour,
  - (b) the consequences for any member of NSW Police conspiring with, or aiding or abetting, any police officer to breach the code of behaviour,
  - (c) the evidentiary value of a certificate relating to the analysis of a sample,
  - (d) the conduct of follow-up testing of police officers who have tested positive for alcohol or prohibited drugs, including provisions as to the frequency of any such follow-up testing.

**211C Reviews of certain decisions under Act by Administrative Decisions Tribunal**

A person aggrieved by a decision of the Commissioner under section 208 (1) as to the amount payable by the person under that subsection where no such amount is prescribed by the regulations may apply to the Administrative Decisions Tribunal for a review of the decision.

**211D Use of statements made by police officers during alternative dispute management procedures**

- (1) This section applies to any statement that is made in good faith by a police officer in the course of alternative dispute management procedures conducted in connection with a complaint concerning that officer's conduct.
- (2) The regulations may prescribe circumstances in which it is to be taken that alternative dispute management procedures are being conducted in connection with a complaint concerning a police officer's conduct.
- (3) A statement to which this section applies:
  - (a) is not admissible in any civil or criminal proceedings against the police officer if the proceedings relate to the conduct in connection with which the statement was made, and
  - (b) may not be used as the basis of taking reviewable or non-reviewable action (within the meaning of section 173) against the police officer.

- (4) In this section, **complaint** means a complaint referred to in section 122 (1) (that is, a complaint concerning the conduct of a police officer), including a complaint referred to in section 122 (2) (that is, a complaint that is not required to be dealt with in accordance with Part 8A).

### **211E Disclosure of information concerning former Police Board functions**

- (1) A person who discloses any relevant information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the former Police Board) is guilty of an offence unless the disclosure is made:
- (a) with the consent of the person from whom the information was obtained, or
  - (b) in connection with the administration or execution of this Act (or any other such Act), or
  - (c) for the purposes of any legal proceedings arising out of this Act (or any such Act) or of any report of any such proceedings, or
  - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
  - (e) with other lawful excuse.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (2) In this section:

**former Police Board** means the Police Board established by this Act, as in force before 1 January 1997 (the date on which the Board was abolished as a consequence of the commencement of the *Police Legislation Further Amendment Act 1996*).

**relevant information** means information relating to the exercise of the functions of the former Police Board.

### **212 Crown bound by this Act**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **213 Protection from personal liability**

- (1) A member of NSW Police is not liable for any injury or damage caused by any act or omission of the member in the exercise by the member in good faith of a function conferred or imposed by or under this or any other Act or law with respect to the protection of persons from injury or death or property from damage.
- (2) This section applies to acts or omissions before as well as after the commencement of this section.

**214 Repute to be evidence of appointment of police officer**

If any question arises as to the right of any police officer to hold or execute his or her office, common reputation is to be taken as evidence of that right, and it is not necessary for a police officer to have or to produce any written appointment or other document to prove that right.

**215 Protection of police acting in execution of warrant**

- (1) If any proceedings (whether criminal or not) are brought against any police officer for anything done or purportedly done by the police officer in execution of a warrant of a judicial officer or other person, the police officer is not to be convicted or held liable merely because:
  - (a) there was an irregularity or defect in the issuing of the warrant, or
  - (b) the person who issued the warrant lacked the jurisdiction to do so.
- (2) In any such proceedings, the court must acquit the police officer or dismiss the proceedings if the police officer:
  - (a) produces the warrant, and
  - (b) proves that the signature on the warrant is that of the person whose signature it purports to be, and
  - (c) proves that such a person has the reputation of being, and acts as, a person who has the jurisdiction to issue the warrant, and
  - (d) the act complained of was done in execution of the warrant.

**216 Special risk benefit where certain police officers hurt on duty**

- (1) The Commissioner may pay to a police officer who:
  - (a) is retired from NSW Police on the ground of physical or mental incapacity (being an incapacity which the Commissioner determines to have been caused by the police officer being hurt on duty), and
  - (b) is not a contributor to the Police Superannuation Fund,an amount calculated in accordance with this section.
- (2) If:
  - (a) a police officer dies, and
  - (b) the police officer's death is determined by the Commissioner to have been caused by the police officer being hurt on duty, and

(c) the police officer is not a contributor to the Police Superannuation Fund,

the Commissioner may pay an amount calculated in accordance with this section to the spouse of the police officer or (if the police officer is not survived by a spouse or if the police officer is survived by more than one spouse) to the personal representative of the police officer.

(2A) The amount calculated in accordance with this section in relation to a police officer to whom subsection (1) or subsection (2) applies is the amount determined in accordance with the formula:

$$A = S \times CF \times I$$

where:

**A** is the amount, and

**S** is the annual salary of the police officer at the day on which the police officer was hurt on duty, and

**CF** is the capitalisation factor, prescribed for the purposes of this section by the regulations, for the sex of the police officer and for the age of the police officer on the day on which he or she was hurt on duty, and

**I** is the extent of the police officer's permanent loss of earning capacity, determined by the Commissioner and expressed as a percentage, as a consequence of being hurt on duty.

(2B) Without limiting any other factor the Commissioner may take into consideration in determining a police officer's permanent loss of earning capacity as referred to in subsection (2A), a psychological or psychiatric injury sustained by a police officer as a consequence of being hurt on duty must not be taken into consideration unless it is demonstrable and permanent.

(3) The Commissioner must not make a payment under this section unless the police officer concerned was, in the opinion of the Commissioner, hurt on duty because the police officer was required to be exposed to risks to which members of the general work force would normally not be required to be exposed in the course of their employment.

(4) (Repealed)

(5) A benefit under this section is payable by the Commissioner and is not payable from the Police Superannuation Fund.

(6) In this section:

**hurt on duty**, in relation to a police officer, means injured in such circumstances as

would entitle the police officer to compensation under the *Workers Compensation Act 1987*.

**spouse** of a police officer includes a person with whom the police officer had a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) at the time of his or her death.

**216AA Special risk benefit where student of policing hurt while undergoing police education**

(1) The Commissioner may pay an amount, calculated in accordance with this section, to a student of policing who suffers an injury:

- (a) that the Commissioner determines to have been caused while the student was undergoing a police education course, and
- (b) that, in the opinion of the Government Medical Officer, renders the student totally and permanently incapacitated for work.

(2) If:

- (a) a student of policing dies, and
- (b) the injury causing the death of the student is determined by the Commissioner to have been caused while the student was undergoing a police education course,

the Commissioner may pay an amount, calculated in accordance with this section, to the student's spouse or (if the student is not survived by a spouse or if the student is survived by more than one spouse) to the student's personal representative.

(3) The amount calculated in accordance with this section in relation to a student of policing to whom subsection (1) or (2) applies is the amount determined in accordance with the formula:

$$A = 0.8 \times S \times CF$$

where:

**A** is the amount.

**S** is the annual salary of a probationary constable as at the day on which the student was injured while undergoing a police education course.

**CF** is the capitalisation factor, prescribed for the purposes of section 216, applicable to the student's sex, and the student's age as at the day on which the student was injured while undergoing a police education course.

(4) The Commissioner must not make a payment under this section unless the student of policing concerned was, in the opinion of the Commissioner, injured because the

student was required to be exposed to risks to which other tertiary students would normally not be required to be exposed in the course of their studies.

- (5) A benefit under this section is payable by the Commissioner out of money made available by Parliament for the purposes of this section.
- (6) In this section:

**Government Medical Officer** means the person holding office as, or acting in, such position as is declared by the regulations under the [Public Sector Management Act 1988](#) to be the office of the Government Medical Officer.

**injury** includes not only physical injury but also psychological and psychiatric injury.

**police education course** means a course of education determined by the Commissioner to be a police education course for the purposes of this section.

**student of policing** means a person (other than a police officer) who is undergoing a police education course.

**spouse** of a student of policing includes a person with whom the student had a de facto relationship (within the meaning of the [Property \(Relationships\) Act 1984](#)) at the time of his or her death.

#### **216A Determination by Compensation Court**

- (1) An application to the Compensation Court for a determination in relation to a decision of the Commissioner under section 216 or 216AA may be made by:
- (a) a police officer referred to in section 216 (1), or
  - (b) the spouse or personal representative of a police officer referred to in section 216 (2), or
  - (c) a student of policing referred to in section 216AA (1), or
  - (d) the spouse or personal representative of a student of policing referred to in section 216AA (2),

within 6 months after the decision is notified in writing to the police officer, student, spouse or personal representative.

- (2) If within 6 months after:
- (a) a police officer to whom section 216 applies retires, or dies, or
  - (b) a student of policing to whom section 216AA applies suffers an injury that renders the student totally and permanently incapacitated for work, or dies,
- the Commissioner fails or refuses to make a decision under the relevant section in



relation to the police officer or student, the Commissioner is taken, for the purposes of this section, to have made a decision under that section to refuse to pay any amount in relation to the police officer or student.

- (3) The Commissioner is entitled to be represented at the hearing of an application under this section.
- (4) After considering the application, the Compensation Court may make a determination that the decision of the Commissioner in respect of which the application was made:
  - (a) be confirmed, or
  - (b) be set aside and replaced by a different decision made by the Compensation Court.
- (5) The Compensation Court must not make a decision referred to in subsection (4) (b) that could not be made by the Commissioner under section 216 or 216AA.
- (6) A decision of the Compensation Court referred to in subsection (4) (b) is taken to be made by the Commissioner and is to be given effect accordingly.
- (7) After hearing the application, the Compensation Court:
  - (a) may assess the costs of the successful party to the application (including costs of representation and witness expenses, if any), and
  - (b) may order that the costs so assessed (or any part of them) be paid to the successful party by any other party within a time specified in the order.

The Compensation Court cannot order the payment of costs by the applicant unless it is satisfied that the application was frivolous or vexatious or was made fraudulently or without proper justification.

- (8) If costs assessed under subsection (7) are not paid within the time specified in the order for their payment, the person in whose favour the order was made may recover the costs from the person against whom the order was made as a debt.
- (9) In this section, **Compensation Court** means the Compensation Court of New South Wales constituted under the [Compensation Court Act 1984](#).

## 217 Ministerial inquiries

- (1) The Minister may appoint any person (an **authorised person**) to inquire into, and to report to the Minister on, any matter on which the Minister wishes to be advised in relation to the management and administration of NSW Police.
- (2) For the purpose of conducting such an inquiry, an authorised person may, at any time, do any of the following:

- (a) enter any police premises,
- (b) call for, and inspect, all or any police records, documents, files or other matter, whether of the same or of a different kind, on police premises,
- (c) question and seek information from any member of NSW Police.

(3) A member of NSW Police who fails:

- (a) to comply with any requirement made of the member by an authorised person under this section, or
  - (b) to give all assistance and co-operation to an authorised person,
- is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

#### **218 Industrial Relations Act 1996 not affected**

- (1) The *Industrial Relations Act 1996* is not affected by anything in this Act.
- (2) Subsection (1) does not limit section 44 or 89 or any provision of the *Industrial Relations Act 1996*.

#### **218A Police Band**

- (1) There is to be a Police Band, which may consist of members of NSW Police or other persons approved by the Minister, or both.
- (2) The ceremonial and other roles of the Police Band are to be as determined by the Commissioner from time to time.

#### **219 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) (Repealed)
  - (b) the hours of attendance of members of NSW Police,
  - (c) the extended, annual and other leave that may be granted to members of NSW Police,
  - (d) the educational or other qualifications or experience for appointment, whether to NSW Police generally or to a particular rank, grade or position within NSW Police, where experience includes:

- (i) experience within NSW Police, whether experience generally or experience in relation to a specified rank, grade or position, and
  - (ii) experience otherwise than within NSW Police, as prescribed by the regulations,
  - (e) the disposal of unclaimed property in the possession of any member of NSW Police (other than property which is in the custody of such a member in connection with any offence),
  - (f) travelling and subsistence allowances and other allowances for members of NSW Police,
  - (g) the payment of gratuities to police officers on their ceasing to be police officers,
  - (h) providing for the exercise of the functions of suspended, sick or absent members of NSW Police (or of the functions attaching to vacant positions) by other members,
  - (i) any other matter relating to the management or control of NSW Police,
  - (j) the reporting by police officers of misconduct or unsatisfactory performance of other police officers,
  - (k) the suspension of police officers from office (with or without pay) pending investigation of alleged misconduct or unsatisfactory performance or pending action under Division 1 of Part 9 with respect to misconduct or unsatisfactory performance.
- (2A) The regulations may make provision for or with respect to the functions of the Commissioner, the Ombudsman, the Police Integrity Commission and other persons in connection with the handling of complaints against police officers under the legislative scheme constituted by this Act, the *Ombudsman Act 1974* and the *Police Integrity Commission Act 1996*.
- (3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

## **220 Repeals**

- (1) The Acts specified in Part 1 of Schedule 3 are repealed.
- (2) The regulations and rules specified in Part 2 of Schedule 3 are repealed.
- (3) Different days may be appointed for the commencement of this section and Schedule 3 for the purpose of repealing different Acts or statutory instruments, or different provisions of an Act or statutory instrument, on different days.

## **221 Savings, transitional and other provisions**

Schedule 4 has effect.

## **222 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after 1 January 2002.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament on or before 31 December 2002.

## **223 Review of Commissioner's powers**

- (1) The Minister is to review this Act each year to determine whether the terms of the Act with respect to the Commissioner's functions remain appropriate.
- (2) The review is to be undertaken as soon as possible after 1 January in each year.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament on or before 30 June in the same year.

## **Schedule 1 Non-reviewable action**

(Section 173)

coaching  
mentoring  
training and development  
increased professional, administrative or educational supervision  
counselling  
reprimand  
warning  
retraining  
personal development  
performance enhancement agreements  
non-disciplinary transfer  
change of shift (but only if the change results in no financial loss and is imposed for a limited period and is subject to review)  
restricted duties  
recording of adverse findings

## **Schedule 2 NSW Police senior executive positions**

(Section 33)

Deputy Commissioner (2 positions)  
Senior Assistant Commissioner

Executive Director, Human Resource Services  
Region Commander—Assistant Commissioner (5 positions)  
Executive Director, Corporate Services  
General Manager, Infrastructure and Processing Services  
Commander, Communications Group  
Commander, Education Services  
General Manager, Financial Services  
General Manager, Business and Technology Services  
Director, State Crime Command—Assistant Commissioner  
Director, Strategic Operations  
Commander, Special Crime and Internal Affairs  
Director, Legal Services  
Director, Public Affairs  
Director, Forensic Services Group  
Commander, Special Services Group  
Commander, Traffic Services  
Assistant Commissioner, Operational Support  
Assistant Commissioner, Counter Terrorist Co-ordination Command  
Director, Executive Support Group  
Commander, Special Investigations  
Director, Special Projects

## **Schedule 3 Repeals**

(Section 220)

## **Part 1 Acts**

*Police Regulation Act 1899 No 20*  
*Constitution and Police Regulation (Amendment) Act 1964 No 9*  
*Police Regulation (Amendment) Act 1971 No 57*  
*Police Regulation (Priority Lists and Appeals) Amendment Act 1980 No 92*  
*Police Board Act 1983 No 135*  
*Police Regulation (Further Amendment) Act 1983 No 192*  
*Police Regulation (Amendment) Act 1985 No 210*  
*Police Regulation (Merit Appointments) Amendment Act 1987 No 291*  
*Police Regulation (Emergencies) Amendment Act 1988 No 88*  
*Police Regulation (False Security Alarms) Amendment Act 1989 No 46*  
*Police Regulation (Imposition of Charges) Amendment Act 1989 No 166*

## **Part 2 Regulations and Rules**

*Police Rules 1977*  
*Police Board Regulation 1984*

## Schedule 4 Savings, transitional and other provisions

(Section 221)

### Part 1 General

#### 1 Definitions

(1) In this Schedule:

**former Act** means the *Police Regulation Act 1899*.

(2) In this Schedule, a reference to the repeal of the former Act is (if different days are appointed for the repeal of different provisions) a reference to the repeal of the relevant provisions.

#### 2 Savings and transitional regulations

(1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the following Acts:

this Act

the *Police and Superannuation Legislation (Amendment) Act 1990*

*Police Service (Police Board) Amendment Act 1991*

the *Police Service (Employer) Amendment Act 1992*

the *Police Service (Complaints, Discipline and Appeals) Amendment Act 1993*

the *Police Service (Management) Amendment Act 1993*

the *Police Service (Complaints) Amendment Act 1994*

*Police Service Amendment (Commissioned Officers) Act 1996*

*Police Legislation Further Amendment Act 1996*

*Police Service Amendment Act 1997*

*Police Service Amendment (Special Risk Benefit) Act 1998*

*Police Service Amendment (Complaints and Management Reform) Act 1998*

*Police Service Amendment (Selection and Appointment) Act 2000*

*Police Service Amendment (Complaints) Act 2001*

*Police Service Amendment (Promotions and Integrity) Act 2001*

*Police Service Amendment (NSW Police) Act 2002*

*Police Amendment (Appointments) Act 2002*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **3 Dissolution of Police Force and Police Department**

The Police Force of New South Wales and the Police Department are, on the repeal of the former Act, dissolved.

### **4 Continuation of former Police Board and its members**

- (1) The part-time members of the Police Board under the *Police Board Act 1983* holding office immediately before the repeal of that Act are to be taken to have been appointed as part-time members of the Police Board established by this Act for the balance of their terms of office.
- (2) The part-time member holding office as Chairman of the Police Board under the *Police Board Act 1983* immediately before the repeal of that Act is to be taken to have been appointed as Chairperson of the Police Board under this Act for the balance of his or her term of office.
- (3) Anything done by or in relation to the Police Board under the *Police Board Act 1983* is to be taken to have been done by or in relation to the Police Board under this Act.

### **5 Existing Commissioner of Police**

The person holding office as Commissioner of Police under the former Act immediately before the repeal of the former Act is to be taken to have been appointed as the Commissioner of Police under this Act.

### **6 Existing members of the Police Force**

A person who, immediately before the repeal of the former Act, held office as a member of the Police Force is to be taken to be a police officer appointed to that office under this Act.

## **7 Existing officers and employees of the Police Department**

A person who, immediately before the repeal of the former Act, was an officer or temporary employee of the Police Department is to be taken to be an administrative officer or temporary employee, respectively, appointed or employed under this Act.

## **8 Conditions of employment**

A person referred to in clause 6 or 7 is (until other provision is duly made under this or any other Act) to be employed in accordance with the awards, industrial agreements and determinations that would have applied to the person if the person had not become a member of the NSW Police and if the Police Force and the Police Department had not been dissolved.

## **9 Superseded references**

In any other Act, in any instrument made under any Act, or in any document:

- (a) a reference to the Police Force of New South Wales is a reference to that part of NSW Police which is comprised of police officers, and
- (b) a reference to the Police Department is a reference to that part of NSW Police which is comprised of administrative officers, and
- (c) a reference to the rules under the former Act is a reference to the regulations under this Act.

## **10 Pending appointments**

Any advertisement for the filling of a vacancy in the Police Force or the Police Department published before the repeal of the former Act, any applications duly made or any recommendations for appointment in accordance with the former Act and the [Police Board Act 1983](#) are to be taken to have been done under this Act, and may be acted on accordingly.

## **11 Pending disciplinary matters**

Any disciplinary proceedings which, on the repeal of the former Act, are pending against a member of the Police Force under the former Act or against a member of the Police Department under the [Public Sector Management Act 1988](#) are to be taken to be pending under this Act, and may be disposed of accordingly.

## **12 Continuation of oath of office**

An oath taken, or affirmation made, by a member of the Police Force under the former Act is to be taken to be an oath taken, or affirmation made, under this Act.



### **13 Continuation of protection from personal liability**

Sections 26 and 26A of the former Act continue to apply to any act done by a member of the Police Force before the repeal of the former Act.

### **14 (Repealed)**

## **Part 3 Provisions consequent on enactment of [Police Service \(Police Board\) Amendment Act 1991](#)**

### **15 Existing Chairperson and part-time member of Police Board**

- (1) The part-time member holding office as Chairperson of the Police Board immediately before the commencement of Schedule 1 (1) to the [Police Service \(Police Board\) Amendment Act 1991](#) ceases to hold office as part-time member and Chairperson on that commencement, but is eligible (if otherwise qualified) for appointment as Chairperson of the Police Board under section 17A (as inserted by that Act).
- (2) The other part-time member of the Police Board holding office immediately before the commencement of Schedule 1 (1) to the [Police Service \(Police Board\) Amendment Act 1991](#) continues to hold office as a part-time member of the Police Board after that commencement for the balance of the member's term of office.

## **Part 4 Provisions consequent on enactment of [Police Service \(Employer\) Amendment Act 1992](#)**

### **16 Pending proceedings by PEIRA**

- (1) Any proceedings to which the Public Employment Industrial Relations Authority is a party immediately before the commencement of the [Police Service \(Employer\) Amendment Act 1992](#) are not affected by the amendments made by that Act.
- (2) However, on the commencement of that Act the Commissioner is taken to be a party to those proceedings instead of the Public Employment Industrial Relations Authority, except in the case of any particular proceedings in respect of which it is agreed between the Commissioner and the Authority that the Authority is to continue to be a party to those proceedings.

### **17 Previous determinations, agreements etc by PEIRA**

- (1) Any thing done by the Public Employment Industrial Relations Authority under Division 7 of Part 6 of this Act before the amendment of that Division by the [Police Service \(Employer\) Amendment Act 1992](#) is taken, after the commencement of that Act, to have been done by the Commissioner.
- (2) Any reference to that Authority in any award, determination or agreement entered into or made under that Division is taken, after that commencement, to be a reference

to the Commissioner.

## **Part 6 Provisions consequent on enactment of *Police Service (Management) Amendment Act 1993***

### **20 Definitions**

In this Part:

**amending Act** means the *Police Service (Management) Amendment Act 1993*.

**appointed day** means the day appointed for the commencement of Schedule 1 (1) to the amending Act.

### **21 Police Board**

- (1) The Police Board constituted under section 15 (as in force immediately before the substitution of that section by the amending Act) is a continuation of, and the same legal entity as, the Police Board constituted under that section (as so substituted).
- (2) A person who, immediately before the appointed day, held office as a member of the Police Board ceases to hold that office on the appointed day. The person is eligible (if otherwise qualified) to be re-appointed, but is not entitled to any remuneration or compensation for so ceasing to hold that office.
- (3) A delegation by the Police Board made under section 21 and in force immediately before the substitution of that section by the amending Act is taken to be a delegation under that section (as so substituted), but only to the extent that the Police Board continues to have the relevant function.

### **22 Commissioner of Police**

- (1) The person holding office as Commissioner immediately before the appointed day is taken to have been appointed as Commissioner on the appointed day for a period of 5 years or until the person reaches 65 years of age, whichever is the shorter period. However, if that person was appointed for a term, the person is taken to have been appointed for the balance of that term.
- (2) For the avoidance of doubt, the provisions of the amending Act (including the provisions relating to the Commissioner's contract of employment and the Commissioner's removal from office) apply to the Commissioner during the period of appointment under this clause.
- (3) Until the Commissioner enters into a contract of employment, the Commissioner is entitled to remuneration at the rate payable to the Commissioner immediately before the appointed day.
- (4) A delegation by the Commissioner made under section 31 and in force immediately

before the substitution of that section by the amending Act is taken to be a delegation under that section (as so substituted).

### **23 Inspector General**

- (1) The person holding office as Inspector General in NSW Police immediately before the day appointed for the commencement of Schedule 1 (3) to the amending Act is taken to have been appointed, on that day, to the position of Inspector General in the Public Service (being a position in the Ministry for Police) for the balance of the term of office as Inspector General in NSW Police.
- (2) The contract of employment of that person under section 41 is taken, on that day and pending a new contract of employment, to be a contract of employment entered into under section 42G of the *Public Sector Management Act 1988*.
- (3) That person, or any other person who holds office as Inspector General, may exercise the functions of an authorised person under section 22 (Powers of entry and inspection) for the purposes of the Inspector General's functions.

## **Part 7 Provisions consequent on enactment of Police Service (Complaints, Discipline and Appeals) Amendment Act 1993**

### **24 Definitions**

- (1) In this Part:

**amending Act** means the *Police Service (Complaints, Discipline and Appeals) Amendment Act 1993*.

**former appeals Act** means the *Police Regulation (Appeals) Act 1923*.

**former complaints Act** means the *Police Regulation (Allegations of Misconduct) Act 1978*.

- (2) In this Part, a reference to the repeal of the former appeals Act or the former complaints Act is (if different days are appointed for the repeal of different provisions) a reference to the repeal of the relevant provisions.

### **25 Application of provisions relating to complaints**

- (1) Part 8A does not apply to conduct that occurred before the commencement of the former complaints Act.
- (2) Part 8A extends to conduct that occurred after the commencement of the former complaints Act and before the commencement of Part 8A.
- (3) Anything duly done before the commencement of that Part under a provision of the former complaints Act is (subject to the regulations under this Schedule) taken to have

been duly done under the corresponding provision of that Part.

## **26 Application of provisions relating to discipline**

- (1) Part 9 applies to conduct occurring before or after the substitution of that Part by the amending Act (including conduct that occurred before the commencement of that Part on 1 July 1990).
- (2) Anything duly done in respect of any disciplinary matter before that substitution of Part 9 under a provision of the former Act, the former complaints Act, the former appeals Act or the regulations under those Acts or this Act is (subject to the regulations under this Schedule) taken to have been duly done under the corresponding provision of that substituted Part 9.

## **27 Application of provisions relating to promotion appeals**

- (1) Divisions 5A and 5B of Part 6 extend to decisions made before the commencement of those Divisions.
- (2) Anything duly done before the commencement of those Divisions under a provision of the former appeals Act is (subject to the regulations under this Schedule) taken to have been duly done under the corresponding provision of those Divisions.

## **28 Police Tribunal**

- (1) The Police Tribunal of New South Wales established under the former complaints Act is the same court as the Police Tribunal of New South Wales established under Part 9A of this Act.
- (2) A person who, immediately before the repeal of the former complaints Act, held office as President or Deputy President of the Police Tribunal is taken to have been appointed to that office under Part 9A of this Act for the balance of the person's term of office.
- (3) The repeal of the former complaints Act does not affect any proceedings pending before the Police Tribunal immediately before the repeal of that Act and those proceedings may (subject to this Act) be continued despite that repeal.

## **Part 8 Provisions consequent on enactment of [Police Service \(Complaints\) Amendment Act 1994](#)**

### **29 Operation of amendments**

- (1) An amendment of this Act or the [Ombudsman Act 1974](#) made by the [Police Service \(Complaints\) Amendment Act 1994](#) extends to conduct occurring or complaints made before the commencement of the amendment.
- (2) Anything done, or purporting to have been done, under this Act or the [Ombudsman Act 1974](#) at any time after the commencement of the [Police Service \(Complaints,](#)

*Discipline and Appeals) Amendment Act 1993* on 1 July 1993 and before the commencement of any amendment made by the *Police Service (Complaints) Amendment Act 1994* that would have been validly done only if that amendment had been in force at that time is validated.

- (3) This clause applies to a matter despite any legal proceedings pending with respect to the matter on the commencement of this clause. However, this clause does not affect any judgment or order given or made by a court before that commencement with respect to a particular matter as between the parties to the proceedings.

## **Part 9 Provisions consequent on enactment of Public Sector Management Amendment Act 1995**

### **30 Transitional arrangements for compensation entitlements of executive officers**

The amendment made to section 53 (Compensation etc where executive officer has no right to return to public sector) by the *Public Sector Management Amendment Act 1995* does not apply in respect of a person during a term of office as an executive officer that commenced before the commencement of that amendment.

## **Part 10 Police Service Amendment (Commissioned Officers) Act 1996**

### **31 Five year term appointment for existing non-executive commissioned officers**

- (1) A member of NSW Police who is a non-executive commissioned police officer within the meaning of Part 6 immediately before the commencement of section 72A (Five year term appointments) is to be appointed under that section for a term of office of 5 years from the officer's deemed appointment day.
- (2) An officer's deemed appointment day is:
  - (a) if the officer was a non-executive commissioned police officer immediately before the beginning of 1 January 1996—1 January 1996, or
  - (b) if the officer became a non-executive commissioned police officer on or after 1 January 1996—the day on which the officer became a non-executive commissioned police officer.
- (3) If an officer's projected date of retirement is before the end of the 5 year term provided for by subclause (1), the term of the appointment is to be (instead of 5 years) for the period up to that projected date of retirement or 12 months (whichever provides the longer term of office). An officer's **projected date of retirement** is the officer's projected date of retirement from NSW Police as determined by the Commissioner after consultation with the officer.
- (4) This clause does not apply to an officer to whom clause 32 applies.

### **32 Term appointment amendments do not apply to officers due to retire before 1 January 1997**

- (1) The amendments made by the *Police Service Amendment (Commissioned Officers) Act 1996* do not apply to a member of NSW Police who was a non-executive commissioned police officer immediately before the beginning of 1 January 1996 with a projected date of retirement from NSW Police (as determined by the Commissioner after consultation with the officer) earlier than 1 January 1997.
- (2) This Act continues to apply to such an officer as if the *Police Service Amendment (Commissioned Officers) Act 1996* had not been enacted.

## **Part 11 Provisions consequent on enactment of Police Legislation Further Amendment Act 1996**

### **33 Definitions**

In this Part:

**amended Act** means this Act, as amended by the amending Act.

**amending Act** means the *Police Legislation Further Amendment Act 1996*.

### **34 Abolition of Police Board**

- (1) The Police Board is abolished.
- (2) Part 8 of the *Public Sector Management Act 1988* applies to each member of the Police Board as if the member had been removed from office by the Governor under section 90 of that Act.

### **35 Saving of action in which Police Board involved**

Any function exercised by the Police Board with respect to a process (such as the appointment of staff to, or the removal of staff from, NSW Police) that had not been completed before the commencement of this clause is, for the purpose of enabling that process to be completed, taken to have been exercised:

- (a) by the Commissioner, in the case of a function that is required by the amended Act to be exercised by the Commissioner, or
- (b) by the Minister, in the case of a function that is required by the amended Act to be exercised by the Minister.

### **36 Saving of existing appointments**

Nothing in an amendment made by the amending Act affects the appointment of a member of NSW Police who held office as such immediately before the commencement of that amendment.

### **37 Contracts held by executive officers**

A contract of employment between an executive officer and the Police Board that was in force under Part 5 immediately before the abolition of the Police Board is taken to be a contract of employment, between the executive officer and the Commissioner, for the remainder of the term fixed by the contract.

### **38 Application of section 206 (Protection against reprisals)**

Section 206, as inserted by the amending Act, applies to a protected allegation referred to in section 206 (1) even if the allegation relates to conduct or activities engaged in, or to matters arising, before the commencement of that section.

### **39 Continued operation of section 181B (Dismissal of police officers—information arising out of Police Royal Commission)**

- (1) Any action that had been commenced under section 181B but had not been completed before the repeal of that section may be completed, and an application may be made under Part 6 of Chapter 2 of the *Industrial Relations Act 1996* in respect of any such action, as if that section had not been repealed.
- (2) Any application under Part 6 of Chapter 2 of the *Industrial Relations Act 1996* in respect of action under section 181B, being an application made before or after the repeal of that section, may be dealt with under that Act as if section 181B had not been repealed.

## **Part 12 Provisions consequent on enactment of [Police Service Amendment Act 1997](#)**

### **40 Definitions**

In this Part:

***amended Act*** means this Act, as amended by the amending Act.

***amending Act*** means the [Police Service Amendment Act 1997](#).

### **41 Application of amendments to existing orders under section 181D**

An amendment made by Schedule 1 to the amending Act does not apply to any order made under section 181D before the commencement of that amendment.

### **42 Continuation of certain proceedings**

Any proceedings before the Supreme Court:

- (a) that were commenced before the commencement of Schedule 1 [4] to the amending Act in connection with a decision or order made under section 181D, or

(b) that are commenced after the commencement of Schedule 1 [4] to the amending Act in connection with a decision or order made under section 181D before that commencement,

are to be dealt with, and any judgment, order or direction of the Supreme Court in any such proceedings is to be given effect to, as if the amending Act had not been enacted.

#### **43 Application of amendment to section 40 of [Police Integrity Commission Act 1996](#)**

- (1) This clause applies to an answer made, or document or other thing produced, by a witness at a hearing before the Police Integrity Commission, as referred to in section 40 (3) of the [Police Integrity Commission Act 1996](#).
- (2) The amendment made to section 40 (3) of the [Police Integrity Commission Act 1996](#) by Schedule 2 to the amending Act applies to an answer made, or document or other thing produced, before the commencement of that Schedule in the same way as it applies to an answer made, or document or other thing produced, after the commencement of that Schedule.

### **Part 13 Provisions consequent on enactment of [Police Service Amendment \(Complaints and Management Reform\) Act 1998](#)**

#### **44 Definitions**

In this Part:

**amending Act** means the [Police Service Amendment \(Complaints and Management Reform\) Act 1998](#).

#### **45 Abolition of Police Tribunal**

- (1) This clause commences on the commencement of Schedule 1 [8] to the amending Act.
- (2) The Police Tribunal is abolished.
- (3) No compensation is payable to any member of the Police Tribunal as a consequence of its abolition.

#### **46 Complaints under Part 8A**

Any complaint that was made under Part 8A before the commencement of Schedule 1 [3] to the amending Act is to be dealt with in accordance with Part 8A, as in force before that commencement, as if the amending Act had not been enacted.

#### **47 Proceedings before Police Tribunal**

Proceedings before the Police Tribunal that were commenced under this Act before the commencement of Schedule 1 [5] to the amending Act are to be dealt with, and any order



or decision of the Tribunal in any such proceedings is to be given effect to, as if the amending Act had not been enacted.

#### **48 Proceedings before GREAT**

Proceedings before GREAT that were commenced under section 182 before the commencement of Schedule 1 [7] to the amending Act are to be dealt with, and any order or decision of the Tribunal in any such proceedings is to be given effect to, as if the amending Act had not been enacted.

#### **49 Application of Divisions 1 and 1A of Part 9**

Divisions 1 and 1A of Part 9, as inserted by Schedule 1 [5] to the amending Act, apply to and in respect of misconduct and unsatisfactory performance occurring before the commencement of that item in the same way as they apply to and in respect of misconduct and unsatisfactory performance occurring after that commencement.

#### **50 Application of former provisions to transit police**

- (1) The provisions of Part 8A, as in force immediately before the commencement of Schedule 1 [3] to the amending Act, continue to apply to and in respect of complaints referred to in section 25 of the *Police Department (Transit Police) Act 1989* (whether made before or after the commencement of that item) as if the amending Act had not been enacted.
- (2) The provisions of Division 1 of Part 9, as in force immediately before the commencement of Schedule 1 [5] to the amending Act, continue to apply to and in respect of breaches of discipline referred to in section 27 of the *Police Department (Transit Police) Act 1989* (whether arising before or after the commencement of that item) as if the amending Act had not been enacted.
- (3) The provisions of Division 2 of Part 9, as in force immediately before the commencement of Schedule 1 [7] to the amending Act, continue to apply to a decision of the Commissioner under Division 1 of Part 9, as in force immediately before the commencement of Schedule 1 [5] to the amending Act, in relation to breaches of discipline referred to in section 27 of the *Police Department (Transit Police) Act 1989* (whether arising before or after the commencement of Schedule 1 [7] to the amending Act) as if the amending Act had not been enacted.

### **Part 14 Provisions consequent on enactment of *Police Service Amendment (Special Risk Benefit) Act 1998***

#### **51 Injuries to which sections 216 and 216A apply**

The provisions of section 216, as amended by the *Police Service Amendment (Special Risk Benefit) Act 1998*, and section 216A, as inserted by that Act, extend to:

- (a) an amount that is paid after the commencement of those provisions, or
- (b) a decision that is made after the commencement of those provisions to refuse to pay an amount,

in relation to an injury sustained by a police officer before the commencement of those provisions.

## **Part 15 Provisions consequent on enactment of [Police Service Amendment \(Selection and Appointment\) Act 2000](#)**

### **52 Eligibility lists for non-executive administrative officer positions**

- (1) Any act, matter or thing done before the commencement of the eligibility list provisions in respect of a vacant non-executive position of an administrative officer that could have been validly done had those provisions been in force at the time it was done is taken to have been (and always to have been) validly done.
- (2) A reference in the eligibility list provisions to an eligibility list extends to include a reference to an eligibility list created before the commencement of those provisions, the creation of which is validated by subclause (1).
- (3) In this clause:

***the eligibility list provisions*** means the provisions of sections 67A, 80 (c) and 81 (2A) and (4), as inserted by the [Police Service Amendment \(Selection and Appointment\) Act 2000](#).

## **Part 16 Provisions consequent on enactment of [Police Service Amendment \(Complaints\) Act 2001](#)**

### **53 Commissioner's guidelines**

The guidelines in force under section 145 (3) immediately before its repeal by the [Police Service Amendment \(Complaints\) Act 2001](#) are taken to be guidelines for the purposes of section 169A but may be amended or revoked by the Commissioner.

### **54 Detrimental action against reprisals**

- (1) The provisions of section 206 (2A) and (2B) extend to proceedings for an offence against section 206 committed before the commencement of those provisions, but only if the hearing in respect of the offence has not commenced.
- (2) Section 206 (4A) extends to proceedings for an offence against section 206 committed less than 6 months before the commencement of that subsection.

## **Part 17 Provisions consequent on enactment of [Police Service](#)**

## **Amendment (Promotions and Integrity) Act 2001**

### **55 Statutory declaration relating to disclosure of misconduct**

The amendments made by Schedule 1 [3], [5], [18] and [22] to the *Police Service Amendment (Promotions and Integrity) Act 2001* extend to a person who is eligible for appointment to a vacant position on the commencement of the amendments.

### **56 Application of this Part to making of temporary appointments**

The amendments made by Schedule 1 [11] and [12] to the *Police Service Amendment (Promotions and Integrity) Act 2001* extend to a position that is a vacant position within the meaning of section 63 (1), as amended by that Act, as at the commencement of those amendments.

### **57 Inquiries to be made before promotional appointment to vacant position**

The amendments made by Schedule 1 [8] and [9] and [12]–[14] to the *Police Service Amendment (Promotions and Integrity) Act 2001* extend to a person who is eligible for appointment to a vacant position on the commencement of the amendments.

### **58 Withdrawal of selection on integrity grounds**

- (1) Section 71B extends to a decision made before the commencement of that section to appoint a person to a non-executive commissioned police officer position.
- (2) Section 77B extends to a decision made before the commencement of that section to appoint a person to a position of police officer of the rank of sergeant.

### **59 Appeals to GREAT**

The provisions of section 81D (c)–(f) as inserted by Schedule 1 [25] to the *Police Service Amendment (Promotions and Integrity) Act 2001* extend to an appeal made to GREAT before the commencement of those provisions and that has not commenced to be heard before that commencement.

### **60 Action following conclusion of successful appeal**

Section 81E, as inserted by Schedule 1 [26] to the *Police Service Amendment (Promotions and Integrity) Act 2001*, extends to an appeal made to GREAT before the commencement of that section and that has not been finally determined by GREAT before that commencement.

### **61 Reduction in rank or grade through misconduct in promotion**

Division 2A of Part 9 extends to a promotion made before the commencement of that Division.

## **Part 18 Provisions consequent on enactment of Police Service**

## **Amendment (NSW Police) Act 2002**

### **62 Construction of references to Police Service**

Subject to the regulations, in any other Act or instrument:

- (a) a reference to the Police Service of New South Wales (however expressed) is to be construed as a reference to NSW Police, and
- (b) a reference to a member of the Police Service of New South Wales (however expressed) is to be construed as a reference to a member of NSW Police.

### **63 Use of word “police” in operating name**

- (1) Any person or body of persons who, immediately before the commencement of this clause, was lawfully carrying on an activity under an operating name (within the meaning of section 204A) that includes the word “police” is taken, on that commencement, to have been granted a consent under section 204B (1) to the carrying on of that activity under that name.
- (2) The provisions of section 204B apply to a consent referred to in subclause (1) in the same way as they apply to a consent granted under section 204B (1).

## **Part 19 Provisions consequent on enactment of [Police Amendment \(Appointments\) Act 2002](#)**

### **64 Statutory declaration relating to disclosure of misconduct**

An amendment made by Schedule 1 [1], [3], [5], [10] or [12] to the [Police Amendment \(Appointments\) Act 2002](#) extends to the appointment of a person to an office or position that was advertised but not filled before the commencement of the amendment.

### **65 Transfer of superintendents between positions within that rank**

The amendment made by Schedule 1 [7] to the [Police Amendment \(Appointments\) Act 2002](#) does not apply to or in respect of a transfer to a position that was advertised but not filled before the commencement of the amendment.