

# 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**  
[Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#) (not commenced)  
[Statute Law \(Miscellaneous Provisions\) Act 2020 No 30](#), Sch 2.31 and 4.72 (not commenced — Sch 2.31 to commence on 11.12.2020; Sch 4.72 to commence on 22.1.2021)

### Authorisation

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# Police Act 1990 No 47



New South Wales

An Act to establish the NSW Police Force, to provide for the management of the NSW Police Force 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 employee** means a member of the NSW Police Force other than a police officer.

**Assistant Commissioner** means a member of the NSW Police Force whose position is determined by the Minister under Part 5 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 the NSW Police Force whose position is determined by the Minister under Part 5 as that of a Deputy Commissioner.

**LECC** means the Law Enforcement Conduct Commission constituted under the *Law Enforcement Conduct Commission Act 2016*.

**LECC Chief Commissioner** means the Chief Commissioner of the Law Enforcement Conduct Commission.

**merit**, in relation to a decision of the Commissioner to appoint or recommend for appointment a person to a position in the NSW Police Force or rank or grade within a

rank of police officer, means—

- (a) the possession by the person of qualifications determined in respect of the position or rank or grade by the Commissioner, and
- (b) the aptitude of the person for the discharge of the duties of the position or rank or grade, and
- (c) the integrity, diligence and good conduct of the person.

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

**non-executive administrative employee** means a member of the NSW Police Force, other than a police officer or a NSW Police Force senior executive.

**non-executive police officer**—see Part 6.

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

**NSW Police Force senior executive**—see section 32.

**police education course** means a course of education determined by the Commissioner to be a police education course for the purposes of one or more provisions of this Act or the regulations.

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

**position**, in relation to NSW Police Force senior executives or non-executive administrative employees, includes role.

**recognised law enforcement officer** means a person appointed as a recognised law enforcement officer under Part 10B whose appointment is in force.

**role** of a NSW Police Force senior executive or a non-executive administrative employee means the duties and responsibilities of any such executive or employee.

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

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(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 Force**

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

The NSW Police Force is established by this Act.

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

The NSW Police Force comprises the following members—

(a) the Commissioner,

(b) NSW Police Force senior executives,

(c) all other police officers or non-executive administrative employees who are employed under this Act.

(d) (Repealed)

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

(1) The mission of the NSW Police Force is to work with the community to reduce violence, crime and fear.

(2) The NSW Police Force 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 the NSW Police Force includes a reference to the functions of members of the NSW Police Force.
- (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](#).
- (6) Nothing in this section confers on the NSW Police Force a power to provide a police service in a way that is inconsistent with any provisions applicable to police officers under the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

#### **6A Functions under [Law Enforcement Conduct Commission Act 2016](#)**

- (1) The NSW Police Force has the functions of working collaboratively (so far as practicable) with LECC with respect to the education of police officers and administrative employees about police and administrative employee misconduct, officer maladministration and agency maladministration and the support and promotion of initiatives of the NSW Police Force directed at the prevention and elimination of such misconduct and maladministration.
- (2) An expression used in this section which is defined in the [Law Enforcement Conduct Commission Act 2016](#) has the meaning it has in that Act.

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

Each member of the NSW Police Force 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 Force**

- (1) The Commissioner is, subject to the direction of the Minister, responsible for the management and control of the NSW Police Force.
- (2) The responsibility of the Commissioner includes the effective, efficient and economical management of the functions and activities of the NSW Police Force.
- (3) The Commissioner may classify the various duties that members of the NSW Police Force 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 the NSW Police Force with respect to the management and control of the NSW Police Force.
- (4A) The Commissioner (on behalf of the Crown) may make or enter into contracts or arrangements with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise of the functions of the NSW Police Force.
- (5) This section is subject to the other provisions of this Act and the regulations.

## **9 (Repealed)**

## **10 Positions in NSW Police Force**

- (1) In addition to the position of Commissioner, the positions in the NSW Police Force 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 the NSW Police Force, 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 hold a position (but not a separate position) in the NSW Police Force.
- (5) (Repealed)
- (6) The Commissioner may establish, or abolish, or change the name of, any branch or other part of the NSW Police Force.



### **11 Designation of police officers**

- (1) The Commissioner is required to designate the positions in the NSW Police Force which are to be held by police officers.
- (2) A position in the NSW Police Force 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 employee 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) (Repealed)

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

- (1) The ranks of police officers within the NSW Police Force are (in descending order) as follows—
  - (a) Commissioner.
  - (b) NSW Police Force senior executive.
  - (c) Superintendent.
  - (d) Inspector.
  - (e) Sergeant.
  - (f) Constable.
- (2) The Commissioner, with the approval of the Minister, may specify different ranks for police officers who are NSW Police Force senior executives.
- (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 the NSW Police Force, so long as the officer remains in the NSW Police Force.

- (3) An oath or affirmation under this section is to be administered by or made before the Commissioner or any other person authorised to administer an official oath under the [Oaths Act 1900](#).

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

- (1) 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.
- (2) Nothing in this section confers on a police officer a power to exercise a function in a way that is inconsistent with any provisions applicable to police officers under the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

### **Part 3**

#### **15-23 (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 the NSW Police Force.
- (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 LECC, and the Commander, Professional Standards Command, 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 LECC, subject to the [Law Enforcement Conduct Commission Act 2016](#), and the

Commander, Professional Standards Command, 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 Minister may appoint a member of the NSW Police Force to act as Commissioner if the office of Commissioner is vacant or the Commissioner is suspended, sick or absent.
- (2) Any such member, while acting as Commissioner, has all the functions of the Commissioner.
- (3) The Minister may at any time terminate the appointment of any such member to act as Commissioner.

## **26 Term of appointment of Commissioner**

- (1) 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.
- (2) The Commissioner may be re-appointed with effect before the expiry of the Commissioner's term of office. In that case, the Commissioner's existing term of office expires.

## **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) The provisions of sections 36 (1), 38, 39 and 42 apply to the Commissioner in the same way as they apply to a NSW Police Force senior executive (subject to a reference in those provisions to the Commissioner being construed 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 stated reason and without notice.
- (1A) A Commissioner who is removed from office is entitled to such compensation (if any) as may be provided in the contract of employment of the Commissioner (and to no other compensation or entitlement for the removal from office). This subsection does not affect the operation of the *Police Regulation (Superannuation) Act 1906* or the *State Authorities Superannuation Act 1987* or prevent the payment of any other benefit provided under a superannuation scheme.
- (1B) A Commissioner who is removed from office is not to be employed in the public sector during the period specified in the contract of employment to which any such compensation relates unless arrangements have been made for a refund of the proportionate amount of the compensation.
- (1C) For the purposes of this section, **employment** of a former Commissioner in the public sector and **public sector** have the same meanings as in section 41 of the *Government Sector Employment Act 2013*.
- (2) (Repealed)
- (3) A recommendation of the Minister under subsection (1) may be made only after the Minister—
- (a) has notified the LECC that the Minister intends to recommend that the Commissioner be removed from office, and
  - (b) has given the LECC a reasonable opportunity to comment on the proposed recommendation.
- (4)–(7) (Repealed)
- (8) The Commissioner may be removed from office only under this section.

## **28A Declaration as “unattached” officer**

- (1) This section applies in relation to a person who is removed from office as Commissioner under section 28.
- (2) The Governor, on the recommendation of the Minister—
- (a) may declare the person so removed to be an unattached officer in the service of

the Crown, and

(b) may revoke any such declaration.

(3) While such a declaration remains in force, the person concerned is entitled to monetary remuneration and employment benefits (including any benefits that may be provided under a superannuation scheme) as if the person had not been removed from office.

(4) 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.

(5) 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.

## **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 the NSW Police Force 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 Force senior executives**

### **32 NSW Police Force senior executives**

- (1) Persons who are employed in the NSW Police Force in a Public Service senior executive band, whether as police officers or as administrative employees, are **NSW Police Force senior executives**. For that purpose, the Public Service senior executive bands under the [Government Sector Employment Act 2013](#) apply to employment in the NSW Police Force.
- (2) The Commissioner is not a NSW Police Force senior executive.
- (3) Deputy Commissioners and Assistant Commissioners are to be employed as NSW Police Force senior executives.
- (4) A police officer is not to be employed as a NSW Police Force senior executive unless the police officer is above the rank of superintendent.
- (5) The Commissioner may, subject to this and any other Act or law, exercise employer functions in relation to persons employed as NSW Police Force senior executives.

### **33 Appointment of senior executives**

- (1) Deputy Commissioners and Assistant Commissioners are to be appointed by the Governor. The persons appointed are to be persons recommended to the Minister by the Commissioner and approved by the Minister.
- (2) Other NSW Police Force senior executives are to be appointed by the Commissioner.
- (3) The appointment of a person under this section to a position in the NSW Police Force is to be based on an assessment of the capabilities, experience and knowledge of the person against the pre-established standards for the position to determine the person best suited to the requirements of the position and the needs of the NSW Police Force.
- (4) It does not matter whether a person appointed under this section is or is not already a member of the NSW Police Force, and it does not matter that a person appointed to a position designated as a position to be held by a police officer is not a police officer at the time of appointment.
- (5) The Commissioner may appoint a member of the NSW Police Force to act as a Deputy Commissioner, Assistant Commissioner or other NSW Police Force senior executive if the executive is suspended, sick or absent or has vacated office, and may terminate the appointment at any time.
- (6) A person, while so acting as a NSW Police Force senior executive, has all the functions

of the executive, but does not thereby become a NSW Police Force senior executive if not already such an executive.

### **34 Integrity matters**

- (1) It is the duty of the Commissioner, before recommending the appointment of, or appointing, a person as a NSW Police Force senior executive—
  - (a) to make inquiries (from the LECC, and the Commander, Professional Standards Command, 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.
- (2) The LECC, subject to the *Law Enforcement Conduct Commission Act 2016*, and the Commander, Professional Standards Command, 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 by the Commissioner.
- (3) As soon as practicable after a person is appointed as a NSW Police Force senior executive, the Commissioner is required to notify the LECC of the identity of the person so appointed.
- (4) The Commissioner must, before recommending the appointment of, or appointing, a person as a NSW Police Force senior executive—
  - (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.
- (5) Subsection (4) does not apply to a person who is not, and has never been, a police officer (whether a member of the NSW Police Force, or the Police Force, by whatever name described, of another State or Territory, or of another country).
- (6) A person who does not provide a statutory declaration in accordance with a requirement under subsection (4) is ineligible for appointment.
- (7) The fact that a person does not provide a statutory declaration in accordance with such a requirement is not to be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed as a NSW Police Force senior executive.
- (8) In the case of the appointment of a person as the Commander, Professional Standards

Command, the functions of that Commander under this section are to be exercised by a Deputy Commissioner nominated by the Commissioner.

### **35 Kinds of employment**

- (1) Employment as a NSW Police Force senior executive may be any one of the following kinds of employment—
  - (a) ongoing employment,
  - (b) term employment.
- (2) Ongoing employment is employment that continues until the executive resigns or his or her employment is terminated.
- (3) Term employment is employment for a specified period or for the duration of a specified task (unless the executive sooner resigns or his or her employment is terminated).

### **36 Employment in bands and assignment to roles**

- (1) A NSW Police Force senior executive is to be employed in the Public Service senior executive band that the Commissioner considers appropriate for the role of the executive.
- (2) In determining the number of NSW Police Force senior executives and the appropriate band in which they are employed, the Commissioner is to apply the applicable work level standards and have regard to any guidance provided by the Public Service Commissioner.
- (3) A NSW Police Force senior executive may, from time to time, be assigned to a role in any part of the NSW Police Force in the band in which the executive is employed.
- (4) A NSW Police Force senior executive may be assigned to a role by the Commissioner.
- (5) A NSW Police Force senior executive (other than a police officer) may—
  - (a) be transferred by the Commissioner to the Public Service of New South Wales and assigned to a role in any Public Service agency in the band in which the executive is employed (with the agreement of the head of that agency), or
  - (b) be transferred by the Commissioner to the NSW Health Service and assigned to a role in the band in which the executive is employed (with the agreement of the Secretary of the Ministry of Health), or

#### **Note—**

A Police Force senior executive may not be assigned to the role of chief executive of a local health district or specialty network governed health corporation except with the concurrence of the board of the organisation concerned—see section 121D (11) of the [Health Services Act 1997](#).



- (c) be transferred by the Commissioner to the Transport Service of New South Wales and assigned to a role in the band in which the executive is employed (with the agreement of the Secretary of the Department of Transport).

**Note—**

See also section 95A which enables a police officer to be seconded to other government agencies. While seconded, the police officer retains his or her rank, seniority and remuneration and may continue to act as a police officer of that rank.

- (6) NSW Police Force senior executives may be assigned to roles under this section to enable the flexible deployment of staff resources and to develop the capabilities of staff.
- (7) A NSW Police Force senior executive is not to be assigned to a different role under this section unless the executive has been consulted. The remuneration payable to the executive is not to be reduced because of the assignment to the different role without the consent of the executive. This subsection extends to a transfer under subsection (5).
- (8) In this section—  
**assign** to a role includes assign to a different role.

### **37 Government sector employment rules and employment directions**

- (1) The Public Service Commissioner may make government sector employment rules under section 12 of the *Government Sector Employment Act 2013* on any matter relating to the employment of NSW Police Force senior executives (including, without limitation, matters of the kind referred to in section 36 of that Act and the application of the principle of employment on merit).
- (2) The Public Service Commissioner must consult the Commissioner of Police before making any such rules.
- (3) This section does not limit any direction that the Commissioner is otherwise authorised to give in relation to the management or control of the NSW Police Force (including employment arrangements). The Commissioner is to consult with the Public Service Commissioner on any inconsistency between any such directions given and applicable government sector employment rules.

### **38 Contract of employment**

- (1) A NSW Police Force senior executive is to be employed under a written contract of employment signed by the executive and by the Commissioner on behalf of the Government.
- (2) Without limiting section 37 (1), the government sector employment rules made under section 12 of the *Government Sector Employment Act 2013* may prescribe model

contracts of employment for NSW Police Force senior executives and may specify any model provisions that are mandatory and that prevail in the event of any inconsistency with the provisions of a contract of employment entered into after the commencement of those mandatory provisions.

- (3) Subject to this Part, the government sector employment rules and any direction issued by the Public Service Commissioner under the *Government Sector Employment Act 2013*, a contract of employment of a NSW Police Force senior executive is to deal with the following matters—
- (a) the band in which the executive is employed,
  - (b) the duration of the contract if the executive is not employed in ongoing employment,
  - (c) the total remuneration package of the executive (comprising monetary remuneration and employment benefits) and any allowances,
  - (d) performance obligations, and reviews of performance, of the executive,
  - (e) progression in the total remuneration package of the executive based on performance,
  - (f) leave and other conditions of employment of the executive,
  - (g) the compensation for any termination of employment of the executive by the Commissioner (including the period to which the compensation relates),
  - (h) any other matter prescribed by the regulations under section 39 (4) of the *Government Sector Employment Act 2013*.
- (4) The contract of employment of a NSW Police Force senior executive may, subject to this Act, include conditions of engagement.
- (5) The contract of employment of a NSW Police Force senior executive does not limit, and is not terminated or otherwise affected by—
- (a) the transfer of the executive under section 36 (5) to the Public Service of New South Wales, the NSW Health Service or the Transport Service of New South Wales, or
  - (b) the assignment of the executive to a different role or any other change to the title, place of work or duties of the executive.
- (6) A contract of employment of a NSW Police Force senior executive may, subject to this section, be varied at any time in accordance with the contract or by further agreement.

- (7) The regulations under the *Government Sector Employment Act 2013* may make provision with respect to the compensation to which a NSW Police Force senior executive whose employment is terminated is entitled under his or her contract of employment. Any such regulation cannot reduce the amount of compensation to which a NSW Police Force senior executive is entitled under a contract of employment entered into before the commencement of the regulation.

### **39 Remuneration, benefits and allowances**

- (1) The remuneration package of a NSW Police Force senior executive must be within the range determined under the *Statutory and Other Offices Remuneration Act 1975* for the band in which the executive is employed, except as provided by subsection (2).

**Note—**

See also section 24R (3) of the *Statutory and Other Offices Remuneration Act 1975*.

- (2) The Commissioner may, in accordance with parameters agreed on by the Commissioner and the Public Service Commissioner, determine a remuneration package for a NSW Police Force senior executive or class of NSW Police Force senior executives that is within a range higher than the range determined under the *Statutory and Other Offices Remuneration Act 1975* for the band in which the executive or class of executives is employed.
- (3) The kinds and value of employment benefits and the allowances for a NSW Police Force senior executive are to be determined by the Commissioner. In making any such determination, the Commissioner is to have regard to any similar determinations that apply to Public Service senior executives.
- (4) A NSW Police Force senior executive is only entitled to the remuneration, employment benefits or allowances provided in the executive's contract of employment.
- (5) For the purposes of this section, employment benefits for a NSW Police Force senior executive are—
- (a) contributions by the executive's employer to a superannuation scheme or fund of the executive, and
  - (b) other benefits provided to the executive at the cost of the executive's employer that are of a private nature.

### **39A (Repealed)**

### **40 Termination of employment**

- (1) The Governor may terminate the appointment of a person as Deputy Commissioner or Assistant Commissioner at any time, for any or no stated reason and without notice. The Governor is not to do so unless the termination is recommended to the Minister by the Commissioner and the Minister approves the recommendation.

- (2) The Commissioner may terminate the employment of any other NSW Police Force senior executive at any time, for any or no stated reason and without notice.
- (3) The Commissioner—
  - (a) may declare a person whose appointment is terminated under subsection (1) to be an unattached officer in the NSW Police Force (an ***unattached declaration***), and
  - (b) may revoke an unattached declaration.
- (4) While an unattached declaration is in force, the person to whom the declaration relates—
  - (a) is to be regarded as a NSW Police Force senior executive (although not as the holder of any position), and
  - (b) is entitled to remuneration and employment benefits (including any benefits that may be provided under a superannuation scheme) as if the person's appointment had not been terminated.
- (5) If, in the case of a person whose appointment has been terminated under subsection (1), an unattached declaration is not made or is revoked by the Commissioner, the employment of the person as a NSW Police Force senior executive is to be terminated by the Commissioner unless the person is appointed to another position in the NSW Police Force (including a position as a non-executive police officer) after consultation with the person.
- (6) Without limiting subsection (5), a person whose appointment as Deputy Commissioner or Assistant Commissioner is terminated under this section and who is the subject of an unattached declaration may be appointed by the Commissioner to a position in the NSW Police Force as a non-executive police officer after consultation with the person.
- (7) Nothing in this section prevents—
  - (a) a NSW Police Force senior executive who is a police officer being removed from the NSW Police Force apart from under this section, or
  - (b) a NSW Police Force senior executive who is an administrative employee from having his or her employment terminated under section 68 or 69 of the [Government Sector Employment Act 2013](#).

#### **41 Compensation for termination of employment**

- (1) A NSW Police Force senior executive whose employment is terminated under section 40 is entitled to such compensation (if any) as may be provided in the contract of employment of the executive (and to no other compensation or entitlement for the termination of employment). This subsection does not affect the operation of the

*Police Regulation (Superannuation) Act 1906* or the *State Authorities Superannuation Act 1987* or prevent the payment of any other benefit provided under a superannuation scheme.

- (2) A NSW Police Force senior executive whose employment is so terminated is not to be employed in the public sector during the period specified in the contract of employment to which any such compensation relates unless arrangements have been made for a refund of the proportionate amount of the compensation.
- (3) The regulations under the *Government Sector Employment Act 2013* may make provision relating to the calculation of the proportionate amount of a payment to be refunded under subsection (2).
- (4) For the purposes of this section, **employment** of a former executive in the public sector and **public sector** have the same meanings as in section 41 of the *Government Sector Employment Act 2013*.

#### **42 Industrial or legal proceedings excluded**

- (1) The employment of a NSW Police Force senior executive, 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*.
- (2) Parts 6, 7 and 9 of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of a NSW Police Force senior executive.
- (3) Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of NSW Police Force senior executives. This subsection does not prevent the provisions of any such industrial instrument being adopted by reference in the conditions of employment of any such executive.
- (4) 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—
  - (a) the engagement of, or failure to engage, a person as such a NSW Police Force senior executive, or
  - (b) the assignment or re-assignment of a NSW Police Force senior executive to a role in a band.
- (5) In this section, a reference to the **employment** of a NSW Police Force senior executive is a reference to—
  - (a) the engagement of, or failure to engage, a person as such an executive, or
  - (b) the assignment or re-assignment of the executive to a role in a band, or

- (c) the removal, retirement, termination of employment or other cessation of employment of the executive, or
- (d) any disciplinary proceedings or action taken against the executive, or
- (e) the remuneration or other conditions of employment of the executive.

**43-61 (Repealed)**

**Part 6 Non-executive police officers**

**Division 1 Preliminary**

**62 Officers to whom Part applies**

This Part applies to all police officers (other than the Commissioner and NSW Police Force senior executives).

**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 police officer** means a police officer to whom this Part applies.

**specialist position** means a position at the rank of sergeant, inspector or superintendent identified by the Commissioner as requiring specialist qualifications or unique knowledge, skills or experience.

**vacant position** means—

- (a) a position that is not held by a person, or
- (b) a position in which a police officer is appointed to act, in accordance with section 66A.
- (c) (Repealed)

**vacant specialist position** means—

- (a) a specialist position that is not held by a person, or
- (b) a specialist position to which a police officer is appointed on a provisional basis, in accordance with section 66AB, or
- (c) a specialist position in which a police officer is appointed to act, in accordance with section 66A.

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

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

- (1) An appointment (whether by way of transfer or promotion or otherwise) as a non-executive police officer is to be made by the Commissioner.
- (2) It does not matter whether the person appointed is or is not already a member of the NSW Police Force.
- (3) In particular, it does not matter whether the person appointed is or is not a police officer at the time of appointment.
- (4) As soon as practicable after a person is appointed (whether by way of transfer or promotion or otherwise) as a non-executive police officer, the Commissioner is required to notify the LECC of the identity of the person so appointed.

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

- (1) If the Commissioner is satisfied that a position is suitable for either a police officer or a non-executive administrative employee, the position may, for the purpose of the selection process, be designated as a position available to both police officers and non-executive administrative employees.
- (2) Before a person is appointed to any such vacant position or vacant specialist position, the Commissioner must determine whether it is to be the position of a police officer or a non-executive administrative employee (and the provisions of this Part or Part 6A relating to the filling of such a vacancy apply accordingly).

### **66 Appointments and promotion appointments to be made on merit**

- (1) This section applies to appointments to vacant positions of non-executive police officers (other than constables) and vacant specialist positions.
- (2) In deciding to appoint a person (other than by way of promotion) to a vacant position of a non-executive police officer or a vacant specialist position, the Commissioner must, from among the applicants who are eligible for appointment, select the applicant who has, in the opinion of the Commissioner, the greatest merit.
- (3) The Commissioner is, for the purpose of determining the merit of persons for appointment (other than by way of promotion) to a vacant position of a non-executive police officer or a vacant specialist position, to have regard to—
  - (a) the nature of the duties of the position, and
  - (b) the qualifications, experience, standard of work performance and capabilities of those persons that are relevant to the performance of those duties.

- (4) In deciding to appoint a person by way of promotion to a vacant position of a non-executive police officer, the Commissioner must appoint a person who has, in the opinion of the Commissioner, the greatest merit as determined in accordance with the regulations.
- (5) (Repealed)

**Note—**

Sections 66AC and 66A contain an exception to subsection (4) and this section, respectively.

**66AA Promotion appointments to specialist positions**

- (1) In deciding to appoint a police officer by way of promotion to a vacant specialist position, the Commissioner must appoint the officer who has, in the opinion of the Commissioner, the greatest merit as determined in accordance with the regulations.
- (2) The Commissioner may require a police officer applying for appointment by way of promotion to a vacant specialist position to undergo a psychological assessment of the officer's suitability for the position.
- (3) The Commissioner may not appoint a police officer by way of promotion to a vacant specialist position for which a psychological assessment is required if the officer—
  - (a) refuses to undergo the assessment, or
  - (b) fails to satisfy any requirement or criteria relevant to the assessment.

**Note—**

Section 66A contains an exception to this section.

**66AB Promotion appointments to specialist positions requiring specific qualifications—provisional appointments**

- (1) This section applies in relation to a vacant specialist position that requires a specific qualification if none of the applicants for the position holds the qualification.
- (2) The Commissioner may appoint by way of promotion to the position a police officer who does not hold the qualification.
- (3) The Commissioner must appoint the police officer to the position on a provisional basis for a period (the **provisional period**) determined by the Commissioner.
- (4) The Commissioner must permanently appoint the police officer to the position if—
  - (a) the officer obtains the qualification within the provisional period, and
  - (b) the officer has, in the opinion of the Commissioner, demonstrated satisfactory performance in the position within the provisional period.



- (5) If the police officer is not permanently appointed under subsection (4) within the provisional period, at the end of the provisional period the officer returns to the rank and grade the officer would have held at the end of the provisional period had the officer not been provisionally appointed to the specialist position.
- (6) Section 66AA applies to an appointment under this section.

**Note—**

Section 66A contains an exception to this section.

**66AC Appointments—senior sergeants**

- (1) The Commissioner may invite expressions of interest from police officers of the rank of sergeant for appointment to a position within the grade of senior sergeant.
- (2) Following a selection process, the Commissioner may appoint to such a position a person who, in the opinion of the Commissioner, has the greatest merit among the candidates for the position.
- (3) Except in such circumstances as may be determined by the Commissioner, a person is not eligible to be appointed to a position within the grade of senior sergeant unless the person has completed a period of, or periods totalling, not less than 2 years at the rank of sergeant.
- (4) A person who is appointed to a position within the grade of senior sergeant does not retain the title or any benefits associated with that grade if the person is transferred to a position within another grade.
- (5) Section 66 (4) does not apply to an appointment under this section.

**66A Acting appointments**

- (1) The Commissioner may appoint a police officer to act in a non-executive police officer position if—
  - (a) the position is vacant, or
  - (b) the holder of the position is suspended, sick or absent.
- (2) The police officer, while acting in the position, has all the functions of the holder of the position.
- (3) The Commissioner may, at any time, terminate the appointment of the police officer to act in the position.
- (4) This section does not prevent the payment of an allowance to a police officer for exercising any or all of the functions of a non-executive police officer position if a police officer is not appointed to act in the position under this section.

- (5) An appointment made under subsection (1)(a) must not be for a period longer than 12 months.
- (6) Sections 66, 66AA and 66AB do not apply to an appointment under this section.

**67 (Repealed)**

**68 Declaration as to misconduct**

- (1) Before appointing a police officer to act in a non-executive police officer position under section 66A, the Commissioner must require the officer to provide a declaration that the officer has not knowingly engaged in specified misconduct or any other misconduct.
- (2) A police officer who fails, refuses or is unable to provide the declaration is ineligible for appointment to the position.
- (3) The failure, refusal or inability of a police officer to provide the declaration must not be taken into consideration for a purpose other than the assessment of the officer's eligibility to be appointed to the position.

**69 Transfer of non-executive police officers**

- (1) If the Commissioner considers it to be in the interests of the NSW Police Force to do so, the Commissioner may transfer a non-executive police officer from one non-executive police officer position to another non-executive police officer position or non-executive administrative employee position.
- (2) Such a transfer may be made if—
  - (a) the position to which the officer is transferred entitles its holder to the same level of remuneration as the officer's former remuneration, or
  - (b) the position to which the officer is transferred entitles its holder to a lower level of remuneration than the officer's former remuneration and—
    - (i) the officer consents to the transfer at the lower level of remuneration, or
    - (ii) the officer requested the transfer or the transfer is made pursuant to an order under section 173, or
  - (c) the officer concerned is being transferred from the rank of superintendent to which the officer is permanently appointed to another 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.
- (3) An officer transferred under subsection (2) (c) is entitled, for the balance of the term for which the officer holds office pursuant to section 74, to the same level of

remuneration in respect of the new position as the officer's former remuneration if the position to which the officer is transferred ordinarily entitles its holder to a level of remuneration that is lower than the officer's former remuneration (unless the officer requested the transfer or it was made pursuant to an order under section 173).

- (4) A transfer under this section may be made only if the officer possesses the qualifications determined by the Commissioner for the other position.
- (5) The transfer under this section of a police officer to a non-executive administrative employee position may not be made without the approval of the police officer.
- (6) Section 66 does not apply to a transfer under this section.

## **70 (Repealed)**

## **71 Integrity matters**

- (1) Each of the following is a duty of the Commissioner—
  - (a) before a non-executive police officer participates in a process relating to the person's promotion to the rank of sergeant, inspector or superintendent—to make inquiries as to the integrity of the officer,
  - (b) before appointing a person by way of promotion as a non-executive police officer—to make inquiries as to the integrity of the person of the following—
    - (i) the LECC,
    - (ii) the Commander, Professional Standards Command,
    - (iii) any other person the Commissioner considers appropriate.
- (2) It is the duty of the Commissioner to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under subsection (1) or otherwise) as to the integrity of a person referred to in that subsection.
- (3) The LECC, subject to the *Law Enforcement Conduct Commission Act 2016*, and the Commander, Professional Standards Command, 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 (1)(b).
- (4) The Commissioner may change a decision to appoint a person under this Part before the person is appointed if the Commissioner receives information as to the person's integrity which causes the Commissioner to form the opinion that the person is not a suitable person to be so appointed.
- (5) If the Commissioner changes such a decision, the Commissioner may decide, in accordance with this Part to appoint instead (from the persons who are eligible for

appointment) the person who the Commissioner is of the opinion at the time has the greatest merit.

- (6) The Commissioner may suspend or remove a person from any part of a process relating to the person's promotion if the Commissioner receives information as to the person's integrity which causes the Commissioner to form the opinion that the person is not a suitable person to participate in the process.

## **72 Vacation of non-executive police officer positions**

- (1) A non-executive police officer's position becomes vacant if the officer—
  - (a) dies, or
  - (b) completes a term of office and is not appointed for a further term, 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, or
  - (e) abandons his or her employment in the NSW Police Force.
- (2) (Repealed)

## **73 Regulations relating to promotion of non-executive police officers**

- (1) The regulations may make provision for or with respect to the promotion of non-executive police officers to the rank of sergeant, inspector or superintendent.
- (2) In particular, the regulations may make provision for or with respect to the following matters—
  - (a) the requirements and processes for promotion,
  - (b) the criteria for eligibility to participate in a process for promotion,
  - (c) the appointment of police officers to positions,
  - (d) the procedures for and conduct of reviews.

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

### **74 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 non-executive police officer 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 the NSW Police Force, as determined by the Commissioner after consultation with the officer.

#### **75 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 74 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 position or vacant specialist position for the purposes of Division 2.

#### **76 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.

#### **77 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.

#### **78 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 the NSW Police Force as a non-executive commissioned police officer, the officer is to be appointed for a new term of office in accordance with section 74 in the rank to which the officer is promoted.

- (2) When a non-executive commissioned police officer is transferred to another position in the NSW Police Force as a non-executive commissioned police officer, the officer is not to be appointed for a new term of office, 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 72 (Re-employment of employees resigning to contest Commonwealth elections) of the [Government Sector Employment Act 2013](#) 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.

#### **79 Powers of dismissal, removal and suspension not affected**

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

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

#### **80 Appointment and promotion 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 the NSW Police Force at any time and without giving any reason.
- (4) The promotion of police officers within the rank of constable is subject to the regulations.

### **Part 6A Non-executive administrative employees**

#### **81 Application of Part**

This Part applies to non-executive administrative employees.

#### **81A Kinds of employment**

- (1) Employment in the NSW Police Force as a non-executive administrative employee may be any one of the following kinds of employment—
  - (a) ongoing employment,
  - (b) temporary employment,
  - (c) casual employment.

- (2) Ongoing employment is employment that continues until the employee resigns or his or her employment is terminated.
- (3) Temporary employment is employment for a temporary purpose.
- (4) Casual employment is employment to carry out irregular, intermittent, short-term, urgent or other work as and when required.

#### **81B Integrity matters**

- (1) It is the duty of the Commissioner before employing a non-executive administrative employee, to make inquiries (from any person or body the Commissioner thinks appropriate), as to the person's integrity.
- (2) It is the duty of the Commissioner to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under subsection (1) or otherwise) as to the integrity of a person referred to in that subsection.
- (3) The LECC is authorised (but not required) to furnish a report to the Commissioner on any person the subject of an inquiry under this section.
- (4) The Commissioner is required to notify the LECC of the identity of each person employed as a non-executive administrative employee as soon as practicable after the person is so employed.

#### **81C Employment in classifications of work**

- (1) Non-executive administrative employees are to be employed in a classification of work determined by the Commissioner in which the person is employed in accordance with this and any other Act or law.
- (2) A classification of work extends to any kind of work and any grade of that work.

#### **81D Assignment of roles in work classifications**

- (1) In this section—  
**assign** to a role includes assign to a different role.
- (2) The Commissioner may from time to time assign non-executive administrative employees to roles in the NSW Police Force in the classification of work in which the employees are employed.
- (3) Non-executive administrative employees may be assigned to roles to enable the flexible deployment of staff resources within the NSW Police Force and to develop the capabilities of staff.
- (4) A non-executive administrative employee is not to be assigned to a different role unless the employee has been consulted. The remuneration payable to the employee

is not to be reduced because of the assignment to the different role without the consent of the employee.

- (5) The Commissioner may also transfer a non-executive administrative employee to a non-executive police officer position.

### **81E Termination of employment**

- (1) The Commissioner may, by instrument in writing, terminate the employment of a non-executive administrative employee on any of the following grounds if the employment is ongoing employment—
- (a) the employee has failed to meet a condition of engagement as an employee imposed under Part 8,
  - (b) the employee lacks, or has lost, an essential qualification for performing the duties of the role assigned to the employee,
  - (c) the performance of the employee is determined under section 68 of the *Government Sector Employment Act 2013* to be unsatisfactory,
  - (d) the employee is unable to perform the duties of the role assigned to the employee because of physical or mental incapacity,
  - (e) the employee is retired on medical grounds under section 94B,
  - (f) the employee has refused to perform duties to which the employee has been duly assigned,
  - (g) the employee has abandoned his or her employment,
  - (h) a finding of misconduct has been made against the employee under section 69 of the *Government Sector Employment Act 2013*,
  - (i) the employee is determined in accordance with the government sector employment rules under the *Government Sector Employment Act 2013* or the regulations under that Act to be excess to the requirements of the NSW Police Force,
  - (j) on any other ground prescribed by the regulations under this Act or by the regulations under section 47 (1) (k) of the *Government Sector Employment Act 2013*.

The instrument is to set out the ground or grounds on which the employment is terminated.

- (2) The Commissioner may, by instrument in writing, terminate the employment of a non-executive administrative employee at any time if the employment is not ongoing



employment.

**81F Government sector employment rules relating to employment of non-executive administrative employees**

- (1) The Public Service Commissioner may make government sector employment rules under section 12 of the [Government Sector Employment Act 2013](#) on any matter relating to the employment of NSW Police Force non-executive administrative employees (including, without limitation, matters of the kind referred to in section 48 of that Act).
- (2) The Public Service Commissioner must consult the Commissioner of Police before making any such rules.
- (3) This section does not limit any direction that the Commissioner is otherwise authorised to give in relation to the management or control of the NSW Police Force (including employment arrangements). The Commissioner is to consult with the Public Service Commissioner on any inconsistency between directions given and applicable government sector employment rules.

**81G Employment of special constables**

- (1) The Commissioner may employ a person under this Part as a non-executive administrative employee (special constable). A person so employed is a **special constable**.
- (2) Employment as a special constable may be made subject to such conditions as the Commissioner determines, including (but not limited to) conditions as to the kinds of functions conferred or imposed and the purposes for and circumstances in which such functions may be exercised.
- (3) Without limiting the generality of subsection (2), the Commissioner may confer or impose on a special constable any of the functions of a police officer of the rank of constable, including any of the functions of a police officer that are specified in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

**Note—**

Accordingly, section 13 of this Act, for example, would apply to any such special constable.

- (4) Sections 207A and 211A–211AB apply to a special constable who is authorised to exercise functions of a police officer in the same way as those sections apply to a police officer.
- (5) Part 15 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) (Safeguards relating to powers) applies to a special constable who is authorised to exercise functions of a police officer in the same way as that Part applies to a police officer.
- (6) Part 4 of the [Law Reform \(Vicarious Liability\) Act 1983](#) applies to a special constable

who is authorised to exercise functions of a police officer in the same way as that Part applies to a police officer.

### **82-83 (Repealed)**

## **Part 6B Industrial matters relating to non-executive officers**

### **84 Application of Part**

- (1) This Part applies to all members of the NSW Police Force (other than the Commissioner or NSW Police Force senior executives).
- (2) In this Part—

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

### **85 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.

### **86 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.

### **87 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.

## **88 Industrial or legal proceedings excluded**

- (1) The engagement of, or the failure to engage, a person as a non-executive officer, or any matter, question or dispute relating to any such engagement (or failure to engage), is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (2) 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 a matter that is declared by this section not to be an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (3) The failure of a non-executive commissioned police officer to be appointed for a further term of office as provided by section 75 is, for the purposes of this section, taken to be a failure to engage the person as a non-executive officer.
- (4) Nothing in this section prevents any of the following proceedings from being brought by a member of the NSW Police Force in relation to the employment of another member of the NSW Police Force—
  - (a) proceedings under Part 9 of the *Anti-Discrimination Act 1977* in relation to a complaint under that Part,
  - (b) proceedings under section 213 of the *Industrial Relations Act 1996* to enforce the provisions of section 210 (Freedom from victimisation) of that Act.

## **89 (Repealed)**

## **Part 7**

## **90-91A (Repealed)**

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

### **Note—**

Other provisions relating to members of the NSW Police Force are to be found in Part 5 of the *Government Sector Employment Act 2013*.

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

## **93A Conditions of engagement of administrative employees**

- (1) The engagement of an administrative employee may be made subject to conditions notified to the employee on his or her engagement.
- (2) The conditions may include (without limitation) conditions dealing with any of the following matters—

- (a) probation,
  - (b) citizenship or residency requirements,
  - (c) formal qualifications,
  - (d) security and other clearances,
  - (e) health clearances.
- (3) The imposition of conditions of engagement is subject to the government sector employment rules under the *Government Sector Employment Act 2013* and the regulations under this Act.
- (4) The contract of employment of a NSW Police Force senior executive may include conditions of engagement.

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

- (1) A person is eligible to be appointed as a member of the NSW Police Force only if the person is an Australian citizen or a permanent Australian resident.
- (2) A member of the NSW Police Force who ceases to be so eligible (or is not so eligible) for appointment as such a member is to be dismissed from the NSW Police Force.
- (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) (Repealed)
- (5) The Commissioner may exempt a non-executive administrative officer from the operation of this section in any case the Commissioner considers appropriate.

#### **94A (Repealed)**

#### **94B Retirement on medical grounds**

The Commissioner may retire a member of the NSW Police Force if—

- (a) the person is found on medical grounds to be unfit to perform or incapable of discharging the duties of the person's position, and
- (b) the person's unfitness or incapacity—
  - (i) appears likely to be of a permanent nature, and
  - (ii) has not arisen from actual misconduct on the part of the person, or from causes within the person's control.

#### **94C Resignation or retirement**

- (1) A member of the NSW Police Force may resign from the NSW Police Force by written notice to the Commissioner.
- (2) The resignation of a member of the NSW Police Force does not take effect until—
  - (a) the Commissioner accepts the resignation, or
  - (b) the member has given the Commissioner at least 4 weeks' notice in writing of the day on which the member intends to resign and the member is not under suspension from duty on that day.
- (3) In this section, **resignation** includes retirement and **member of the NSW Police Force** does not include the Commissioner.

#### **94D Approval to engage in other paid employment**

A member of the NSW Police Force (other than the Commissioner) must not engage in any paid employment outside his or her duties as such a member without the approval of the Commissioner.

#### **95 Arrangements for use by NSW Police Force 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 Force**

- (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 the NSW Police Force (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 police officer of that rank. However, this subsection does not prevent the payment of additional remuneration to police officers in accordance with arrangements under this section.

#### **95B, 96 (Repealed)**

#### **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.

**96B Vetting of prospective members of NSW Police Force or consultants**

- (1) Vetting information that is held by the Commissioner or obtained under this section may be used in determining whether to appoint an applicant as a member of the NSW Police Force or to engage an applicant as a consultant to the NSW Police Force.
- (2) For the purposes of this section, **vetting information** is information of the following kind about an applicant, or about an associate or relative of an applicant—
  - (a) any criminal intelligence report or other criminal information,
  - (b) information held in the Births, Deaths and Marriages Register,
  - (c) information held by Roads and Maritime Services relating to licences or other authorities, offences or penalties,
  - (d) information held by Corrective Services NSW, Department of Attorney General and Justice,
  - (e) information held by the Australian Crime Commission,
  - (f) information held by a law enforcement agency,
  - (g) information held by an agency of the Commonwealth or of the State or another State or Territory investigating public sector corruption,
  - (h) information held by an agency of a jurisdiction outside Australia, being an agency responsible for the enforcement of laws of that jurisdiction,
  - (i) information prescribed by the regulations that is held by a public authority or held by a Government agency of another jurisdiction (whether in or outside Australia).
- (3) The Commissioner may, with the consent of an applicant, request a public authority or

other person or body to disclose vetting information about the applicant.

- (4) The Commissioner may also, without consent, request a public authority or other person or body (not being an agency of a jurisdiction outside Australia) to disclose vetting information about associates or relatives of the applicant.
- (5) The Commissioner must notify an applicant that the Commissioner has the power under this section to request a public authority or other person or body (not being an agency of a jurisdiction outside Australia) to disclose vetting information about associates or relatives of the applicant. The notice must be given when the consent of the applicant is sought under subsection (3) or, if consent has not been sought for the purposes of that subsection, before the first request for information about associates or relatives of the applicant is made under this section.
- (6) A public authority that holds, or is responsible for the disclosure of, vetting information is authorised to disclose the information to the Commissioner for the purposes of this section.
- (7) The following information about the criminal history of a person may be disclosed and considered for the purposes of this section—
  - (a) information relating to spent convictions, despite anything to the contrary in the *Criminal Records Act 1991*,
  - (b) information relating to criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged,
  - (c) information relating to offences, despite anything to the contrary in section 579 of the *Crimes Act 1900*.
- (8) For the purposes of the collection, disclosure or use of vetting information under this section or section 96C, the information may be collected, disclosed or used despite any other Act or law.

**Note—**

Section 62 of the *Privacy and Personal Information Protection Act 1998* makes it an offence for a public sector official (including a member of the NSW Police Force) to disclose personal information, other than for official purposes, about a person to which the official has had access in an official capacity.

- (9) This section does not restrict or prevent—
  - (a) the Commissioner or any other person from collecting, disclosing or using any information that the Commissioner or other person may otherwise lawfully collect, disclose or use, or
  - (b) the Commissioner from considering information other than vetting information in determining whether or not to appoint an applicant as a member of the NSW Police Force or to engage an applicant as a consultant to the NSW Police Force.

(10) In this section—

**law enforcement agency** means the following—

- (a) a Police Force of another State or Territory,
- (b) the Australian Federal Police,
- (c) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of the State or another State or Territory.

**public authority** has the same meaning as it has in the *Independent Commission Against Corruption Act 1988*.

### **96C Safeguards relating to use of vetting information**

- (1) The Commissioner must, for the period of 2 years commencing on the commencement of this section (the **review period**), keep a record of each occasion when vetting information about an associate or a relative of an applicant is considered under section 96B.
- (2) The Commissioner is to record whether vetting information was the basis (wholly or partly) of a decision not to appoint or engage the applicant and the information relied on for that purpose.
- (3) A person appointed by the Attorney General is to review the records kept under this section at the end of the review period.
- (4) The person appointed must be a person who is—
  - (a) a former Judge of the Supreme Court of the State or of any other State or Territory, a former Judge of the Federal Court of Australia or a former Justice of the High Court of Australia, or
  - (b) a person qualified to be appointed as (but who is not) a Judge or Justice of any such court.
- (5) The Commissioner may, at the request of the person conducting the review, make available any records kept by the Commissioner under this section and any further information requested by the person that is reasonably related to the review.
- (6) The person conducting the review must, not later than 6 months after the end of the review period, report on the records to the Minister and the Attorney General and provide a copy of the report to the Commissioner.
- (7) A report may contain recommendations relating to the collection, use and disclosure of vetting information under section 96B and related procedures or practices of the Commissioner.



**96D Secrecy—review information**

- (1) The person who conducts the review under section 96C must not, directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's functions under this Act—
  - (a) make a record of any communication, or
  - (b) divulge or communicate to any person any information,  
being information acquired by the person by reason of, or in the course of, the exercise of the person's functions under this Act.
- (2) The person who conducts the review under section 96C cannot be required—
  - (a) to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act, or
  - (b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's functions under this Act.
- (3) Despite this section, the person may divulge any such information—
  - (a) for the purposes of and in accordance with this Act, or
  - (b) to any prescribed authority or person.

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

- (1) A member of the NSW Police Force 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 the NSW Police Force 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 the NSW Police Force 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 the NSW Police Force 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 LECC 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 the NSW Police Force, 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 the NSW Police Force.

**relevant authority** means—

- (a) the Minister or the LECC, 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 LECC, in any other case.

## **98 Recognition of commissioned officers**

- (1) The Governor may issue a document recognising the appointment of a police officer or other person to the position of a commissioned police officer.
- (2) Recognition by the Governor does not affect the manner of appointment of a person to a position of the rank of commissioned police officer under this Act or any other provision of this Act or the regulations relating to the employment of such a police officer.

**99-120** (Renumbered as secs 200-221)

## **Part 8A Complaints about conduct of police officers, administrative employees and the NSW Police Force**

### **Division 1 Preliminary**

## 121 Interpretation

(1) In this Part—

**administrative employee** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

**administrative employee complaint** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

**administrative employee misconduct** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

**agency complaint** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

**agency maladministration** has the meaning it has in relation to the NSW Police Force in the *Law Enforcement Conduct Commission Act 2016*.

**complainant** means a person by whom, or on whose behalf, a complaint is made.

**complaint** means an allegation that any conduct of—

- (a) an administrative employee (whether or not named or identified) is (or could be) conduct that falls within the description of administrative employee misconduct or officer maladministration, or
- (b) a police officer (whether or not named or identified) is (or could be) conduct that falls within the description of police misconduct or officer maladministration, or
- (c) the NSW Police Force is (or could be) conduct that falls within the description of agency maladministration.

**critical incident** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

**misconduct information** has the same meaning in relation to the Commissioner as in the *Law Enforcement Conduct Commission Act 2016* in relation to the LECC.

**misconduct matter** means—

- (a) a complaint, or
- (b) misconduct information.

**misconduct matters information system** means the system established by the regulations for recording information concerning police complaints and misconduct information under this Act and the *Law Enforcement Conduct Commission Act 2016*.

**misconduct matters management guidelines** means misconduct matters

management guidelines within the meaning of the *Law Enforcement Conduct Commission Act 2016*.

**notifiable misconduct matter** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

**officer maladministration** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

**officers of the LECC** means the following—

- (a) the Chief Commissioner, Commissioner for Integrity and Commissioner for Oversight of the LECC,
- (b) an Assistant Commissioner of the LECC,
- (c) a member of staff of the LECC.

**police complaint** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

**Note—**

A **police complaint** is defined in the *Law Enforcement Conduct Commission Act 2016* to mean an allegation that any conduct of a police officer (whether or not named or identified) is (or could be) conduct that falls within the description of police misconduct or officer maladministration within the meaning of that Act.

**police misconduct** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

**serious maladministration** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

**serious misconduct** has the same meaning as in the *Law Enforcement Conduct Commission Act 2016*.

- (2) This Part applies to and in respect of a former administrative employee or police officer (in relation only to conduct occurring while he or she was an administrative employee or police officer) in the same way as it applies to and in respect of an administrative employee or police officer, so that a misconduct matter concerning a former administrative employee or police officer may be made or be the subject of a report or of other information and dealt with as if the former administrative employee or police officer were still an administrative employee or police officer.
- (3) Subject to the regulations, a reference in this Part to the **conclusion of a critical incident investigation** is a reference to the final report of the police officers investigating a critical incident given after the conclusion of all criminal or coronial proceedings arising out of the critical incident.

## **122 Application of Part to certain complaints and misconduct information**

This Part applies to and in respect of a misconduct matter concerning the conduct of a police officer or administrative employee, or the NSW Police Force, received by the Commissioner or of which the Commissioner becomes aware.

## **123 Relationship with [Law Enforcement Conduct Commission Act 2016](#)**

This Part is subject to the [Law Enforcement Conduct Commission Act 2016](#).

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

### **124 Making of complaints to Commissioner**

- (1) Any person may complain to the Commissioner about conduct of a police officer or administrative employee that is (or could be) police misconduct, administrative employee misconduct or officer maladministration.
- (2) Any person may complain to the Commissioner about conduct of the NSW Police Force that is (or could be) agency maladministration.
- (3) This section does not affect any other right of a person to complain about the conduct of an administrative employee or a police officer or the NSW Police Force.

#### **Note—**

A complaint may also be made to the LECC—see section 35 of the [Law Enforcement Conduct Commission Act 2016](#).

### **125 Complaint to be in writing**

- (1) A complaint to the Commissioner must be in writing.
- (2) However, the Commissioner—
  - (a) may accept a complaint that is not in writing if the Commissioner considers it appropriate to do so, and
  - (b) in that event, must reduce the complaint to writing as soon as practicable.
- (3) A complaint may be made by delivering or sending it to the Commissioner or in any other manner determined by the Commissioner and publicly notified by the Commissioner.

### **126 Anonymous complaints**

- (1) It is not necessary for a complainant to be identified in a complaint.
- (2) Any provision of this Act or any misconduct matters management guidelines that require a complainant to be notified of any matter does not apply to or in respect of a

complainant who is not identified in the complaint.

### **127 Complaints made by prisoners**

- (1) 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 immediately send, unopened, any written matter addressed to a police officer (whether by name or by reference to an office held by that officer), the Commissioner (whether by name or by reference to that office) or to the LECC to that addressee.
- (2) In this section—

**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 and who, if a correctional officer within the meaning of the *Crimes (Administration of Sentences) Act 1999*, is authorised by or under that Act to accept correspondence from a prisoner.

**prisoner** means any person in lawful detention or custody.

#### **Note—**

Under clause 110 of the *Crimes (Administration of Sentences) Regulation 2014* a prisoner must not send any letter otherwise than through the hands of a nominated officer within the meaning of that Regulation.

### **127A Member of Parliament may make complaint on behalf of a complainant**

- (1) A complaint may, with the consent in writing of a person, be made on his or her behalf by a member of Parliament.
- (2) A member of Parliament does not become the complainant merely because the member makes a complaint to the Commissioner on behalf of another person but may be informed, notified, given or sent such advice about progress on or the outcome of a complaint as the Commissioner considers appropriate.

## **Division 3 Misconduct matters information system**

### **128 Misconduct matters information system**

- (1) The regulations may make provision for or with respect to a system for recording information about misconduct matters concerning police officers, administrative employees and the NSW Police Force received by the Commissioner or of which the Commissioner becomes aware under this Act and received by the LECC or of which the LECC becomes aware under the *Law Enforcement Conduct Commission Act 2016* and, in particular, for or with respect to—
  - (a) the establishment, control, operation and maintenance of the system, and

- (b) the registration of misconduct matters in the system, and
  - (c) the nature of the information about misconduct matters 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 LECC 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 misconduct matters**

- (1) The following must be registered in the misconduct matters information system—
- (a) all police complaints, administrative employee complaints and agency complaints about the NSW Police Force received by the Commissioner and the LECC,
  - (a) such information about misconduct information as is required to be registered in the system by misconduct matters management guidelines.
- (2) Despite subsection (1), the LECC may direct that information about a misconduct matter or a specified class of misconduct matters—
- (a) is not to be entered in the misconduct matters information system, or
  - (b) is to be removed from the misconduct matters information system, or
  - (c) is to be entered or re-entered in the misconduct matters information system.
- (2A) Despite subsection (1), information about a misconduct matter (or part of a misconduct matter) received by the LECC or of which it becomes aware that is not referred to the Commissioner is not required to be registered in the misconduct matters information system unless the LECC directs that a misconduct matter received by the LECC be entered in the system.



- (3) The LECC Chief Commissioner, and such other officers of the LECC as are authorised in that regard by the Chief Commissioner, are to have unrestricted access to all information in the misconduct matters information system.
- (4) The LECC Chief Commissioner may place a caveat on particular information registered in the 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), (6) (Repealed)

## **Division 4 Dealing with misconduct matters**

### **130 Notices about police and administrative employee misconduct matters received by Commissioner**

- (1) As soon as practicable after receiving a complaint, a police officer or other member of the NSW Police Force must forward the complaint to the Commissioner.

**Note—**

Section 211F imposes a duty on police officers to report misconduct.

- (2) The Commissioner is to give the LECC notice of any notifiable misconduct matter received by the Commissioner under this Part or of which the Commissioner becomes aware.

**Note—**

The LECC may refer notifiable misconduct matters about police misconduct or officer maladministration to the Commissioner for police investigation with recommendations—see section 47 of the [Law Enforcement Conduct Commission Act 2016](#).

- (3) As soon as practicable after deciding under section 131 how to deal with a misconduct matter that is a notifiable misconduct matter, the Commissioner must, in accordance with any relevant misconduct matters management guidelines, notify the LECC of the Commissioner's decision with respect to the misconduct matter.
- (4) Nothing in this section requires notice of a misconduct matter to be given to the LECC if the LECC already has a copy of the misconduct matter.

### **131 Dealing with misconduct matters**

- (1) As soon as practicable after the Commissioner receives (or becomes aware of) a misconduct matter, and at any time during a police investigation of a misconduct matter, the Commissioner may (except as provided by subsection (3)) decide as follows—
  - (a) to investigate or otherwise deal with the misconduct matter under this Part,
  - (b) to refer the misconduct matter to the LECC for consideration of whether or not it is to be investigated by the LECC or otherwise dealt with under the [Law Enforcement](#)

*Conduct Commission Act 2016,*

(c) to take no further action under this Part with respect to the misconduct matter.

**Note—**

The Commissioner may decide to take action with respect to administrative employee misconduct matters in accordance with Part 8 of the *Government Sector Employment Rules 2014*.

- (2) A decision under subsection (1) may be made in respect of the whole or any part of a misconduct matter.
- (3) The Commissioner must refer a misconduct matter received by the Commissioner or of which the Commissioner becomes aware that alleges, indicates or suggests that conduct of the Commissioner or a Deputy Commissioner is (or could be) officer misconduct to the LECC unless the misconduct has been referred to the Commissioner by LECC.
- (4) The Commissioner is to take into account any misconduct matters management guidelines or recommendation of the LECC in deciding how to investigate or deal with the misconduct matter.
- (5) If the Commissioner decides to refer a misconduct matter to the LECC, the Commissioner may recommend how the misconduct matter should be dealt with by the LECC.
- (6) If the Commissioner decides that a misconduct matter that is a complaint does not need to be investigated, the Commissioner must notify the complainant of the decision and the reasons for it.
- (7) Additional information from a complainant, and any existing information relevant to a misconduct matter to which the Commissioner can readily obtain access, may be used in making a decision concerning a misconduct matter.
- (8) The making of a decision under this section is not an investigation of the misconduct matter to which the decision relates.
- (9) The Commissioner may investigate or otherwise deal with any notifiable misconduct matter pending the making of a decision by the LECC under section 44 of the *Law Enforcement Conduct Commission Act 2016*.

**132 Factors affecting decision about investigation of or other dealing with police or agency misconduct matter**

In deciding whether any misconduct matter concerning a police officer or the NSW Police Force should be, or does not need to be, investigated or dealt with, the Commissioner may have regard to such matters as the Commissioner thinks fit, including whether, in the Commissioner's opinion—

- (a) action has been, is being or will be taken to remedy the subject-matter of the misconduct matter without the need for an investigation, or
- (b) the misconduct matter is frivolous, vexatious or not made in good faith, or
- (c) the subject-matter of the misconduct matter is trivial, or
- (d) the relevant conduct occurred too long ago to justify investigation, or
- (e) there is or was available an alternative and satisfactory means of redress in relation to the relevant conduct, or
- (f) the complainant does not or could not have an interest, or a sufficient interest, in the conduct complained of, or
- (g) civil, criminal or disciplinary proceedings, or a coroner's inquest, relating to the subject-matter of the misconduct matter are pending or reasonably in contemplation.

**133 Decision of Commissioner as to investigation of notifiable misconduct matter concerning police misconduct or officer or agency maladministration**

- (1) This section applies to and in respect of a decision made by the Commissioner under section 131 with respect to a notifiable misconduct matter concerning police misconduct, officer maladministration or agency maladministration notified to the LECC in accordance with section 130 (3).
- (2) If the LECC agrees with the Commissioner's decision to investigate the misconduct matter—
  - (a) the Commission must notify the Commissioner, and
  - (b) the Commissioner must notify the complainant of the decision, and
  - (c) the Commissioner must cause the misconduct matter to be investigated under this Part and may, if of the opinion that it is appropriate to do so, notify the police officer whose conduct is the subject of the misconduct matter of the decision.
- (3) If the LECC either disagrees with the Commissioner's decision not to investigate the misconduct matter or considers that the misconduct matter should be investigated by the LECC under Part 6 of the [Law Enforcement Conduct Commission Act 2016](#)—
  - (a) the LECC must notify the Commissioner and the complainant of that fact, and
  - (b) the Commissioner must cause the misconduct matter to be investigated under Division 5 of this Part or the LECC may conduct the investigation under Part 6 of that Act.
- (4) If the LECC and the Commissioner are unable to reach agreement, the LECC's opinion is to be determinative of the matter.

## **Division 5 Action with respect to police and agency misconduct matters**

### **134 Application of Division**

This Division applies to and in respect of the investigation of misconduct matters concerning police officers and the NSW Police Force.

**Note—**

The Commissioner may decide to take action with respect to administrative employee misconduct matters in accordance with Part 8 of the [Government Sector Employment Rules 2014](#).

### **135 Investigation of police and agency misconduct matters by Commissioner**

- (1) The Commissioner is to cause a misconduct matter relating to a police officer or the NSW Police Force received by the Commissioner under this Act or referred to the Commissioner under the [Law Enforcement Conduct Commission Act 2016](#) that the Commissioner decides to investigate to be investigated by a police officer or police officers in accordance with this Division.
- (2) The Commissioner may specify matters that need to be examined or taken into consideration by the police officer or police officers in investigating the misconduct matter.
- (3) The powers of the Commissioner to cause a misconduct matter to be investigated include the power to cause any action to be taken to resolve the misconduct matter in the manner that the Commissioner thinks fit, subject to this Act or any other law.
- (4) Without limiting subsection (3), a person conducting an investigation may attempt to resolve a misconduct matter (being a complaint) by means of alternative dispute management procedures.

### **136 Conduct of investigation**

- (1) The police officer or police officers carrying out an investigation of a misconduct matter under this Division must—
  - (a) 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, have regard to any matters specified by the Commissioner under section 135 or by the LECC under section 47 of the [Law Enforcement Conduct Commission Act 2016](#) as needing to be examined or taken into consideration.
- (2) If the misconduct matter under investigation is indicative of a systemic problem involving the NSW Police Force generally, or a particular area of the NSW Police Force, the investigation may extend beyond any police officer to whom the misconduct

matter relates—

- (a) to the NSW Police Force generally, or that particular area of the NSW Police Force, and
- (b) to other police officers and other members of the NSW Police Force.

## **Division 6 Miscellaneous provisions relating to investigations under this Part**

### **137 Information to be sent to complainant (if any) and LECC**

- (1) As soon as practicable after the investigation of any misconduct matter by the Commissioner has been concluded and a report of the investigation finalised, the Commissioner must—
  - (a) if the investigation followed a complaint—
    - (i) if practicable, consult with the complainant before making a decision concerning any action to be taken as a result of the misconduct matter, and
    - (ii) 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
  - (b) provide the LECC 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, with respect to the misconduct matter, and
    - (iii) if the investigation followed a complaint, advice as to whether or not the complainant is satisfied with the action taken, or to be taken, as a result of the complaint.
- (2) Subsection (1) (b) does not apply if the LECC has waived the requirement under section 106 (Discontinuance of oversight) of the *Law Enforcement Conduct Commission Act 2016*.

### **138 Commissioner's progress reports to complainant**

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

### **139 Proceedings may be instituted if warranted**

- (1) If it appears to a police officer conducting an investigation under this Part that sufficient evidence exists to warrant the prosecution of a police officer or an

administrative employee for an offence, the police officer is to refer the matter to the Commissioner for consideration.

- (2) The Commissioner must inform the LECC if the Commissioner decides to institute any such proceedings and of the particulars of the proceedings.
- (3) Nothing in this section prevents the taking of disciplinary action against the police officer or administrative employee concerned.

#### **140 Commissioner may decide to take no further action**

- (1) The Commissioner may discontinue or conclude an investigation with respect to a misconduct matter under this Part at any time.
- (2) In deciding to discontinue or conclude an investigation with respect to a misconduct matter, the Commissioner may have regard to such matters as the Commissioner thinks fit, including the matters referred to in section 132.
- (3) Where the Commissioner discontinues an investigation of a misconduct matter, the Commissioner must inform the complainant and the LECC in writing of the decision and the reasons for the decision.
- (4) The Commissioner may, if of the opinion that it is appropriate to do so, notify the police officer whose conduct is the subject of a misconduct matter of a decision by the Commissioner concerning the misconduct matter.

#### **141 Other police investigations not affected**

- (1) Nothing in this Part prevents the Commissioner or any other police officer from investigating, otherwise than under this Part, any matter relating to a misconduct matter, and such an investigation may be made even though an investigation under this Part—
  - (a) is not commenced, or
  - (b) is deferred or discontinued, or
  - (c) is completed, or
  - (d) is made the subject of an investigation under this Act or (subject to subsection (2)) any other Act.
- (2) A matter that is the subject of a misconduct matter being investigated by the LECC under the [Law Enforcement Conduct Commission Act 2016](#) must not be investigated under this Part, or otherwise, by the Commissioner unless—
  - (a) it is referred to the Commissioner by the LECC to be dealt with under this Part, or
  - (b) such an investigation is authorised to be carried out by the regulations or by the

LECC, either generally or in a particular case.

**142 Action on misconduct matter not affected by failure to comply with Part**

Action taken with respect to a misconduct matter is not to be called into question in any legal proceedings merely because of any failure to comply with the requirements of this Part with respect to the referral or notification of the misconduct matter.

**143-155 (Repealed)**

**Divisions 7, 8**

**156-167 (Repealed)**

**Division 9 Miscellaneous**

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

- (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 misconduct matter 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 the NSW Police Force,
- (c) the LECC,
- (d) the Inspector of the LECC,
- (e) the Independent Commission Against Corruption,
- (e1) the Inspector of the Independent Commission Against Corruption,
- (f) the New South Wales Crime Commission,
- (g) the Ombudsman,
- (g1) the Children’s Guardian,
- (h) a member of Parliament,
- (i) a prison officer within the meaning of section 127 (2).

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, 169 (Repealed)**

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

A member of the NSW Police Force 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 7 of the *Weapons Prohibition Act 1998*, is authorised to possess handcuffs, body armour vests, Taser guns, extendable or telescopic batons and defence or anti-personnel spray.

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

### **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 misconduct matter or investigation under Part 8A or the [Law Enforcement Conduct Commission Act 2016](#) 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 misconduct matter that has been investigated, or is being investigated, under Part 8A or the *Law Enforcement Conduct Commission Act 2016*, 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 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 the NSW Police Force 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) (Repealed)

#### **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 member of the Commission who is an Australian lawyer 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 the NSW Police Force 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 the NSW Police Force.
- (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 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 the NSW Police Force 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 the NSW Police Force.

(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 the NSW Police Force 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 the NSW Police Force,
  - (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 the NSW Police Force 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 the NSW Police Force, 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 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 member who is an Australian lawyer.
- (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 members who are each Australian lawyers.
- (3) A Magistrate (including an Industrial Magistrate) may act as member of the Commission for the purposes of an appeal if—
  - (a) the Chief Magistrate of the Local Court has, at the request of the Chief Commissioner of the Commission, nominated the Magistrate to act as a member of the Commission in relation to the appeal, and
  - (b) the Magistrate consents to acting as a member of the Commission in relation to the appeal.
- (4) The following provisions apply to and in respect of a Magistrate who acts as a member of the Commission pursuant to this section—
  - (a) the Magistrate has, while acting as a member, all the powers, authorities, privileges and immunities of a member,
  - (b) the Magistrate may attend the sittings of the Commission for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by the Commission while the Magistrate was acting as a member in the proceedings even if the Magistrate is no longer acting as a member,
  - (c) the Magistrate is not, while receiving remuneration as a Magistrate, entitled to

remuneration for acting as a member,

- (d) any service of the Magistrate while acting as a member is taken for all purposes (including for the purposes of the [Local Court Act 2007](#)) to be service as a Magistrate,
- (e) nothing in this Act or any other law requires the Magistrate to devote the whole of his or her time to the duties of acting as a member.

## **Division 2 Resignation of police officers on recommendation of LECC**

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

- (1) The Commissioner is required to accept the resignation of a police officer from the NSW Police Force if—
  - (a) the officer tenders his or her resignation, and
  - (b) the LECC 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 misconduct matter under Part 8A or the [Law Enforcement Conduct Commission Act 2016](#) 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 misconduct matter that has been investigated, or is being investigated, under Part 8A or the *Law Enforcement Conduct Commission Act 2016*, 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 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 the NSW Police Force who is senior to the police officer in respect of whom those functions are being exercised.

## **Division 3 Miscellaneous provisions**

### **184 (Repealed)**

#### **184A Consultation with LECC before certain action is taken**

(1) Before—

(a) making an order under section 173 (2) or (3) or 181D (1) with respect to a police officer under LECC investigation, or

(b) commencing or authorising the commencement of criminal proceedings against a police officer under LECC investigation,

the Commissioner must consult with the LECC.

(2) Failure to comply with subsection (1) with respect to any order under section 173 (2) or (3) or 181D (1) does not affect the validity of the order.

(3) In this section, **police officer under LECC investigation** means a police officer in respect of whom the LECC has notified the Commissioner that an investigation of serious misconduct or officer maladministration that is serious maladministration is being carried out under the [Law Enforcement Conduct Commission Act 2016](#).

#### **185 Disciplinary appeals to Industrial Relations Commission by non-executive administrative employees**

The provisions of Part 7 of Chapter 2 of the [Industrial Relations Act 1996](#) relating to disciplinary appeals apply to non-executive administrative employees as if those employees were employees, and the Commissioner were their employer, within the meaning of that Part.

### **186 Appeal to Industrial Relations Commission relating to leave when hurt on duty**

- (1) A police officer may appeal to the Industrial Relations Commission 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 *Industrial Relations Act 1996* applies to and in respect of an appeal under this section in the same way as it applies to a disciplinary appeal under Part 7 of Chapter 2 of that Act.

**Note—**

A disciplinary appeal under Part 7 of Chapter 2 of the *Industrial Relations Act 1996* is made by lodging a notice of appeal with the Industrial Registrar under section 100B (2) of that Act within 28 days after the public sector employee concerned is notified of the decision against which the appeal is made.

- (3) For the purpose of the Industrial Relations Commission hearing and determining an appeal under this section, a police officer is taken to be a public sector employee and the Commissioner the public sector employer, within the meaning of Part 7 of Chapter 2 of the *Industrial Relations Act 1996*.

### **187 Transitional**

- (1) The provisions of this Act and the regulations relating to disciplinary proceedings against members of the NSW Police Force 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 9B Police officers—death and disability**

### **199A Definitions**

In this Part—

***approved death and disability insurance policy***—see section 199D.

***death and disability payments*** means payments (whether periodic or lump sum) to or in respect of a police officer who dies or who becomes permanently or temporarily incapacitated for work—

- (a) as a result of being injured at work, or
- (b) as a result of being injured while employed as a police officer (whether or not on duty),

and, without limiting the generality of the foregoing, includes payments to or in respect of a police officer by way of the top-up of workers compensation payments.

***injured at work***, in relation to a police officer, means injured in such circumstances as entitles the police officer to compensation under the [Workers Compensation Act 1987](#).

**199B Police officers excluded from this Part**

- (1) This Part does not apply to or in respect of a police officer who is a contributor to the Police Superannuation Fund under the [Police Regulation \(Superannuation\) Act 1906](#) or to the State Superannuation Fund under the [Superannuation Act 1916](#).
- (2) This Part does not apply to or in respect of a police officer who is a contributor to the State Authorities Superannuation Fund and who is covered by the additional benefit under the [State Authorities Superannuation Act 1987](#), except as provided by section 199D (3).

**199C Approved death and disability insurance policy to be taken out on behalf of police officers**

An approved death and disability insurance policy is required to be taken out on behalf of police officers by the NSW Police Force or by FSS Trustee Corporation.

**199D Approved death and disability insurance policy**

- (1) For the purposes of this Part, an ***approved death and disability insurance policy*** is an insurance policy approved by the Minister, with the concurrence of the Treasurer, that provides death and disability payments to or in respect of police officers. An approved policy may comprise a number of separate policies.
- (2) An approved death and disability insurance policy—
  - (a) must include provision for payments to or in respect of police officers who die, or who are incapacitated for work, as a result of being injured at work, and
  - (b) may also include provision for payments to or in respect of police officers where their death or incapacity does not result from being injured at work.
- (3) An approved death and disability insurance policy may provide for payments in the form of income protection in connection with an injury to a police officer despite the police officer being a contributor to the State Authorities Superannuation Fund and covered by the additional benefit under the [State Authorities Superannuation Act 1987](#).

**199E Contribution by State to cost of approved insurance policy**

The Minister may approve an insurance policy under this Part only if satisfied that the long-term cost to the State of the policy (after deducting the contribution to that cost of

police officers under section 199F) will be—

- (a) subject to paragraph (b), approximately 4.6% of the remuneration of police officers covered by the policy, or
- (b) such other amount as the regulations prescribe.

**199F Contributions by police officers to cost of approved insurance policy**

- (1) Police officers are required to make the same contribution to the cost to the State of an approved death and disability insurance policy as the contribution police officers would have been required to make under the *Crown Employees (Police Officers Death and Disability) Award 2005* if that Award had not been rescinded by the [Police Amendment \(Death and Disability\) Act 2011](#).

**Note—**

On the rescission of the Award, the contribution required to be made by police officers was 1.8% of their remuneration.

- (2) The contribution is to be made by way of salary sacrifice.

**199G Regulations relating to death or disability of police officers**

The regulations may make provision for or with respect to the death or disability of police officers, including the following—

- (a) the provisions that must or may be included in an approved death and disability insurance policy,
- (b) the savings and transitional provisions applying to police officers on the commencement of this Part in relation to death and disability payments (including the provisions applying after that commencement during any period in which an approved death and disability insurance policy is not in force),
- (c) the obligations of the NSW Police Force and police officers or former police officers with respect to rehabilitation, retraining and redeployment of incapacitated police officers or former police officers,
- (d) the establishment by the NSW Police Force of injury management and prevention and other programs to facilitate or promote the health and fitness of police officers, and the obligation of police officers to participate in those programs.

**199H Other entitlements not affected**

The provisions of this Part do not affect—

- (a) any compensation payable under the [Workers Compensation Act 1987](#), or
- (b) any superannuation entitlements.



**199I Rescission of Crown Employees (Police Officers Death and Disability) Award 2005**

The *Crown Employees (Police Officers Death and Disability) Award 2005* of the Industrial Relations Commission of New South Wales is rescinded.

**199J Rescission of workers compensation top-up provisions of Crown Employees (Police Officers - 2009) Award**

Clause 9 of the *Crown Employees (Police Officers - 2009) Award* of the Industrial Relations Commission of New South Wales is rescinded.

**199K Savings and transitional arrangements**

(1) In this section—

**former death and disability award** means the award referred to in section 199I that is rescinded by that section.

**former workers compensation top-up award provision** means the provision of the award referred to in section 199J that is rescinded by that section.

**new insurance policy commencement date**, in relation to an injury to a police officer, means the date on and from which the police officer is covered in respect of death or disability arising from any such injury under an approved death and disability insurance policy.

(2) Except as provided by this section, a police officer who dies or is discharged from the NSW Police Force after the commencement of this Part is not entitled to any payments under the former death and disability award.

(3) If—

(a) immediately before the Bill for the *Police Amendment (Death and Disability) Act 2011* was agreed to by both Houses of Parliament, a police officer had been unfit for duty because of a disability for a total period of at least 4 months during the previous 8 months and the NSW Police Force had received a report or certificate from the police officer's nominated treating medical practitioner indicating that—

(i) the police officer had reached maximum medical improvement, and

(ii) the police officer should be discharged from the NSW Police Force, and

(b) the police officer had not been discharged from the NSW Police Force before the commencement of this Part because of that disability,

the provisions of the former death and disability award relating to payments for temporary or partial incapacity continue to apply in respect of that disability of that police officer despite the rescission of the award.

**Note—**

See subsection (8) for preservation of entitlements relating to death or permanent and total incapacity under insurance policies taken out pursuant to the award.

- (4) A police officer—
- (a) who suffers a disability arising from an injury before the new insurance policy commencement date, and
  - (b) who is not covered by the approved death and disability insurance policy (or by an insurance policy referred to in subsection (8)) in respect of that disability, and
  - (c) who is not entitled to a payment under subsection (3) in respect of that disability, and
  - (d) who would have been covered in respect of that disability under the former death and disability award, but for its rescission,

is entitled to be paid by the NSW Police Force in respect of that disability such amounts as are equivalent to the amounts that the police officer would have been paid under the approved death and disability insurance policy if that policy had covered the police officer.

- (5) If on the commencement of this Part there is no approved death and disability insurance policy that provides income protection benefits to replace the benefits for partial and permanent disability under the former death and disability award, income protection benefits are to be paid to police officers (until there is such a policy) in accordance with the insurance proposal provided to First State Super by TAL Life Limited and tabled in the Legislative Council by or on behalf of the Minister for Police and Emergency Services during consideration by the Legislative Council of the Bill for the *Police Amendment (Death and Disability) Act 2011* (subject to subsection (6)).
- (6) On duty income protection rates under the insurance proposal referred to in subsection (5) are to be increased in accordance with adjustments to the insurance proposal that are tabled with the insurance proposal by or on behalf of the Minister for Police and Emergency Services.
- (7) Despite the rescission of the former workers compensation top-up award provision, police officers in receipt of weekly compensation payments under the *Workers Compensation Act 1987* on the commencement of this Part continue to be entitled to payments under that provision for a period of 9 months after the commencement of this Part.
- (8) This section does not affect any entitlements under an insurance policy that has been taken out on behalf of police officers before the commencement of this Part.

**Note—**

Existing insurance policies taken out with First State Super cover police officers for death and for total and permanent incapacity and will continue to apply until replaced by coverage under an approved death and

disability insurance policy.

- (9) The rescission of the former death and disability award does not affect any entitlement to payments under that award in relation to the death or discharge of a police officer from the NSW Police Force before the rescission of the former award.
- (10) This section is subject to the regulations made under clause 2 of Schedule 4.

#### **199L Review of costs of scheme and advice to Minister and Treasurer**

- (1) A committee (comprising of the Commissioner of Police and a representative of the Police Association of NSW nominated by that Association) is to keep under review the cost to the State and fairness to police of securing death and disability payments to or in respect of police officers under this Part.
- (2) The committee is to advise the Minister and the Treasurer from time to time of that cost to the State and of the percentage of the remuneration of police officers that it represents.
- (3) The Commissioner is to ensure that the representative of the Police Association of NSW on the committee has access to such information as may be necessary to enable the committee to conduct the review under this section.

#### **199M Review of effectiveness of scheme by Auditor-General**

- (1) The Auditor-General is to review whether the provisions of this Part and the injury management practices for police officers have improved the performance of the NSW Police Force in securing the return of injured police officers to duty.
- (2) The review is to be conducted within 12 months after the commencement of this Part (or within such further period as the Minister may approve on the recommendation of the Auditor-General).
- (3) The Commissioner is to ensure that the Auditor-General has access to such information as may be necessary to enable the Auditor-General to conduct the review.
- (4) The Auditor-General is to report to the Minister and to each House of Parliament on the results of the review as soon as practicable after the review is completed.
- (5) If a House of Parliament is not sitting when the Auditor-General seeks to present the report, the Auditor-General is to present the report to the Clerk of the House concerned.

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

### **200 Bribery or corruption**

- (1) A member of the NSW Police Force who receives or solicits any bribe, pecuniary or

otherwise, is guilty of an offence.

(2) A person (including a member of the NSW Police Force) who—

(a) gives, or offers or promises to give, any bribe (pecuniary or otherwise) or any other benefit to a member of the NSW Police Force, or

(b) makes any collusive agreement with a member of the NSW Police Force,

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) (Repealed)

(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 Force as police officer under false pretences**

A person who gains admission to the NSW Police Force as a police officer—

(a) without disclosing any previous dismissal of the person from the NSW Police Force or 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 or a special constable employed under section 81G) 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 or in connection with the exercising of functions as a member of the Police Band.
- (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 [Road Transport Act 2013](#).

**police insignia** means—

- (a) any items (being insignia, emblems, logos, devices, accoutrements and other things) that are generally recognised as pertaining to the NSW Police Force 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 2 years, or both.

## **204 (Repealed)**

### **204A Use of “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—

(a) the terms of a consent in force under section 204B, or

(b) in relation to an operating name that is registered, or required to be registered, under the *Business Names Registration Act 2011* of the Commonwealth—any consent or other authorisation (if any) to use “police” in that name given by or under that Act.

(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 the NSW Police Force, 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 2009* and any business name registered under the *Business Names Registration Act 2011* of the Commonwealth 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.
- (6) The provisions of this section and section 204B are intended to operate as referred to in sections 12 (2) (b) and (e), 19 (5) and 20 (3) of the *Business Names Registration Act 2011* of the Commonwealth.

**Note—**

Section 12 (2) (b) and (e) of the *Business Names Registration Act 2011* of the Commonwealth (the **Commonwealth Act**) provide that the business names legislation referred to in that section is not intended to exclude or limit the concurrent operation of a law of a State that—

- (a) prohibits or restricts the use of a word or expression by an entity or class of entities, or
- (b) imposes obligations on an entity or class of entities that are in addition to obligations imposed under that Act.

Sections 19 (5) and 20 (3) of the Commonwealth Act also provide that an entity does not commit an offence under those sections concerning the inclusion or display of registered business names in written communications and at places of business if the inclusion, use or display of a business name in such a communication or at such a place would be contrary to a law of a State.

**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 the name under which an association is incorporated under the *Associations Incorporation Act 2009*—to the Commissioner for Fair Trading, Department of Finance and Services, and
  - (c) if the consent relates to a business name registered under the *Business Names Registration Act 2011* of the Commonwealth—the Australian Securities and Investments Commission.

**Note—**

In the case of the name under which an association is incorporated under the *Associations Incorporation Act 2009*, notification of the Commissioner for Fair Trading, Department of Finance and Services will prompt the Commissioner for Fair Trading to exercise his or her powers under that Act to direct the association to change its 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 2009*—
    - (i) on the date on which the Commissioner for Fair Trading, Department of Commerce issues a certificate of incorporation in respect of the association's new name under section 12 (3) of that Act, or
    - (ii) on the date on which the Commissioner for Fair Trading, Department of Commerce cancels the association's incorporation under section 76 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 or administrative employee about one or more other police officers or administrative employees where the allegation (a **protected allegation**) is made—

- (a) in the performance of the duty imposed on the police officer or administrative employee 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 or administrative employee.

(2) A police officer or administrative employee who takes detrimental action against another police officer or administrative employee or former police officer or administrative employee (being action that is substantially in reprisal for the other police officer or administrative employee or former police officer or administrative employee 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 public interest disclosure within the meaning of the [Public Interest 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 *Public Interest Disclosures Act 1994*. In particular, nothing in this section prevents a police officer or administrative employee 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 the 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 the NSW Police Force, but who was such a member when the offence was allegedly committed.

(3) If an offence against this Act is an indictable offence, the 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), the 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 153 (Procuring false testimony by witness) or 154 (Bribery of witness) of the *Law Enforcement Conduct Commission Act 2016*,
  - (d) an offence against section 93X, 314, 319, 323, 325 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 section 351B or 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 LECC, 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 LECC and notified to the Commissioner.

## **Part 10B Recognised law enforcement officers**

### **207B Appointment of recognised law enforcement officers**

- (1) The Commissioner may appoint any of the following persons as recognised law enforcement officers (whether by appointing all such persons, any class of them or any individual)—
- (a) members of the Australian Federal Police,
  - (b) members of the police force of another State or a Territory.
- (2) An appointment is to be made—
- (a) by notice in writing given to each person appointed, or
  - (b) by notice published in the Gazette.
- (3) The notice is to specify any conditions to which the appointment is subject and the term of the appointment if the appointment is for a limited term.
- (4) The Commissioner must not appoint any person as a recognised law enforcement officer unless the person is to be, in the opinion of the Commissioner, subject to an appropriate disciplinary system in respect of the exercise of the person's functions as a recognised law enforcement officer.
- (5) An appointment as a recognised law enforcement officer may be made subject to conditions, including (but not limited to) conditions as to the kinds of functions conferred and the purposes for and circumstances in which such functions may be exercised.

### **207C Variation and revocation of appointment and imposition of conditions**

- (1) The Commissioner may, at any time by notice—
- (a) revoke an appointment under section 207B, or
  - (b) impose any condition on an appointment under section 207B, or
  - (c) vary or revoke any condition of an appointment under section 207B.
- (2) Without limiting subsection (1), the Commissioner may, at any time by notice, revoke the appointment of a person as a recognised law enforcement officer if the Commissioner is of the opinion that the person is not a suitable person to be a

recognised law enforcement officer.

- (3) A notice required to be given under this section must—
  - (a) be in writing given to each recognised law enforcement officer concerned, or
  - (b) be published in the Gazette.
- (4) A person who is a recognised law enforcement officer because he or she is a member of the Australian Federal Police or of the police force of another State or a Territory ceases to be a recognised law enforcement officer on ceasing to be such a member.

**207D Oath or affirmation by recognised law enforcement officers**

- (1) Before a person commences to exercise any of the functions of a recognised law enforcement officer, the person must take the oath or make the affirmation of office as a recognised law enforcement officer in accordance with the regulations.
- (2) The regulations may exempt a person or class of persons from the operation of this section.

**207E Recognised law enforcement officers to have police functions**

- (1) A recognised law enforcement officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under this Act has and may exercise under any law of the State (including the common law and this Act).
- (2) Those functions extend to functions conferred after the commencement of this section on a police officer of the rank of constable duly appointed under this Act.
- (3) For the purposes only of subsections (1) and (2), a provision of any Act or statutory instrument applies to a recognised law enforcement officer in the same way as it applies to a police officer in his or her capacity as a police officer and, in particular, the following provisions so apply—
  - (a) the *Law Enforcement (Powers and Responsibilities) Act 2002*,
  - (b) (Repealed)
  - (c) the *Law Reform (Vicarious Liability) Act 1983*,
  - (d) the *Firearms Act 1996*,
  - (e) the *Weapons Prohibition Act 1998*.
- (4) However, the provisions of this Act (except this Part and sections 6, 14 and 213), and the regulations under this Act, applying to police officers do not apply to a recognised law enforcement officer.

- (5) Despite subsections (3) and (4), the regulations may—
- (a) declare that any provision of any Act or statutory instrument applies to a recognised law enforcement officer in the same way as it applies to a police officer in his or her capacity as a police officer, either generally or in prescribed circumstances, and
  - (b) provide that any such provision applies to a recognised law enforcement officer with such modifications as may be prescribed, and
  - (c) declare that any provision of any Act or statutory instrument that applies to a police officer in his or her capacity as a police officer does not apply to a recognised law enforcement officer, either generally or in prescribed circumstances.
- (6) The conferral of functions by this section on a recognised law enforcement officer is subject to any applicable conditions of the officer's appointment as a recognised law enforcement officer.
- (7) The regulations may make provision for or with respect to identification requirements for, or the wearing of uniforms by, recognised law enforcement officers.
- (8) A reference in this section to a police officer in his or her capacity as a police officer includes a reference to a police officer in his or her capacity as a member of the NSW Police Force.

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

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

- (1) If a member of the NSW Police Force (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 the NSW Police Force 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 the NSW Police Force (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 (or both) 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) An authorised person must require any police officer directly involved in a mandatory testing incident to—
  - (a) undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence of alcohol, and
  - (b) provide a sample of their urine or hair (or both) 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 mandatory testing 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 mandatory testing 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 clause 11 of Schedule 3 to the *Road Transport Act 2013* instead. Schedule 3 to the *Road Transport Act 2013* applies to any taking of a sample pursuant to this subsection as if the sample were a sample of blood taken under clause 11 of that Schedule.
- (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 Schedule 3 to the *Road Transport Act 2013*.
- (4E) A police officer of or above the rank of superintendent may direct any off duty police officer to accompany another police officer to any police premises to report for duty to provide a sample of the off duty police officer's urine or hair (or both) for the purpose of testing for the presence of prohibited drugs. The selection of police officers for testing pursuant to this subsection is to be conducted on a targeted basis, as determined by the Commissioner.
- (4F) A police officer directed to accompany another police officer pursuant to subsection (4E) must not refuse to do so without reasonable excuse.
- (4G) For the purposes of subsection (4E), a police officer is taken to be **off duty** other than when a police officer is required to report for duty in accordance with a roster.
- (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,
- (i) the circumstances amounting to reasonable excuse for failing to accompany a police officer pursuant to subsection (4E).

(5A) Subject to the regulations, section 109 (Measurement of alcohol concentrations) of the *Road Transport Act 2013* applies in relation to the measurement of the concentration of alcohol in a person's breath or blood for the purposes of this section and the regulations in the same way as it applies for the purposes of that Act.

(6) The annual report of the NSW Police Force 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 breath or 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 breath or 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 Act 2013](#).

**mandatory testing incident** means an incident where a person is killed or seriously injured—

- (a) as a result of the discharge of a firearm by a police officer, or
- (b) as a result of the application of physical force by a police officer, or
- (c) while detained by a police officer, or while in police custody, or
- (d) in circumstances involving a police aircraft, motor vehicle or vessel.

**police premises** means any police station, command, building, structure or any other area occupied from time to time by the NSW Police Force.

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

#### **211AA Testing of officers for steroids**

- (1) An authorised person may require any police officer who is on duty in accordance with a roster to provide a sample of the police officer's urine for the purpose of testing for the presence of steroids. The selection of police officers for testing pursuant to this subsection is to be conducted on a targeted basis, as determined by the Commissioner.
- (2) The regulations may make provision for or with respect to the following—
  - (a) the authorisation of persons—
    - (i) to administer tests for the purpose of detecting the presence of steroids, and
    - (ii) to operate equipment for that purpose,
  - (b) the conduct of testing,
  - (c) the taking of samples of urine,
  - (d) the devices used in carrying out tests,
  - (e) the accreditation of persons conducting analyses for the presence of steroids,
  - (f) the procedure for the handling and analysis of samples of urine,
  - (g) offences relating to interference with test results or the testing procedure,
  - (h) the confidentiality of test results,
  - (i) requests for production of medical prescriptions for steroids and offences relating to failure to comply with such requests.

(3) The annual report of the NSW Police Force prepared under the *Annual Reports (Departments) Act 1985* must include details of—

- (a) the number of tests for steroids conducted during the relevant year, and
- (b) the number of those tests that indicated that a police officer had tested positive for the presence of steroids.

(4) In this section—

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

**steroid** means anabolic and androgenic steroidal agents included in Schedule Four to the Poisons List under the *Poisons and Therapeutic Goods Act 1966*.

#### **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 or steroids**

(1) The regulations may establish a code of behaviour regarding the consumption of alcohol and the use of prohibited drugs and steroids by members of the NSW Police

Force.

- (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 steroids, or of otherwise breaching the code of behaviour,
  - (b) the consequences for any member of the NSW Police Force 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 or steroids, including provisions as to the frequency of any such follow-up testing.

#### **211C Administrative reviews of certain decisions under Act by Civil and Administrative 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 Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) 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 police complaint within the meaning of the [Law Enforcement Conduct Commission Act 2016](#).

### **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.

### **211F Members of NSW Police Force under duty to report misconduct of police officers**

- (1) A police officer who has reasonable grounds to suspect that another police officer has engaged in police misconduct or serious maladministration is under a duty to report that police misconduct or maladministration or alleged misconduct or maladministration in writing to another police officer who is of the rank of sergeant or above and is more senior in rank than the police officer with a duty to report (a **senior police officer**).
- (2) The senior police officer to whom a report is made must report it in writing promptly to the Commissioner (or a police officer nominated by the Commissioner for the purposes of this section) if the senior police officer has reasonable grounds to suspect that the conduct (or alleged conduct)—
  - (a) constitutes (or would constitute) a criminal offence or is (or could be) other police misconduct or serious maladministration, or
  - (b) could provide sufficient grounds—

- (i) for taking dismissal action against a probationary police officer under section 80 (3), or
  - (ii) for taking reviewable action under section 173 or making an order under section 181D.
- (3) An administrative employee who has reasonable grounds to suspect that a police officer has engaged in police misconduct or serious maladministration is under a duty to report that police misconduct or maladministration or alleged misconduct or maladministration in writing to a police officer who is of or above the rank of sergeant.
- (4) A police officer to whom a report is made under subsection (3) must report it in writing promptly to the Commissioner (or a police officer nominated by the Commissioner for the purposes of this section) if the police officer has reasonable grounds to suspect the conduct or alleged conduct is of a kind described in subsection (2) (a) or (b).
- (5) This section does not apply to misconduct or maladministration or alleged misconduct or maladministration—
  - (a) that has been the subject of a misconduct matter received by the LECC under the [Law Enforcement Conduct Commission Act 2016](#) or the Commissioner under Part 8A or of which the LECC or the Commissioner is already aware, or
  - (b) that has been the subject of evidence or other material given, or submissions made, in the course of criminal proceedings, or
  - (c) that has already been reported under this section to a senior police officer.
- (6) A report must be provided in accordance with this section despite any prohibition in, or any requirement of, any Act or law (in particular, the [Privacy and Personal Information Protection Act 1998](#) and the [Health Records and Information Privacy Act 2002](#)) but only if it contains information that is relevant to the officer misconduct or serious maladministration concerned.
- (7) An expression used in this section which is defined in the [Law Enforcement Conduct Commission Act 2016](#) has the meaning it has in that Act.

**211G Referral of other misconduct matters to Commissioner**

- (1) Section 211F does not prevent any police officer or administrative employee (within the meaning of Part 8A) from referring any misconduct matter of which the officer or employee becomes aware that the officer or employee is not under a duty to report under that section to the Commissioner.
- (2) Section 211F (6) applies to and in respect of a misconduct matter referred under this section in the same way as it applies to a report under section 211F.

- (3) This section does not limit or affect the operation of the *Public Interest Disclosures Act 1994*. In particular, nothing in this section prevents a police officer who makes a report under section 211F from making a disclosure relating to the same conduct or activities under that Act.

## **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**

A member of the NSW Police Force 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 (whether written or unwritten).

## **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, 216 (Repealed)**

## **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 HealthQuest, 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 this section by the regulations, for the sex of the student and for the age of the student on 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—

**HealthQuest** means the statutory health corporation of that name constituted by the [Health Services Act 1997](#).

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

**spouse** of a student of policing includes a de facto partner of the student at the time of his or her death.

**Note—**

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

## **216A Determination by District Court**

- (1) An application to the District Court for a determination in relation to a decision of the Commissioner under section 216AA may be made by—
- a student of policing referred to in section 216AA (1), or
  - 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 student, spouse or

personal representative.

- (2) If within 6 months after 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 that section in relation to the 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 student.
- (3) The Commissioner is entitled to be represented at the hearing of an application under this section.
- (4) After considering the application, the District 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 District Court.
- (5) The District Court must not make a decision referred to in subsection (4) (b) that could not be made by the Commissioner under section 216AA.
- (6) A decision of the District 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 District 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 District 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—

***District Court*** means the District Court of New South Wales established by the [District Court Act 1973](#).

## **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 the NSW Police Force.

- (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 the NSW Police Force.
- (3) A member of the NSW Police Force 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 42 or 88 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 the NSW Police Force 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 the NSW Police Force,

- (c) the extended, annual and other leave that may be granted to members of the NSW Police Force,
  - (d) the educational or other qualifications or experience for appointment, whether to the NSW Police Force generally or to a particular rank, grade or position within the NSW Police Force, where experience includes—
    - (i) experience within the NSW Police Force, whether experience generally or experience in relation to a specified rank, grade or position, and
    - (ii) experience otherwise than within the NSW Police Force, as prescribed by the regulations,
  - (e) (Repealed)
  - (f) travelling and subsistence allowances and other allowances for members of the NSW Police Force,
  - (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 the NSW Police Force (or of the functions attaching to vacant positions or vacant specialist positions) by other members,
  - (i) any other matter relating to the management or control of the NSW Police Force or students of policing,
  - (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,
  - (l) a review of the process for promoting non-executive police officers established by amendments made by the *Police Amendment (Promotions) Act 2020*.
- (2A) The regulations may make provision for or with respect to the functions of the Commissioner, the LECC and other persons in connection with the handling of misconduct matters under Part 8A and the *Law Enforcement Conduct Commission Act 2016*.
- (2B) In particular, regulations may be made for or with respect to the following—
- (a) the giving of notice with respect to, and the referral of, misconduct matters to the LECC, the Commissioner, the police officer or administrative employee the subject of the misconduct matter, complainants and referring authorities,

- (b) the giving of reasons with respect to specified decisions made under this Act,
  - (c) notices required to be given with respect to the carrying out, progress and completion of investigations under Part 8A,
  - (d) notices required to be given relating to the oversight by the LECC and discontinuance of oversight of investigations under Part 8A.
- (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 the period of 5 years from the date of assent to the *Police Amendment (Miscellaneous) Act 2006*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **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 (Repealed)

## 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*

*Police Legislation Amendment (Civil Liability) Act 2003*

*Police Amendment (Senior Executive Transfers) Act 2004*

*Police Amendment (Death and Disability) Act 2005*

*Police Amendment (Police Promotions) Act 2006*

*Police Amendment (Miscellaneous) Act 2006*

*Police Amendment Act 2007*

*Police Legislation Amendment (Recognised Law Enforcement Officers) Act 2010*

*Police Amendment (Death and Disability) Act 2011*

*Royal Commissions and Ombudsman Legislation Amendment Act 2013*

*Police Amendment (Police Promotions) Act 2014*

any other Act that amends this Act

- (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.

## **Part 20 Provisions consequent on enactment of [Police Legislation Amendment \(Civil Liability\) Act 2003](#)**

### **66 Application of amendment to section 213**

- (1) Section 213 (as substituted by the [Police Legislation Amendment \(Civil Liability\) Act 2003](#)) extends to any act or omission of a member of NSW Police that was done, or omitted to be done, before the commencement of that section.
- (2) However, section 213 (as substituted by the [Police Legislation Amendment \(Civil Liability\) Act 2003](#)) does not extend to any proceedings in respect of any such act or omission brought before the commencement of that section.

## **Part 21 Provisions consequent on enactment of [Police Amendment \(Senior Executive Transfers\) Act 2004](#)**

### **67 Transfers to vacant positions**

The amendments made by the [Police Amendment \(Senior Executive Transfers\) Act 2004](#) extend to a position that is vacant at the commencement of the amendments.

## **Part 22 Provisions consequent on enactment of [Police Amendment \(Death and Disability\) Act 2005](#)**

### **68 Definitions**

In this Part—

**amending Act** means the [Police Amendment \(Death and Disability\) Act 2005](#).

**death or incapacity benefit** means a benefit payable to or in respect of a police officer under a police officers award (whether provided for in that award or by or under any Act, law or instrument) if—

- (a) the police officer dies, or
- (b) the police officer suffers total and permanent incapacity or partial and permanent incapacity.

**hurt on duty** has the same meaning as in section 216 (6) (as in force immediately before its repeal by the amending Act).

**police officers award** means—

- (a) the *Crown Employees (Police Officers Death and Disability) Award 2005*, until its

rescission by the *Police Amendment (Death and Disability) Act 2011*, and

- (b) after that rescission, the provisions of Part 9B of this Act and an approved death and disability insurance policy under that Part.

#### **69 Savings in relation to special risk benefits**

- (1) Sections 216 and 216A (as in force immediately before the commencement of Schedule 1 [1] to the amending Act) continue to apply to and in respect of a police officer as if those sections had not been repealed and amended, respectively, if—
  - (a) the police officer was hurt on duty before the repeal of section 216, and
  - (b) he or she is not subsequently entitled to a death or incapacity benefit in respect of that injury.
- (2) If an amount is paid under section 216 or 216A (as in force immediately before the commencement of Schedule 1 [1] to the amending Act) in relation to a physical or mental injury for which a death or incapacity benefit is also paid, the person to whom the amount is paid is liable to repay the amount to the Commissioner.
- (3) Any amount due to the Commissioner under this clause may be recovered as a debt in a court of competent jurisdiction.
- (4) Subclauses (2) and (3) apply whether or not the amount was received before or after the commencement of this clause.

### **Part 23 Provisions consequent on enactment of *Police Amendment (Police Promotions) Act 2006***

#### **70 Definitions**

In this Part—

**amending Act** means the *Police Amendment (Police Promotions) Act 2006*.

**pre-2006 promotion laws** means this Act, and the *Police Regulation 2000*, as in force before their amendment by the amending Act.

**promotion list** has the same meaning as it has in Part 6 of this Act.

#### **71 Application of pre-2006 appointment and promotion provisions**

- (1) The pre-2006 promotion laws continue to apply to or in respect of the appointment of officers by way of promotion to positions of the rank or grade within a rank of sergeant, senior sergeant, inspector and superintendent (other than positions of executive officers within the meaning of Part 5 of this Act).
- (2) The pre-2006 promotion laws cease to so apply to or in respect of appointments to

positions of a particular rank or grade within a rank when a promotion list is first established for that rank or grade under this Act (as amended by the amending Act).

- (3) Despite subclause (2), an appeal may be made and dealt with in accordance with the pre-2006 promotion laws, in respect of an appointment made under those laws, after they cease to apply.
- (4) The application of this Act, as amended by the amending Act, to a rank or grade within a rank for which a promotion list has been established does not affect the continuing application of the pre-2006 promotion laws to a rank or grade within a rank for which a promotion list has not been established.
- (5) This clause has effect subject to the regulations.

## **72 Preparation of first promotion lists**

- (1) Police officers may undertake qualification and assessment procedures for placement on the first promotion lists for particular ranks or grades within ranks.
- (2) This Act, and the *Police Regulation 2000*, as amended by the amending Act, apply to the extent necessary to enable the establishment of the first promotion lists and qualification for placement on those lists.
- (3) To avoid doubt, a person who is undertaking qualification for placement on a first promotion list for a rank may, before that list is established, continue to apply for positions of that rank in accordance with the pre-2006 promotion laws.
- (4) This clause has effect subject to the regulations.

## **73 Eligibility lists**

An eligibility list in force under section 67A immediately before its repeal by the amending Act in respect of a position of an administrative officer continues in force and is taken to have been made under section 82F, as inserted by the amending Act.

## **Part 24 Provisions consequent on enactment of *Police Amendment (Miscellaneous) Act 2006***

### **74 Definition**

In this Part—

**amending Act** means the *Police Amendment (Miscellaneous) Act 2006*.

### **75 Construction of references to NSW Police and NSW Police Senior Executive Service**

- (1) Subject to the regulations, in any other Act or instrument—
  - (a) a reference to NSW Police (however expressed) is to be construed as a reference



to the NSW Police Force, and

(b) a reference to a member of NSW Police (however expressed) is to be construed as a reference to a member of the NSW Police Force, and

(c) a reference to NSW Police Senior Executive Service (however expressed) is to be construed as a reference to the NSW Police Force Senior Executive Service.

(2) Subject to the regulations, a reference in a provision of any other Act or instrument that commenced or was inserted before the commencement of this Act to a member of the Police Force is to be construed as a reference to a police officer.

#### **76 Existing executive positions**

(1) The positions listed in Schedule 2 to this Act, as in force immediately before the repeal of that Schedule by the amending Act, are taken to be positions determined by the Minister under Division 2 of Part 5 and this Act applies accordingly.

(2) Any such position or positions may be the subject of a determination by the Minister under Division 2 of Part 5 amending or omitting them.

### **Part 25 Provision consequent on enactment of [Police Amendment Act 2007](#)**

#### **77 Existing complaints**

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

### **Part 26 Provisions consequent on enactment of [Police Legislation Amendment \(Recognised Law Enforcement Officers\) Act 2010](#)**

#### **78 Existing special constables**

(1) A person appointed as a special constable under section 101 (1A) (a) of the [Police \(Special Provisions\) Act 1901](#) immediately before the repeal of that paragraph ceases to hold the office of special constable on that repeal.

(2) The repeal of section 101 (1A) (a) of the [Police \(Special Provisions\) Act 1901](#) does not affect the validity of the exercise of any function by a special constable before that repeal or any proceedings initiated by a special constable before that repeal.

### **Part 27 Provision consequent on enactment of [Statute Law](#)**

## **(Miscellaneous Provisions) Act 2011**

### **79 Existing eligibility lists**

The amendments made to sections 39A (3) and 82F (3) by the *Statute Law (Miscellaneous Provisions) Act 2011* extend to eligibility lists having effect immediately before the commencement of those amendments.

## **Part 28 Provision consequent on enactment of Business Names (Commonwealth Powers) Act 2011**

### **80 Continuation of existing consents under section 204B**

Any consent in force under section 204B immediately before the commencement of Schedule 3.15 to the *Business Names (Commonwealth Powers) Act 2011* continues in force until such time as it is revoked under that section (as amended).

## **Part 29 Provisions consequent on enactment of Independent Commission Against Corruption and Other Legislation Amendment Act 2013**

### **81 Previous collection, use and disclosure of vetting information**

Any collection, use or disclosure of vetting information to or by the Commissioner that occurred before the commencement of section 96B, as inserted by the *Independent Commission Against Corruption and Other Legislation Amendment Act 2013*, is taken to have been validly done if the collection, use or disclosure would have been valid if done on or after that commencement.

## **Part 30 Provisions consequent on enactment of Police Legislation Amendment (Special Constables) Act 2013**

### **82 Revocation of appointment of all special constables under repealed Act**

- (1) A person holding office as a special constable under the *Police (Special Provisions) Act 1901* ceases to hold that office on the repeal of that Act by the *Police Legislation Amendment (Special Constables) Act 2013*.
- (2) The repeal of the *Police (Special Provisions) Act 1901* does not affect the validity of the exercise of any function, or any proceeding initiated, by a special constable before that repeal.

### **83 Existing members of the NSW Police Force**

- (1) In this clause and clause 86—

***existing NSW Police Force special constable*** means a member of the NSW Police

Force holding office as a special constable under the *Police (Special Provisions) Act 1901* immediately before the repeal of that Act.

- (2) An existing NSW Police Force special constable is, on the commencement of this clause—
  - (a) taken to have been appointed by the Commissioner under section 82L as a non-executive administrative officer (special constable), or
  - (b) in the case of an existing NSW Police Force special constable who is a member of the NSW Police Force solely by reason of being a member of the Police Band—taken to have been appointed by the Commissioner as a non-executive administrative officer under section 82A.

#### **84 Appointments of existing security officers**

- (1) In this clause and clause 86—

**existing security officer** means a person holding office as a special constable under the *Police (Special Provisions) Act 1901* immediately before the repeal of that Act who—

- (a) is employed in the service of the Crown, other than in the NSW Police Force, to perform security duties, and
  - (b) is subject to the day-to-day direction of the Commissioner.
- (2) On the commencement of this clause, an existing security officer specified in an order made under subclause (3)—
  - (a) is transferred to the NSW Police Force, and
  - (b) is taken to have been appointed by the Commissioner under section 82L as a non-executive administrative officer (special constable).
- (3) The Minister may, on the recommendation of the Commissioner, by order in writing specify the existing security officers to be transferred and appointed under subclause (2).

#### **85 Appointments of existing Police Band members**

- (1) In this clause and clause 86—

**existing Police Band member** means a person holding office as a special constable under the *Police (Special Provisions) Act 1901* immediately before the repeal of that Act and who is employed in the service of the Crown, other than in the NSW Police Force, as a member of the Police Band.

- (2) On the commencement of this clause, an existing Police Band member specified in an

order made under subclause (3)—

(a) is transferred to the NSW Police Force, and

(b) is taken to have been appointed by the Commissioner as a non-executive administrative officer under section 82A.

(3) The Minister may, on the recommendation of the Commissioner, by order in writing specify the existing Police Band members to be transferred and appointed under subclause (2).

## **86 Effect of appointments**

(1) A person taken to have been appointed to a position of non-executive administrative officer by virtue of clause 83, 84 or 85—

(a) is appointed at the same level of remuneration to which the person was entitled as an existing NSW Police Force special constable, existing security officer or existing Police Band member, and

(b) retains all leave and other employment entitlements accrued by or accruing to the person as an existing NSW Police Force special constable, existing security officer or existing Police Band member.

(2) A person who is transferred to the NSW Police Force under clause 84 or 85—

(a) is not entitled to receive any payment or other benefit merely by reason of that transfer, and

(b) is not entitled to elect, because of the transfer, to be paid the money value of any extended or annual leave that the person had accrued as an existing security officer or existing Police Band member immediately prior to the transfer, and

(c) is not entitled to claim, both under this or any other Act, dual benefits of the same kind for the same period of service.

## **Part 31 Provision consequent on enactment of [Royal Commissions and Ombudsman Legislation Amendment Act 2013](#)**

### **87 Competency and compellability of Ombudsman and officers of Ombudsman as witnesses**

Section 165 (2), as substituted by the [Royal Commissions and Ombudsman Legislation Amendment Act 2013](#), extends to evidence or documents acquired in the course of the administration or execution of Part 8A before the commencement of that subsection, as substituted.

## **Part 32 Provisions consequent on enactment of [Government Sector](#)**

## Employment Legislation Amendment Act 2016

### 88 Definitions

In this Part—

**amending Act** means the *Government Sector Employment Legislation Amendment Act 2016*.

**former senior executive provisions** means—

- (a) the provisions of Part 5 of this Act (and any other provisions of this Act that relate to the operation of that Part) as in force immediately before the substitution of that Part by the amending Act, and
- (b) the provisions of Part 3A of the *Statutory and Other Offices Remuneration Act 1975* as in force immediately before the commencement of the amendments made by the amending Act to that Part.

**implementation date** for a transitional police senior executive or transitional administrative senior executive—see clause 90.

**new senior executive provisions** means the provisions of Part 5 of this Act (and any other provisions of this Act that relate to the operation of that Part), as substituted by the amending Act, and the provisions of Part 3B of the *Statutory and Other Offices Remuneration Act 1975*.

**senior executive bands determination** has the same meaning as in the *Government Sector Employment Act 2013*.

**transitional administrative senior executive** means a person (other than a police officer)—

- (a) who, immediately before the substitution of Part 5 of this Act by the amending Act, was employed as an executive officer under the former senior executive provisions (such a person is referred to in this Part as a **transitional administrative SES executive**), or
- (b) who, immediately before the substitution of Part 6A of this Act by the amending Act, was employed under that Part in the NSW Police Force as an administrative officer in the classification or grade of senior officer (or in any equivalent classification or grade determined by the Commissioner for the purposes of this definition) and whose salary was more than the maximum salary for a clerk (Grade 12) in the Public Service (such a person is referred to in this Part as a **transitional administrative SO executive**).

**transitional police senior executive** means a police officer who, immediately before the substitution of Part 5 of this Act by the amending Act, was employed as an executive officer under the former senior executive provisions.

## **89 Existing Police Commissioner**

- (1) The person holding office as Commissioner on the commencement of the amendment made to section 27 of this Act by the amending Act continues in office as Commissioner for the balance of the person's existing term of office. However, the person ceases to hold office as Commissioner under this clause if the person vacates that office in accordance with Part 4 of this Act or if the person is subsequently appointed as Commissioner under Part 4 of this Act (as amended by the amending Act).
- (2) A person who continues in office as Commissioner under this clause—
  - (a) is taken to be employed in accordance with this Act (as amended by the amending Act) in the Public Service senior executive band determined in respect of that office, and
  - (b) is not required to enter into a contract of employment under the new senior executive provisions for the purposes of the period of continued employment, and
  - (c) has a remuneration package that is equivalent to the remuneration package of the person immediately before the commencement of this clause (unless the remuneration package is increased in accordance with the former senior executive provisions or as a result of progression within the applicable remuneration range), and
  - (d) is, if the person is removed from office under this Act (as amended by the amending Act) on or after the commencement of this clause, entitled to the compensation (if any) provided under and in accordance with section 28 (7) of this Act (as in force immediately before the repeal of that subsection by the amending Act).

## **90 Review of senior executive structure for implementation of new senior executive provisions**

- (1) The Commissioner is to review the senior executive structure of the NSW Police Force in order to transition senior executive employment in the NSW Police Force to the arrangements under the new senior executive provisions.
- (2) The Commissioner is, in consultation with the Public Service Commissioner, to prepare an implementation schedule for the staged implementation of the new senior executive provisions to the extent they relate to transitional police senior executives and transitional administrative senior executives.
- (3) The implementation schedule is to set out the date on which the new senior executive provisions will apply to transitional police senior executives and transitional administrative senior executives. Different dates may be set for different transitional senior executives.

- (4) The date so set is the **implementation date** for the transitional senior executive concerned.
- (5) The implementation date for a transitional police senior executive or transitional administrative senior executive may be changed by the Commissioner in consultation with the Public Service Commissioner.
- (6) The implementation date for a transitional police senior executive cannot be earlier than the end of the person's term of office under the former senior executive provisions.

#### **91 Police senior executives—transitional arrangements**

- (1) Until the implementation date for a transitional police senior executive, the new senior executive provisions apply to the executive subject to the following—
  - (a) the executive is employed under the new senior executive provisions in term employment in the band under the senior executive bands determination that includes the remuneration package to which the executive continues to be entitled under this subclause,
  - (b) the term for which the executive is taken to be so employed is (subject to this subclause)—
    - (i) the balance of the person's term of office as a transitional police senior executive, and
    - (ii) any additional period before the implementation date that the Commissioner may approve,
  - (c) the executive is not required to enter into a contract of employment under the new senior executive provisions for the purposes of that period of continued employment,
  - (d) the executive has a remuneration package that is equivalent to the remuneration package of the person under the former senior executive provisions (unless the remuneration package is increased in accordance with those provisions or as a result of progression within the applicable remuneration range),
  - (e) if the executive's employment is terminated under section 40 of this Act (as inserted by the amending Act), the executive is entitled to the compensation provided under the former senior executive provisions (and is subject to any requirements under those provisions relating to the refund of that compensation) as if the termination had been a removal of the executive from office under those former provisions.
- (2) On the implementation date for a transitional police senior executive, the person—

- (a) ceases to be a transitional police senior executive, and
- (b) is employed as a NSW Police Force senior executive under the new senior executive provisions.

## **92 Administrative senior executives—transitional arrangements**

- (1) Until the implementation date for a transitional administrative SES executive, the new senior executive provisions apply to the executive subject to the following—
  - (a) the executive is taken to be employed in the band under the Public Service senior executive bands determination that the Commissioner considers appropriate for the role of the executive,
  - (b) the term for which the executive is taken to be so employed is (subject to this clause)—
    - (i) the balance of the person's term of office as a transitional administrative SES executive, and
    - (ii) any additional period before the implementation date that the Commissioner may approve,
  - (c) the executive is not required to enter into a contract of employment under the new senior executive provisions for the purposes of that period of continued employment,
  - (d) the executive has a remuneration package that is equivalent to the remuneration package of the person under the former senior executive provisions even if it exceeds the band in which the executive is employed,
  - (e) if the executive's employment is terminated under section 40 of this Act (as inserted by the amending Act), the executive is entitled to the compensation provided under the former senior executive provisions (and is subject to any requirements under those provisions relating to the refund of that compensation) as if the termination had been a removal of the executive from office under the former senior executive provisions.
- (2) The following provisions apply in relation to a person who is a transitional administrative SO executive until the person's implementation date—
  - (a) the person is employed under Part 6A of this Act (as substituted by the amending Act) in ongoing employment,
  - (b) the person is not employed in a band under the senior executive bands determination,
  - (c) the conditions of employment applying to the person immediately before the



commencement of this clause continue to apply to the person, subject to this clause,

(d) if the person's employment is terminated under section 81E of this Act (as inserted by the amending Act), the person is entitled to the compensation that the person would have received had the person's employment been terminated immediately before the commencement of this clause.

(3) If a transitional administrative senior executive is assigned to a different role in the NSW Police Force—

(a) the person does not cease to be a transitional administrative senior executive, and

(b) the remuneration package of the transitional administrative senior executive is, despite subclause (1) (d) and subject to section 36 (7) of this Act, the remuneration package for the role to which the executive has been so assigned.

**Note—**

See also subclause (7) for consequences of temporary assignments outside the NSW Police Force.

(4) On the implementation date for a transitional administrative senior executive—

(a) the person ceases to be a transitional administrative senior executive, and

(b) the employment of the person in the NSW Police Force is terminated unless the person is employed in the NSW Police Force on and from the implementation date in accordance with this Act (whether as a NSW Police Force senior executive or as a non-executive administrative employee, and whether following recruitment action or, in the case of a transitional administrative SO executive, following redeployment as an excess employee), and

(c) any such termination of the employment of a person who was a transitional administrative SES executive is taken to be a termination under section 40 of this Act to which subclause (1) (e) applies, and

(d) any such termination of the employment of a person who was a transitional administrative SO executive is taken to be a termination under section 81E of this Act to which this Act (including the conditions of employment preserved by this clause) applies, and

(e) section 42 of this Act applies to any such termination of employment of a person (whether an existing administrative SES executive or an existing administrative SO executive) on the basis that the person is an executive employee for the purposes of that section.

(5) The following applies to the creation of a role within the new senior executive

structure of the NSW Police Force (to the extent that it relates to administrative employees) and to the initial recruitment action under this Act to fill that role—

- (a) the work level and other employment arrangements relating to a new role within that new structure are to be determined under this Act and are not determined by the work level and other arrangements that applied to roles in the former executive structure of the NSW Police Force,
  - (b) transitional administrative senior executives may be recruited to any such new role before or at the end of the period of their continued employment as transitional administrative senior executives,
  - (c) the initial recruitment action to fill any such role is to be limited to the following candidates (having regard to the type and level of the role and any other relevant matter)—
    - (i) any transitional administrative senior executives who occupy a similar role in the NSW Police Force,
    - (ii) any NSW Police Force senior executives employed in a similar role after the substitution of Part 5 of this Act by the amending Act,
    - (iii) any other persons employed in the NSW Police Force whom the Commissioner considers appropriate.
- (6) Initial recruitment action to fill a role within the new senior executive structure of the NSW Police Force Public Service agency (to the extent that it relates to administrative employees) is not required to be limited as referred to in subclause (5) (c) if—
- (a) there are no candidates of the kind referred to in subclause (5) (c) (i) or (ii) for the recruitment action concerned, or
  - (b) the role is not similar to any role in the former executive structure of the NSW Police Force.
- (7) If a transitional administrative senior executive is temporarily assigned to work outside the NSW Police Force—
- (a) the person does not cease to be a transitional administrative senior executive, and the implementation date for the executive does not change, because of that temporary assignment, and
  - (b) the person retains his or her eligibility under subclause (5) as a candidate for initial recruitment action in the NSW Police Force, and
  - (c) the person is also eligible under subclause (5) as a candidate for initial recruitment action in relation to a similar role in the other government sector agency to which the person is temporarily assigned.

### **93 Transitional provisions relating to remuneration of senior executives**

- (1) For the purposes of clauses 91 and 92, the remuneration package of a person under the former senior executive provisions includes any of the following determined by the Statutory and Other Offices Remuneration Tribunal and payable to the person under those provisions—
  - (a) a remuneration package that is payable to the person as the holder of the relevant position under the former senior executive provisions that exceeds the remuneration package otherwise determined for the senior executive level of the person,
  - (b) an additional amount payable as a recruitment allowance.
- (2) If a person referred to in subclause (1) to whom a recruitment allowance is payable is subsequently employed in accordance with the new senior executive provisions as a NSW Police Force senior executive, the person continues to be entitled to so much of that former recruitment allowance as will ensure that the remuneration payable after that subsequent employment is not less than the remuneration payable before that subsequent employment. Any general increase in remuneration packages to account for an annual determination of the Statutory and Other Offices Remuneration Tribunal is to be excluded and does not operate to reduce the amount of recruitment allowance payable.
- (3) This subclause applies to a transitional administrative SES executive who is subsequently employed in accordance with the new senior executive provisions as a NSW Police Force senior executive and who is assigned to a new role (or subsequently assigned to a different role) that is of equivalent work value as the person's former position, office or role. The remuneration package of the person in any such new or different role is to be not less than the remuneration package of the person immediately before the person was so subsequently employed.
- (4) This subclause applies to a transitional administrative SO executive who is subsequently employed in accordance with the new senior executive provisions as a NSW Police Force senior executive and who is assigned to a role (when first so employed) that is of equivalent work value as the person's position immediately before the commencement of this clause. The person may be paid an allowance, determined by the Commissioner in accordance with guidance provided by the Public Service Commissioner, to avoid any financial disadvantage as a NSW Police Force senior executive in that role (or any other assigned role of equivalent work value) compared to the remuneration payable immediately before the person was so subsequently employed.
- (5) A retention allowance payable under the former senior executive provisions to a person to whom clause 91 or 92 applies is payable for completed years of service (or pro rata for completed parts of years of service) on the date the person ceases to be a

person to whom that clause applies (otherwise than by resignation).

#### **94 Existing non-executive administrative officers**

- (1) A person (other than a transitional administrative SO executive) who was employed in the NSW Police Force as a non-executive administrative officer immediately before the substitution of Part 6A of this Act by the amending Act is, on that substitution, taken to be employed in ongoing employment as a non-executive administrative employee under that Part.
- (2) The application of the provisions of this Act, the regulations and the government sector employment rules to any such person is subject to the provisions of this Schedule.
- (3) The substitution of Part 6A of this Act does not affect the continuity of service of a person taken to be employed under this clause, any accrued rights to leave under the former Part 6A or any accrual of rights to leave under this Act.
- (4) A person who is taken to be employed under this clause is taken to be employed in a role or classification of work that corresponds to the kind and grade of work of the person's position or work on the substitution of Part 6A.

#### **95 Existing temporary employees**

- (1) A person who was employed in the NSW Police Force as a temporary employee immediately before the repeal of Part 7 of this Act by the amending Act (an **existing temporary employee**) is, on that repeal, taken to be employed in temporary employment as a non-executive administrative employee under Part 6A of this Act (as substituted by the amending Act).
- (2) The application of the provisions of this Act, the regulations and the government sector employment rules to an existing temporary employee is subject to the provisions of this Schedule.
- (3) The repeal of Part 7 of this Act (the **repealed Part**) does not affect the continuity of service of an existing temporary employee, any accrued rights to leave under the repealed Part or any accrual of rights to leave under this Act (as amended by the amending Act).
- (4) A person who is taken to be employed under this clause is taken to be employed in a role or classification of work that corresponds to the kind and grade of the person's work on the repeal of Part 7.
- (5) The Commissioner is to determine a date for the purposes of this clause in respect of each existing temporary employee (the **determined date**).
- (6) If the term of employment of an existing temporary employee is due to expire before

the determined date, the person's temporary employment may be extended before it expires in accordance with the repealed Part as if that Part had not been repealed. However, if the temporary employment is to be extended beyond the determined date, the extension of the existing temporary employee's employment must satisfy the requirements of the government sector employment rules relating to temporary employment.

- (7) On and from the determined date, any extension of the temporary employee's employment must be made in accordance with the provisions of the government sector employment rules relating to temporary employment.
- (8) Despite its repeal, section 91A of this Act continues to apply, until the determined date, in relation to an existing temporary employee who is a long-term temporary employee within the meaning of that section. Any appointment of the employee under that section as so continued by this clause is taken to be employment in ongoing employment under this Act in a relevant role.
- (9) On and from the determined date, any conversion of an existing temporary employee's employment to ongoing employment must be made in accordance with the provisions of the government sector employment rules.

#### **95A Recruitment action relating to administrative officers and employees**

- (1) Any recruitment action relating to an administrative officer position that was commenced within the period of 12 months immediately before 31 October 2017, but not completed before that date, may be completed as if this Act had not been amended by the amending Act.
- (2) Without limiting the operation of subclause (1), the Commissioner may, in taking recruitment action that was pending immediately before 31 October 2017 in relation to an administrative officer position, or in taking recruitment action that is commenced before 31 October 2019 in relation to an administrative employee role, choose to proceed—
  - (a) under the provisions of this Act and the regulations made under this Act (as in force immediately before 31 October 2017) relating to the recruitment of administrative officers (the **former recruitment provisions**), in which case those provisions continue, despite the amendments made by the amending Act, to have effect in relation to the recruitment action, or
  - (b) under the provisions of this Act (as amended by the amending Act), the regulations made under this Act (as so amended), and the government sector employment rules made under the *Government Sector Employment Act 2013*, relating to the recruitment of administrative employees (the **new recruitment procedures**).

- (3) Any recruitment action relating to an administrative employee role on and from 31 October 2019 must comply with the new recruitment procedures.

#### **95B Existing arrangements relating to use of staff (secondments etc)**

- (1) Any arrangement under section 95 or 95A of this Act that had effect immediately before 31 October 2017 is not affected by the amendments made to this Act by the amending Act.
- (2) In the case of any such existing arrangement that is in the nature of a secondment to or from a government sector agency within the meaning of the *Government Sector Employment Act 2013*, the person concerned is entitled to return to the government sector agency from which the person was seconded at the same work level at which the person was employed immediately before being seconded.

#### **96 Eligibility lists**

- (1) An eligibility list that was current under this Act (or the regulations made under this Act) immediately before 31 October 2017 may continue to be used in relation to a role that is comparable to the position for which the list was created, but only until such time as the list would otherwise cease to have effect in accordance with this Act (or the regulations made under this Act) as in force immediately before that date.
- (2) If, in accordance with clause 95A (2) (a), recruitment action is taken under the former recruitment provisions, an eligibility list for the purposes of that recruitment may be created under this Act (or the regulations made under this Act) as if this Act had not been amended by the amending Act.
- (3) Any such eligibility list ceases to have effect on 31 October 2018.

#### **97 Preservation of status as police officer for purposes of applying for benefits under *Police Regulation (Superannuation) Act 1906***

A person who is removed from office as Commissioner under section 28 or whose appointment as Deputy Commissioner or Assistant Commissioner is terminated under section 40 is, on that removal or termination, taken to be a police officer for the purposes only of enabling the person to make an application for benefits under the *Police Regulation (Superannuation) Act 1906* as a police officer and enabling matters in connection with that application to be dealt with.

#### **98 (Repealed)**

#### **99 References to special constables**

In any other Act, in any statutory or other instrument, or in any contract or agreement, a reference to a special constable within the meaning of section 82L of this Act is to be construed as a reference to a special constable within the meaning of section 81G of this Act.

### **100 Savings and transitional regulations**

- (1) The provisions of any regulation made under Part 1 of this Schedule consequent on the enactment of the amending Act have effect despite anything to the contrary in this Part.
- (2) The regulations made under Part 1 of this Schedule consequent on the enactment of the amending Act may make separate savings and transitional provisions or amend this Part to consolidate the savings and transitional provisions.

### **101 Review of certain amendments made by amending Act**

- (1) The Minister is to review the following provisions of this Act to determine whether the policy objectives of the provision remain valid and whether the terms of the provision remain appropriate for securing those objectives—
  - (a) section 28 (as amended by the amending Act),
  - (b) sections 28A, 33 (3), 40 and 41 (as inserted by the amending Act).
- (2) The review is to be undertaken as soon as possible after the end of the period of 2 years following the commencement of this clause.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as practicable after the review is completed.

## **Part 33 Provisions consequent on enactment of [Law Enforcement Conduct Commission Act 2016](#)**

### **102 Definition**

In this Part—

**LECC Act** means the [Law Enforcement Conduct Commission Act 2016](#).

### **103 Complaints information system**

The complaints information system established under Part 8A of this Act before its amendment by the LECC Act is taken to have been established for the purposes of the misconduct matters information system under Part 8A as amended by the LECC Act.

### **104 Existing complaints**

Any complaint made, or referred, to the Commissioner under Part 8A of this Act as in force before its amendment by the LECC Act may (subject to Part 2 of Schedule 3 to the LECC Act) be dealt with by the Commissioner in accordance with Part 8A as if it had not been amended by the LECC Act.