



*PARLIAMENT OF NEW SOUTH WALES*

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*THE JOINT SELECT COMMITTEE UPON POLICE ADMINISTRATION*

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*SECOND REPORT*

*POLICE SERVICE (MANAGEMENT) AMENDMENT BILL, 1993*

*13 May, 1993*

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## ATTACHMENTS

Police Service (Management) Amendment Bill 1993

Proceedings of the Committee

**CHAIRMAN**

The Honourable D.J. Gay, MLC

**COMMITTEE MEMBERS**

**Legislative Council**

The Honourable J. Jobling  
The Honourable E. Kirkby  
The Honourable J. Shaw, QC

**Legislative Assembly**

The Honourable P.T. Anderson  
Mr J.E. Hatton  
Mr M.J. Kerr  
Mr D.L. Page  
Mr P.F.P. Whelan  
The Honourable M.R. Yabsley

**CLERK TO THE COMMITTEE**

Mr Mark Swinson

**COMMITTEE STAFF**

**Project Officer** Mr John Cook

Mr Bill Dunbar  
Mr Patrick Manning

## **SECOND REPORT**

### **Terms of Reference.**

On Wednesday, 14 October, 1992 the Legislative Assembly and the Legislative Council of the New South Parliament adopted resolutions in identical terms which, amongst other things, included that :-

- (1) A Joint Select Committee be appointed to inquire into whether mechanisms of accountability, the existing roles and reporting relationships between the Minister for Police, the Police Board of New South Wales, the Inspector General of Police and the Commissioner of Police are adequate to ensure an efficient, effective and accountable Police Service in New South Wales and may make such recommendations for reform as it considers desirable.
- (2) In conducting the inquiry :
  - (a) the Committee shall have regard to the circumstances which resulted in the resignation of the Honourable E P Pickering MLC as Minister for Police and Emergency Services; and
  - (b) the Committee shall not duplicate the examination by the Ombudsman of the matters outlined in the report of the Ombudsman in the Parliament on 29 September, 1992 about the complaints of Mrs Carolyn Rigg about the conduct of the New South Police Service until such time as the Ombudsman's report is completed.
- (3) That the Committee shall consist of six members of the Legislative Assembly and four members of the Legislative Council.

### **Reports Tabled in the Parliament.**

The Committee tabled in the Parliament on 26 February, 1993 a brief Interim Report in relation to Term (2)(a) of its Reference.

On 31 March, 1993 the Committee tabled a comprehensive First Report in the Parliament on Reference (2)(a) on the circumstances which resulted in the resignation of the Honourable E P Pickering, MLC, as Minister for Police and Emergency Services.

### **The Intervening Events Relating to Term (1).**

Following the tabling of the First Report on 31 March, 1993, the Committee has been addressing itself to Term (1) of its Reference which is concerned with mechanisms of accountability and the existing roles of and the reporting arrangements between the Minister for Police, the Police Board, the Inspector General and the Commissioner of Police.

It must be understood that the Committee had no opportunity to focus on issues associated with Term (1) until it had completed Term (2)(a) because of the complexity of the issues which were associated with that Term, and the huge volume of evidence which had been received in the form of documents or was given orally before the Committee by a large number of witnesses.

Events were nevertheless proceeding at a pace which had considerable impact on the deliberations of the Committee in respect of Term (1). The situation which has been reached is that, in the period since the establishment of the Committee on 14 October 1992, the Government has made significant changes in the area of accountability and in reporting. The Committee recognises that the Government could not, realistically, have delayed the implementation of reform because the events which are chronicled in the Committee's First Report, and which unfolded from the evidence as the Committee's sittings progressed, required the taking of urgent corrective action.

In the Legislative Assembly on 22 September, 1992, the Premier announced that the Honourable E P Pickering, MLC, would resign as Minister for Police the next day - 23 September, 1992 - and that the Honourable T A Griffiths, MP would be immediately sworn in as Minister for Police.

At the same time the Premier said that Cabinet had approved the establishment of a small Ministry for Police to take responsibility for policy questions and administrative procedures within the police portfolio. This was a departure from the processes which were pursued by Mr Pickering.

The Premier said that the Ministry would be a small organisation and would have responsibility for operational policy, including budget policy, the structure of the Police Service, salary levels, training policy and the like. It would work in close co-operation with the Police Board which would continue to have sole responsibility for senior police appointments.

Since his appointment, Mr Griffiths has directed and oversighted a comprehensive review of the police administration. The overall plan for change was contained in a submission by the Minister to the Committee dated 13 November, 1992. That plan contained five principal proposals as follows :-

- The reporting arrangements of the Commissioner of Police should be the same as for other Chief Executive Officers with regard to Ministers. The Commissioner will enter into a contract similar to those of members of the Chief Executive Service.
- The convention that the Commissioner is immune from ministerial direction with regard to matters of law enforcement will continue. The Minister's right to receive information and to give directions to the Commissioner is to be preserved.
- The Minister will be able to recommend to the Governor-in-Council that the Commissioner be dismissed if there is a breakdown in their working relationship. Because of the special position of the Commissioner, the concurrence of the Chairperson of the Police Board will be required.
- The functions of the Police Board will be altered to concentrate on appointments and promotion of senior officers and on career development and training programs. The Chairperson will revert to part-time status. The Commissioner's management responsibilities will no longer be complicated by the over-riding authority of the Police Board.
- The Ministry will be established with the Director General reporting and advising the Minister but not interfering in the relationship between the Minister and the Commissioner as Chief Executive Officer of the Police Service. Policy responsibility will be with the Ministry. The Inspector General will be moved to the Ministry.

On 4 March, 1993, the Premier announced the reforms that the Government intended to introduce to enhance accountability, strengthen command and control, improve communications and clarify the chain of command. Mr Fahey said that the package of reforms would include :-

- The Police Board - to be expanded from three to five members with the Director General of the Police Ministry and the Commissioner of Police to be additional non-deliberative members.
- The Commissioner to enter into a five year employment contract with performance agreement, similar to other department heads.
- The Commissioner to be removed by recommendation of the Minister to the Governor-in-Council with the recommendation only to be made with the concurrence of the Chairperson of the Police Board.

The Premier went on to provide further information on the proposals which he said were in accordance with the plan that had been submitted to this Committee. He also mentioned that the Minister would be bringing forward plans to restructure the senior levels of police management.

On 31 March, 1993 - the same day that the Committee tabled its First Report in the Parliament - Minister Griffiths introduced into the Legislative Assembly the Police Service (Management) Amendment Bill 1993. The Bill provides for the reforms announced by the Premier. It defines the new role for the Police Board. It provides for the composition of the Board and it provides for the employment arrangements of the Commissioner of Police as well as the transferring of the Inspector General to the Ministry for Police.

Debate on the Bill was adjourned following the delivery of the second reading speech in the House by the Minister that day in order that this Committee could consider the terms of the legislation and report to the Parliament.

The Minister sought early consideration by the Committee in order that the Bill could be debated in the Parliament during the current sittings. The Committee has been pleased to assist by providing this Report as otherwise the legislation might have been delayed by several months.

However, it should be noted that the Committee has not yet inquired into all matters associated with Term (1). The Committee will be deliberating further on that reference.

#### **Recommended Amendments to the Bill.**

The focus of this Report is on the Police Service (Management) Amendment Bill 1993.

The Committee has received a number of submissions on Term (1). It has had the benefit of a briefing from the Honourable T A Griffiths, Minister for Police, and it has received advice from the former Minister, the Honourable E P Pickering MLC and a number of other persons.

The Committee has given very careful consideration to the terms of the Bill and provides, through this Report, advice to the Parliament of its overall endorsement.

Nevertheless, the Committee has some reservations and suggests that the following amendments be considered :-

1. Page 3, Schedule 1 (1), lines 14 and 15 (proposed section 17 (2)). Omit "if all the voting members of the Board so direct", insert instead "if the Board so directs".

The amendment provides that the Commissioner of Police and the Director-General of the Ministry for Police may be excluded from meetings of the Police Board by a majority vote of the voting members instead of by the unanimous vote of those members - majority voting is provided for under clause 13 of Schedule 1 to the Act, as amended by Schedule 1 (2) (k) to the Bill.

2. Page 3, Schedule 1 (1), proposed section 17. After line 15, insert:  
(3) The Police Board must disclose in its annual report whether the Commissioner or Director-General was excluded from any meeting of the Board during the reporting year and, if so, the number of occasions on which each of them was so excluded. The Chairperson of the Police Board is to give the Minister written notice of any such exclusion as soon as practicable after it occurs.

The amendment requires the Police Board to disclose in its annual report the number of occasions on which the Commissioner and the Director-General were excluded from meetings. The Minister is also to be given written notice of each exclusion as soon as practicable after it occurs.

3. Page 3, Schedule 1 (1), proposed section 19. After line 33, insert:  
(c) the undertaking of audits, if and when the Board considers it appropriate, of those procedures of the Police Service that are designed to safeguard the integrity of the Police Service;

The amendment confers on the Police Board authority to undertake audits of the procedures of the Police Service that are designed to safeguard the integrity of the Police Service.



4. Page 3, Schedule 1 (1), lines 34-37 (proposed section 19 (c) as printed). Omit all words on those lines, insert instead:

(d) the making of reports or recommendations to the Minister arising from the exercise of its functions (including from inquiries carried out on its own initiative after consultation with the Minister) concerning the integrity of members of the Police Service or concerning any other matter;

The amendment provides specifically for the Police Board to provide reports or recommendations on matters arising from inquiries carried out by the Police Board on its own initiative after consultation with the Minister.

5. Page 4, Schedule 1 (1), lines 13 and 14 (proposed section 21). Omit "a person of a class authorised by the Minister", insert instead "any person".

The amendment removes the restriction on the class of persons to whom the Police Board may delegate its functions - namely the restriction that the Minister approve the class of persons. Existing section 21 of the Act limits the power of delegation to the Commissioner and members of the Board's staff.

6. Page 4, Schedule 1 (1), proposed section 21. After line 15, insert:  
(2) The Police Board must consult the Minister about any proposed delegation by the Board under this section.

The amendment requires the Police Board to consult the Minister about any proposed delegation.

7. Page 7, Schedule 1 (1), lines 15-17 (proposed section 28 (1)). Omit "made with the concurrence in writing of the Chairperson of the Police Board".
8. Page 7, Schedule 1 (1), lines 19 and 20 (proposed section 28 (2)). Omit "made with the concurrence in writing of the Chairperson of the Police Board".

9. Page 7, Schedule 1 (1), proposed section 28. After line 24, insert:
- (3) A recommendation of the Minister under this section may be made only if the recommendation is supported:
    - (a) by the Police Board; or
    - (b) by resolutions of both Houses of Parliament passed after the Police Board has been given an opportunity to consider the matter.

The amendments Nos 7, 8 and 9 omit the requirement of the Bill that the proposed removal of the Police Commissioner from office must be supported by the Chairperson of the Police Board and replaces it with a requirement that the proposed removal must be supported by a majority of the members of the Police Board or by resolution of both Houses of Parliament.

10. Page 11, Schedule 1 (4) (c), line 24. Omit "5 years", insert "3 years".

A majority of the Committee Members present during deliberations believed that Amendment No. 10 should also be recommended.

The amendment reduces the period of appointment of the current Commissioner after the commencement of the proposed Act from 5 years to 3 years.

The effect of this is to appoint the present incumbent of the office of Commissioner of Police for an initial period of three years rather than five years as has been proposed. The present Commissioner, Mr Lauer has already served two years as Commissioner and appointing him for three years would give him five years in the office prior to consideration of reappointment.

### **Power of Minister for Police to Give Directions**

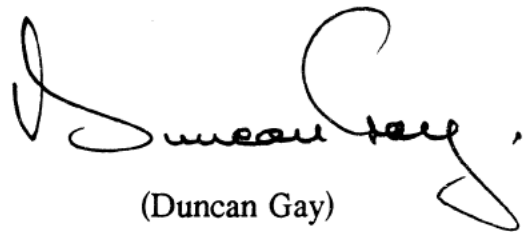
The Committee wishes to record its disquiet that there is a widely held misapprehension that the Minister for Police in this State is unable to direct the Commissioner of Police on operational policing issues. This is not the case and the Committee wishes to emphasise that any such belief is patently wrong.

Section 8 (1) of the Police Service Act 1990 provides that "The Commissioner is, subject to the direction of the Minister, responsible for the management and control of the Police Service". This is unequivocal and is not to be altered in any way under the Bill which is presently before the Parliament.

The Committee is under no doubt that this empowers the Minister to direct the Commissioner on operational issues. The Committee agrees that it is best expressed in the submission of the former Commissioner of Police, Mr John Avery when he said "A strict interpretation of the legislation indicates that the Minister has power to give directions to the Commissioner if that direction does not require the Commissioner to neglect his or her statutory duty by act or omission."

The Commissioner and the New South Wales Police Service is and remains accountable though the Minister to the Parliament.

13 May 1993



(Duncan Gay)  
Chairman

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POLICE SERVICE (MANAGEMENT) AMENDMENT BILL 1993

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FIRST PRINT

**POLICE SERVICE (MANAGEMENT) AMENDMENT  
BILL 1993**

NEW SOUTH WALES



**EXPLANATORY NOTE**

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to alter the role and composition of the Police Board; and
- (b) to alter the employment arrangements of the Commissioner of Police; and
- (c) to transfer the Inspector General from the Police Service to the Ministry for Police.

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**Role of Police Board**

Under the Bill, the Commissioner of Police will have clear responsibility for the management and control of the Police Service. Accordingly, the Police Board will no longer have general statutory responsibility in connection with the improvement of the Police Service and its efficiency and performance. The Board will retain its principal statutory role in the following areas:

- (a) the employment of Police Service senior executive officers and the appointment and promotion of other commissioned police officers;
- (b) the supervision and promotion of career development and training for all members of the Police Service;
- (c) the making of reports or recommendations to the Minister on any matter referred to it by the Minister.

The Board will also be able to make its own reports or recommendations to the Minister arising from the exercise of its functions (including reports or recommendations concerning the integrity of members of the Police Service). The Board will retain its power to enter police premises, inspect police documents and question police officers.

*Police Service (Management) Amendment 1993*

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**Composition of Police Board**

At present the Police Board consists of a full-time or part-time Chairperson, the Commissioner and between 1 and 3 part-time members. Under the Bill, the Board will consist of a part-time Chairperson, the Commissioner, the Director-General of the Ministry for Police and between 2 and 4 part-time members. However, the Commissioner and the Director-General will not be voting members of the Board and may be excluded from particular meetings of the Board. The existing members of the Board are not continued in office, but are eligible for re-appointment.

**Employment arrangements of Commissioner of Police**

Generally speaking, the employment of the Commissioner of Police will be placed on the same basis as that of other chief executive officers of government agencies. In particular:

- (a) **Appointment.** The Commissioner will continue to be appointed by the Governor on the recommendation of the Minister. The Minister will continue to be required to obtain and have regard to a recommendation from the Police Board of the applicant with the greatest merit. However, the Board will not be able to limit advertising for the position to police officers, but will be able to dispense with advertising the position if it decides to recommend the re-appointment of the Commissioner. In addition, the Parliamentary Joint Committee on the ICAC will be given an opportunity to report to the Minister on the integrity of the person proposed to be appointed (or re-appointed).
- (b) **Term of appointment.** All future appointments to the office of Commissioner will be for a maximum (renewable) term of 5 years, as is the case with other chief executive officers. At present a police officer who is appointed as Commissioner is appointed until the age of 65 years.
- (c) **Contract of employment and remuneration.** The Commissioner (as is the case with other chief executive officers) will be required to enter into a contract of employment with the Minister for the term of appointment that will deal with the duties of the position, the performance criteria and division of the remuneration package between salary and employment benefits. The amount of the remuneration package will be set by the Statutory and Other Offices Remuneration Tribunal.
- (d) **Removal from office.** At present the Commissioner may only be removed from office by the Governor for misbehaviour or incompetence if both Houses of Parliament agree. The Governor may also remove the Commissioner from office for engaging in other unauthorised paid employment, unauthorised absence from work, becoming bankrupt or becoming mentally ill. Under the Bill (as is the case with other chief executive officers) the Commissioner may be removed from office at any time for any reason on the recommendation of the Minister. However, the Commissioner may not be removed from office unless the Chairperson of the Police Board concurs in the recommendation of the Minister.
- (e) **Existing Commissioner.** The Commissioner holding office on the commencement of the proposed Act will be appointed by that Act as Commissioner for a period of 5 years. Although Commissioner Lauer was appointed until the age of 65 years, if another Commissioner is holding office on that commencement and was appointed for a limited term or would reach 65 years before that 5 year period, the statutory appointment would be limited to

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the balance of the term or until the age of 65 years. A Commissioner continued in office by this provision will still be required to enter into a contract of employment with the Minister and will be subject to the new employment and removal provisions during that statutory term of office and on any proposed re-appointment.

**Transfer of Inspector General**

The position of Inspector General is to be transferred from the Police Service to the Ministry for Police. The incumbent officer is to be continued in office for the balance of his term of office. The Inspector General will retain the power to enter police premises, inspect police documents and question police officers.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 gives effect to Schedule 1 which contains the amendments to the Police Service Act 1990 described above.

Clause 4 gives effect to Schedule 2 which contains consequential amendments to other Acts and repeals an Act validating the original appointment of the Inspector General.

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FIRST PRINT

**POLICE SERVICE (MANAGEMENT) AMENDMENT  
BILL 1993**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Police Service Act 1990 No. 47
4. Consequential amendment and repeal of other Acts

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

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**POLICE SERVICE (MANAGEMENT) AMENDMENT  
BILL 1993**

NEW SOUTH WALES



No. , 1993

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**A BILL FOR**

An Act to amend the Police Service Act 1990 with respect to the Police Board and the Commissioner of Police; and for other purposes.

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*Police Service (Management) Amendment 1993*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Police Service (Management) Amendment Act 1993.

**5 Commencement**

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

**Amendment of Police Service Act 1990 No. 47**

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

**10 Consequential amendment and repeal of other Acts**

4. (1) The Acts specified in Schedule 2 are amended as set out in that Schedule.

(2) The Police Service (Inspector General) Act 1991 (1991 No. 62) is repealed.

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**15 SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990**

(Sec. 3)

(1) Parts 3 and 4:

Omit the Parts, insert instead:

**20 PART 3—THE POLICE BOARD OF NEW SOUTH  
WALES**

**Constitution of the Board**

15. (1) There is constituted by this Act the Police Board of New South Wales.

25 (2) The Police Board is a body corporate.

(3) The Police Board is a statutory body representing the Crown.

**Board subject to Ministerial control**

30 16. The Police Board is, in the exercise of its functions, subject to the control and direction of the Minister.

*Police Service (Management) Amendment 1993*

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990—*continued*

**Composition and procedure of the Board**

17. (1) The Police Board is to consist of:

- (a) the Chairperson of the Police Board; and 5
- (b) the Commissioner; and
- (c) the Director-General of the Ministry for Police; and
- (d) at least 2 but not more than 4 part-time members appointed by the Governor.

(2) Although the Commissioner and the Director-General are members of the Police Board, they do not have a vote at any meeting of the Board. They each have a right to be heard at any meeting of the Police Board but both or either of them may be excluded from any meeting if all the voting members of the Board so direct. 10

(3) Schedule 1 has effect with respect to the members and procedure of the Police Board. 15

**Appointment of Chairperson of the Board**

18. (1) The Governor may appoint a person as Chairperson of the Police Board. 20

(2) The appointment of the Chairperson is to be on a part-time basis.

(3) Neither the Commissioner nor the Director-General of the Ministry for Police is eligible to be appointed as Chairperson of the Police Board. 25

**Functions of the Board**

19. The Police Board has the following functions:

- (a) the functions conferred on it by this Act in connection with the employment of members of the Police Service Senior Executive Service and other members of the Police Service; 30
- (b) the supervision and promotion of career development and training for all members of the Police Service;
- (c) the making of reports or recommendations to the Minister arising from the exercise of its functions (including reports or recommendations concerning the integrity of members of the Police Service); 35
- (d) the making of reports or recommendations to the Minister on any matter referred to it by the Minister;

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 SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
 1990—*continued*

(e) such other functions as are conferred or imposed on it by or under this or any other Act.

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**Staff of the Board**

20. (1) The staff of the Police Board is to be employed under Part 2 of the Public Sector Management Act 1988.

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(2) The Police Board may, with the approval of the Minister, arrange for the use of the services of any staff (by secondment or otherwise) or facilities of the Police Service, a government department or a public authority.

**Delegation by the Board**

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21. The Police Board may delegate to a person of a class authorised by the Minister any of the functions of the Police Board, other than this power of delegation.

**Powers of entry and inspection**

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22. (1) An authorised person may, for the purpose of exercising the Police Board's functions, enter any police premises at any time.

(2) The authorised person may, for that purpose, call for and inspect all or any police records, documents, files or other matter, whether of the same or a different kind or nature, on those premises, and question and seek information from any member of the Police Service.

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(3) A member of the Police Service who fails to comply with any requirement made of the member under this section or to give all assistance and co-operation to the authorised person is guilty of an offence.

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

(4) An authorised person is to be issued with a certificate of authority under this section signed by the Chairperson of the Board.

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(5) In this section, "authorised person" means a member of the Police Board, or other person, authorised by the Chairperson of the Police Board for the purposes of this section.

*Police Service (Management) Amendment 1993*

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990—*continued*

**Annual report of the Board**

23. (1) As soon as practicable after 30 June (but on or before 31 December) in each year, the Police Board is required to prepare and forward to the Minister a report on its work and activities for the 12 months ending on 30 June in that year. 5

(2) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report. 10

**PART 4—THE COMMISSIONER OF POLICE**

**Appointment of Commissioner**

24. (1) The Commissioner of Police is to be appointed by the Governor on the recommendation of the Minister. 15

(2) It does not matter whether the person appointed is or is not already a member of the Police Service.

(3) Before a person is appointed:

(a) the Police Board is required to invite applications for appointment to the office from any persons wishing to apply; and 20

(b) the Minister is required to obtain and have regard to the recommendation of the Police Board in relation to the appointment; and

(c) the Minister is required to obtain and have regard to an official report (referred to in section 3 (3)) on the previous employment and conduct of any police officer proposed to be appointed or (if the person proposed to be appointed is not a police officer) to a similar report; and 25  
30

(d) the Minister is required to request and have regard to a report under this section by the Parliamentary Joint Committee known as the Committee on the Independent Commission Against Corruption of its examination of the integrity of the person proposed to be appointed. 35

(4) In deciding to make a recommendation in relation to an appointment under this section, the Police Board must, from among the applicants eligible for appointment, select the

*Police Service (Management) Amendment 1993*SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990—*continued*

applicant who has, in the opinion of the Police Board, the greatest merit.

5 (5) However, the Police Board is not required to invite applications for appointment if it decides to recommend the re-appointment of the person holding office as Commissioner.

10 (6) The Parliamentary Joint Committee has 14 days after it receives a request under subsection (3) (d) to report to the Minister and has a further 30 days (after the initial 14 days) to do so if it notifies the Minister within that 14 days that it requires more time to consider the matter. A request is to be in writing and may be withdrawn by the Minister at any time.

15 (7) Section 70 (Confidentiality) of the Independent Commission Against Corruption Act 1988 applies in respect of the exercise of the Parliamentary Joint Committee's functions relating to the appointment of a Commissioner in the same way as it applies in respect of the exercise of the Committee's functions relating to the appointment of the Commissioner for the Independent Commission Against Corruption.

**Acting Commissioner**

25 25. (1) The Minister may appoint a member of the Police Service recommended by the Police Board to act as Commissioner during the illness or absence of the Commissioner or during any vacancy in the office of Commissioner.

30 (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.

**Term appointment of Commissioner**

35 26. 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.

*Police Service (Management) Amendment 1993*

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990—*continued*

**Employment and remuneration of Commissioner**

27. (1) The employment of the Commissioner is to be governed by a contract of employment between the Commissioner and the Minister. 5

(2) Sections 41–47, 59 and 61 (relating to employment and remuneration of executive officers) apply to the Commissioner in the same way as they apply to an executive officer. However, in the application of those sections a reference to the Police Board is to be read as a reference to the Minister. 10

**Removal of Commissioner**

28. (1) The Governor may remove the Commissioner from office on the recommendation of the Minister made with the concurrence in writing of the Chairperson of the Police Board. 15

(2) The Governor, on the recommendation of the Minister made with the concurrence in writing of the Chairperson of the Police Board: 20

(a) may declare the person so removed from office as Commissioner to be an unattached officer in the service of the Crown; and

(b) may revoke any such declaration.

(3) While such a declaration remains in force, the person concerned is entitled to monetary remuneration and employment benefits as if the person had not been removed from office. 25

(4) If:

(a) the Commissioner is removed from office and such a declaration is not made; or 30

(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. 35

(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.

*Police Service (Management) Amendment 1993*

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990—*continued*

5 (6) A person removed from office as Commissioner (except for misbehaviour after due inquiry) is entitled to the same compensation under section 53 as an executive officer removed from office as referred to in that section.

(7) The Commissioner may be removed from office only under this section.

**Retirement of Commissioner**

10 29. (1) The Commissioner may retire on or after reaching 55 years of age.

(2) The Commissioner is not required to retire on reaching 65 years of age.

15 (3) Nothing in this section affects the provisions of an Act relating to any superannuation scheme of which the Commissioner is a member. However, the Commissioner may not be retired under any such Act without the Commissioner's consent.

**Vacation of office of Commissioner**

20 30. (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
- 25 (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:

- 30 (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
- 35 investigation for misbehaviour.

(3) The Commissioner is under official investigation for misbehaviour if the Minister so certifies with the concurrence in writing of the Chairperson of the Police Board.



*Police Service (Management) Amendment 1993*

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990—*continued*

**Delegation by Commissioner**

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

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(2) Schedule 1 (**Provisions relating to the members and procedure of the Police Board**):

(a) Clause 1, definition of “part-time member”:

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Omit “other than the Commissioner or the Chairperson”, insert instead “other than the Chairperson, Commissioner or Director-General of the Ministry for Police”.

(b) After the definition of “part-time member” in clause 1, insert:

15

“**voting member**” means a member other than the Commissioner or the Director-General of the Ministry for Police.

(c) At the end of clause 3, insert:

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

20

(d) From clause 4, omit “A part-time Chairperson”, insert instead “The Chairperson” and omit “the part-time Chairperson”, insert instead “the Chairperson”.

25

(e) Omit clause 5 (1) (f) and (i).

(f) From clause 5 (1) (h), omit “a part-time”, insert instead “the” and omit “part-time” where secondly and thirdly occurring.

30

(g) From clause 7 (2), omit “a part-time Chairperson” wherever occurring, insert instead “the Chairperson”.

(h) After clause 10, insert:

**Notice of meetings**

10A. All members are to be given notice of meetings of the Board by the Chairperson or by an officer of the Board authorised by the Chairperson.

35

*Police Service (Management) Amendment 1993*


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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990—*continued*

- (i) Omit clause 11, insert instead:

**Quorum**

5           11. A quorum for a meeting of the Board is a majority of the voting members of the Board for the time being.

- (j) Omit clause 12, insert instead:

**Presiding member**

10           12. (1) The Chairperson or, in the absence of the Chairperson, a part-time member elected to chair the meeting by the voting members present is to preside at a meeting of the Board.

15           (2) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

- (k) Clause 13:

After “votes cast”, insert “by voting members”.

- (l) Clause 14:

20           From clause 14 (1), omit “those members”, insert instead “such of those members as are voting members”.

- (3) Schedule 2 (**Police Service Senior Executive Positions**):

Omit “Inspector General”.

- (4) Schedule 4 (**Savings, transitional and other provisions**):

25           (a) At the end of clause 2 (1) of Part 1 (Savings and transitional regulations), insert:

the Police Service (Management) Amendment Act 1993.

- (b) Omit clause 14 (Application of s. 26).

- (c) At the end of the Schedule, insert:

30           **PART 6—PROVISIONS CONSEQUENT ON  
ENACTMENT OF POLICE SERVICE  
(MANAGEMENT) AMENDMENT ACT 1993**

**Definitions**

20. In this Part:

35           “**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.

*Police Service (Management) Amendment 1993*


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 SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
 1990—*continued*
**Police Board**

21. (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). 5

(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. 10

(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. 15

**Commissioner of Police** 20

22. (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. 25

(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. 30

(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. 35

(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). 40

*Police Service (Management) Amendment 1993*SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990—*continued***Inspector General**

5           23. (1) The person holding office as Inspector General in  
the Police Service 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  
10 the Ministry for Police) for the balance of the term of office  
as Inspector General in the Police Service.

(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  
15 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  
20 functions.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER  
ACTS

(Sec. 4 (1))

**Public Sector Management Act 1988 No. 33**

25           Schedule 3B (Senior Executive Positions):

At the beginning of the positions relating to the Ministry for  
Police, insert the following position:

Inspector General

**Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)**

30           (1) Section 24A (Definitions):

After "1988" in the definition of "chief executive office  
holder", insert "or the Commissioner of Police".

*Police Service (Management) Amendment 1993*

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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER  
ACTS—*continued*

(2) Schedule 1 (**Public offices**):

Omit “Commissioner of Police.”

(3) Schedule 3 (**Public offices**):

Omit from Part 2 “Chairperson of the Police Board.”

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PROCEEDINGS OF THE COMMITTEE

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NO 31

**Wednesday, 28 April, 1993  
at 5.00 p.m., Parliament House, Sydney**

MEMBERS PRESENT

The Honourable D. Gay, MLC (Chairman)

Legislative Assembly

The Honourable P. Anderson  
Mr J. Hatton  
Mr M. Kerr  
Mr D.L. Page  
Mr P. Whelan  
The Honourable M. Yabsley

Legislative Council

The Honourable J. Jobling  
The Honourable E. Kirkby

An apology was received from Mr Shaw.

The Chairman reported receipt of the following correspondence:

- (a) Letter from the Minister for Police (dated 19 April 1993) re provision of additional information to the Committee.  
(Noted)
- (b) Letter from the Minister for Police (dated 2 April 1993) re Committee's First Report.  
(Noted)
- (c) Letter from Minister for Police (undated) forwarding an additional submission to the Committee.  
(Noted/be acknowledged)
- (d) Letter from Mr J. Hatton, MP, forwarding material for information.  
(Circulate)

The Committee agreed that it would approach its reference in the first instance through an examination of the Government's legislative package and then decide whether other matters should be examined.

Committee Meetings/Witnesses

The Committee decided to request the undermentioned to brief the Committee.

Wednesday, 5 May, 1993

The Honourable T. Griffiths, Minister for Police  
Mr T. Keady, Director General, Ministry for Police

Afterwhich - deliberations.

The Committee agreed that the Chairman ascertain from the undermentioned whether they would be prepared to provide a written submission to the Committee and to give evidence if required.

Thursday, 6 May, 1993

Mr Peter Lamb, National Crime Authority  
Mr D. Landa, Ombudsman  
Mr J. Marsden, Police Board  
Mr B. Thorley, Police Board  
Mr I. Temby, Commissioner ICAC  
The Honourable E.P. Pickering, MLC  
Mr B. Swanton, Institute of Criminology

Afterwhich - deliberations.

Monday, 10 May, 1993

Carry over from previous hearing.

There being no further business the Committee adjourned at 5.45 p.m. until Wednesday, 5 May, 1993.

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NO 32

**Wednesday, 5 May, 1993  
at 10.00 a.m., Parliament House, Sydney**

MEMBERS PRESENT

The Honourable D. Gay, MLC (Chairman)

Legislative Assembly

The Honourable P. Anderson  
Mr J. Hatton  
Mr D.L. Page  
Mr P. Whelan  
The Honourable M. Yabsley

Legislative Council

The Honourable J. Jobling  
The Honourable E. Kirkby  
The Honourable J. Shaw

An apology was received from Mr Kerr.

The Committee held informal discussions with the Minister for Police, the Honourable T. Griffiths, MP; the Director General of the Ministry for Police, Mr T. Keady and the Minister's Chief of Staff, Operations and Policy, Mr B. Kelly.

The Committee agreed that the records of the present discussion and those planned for tomorrow would be treated as confidential by the members of the Committee.

There being no further business, the Committee adjourned at 1.30 p.m. until Thursday 6 May, 1993.

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NO 33

Thursday, 6 May, 1993  
at 10.00 a.m., Parliament House, Sydney

MEMBERS PRESENT

The Honourable D. Gay, MLC (Chairman)

Legislative Assembly

The Honourable P. Anderson  
Mr J. Hatton  
Mr M. Kerr  
Mr D.L. Page  
Mr P. Whelan  
The Honourable M. Yabsley

Legislative Council

The Honourable E. Kirkby  
The Honourable J. Shaw

An apology was received from Mr Jobling.

The Committee held informal discussions with the Honourable E.P. Pickering, MLC.

At 2.15 p.m. - the Committee deliberated.

Resolved, on motion of Mr Hatton, seconded by Mr Page: That the submission from Mr Pickering and the record of his briefing before the Committee be sent to the ICAC.

The Committee agreed that a deliberative meeting would be held on Monday 12 May 1993 to formulate a second report principally on the Police Service (Management) Amendment Bill and thereafter the Committee would make a third and final report.

The Committee held informal discussion with Mr Bruce Swanton, Criminologist, Australian Institute of Criminology.

The Committee then held informal discussions with the Ombudsman, Mr David Landa and the Assistant Ombudsman, Mr Kieran Pehm.

There being no further business, the Committee adjourned at 4.20 p.m. until Monday 10 May, 1993.

NO 34

Monday, 10 May, 1993  
at 10.00 a.m., Parliament House, Sydney

MEMBERS PRESENT

The Honourable D. Gay, MLC (Chairman)

Legislative Assembly

The Honourable P. Anderson  
Mr J. Hatton  
Mr M. Kerr  
Mr D.L. Page  
The Honourable M. Yabsley

Legislative Council

The Honourable J. Jobling  
The Honourable E. Kirkby  
The Honourable J. Shaw

An apology was received from Mr Whelan.

Resolved, on motion of Mr Kerr, seconded by Mr Yabsley, That Minutes Nos 31, 32 and 33 as circulated, be agreed to.

The Chairman brought up his draft Second Report.

The Committee considered the Report by paragraph.

Resolved, on motion of Mr Kerr, seconded by Mr Hatton, That

- (1) The draft Report, as amended, be adopted in principle by the Committee, subject to paragraph (3) below.
- (2) The Chairman be authorised to make any spelling and minor grammatical corrections to the Report as may be necessary prior to its tabling.
- (3) The Chairman be authorised to confer with the Parliamentary Counsel's Office, through the Minister for Police, in regard to the Committee's suggested amendments to the Bill and report back to the Committee.

There being no further business, the Committee adjourned at 3.10 p.m.,  
sine die.

\* \* \* \*

NO 35

Wednesday, 12 May, 1993  
at 3.45 p.m. Parliament House, Sydney

MEMBERS PRESENT

The Honourable D. Gay, MLC (Chairman)

Legislative Assembly

The Honourable P. Anderson  
Mr J. Hatton  
Mr M. Kerr

Legislative Council

The Honourable J. Jobling  
The Honourable E. Kirkby  
The Honourable J. Shaw

An apology was received from Mr Page, Mr Yabsley and Mr Whelan.

Resolved, on motion of Mr Kerr, seconded by Ms Kirkby, That Minutes No 34, be agreed to.

The Chairman reported receipt of the following correspondence from -

- (1) Commissioner Temby, Independent Commission Against Corruption, dated 3 May 1993
- (2) Mr P. Lamb, National Crime Authority, dated 3 May 1993
- (3) Mr B. Thorley, Police Board, dated 30 April 1993
- (4) The Honourable E.P. Pickering, MLC (submission) dated 29 April 1993
- (5) Mr B. Swanton, Institute of Criminology, dated 9 May 1993.

Resolved, on motion of Mr Kerr, seconded by Mr Anderson, That the correspondence and submission be noted.

Resolved, on motion of Mr Anderson, seconded by Mr Hatton, That the Chairman write to Mr Swanton to thank him for briefing the Committee and for the information contained in his letter of 9 May 1993.

The Committee considered the suggested amendments as prepared by Parliamentary Counsel.

Resolved, on motion of Mr Hatton, seconded by Ms Kirkby, That

- (1) The suggested amendments (with an addition to amendment No. 2) be adopted by the Committee and incorporated in the Draft Report.
- (2) The Draft Report be tabled in both Houses.

The Committee discussed the matters which could be considered for inclusion in its Third Report.

There being no further business, the Committee adjourned at 4.30 p.m.,  
sine die.