



New South Wales

Police Service Amendment (Complaints) Bill 2001

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Police Service Act 1990* (“the Principal Act”):

- (a) to provide that Category 2 complaints under that Act (complaints that are not required to be referred to the Police Integrity Commission) against police officers need only be notified to the Ombudsman in accordance with guidelines agreed between the Police Integrity Commission and the Ombudsman, and
- (b) to limit the circumstances in which members of the Police Service may disclose the identity of a person making a complaint about the conduct of a police officer, and
- (c) to include specific offences in relation to the making of false complaints and giving of false information in the course of investigations into complaints, and

- (d) to bring the provisions relating to the protection of police officers against reprisals for making protected allegations more into line with similar provisions in the *Protected Disclosures Act 1994*, and
- (e) to extend the time in which proceedings may be brought for an offence of taking detrimental action against a police officer in reprisal for the police officer making a protected allegation.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

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

Clause 3 is a formal provision giving effect to the amendments to the *Police Service Act 1990* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] substitutes the definition of *notifiable complaint* in Part 8A of the Principal Act. Notifiable complaints are complaints that must be referred to the Ombudsman. Currently, notifiable complaints are all Category 2 complaints made by the public and Category 2 complaints made by police officers that in accordance with certain guidelines are to be notified to the Ombudsman. Category 2 complaints are complaints that do not need to be referred to the Police Integrity Commission. The new definition will provide that those guidelines will determine which Category 2 complaints, whether made by a member of the public or a police officer, are to be notified to the Ombudsman.

Schedule 1 [3] makes it an offence for a person to make a false complaint about the conduct of a police officer or to provide false or misleading information in the course of the investigation of such a complaint to specified persons or bodies that may be involved in receiving complaints or in the complaints procedure.

Schedule 1 [4] provides that a member of the Police Service must not disclose the identity of a person who makes a complaint about the conduct of a police officer, except in certain authorised circumstances. Currently, section 145 (3) of the Principal Act limits such disclosures by police officers, but only while investigation of the complaint is being undertaken. **Schedule 1 [2]** makes a consequential amendment to remove section 145 (3).

Schedule 1 [5] provides that a defendant in proceedings for an offence of taking detrimental action against a police officer in reprisal for the police officer making a protected allegation has the onus of proving that the action was not taken in reprisal. The protected allegation must also be a protected disclosure under the *Protected Disclosures Act 1994*. The new provision mirrors section 20 (1A) of that Act.

Schedule 1 [6] extends the time within which proceedings for an offence referred to in the previous paragraph may be instituted from 6 months to 2 years.

Schedule 1 [7] and [8] contain savings and transitional provisions.



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New South Wales

Police Service Amendment (Complaints) Bill 2001

No , 2001

A Bill for

An Act to amend the *Police Service Act 1990* with respect to complaints; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Police Service Amendment (Complaints) Act 2001</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Police Service Act 1990 No 47	7
The <i>Police Service Act 1990</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments

1

(Section 3)

2

[1] Section 121 Definitions

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Omit the definition of *notifiable complaint*. Insert instead:

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

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[2] Section 145 Conduct of investigation

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Omit section 145 (3).

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[3] Section 167A

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Insert before section 168:

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

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

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

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

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- (a) the Minister,

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- (b) a member of the Police Service,

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- (c) the Police Integrity Commission,

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- (d) the Inspector of the Police Integrity Commission,

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- (e) the Independent Commission Against Corruption,

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- (f) the New South Wales Crime Commission,

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- (g) the Ombudsman,

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(h)	a member of Parliament,	1
(i)	a prison officer within the meaning of section 127 (8).	2
	Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.	3
		4
(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.	5
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		7
[4]	Section 169A	8
	Insert after section 169:	9
169A	Identity of complainant not to be disclosed	10
	A member of the Police Service must not disclose to any person the identity of a complainant unless the disclosure is made:	11
		12
		13
(a)	in accordance with guidelines established by the Commissioner, or	14
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(b)	with the consent of the complainant, or	16
(c)	in accordance with a requirement of or made under this or any other Act, or	17
		18
(d)	for the purposes of any legal proceedings before a court or tribunal.	19
		20
[5]	Section 206 Protection against reprisals	21
	Insert after section 206 (2):	22
(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.	23
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		25
		26
(2B)	Subsection (2A) applies only in relation to a protected allegation that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 1994</i> .	27
		28
		29

[6] Section 206 (4A)	1
Insert after section 206 (4):	2
(4A) Proceedings for an offence against this section may be	3
instituted at any time within 2 years after the offence is alleged	4
to have been committed.	5
[7] Schedule 4 Savings, transitional and other provisions	6
Insert at the end of clause 2 (1):	7
<i>Police Service Amendment (Complaints) Act 2001</i>	8
[8] Schedule 4, Part 16	9
Insert after Part 15:	10
Part 16 Provisions consequent on enactment of	11
Police Service Amendment (Complaints)	12
Act 2001	13
53 Commissioner's guidelines	14
The guidelines in force under section 145 (3) immediately	15
before its repeal by the <i>Police Service Amendment</i>	16
(<i>Complaints</i>) <i>Act 2001</i> are taken to be guidelines for the	17
purposes of section 169A but may be amended or revoked by	18
the Commissioner.	19
54 Detrimental action against reprisals	20
(1) The provisions of section 206 (2A) and (2B) extend to	21
proceedings for an offence against section 206 committed	22
before the commencement of those provisions, but only if the	23
hearing in respect of the offence has not commenced.	24

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Schedule 1 Amendments

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|--|---|
| (2) Section 206 (4A) extends to proceedings for an offence against | 1 |
| section 206 committed less than 6 months before the | 2 |
| commencement of that subsection. | 3 |