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New South Wales

Protected Disclosures Amendment (Police) Bill 1998

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 *Protected Disclosures Act 1994* so as:

- (a) to make it clear that a member of the Police Service is a public official for the purposes of that Act and that disclosures of corrupt conduct, maladministration and waste made by such a member in accordance with the Act are protected by the Act, and
- (b) to provide that in proceedings for an offence under section 20 of the Act the onus lies with the defence to prove that any detrimental action shown to be taken against a person who made a protected disclosure was not substantially in reprisal for the person having made the disclosure.

The Bill also amends section 206 of the *Police Service Act 1990* to clarify the relationship of that provision to the *Protected Disclosures Act 1994*.

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 *Protected Disclosures Act 1994* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendment to the *Police Service Act 1990* set out in Schedule 2.

Schedule 1 Amendment of Protected Disclosures Act 1994

The *Protected Disclosures Act 1994* protects disclosures of corrupt conduct, maladministration and serious and substantial waste of public officials and public authorities that are made by public officials in accordance with the Act.

A disclosure made by a public official is only protected by the Act if it is made voluntarily. In general, a disclosure is not voluntary if it is made in the exercise of a duty imposed on a public official under an Act.

Amendments relating to members of Police Service

Schedule 1 (other than Schedule 1 [3]) amends the Act to achieve the object described in paragraph (a) of the overview.

Schedule 1 [1] amends the definition of *public official* to put it beyond doubt that a member of the Police Service is a public official for the purposes of the Act.

This will ensure that a member of the Police Service may make disclosures in accordance with the Act concerning such conduct to investigating authorities (the Auditor-General, the Independent Commission Against Corruption, the Ombudsman, the Police Integrity Commission or the Inspector of the Police Integrity Commission), the principal officers of public authorities or investigating authorities or officers who constitute public authorities, other officers of the Police Service in accordance with established internal reporting procedures, members of Parliament and journalists and will be protected by sections 20 and 21 of the Act. A disclosure by such a member will, because of section 8 (3) of the Act, be protected when a person is no longer a member of the Police Service.

Schedule 1 [2] amends section 9 of the Act to ensure that a member of the Police Service will be treated as making a voluntary disclosure about conduct even if the member has already disclosed the conduct under a duty imposed under the *Police Service Act 1990* or any other Act.

Schedule 1 [4] and **[5]** provide for the making of savings and transitional regulations and ensure that the amendments will apply to protect disclosures about conduct or activities engaged in, or matters arising before, the commencement of the proposed Act.

Amendments relating to onus of proof

Schedule 1 [3] amends section 20 to achieve the object described in paragraph (b) of the overview.

Schedule 2 Amendment of Police Service Act 1990

Schedule 2 amends section 206 of the *Police Service Act 1990* to clarify the relationship of that section and the *Protected Disclosures Act 1994*.

Section 206 of the *Police Service Act 1990* protects a police officer from the taking of reprisal action where the police officer makes an allegation of misconduct or criminal activity in the course of his or her duty or in accordance with the complaint procedures set out in that Act.

Schedule 2 amends the section to make it clear that the making of such an allegation does not prevent the police officer from making a separate disclosure about the conduct or activity under the *Protected Disclosures Act 1994*.

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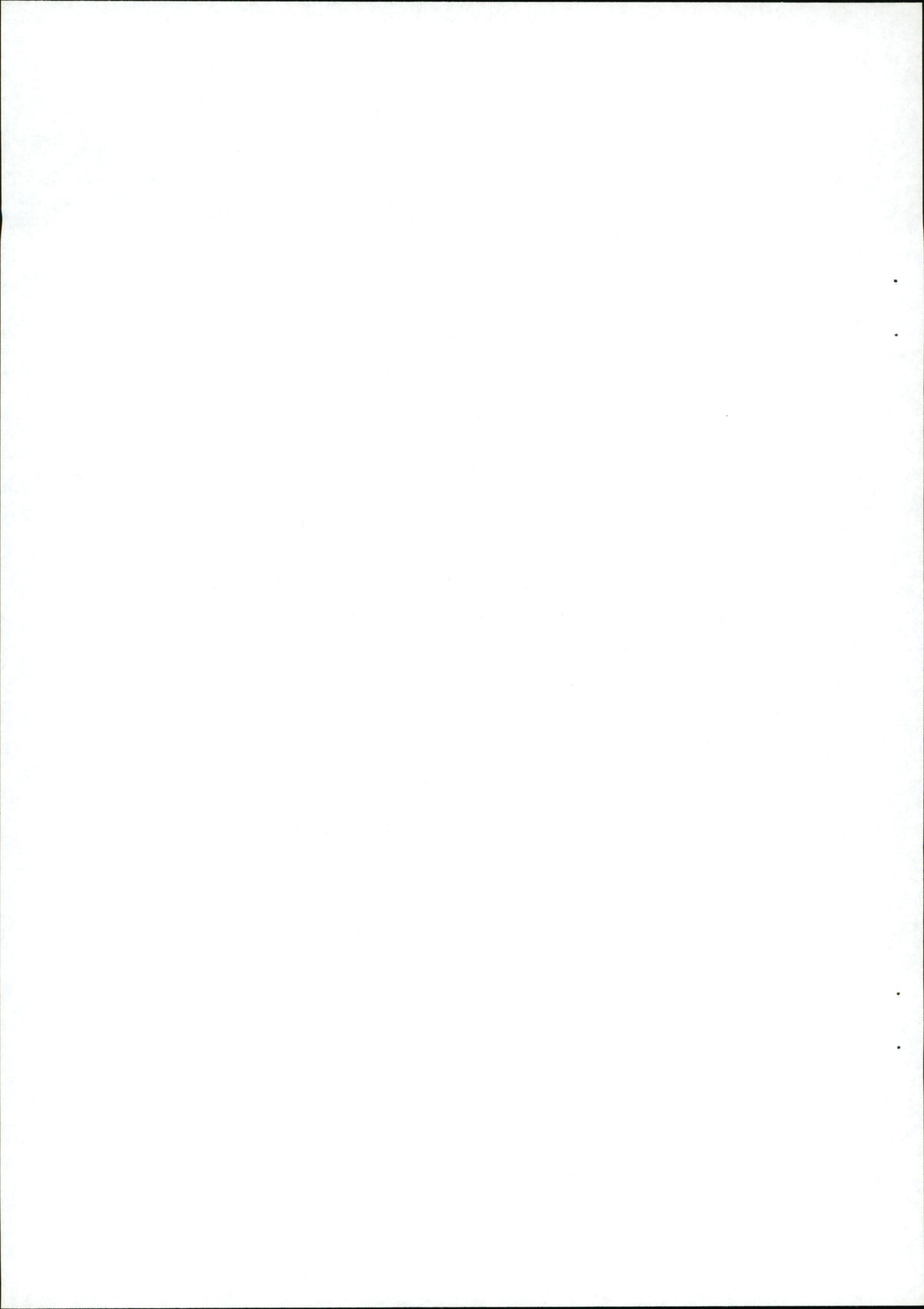
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New South Wales

Protected Disclosures Amendment (Police) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Protected Disclosures Act 1994* with respect to disclosure by members of the Police Service of corrupt conduct, maladministration and waste; to make a related amendment to the *Police Service Act 1990*; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Protected Disclosures Amendment (Police) Act 1998*.

2 Commencement

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

3 Amendment of Protected Disclosures Act 1994 No 92

The *Protected Disclosures Act 1994* is amended as set out in Schedule 1.

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4 Amendment of Police Service Act 1990 No 47

The *Police Service Act 1990* is amended as set out in Schedule 2.

**Schedule 1 Amendment of Protected Disclosures
Act 1994**

(Section 3)

[1] Section 4 Definitions

Insert “a member of the Police Service,” after “includes” in the definition of *public official*. 5

[2] Section 9 Disclosures must be made voluntarily

Insert after section 9 (3):

- (4) A disclosure made by a member of the Police Service is made voluntarily for the purposes of this section even if it relates to the same conduct as an allegation that the member of the Police Service has made in performance of a duty imposed on the member by or under the *Police Service Act 1990* or any other Act. 10

[3] Section 20 Protection against reprisals

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Insert after section 20 (1):

- (1A) In any proceedings for an offence against this section, it lies on the defendant to prove that detrimental action shown to be taken against a person was not substantially in reprisal for the person making a protected disclosure. 20

[4] Section 33

Insert after section 32:

33 Savings, transitional and other provisions

Schedule 2 has effect.

[5] Schedule 2 Savings, transitional and other provisions

Insert after Schedule 1:

Schedule 2 Savings, transitional and other provisions

(Section 33) 5

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 10

Protected Disclosures Amendment (Police) Act 1998

- (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: 15

- (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 20

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 25

Part 2 Savings and transitional provisions

2 Disclosures made by police officers

A disclosure made by a police officer is protected by this Act even if it is made about conduct or activities engaged in, or about matters arising, before the commencement of the *Protected Disclosures Amendment (Police) Act 1998*. 30

3 Protection against reprisals

Section 20 (1A) does not apply in relation to a proceeding the hearing of which began before the commencement of that subsection.

**Schedule 2 Amendment of Police Service Act
1990**

(Section 4)

Section 206 Protection against reprisals

Insert "In particular, nothing in this section prevents a police officer who makes a protected allegation from making a disclosure relating to the same conduct or activities under that Act" after "1994." in section 206 (4).

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