



New South Wales

## **Police Service Amendment (Complaints and Management Reform) 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 *Police Service Act 1990*:

- (a) to replace the existing scheme for handling complaints against police officers with a new simplified scheme, and
- (b) to replace the existing scheme for taking disciplinary action against police officers with a new scheme for dealing with police officers' misconduct and unsatisfactory performance, and
- (c) to provide for the review by the Industrial Relations Commission of certain orders made in connection with the new scheme referred to in paragraph (b), and
- (d) as a consequence of the new scheme referred to in paragraph (b), to abolish the Police Tribunal.

The Bill also makes consequential amendments to the *Ombudsman Act 1974* and the *Police Integrity Commission Act 1996*.

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## Outline of provisions

**Clause 1** specifies the name (also called the short title) of the proposed Act.

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

**Clause 3** is a formal provision giving effect to Schedule 1 (which amends the *Police Service Act 1990*).

**Clause 4** is a formal provision giving effect to Schedule 2 (which amends the *Ombudsman Act 1974* and the *Police Integrity Commission Act 1996*).

## **Schedule 1      Amendment of Police Service Act 1990**

**Schedule 1 [1]** and **[2]** amend sections 3 and 44 as a consequence of the proposed abolition of the Police Tribunal.

**Schedule 1 [3]** repeals Part 8A and replaces it with a new Part 8A. The new Part 8A deals with complaints about the conduct of police officers.

Division 1 (Preliminary) defines certain words for the purposes of the proposed Part, restricts the application of the Part to certain kinds of conduct, extends the application of the Part to former police officers, provides for the application of the Part to anonymous complaints and subordinates the Part to the *Police Integrity Commission Act 1996* (proposed sections 121–125).

Division 2 (Procedure for making complaints) confers on all persons the right to make complaints about police officers and provides for the manner in which complaints are to be made (proposed sections 126 and 127). Complaints may be made to the Commissioner of Police, the Police Integrity Commission or the Ombudsman, and may be made either directly or indirectly through a Local Court, the Minister administering the Act, the Independent Commission Against Corruption or the New South Wales Crime Commission. A complaint may be made on the complainant's behalf by a member of Parliament.

Division 3 (Complaints information system) provides for the establishment of a complaints information system, requires complaints to be registered in that system and regulates how access to information in that system is to be given to the Police Integrity Commission, the Ombudsman and other persons (proposed sections 128 and 129).



Division 4 (Reference of complaints between authorities) provides for the notification and reference to the Commissioner of Police, the Police Integrity Commission and the Ombudsman of complaints received by them and by Local Courts, the Independent Commission Against Corruption and the New South Wales Crime Commission, deals with complaints referred by the Minister administering the Act and complaints made by members of Parliament, prevents the need for multiple handling of the same complaint and prohibits the handling of a complaint from being called into question because of a failure to comply with the requirements of the proposed Division (proposed sections 130–138).

Division 5 (Investigation by Commissioner) provides for the circumstances in which a complaint should or should not be investigated by the Commissioner of Police and the matters to which the Commissioner and the Ombudsman are to have regard in deciding whether a complaint should or should not be investigated, empowers the Ombudsman to request further information from a complainant and other persons in order to determine whether a complaint should or should not be investigated, provides for the manner in which a complaint is to be investigated, for the monitoring of investigations by the Ombudsman, for reports on an investigation to be given to the complainant and for the institution of prosecutions as a consequence of evidence arising from an investigation and preserves the power of police to carry out investigations otherwise than under the proposed Division (proposed sections 139–149).

Division 6 (Procedures following investigation by Commissioner) provides for the information to be given to the complainant and the Ombudsman after an investigation has been concluded, empowers the Ombudsman to require the Commissioner of Police to provide the Ombudsman with certain information concerning the investigation of a complaint and the timeliness of the investigation and to request further investigation of a complaint or the review of action taken as a result of an investigation and provides for the preparation of reports by the Ombudsman on the Commissioner's response to requests under the proposed Division (proposed sections 150–155).

Division 7 (Investigation by Ombudsman) empowers the Ombudsman to make a complaint the subject of an investigation under the *Ombudsman Act 1974*, requires the Ombudsman to prepare a report on any such investigation, empowers the Commissioner of Police to notify the Ombudsman of the action taken as a result of any such report and empowers the Ombudsman to carry out an investigation under the *Ombudsman Act 1974* of conduct that could be, but has not been, the subject of a complaint under the proposed Part (proposed sections 156–159).

Division 8 (Additional provisions concerning Ombudsman) requires the Ombudsman to carry out periodic inspections of police records to ascertain compliance with the proposed Part and to prepare pamphlets for public distribution as to the rights and duties of police officers and the public under the Part, provides for consultation between the Ombudsman and the Minister administering the Act in connection with complaints, prohibits the publication by the Ombudsman of certain police information, provides for the way in which section 34 of the *Ombudsman Act 1974* (dealing with disclosure of information) is to be construed in its application to information received by the Ombudsman under the Part, prevents the Ombudsman and any officer of the Ombudsman from being called as a witness in any legal proceedings to give evidence or produce documents arising from the operation of the Part, restricts the Ombudsman's powers of delegation with respect to certain functions under the Part and provides for the exercise by officers of the Ombudsman of the Ombudsman's functions under the Part (proposed sections 160–167).

Division 9 (Miscellaneous) enables the Police Integrity Commission to take over the investigation of a complaint that would normally be investigated by the Commissioner of Police, prescribes certain matters relating to reports furnished to Parliament, deals with the admissibility in evidence of certain documents brought into existence for the purposes of the proposed Part, preserves the powers and duties of police officers with respect to the action to be taken as a result of a complaint and provides for the use of Federal and interstate police to assist in the conduct of investigations under the Part (proposed sections 168–172).

**Schedule 1 [4]** substitutes the heading to Part 9 as a consequence of the amendments to be made to that Part by Schedule 1 [5], [6] and [7].

**Schedule 1 [5]** repeals Divisions 1 and 1A of Part 9 and replaces them with new Divisions 1 and 1A.

Division 1 (Misconduct and unsatisfactory performance) empowers the Commissioner of Police to order that certain kinds of action be taken with respect to a police officer who engages in misconduct or whose performance is unsatisfactory (proposed section 173). The more serious action (referred to as reviewable action) can only be taken following a “show cause” process. Reviewable action is reviewable only in accordance with Division 1A or by the Supreme Court in the exercise of its jurisdiction to review administrative action. Non-reviewable action (which comprises action referred to in proposed Schedule 1) is reviewable only by the Supreme Court in the exercise of its jurisdiction to review administrative action.



Division 1A (Review of Commissioner's order under Division 1) empowers a police officer to apply to the Industrial Relations Commission for a review of an order for reviewable action, provides for the conduct of proceedings on such a review, requires the Industrial Relations Commission to settle a claim by conciliation, provides for the determination of a claim in the event that conciliation is not achieved, provides that proceedings under the proposed Division are to be informal, modifies the application of Part 5 of Chapter 4 of the *Industrial Relations Act 1996* to proceedings under the Division, deals with certain evidentiary matters and provides for the application of the Division to proceedings before the Full Bench of the Industrial Commission on appeal from decisions of the Commission under the Division (proposed sections 174–181).

**Schedule 1 [6]** amends section 181K so as to restrict the operation of that section (which deals with the constitution of the Industrial Relations Commission for the purposes of Part 9) to reviews conducted under Division 1C. That section will consequently not apply to reviews conducted under proposed Division 1A.

**Schedule 1 [7]** repeals Division 2 of Part 9, so abolishing the right of police officers to appeal to the Government and Related Employees Appeal Tribunal against disciplinary action, and replaces that Division with what is currently Division 1A of Part 9 (to be repealed by Schedule 1 [5]).

**Schedule 1 [8]** repeals Part 9A (which establishes the Police Tribunal of New South Wales).

**Schedule 1 [9]** augments the Governor's power to make regulations. The amendment is consequential on proposed Division 1 of Part 9.

**Schedule 1 [10]** inserts a new Schedule 1 containing a list of those kinds of actions that are to be "non-reviewable action" for the purposes of proposed section 173.

**Schedule 1 [11]** amends Schedule 4 (Savings, transitional and other provisions) so as to enable the regulations to make provisions of a saving or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [12]** amends Schedule 4 so as to include further provisions of a saving or transitional nature consequent on the enactment of the proposed Act.

**Schedule 2      Amendment of other Acts**

**Schedule 2.1** amends sections 34 and 35 of the *Ombudsman Act 1974* as a consequence of the proposed abolition of the Police Tribunal.

**Schedule 2.2** amends the *Police Integrity Commission Act 1996* as a consequence of the proposed substitution of Part 8A of the *Police Service Act 1990*.



First print



New South Wales

# **Police Service Amendment (Complaints and Management Reform) Bill 1998**

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New South Wales

## **Police Service Amendment (Complaints and Management Reform) Bill 1998**

No , 1998

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### **A Bill for**

An Act to amend the *Police Service Act 1990* so as to make provision with respect to the handling of complaints about police officers and the management of police officers' misconduct and unsatisfactory performance and so as to abolish the Police Tribunal; to make consequential amendments to certain other Acts; and for other purposes.

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

**1 Name of Act**

This Act is the *Police Service Amendment (Complaints and Management Reform) Act 1998*.

**2 Commencement**

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

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

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

**4 Amendment of other Acts**

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Each Act specified in Schedule 2 is amended as set out in that Schedule.



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## Schedule 1    Amendment of Police Service Act 1990

(Section 3)

[1]    **Section 3 Definitions**

Omit the definition of *Police Tribunal* from section 3 (1). 5

[2]    **Section 44 Industrial arbitration and legal proceedings excluded**

Omit "to the Police Tribunal or" from section 44 (6).

[3]    **Part 8A**

Omit the Part. Insert instead:

**Part 8A            Complaints about conduct of police officers** 10

**Division 1        Preliminary**

**121 Definitions**

In this Part:

*Category 1 complaint* has the same meaning as it has in  
the *Police Integrity Commission Act 1996*. 15

**Note.** The definition of *Category 1 complaint* in the *Police  
Integrity Commission Act 1996* is as follows:

*Category 1 complaint* means a police complaint:

- (a) that is of a class or kind that the Commissioner for the  
Police Integrity Commission and the Ombudsman have  
agreed should be referred to the Commission, or 20
- (b) that the Commissioner for the Police Integrity Commission  
has requested should be referred to the Commission, or
- (c) that is of a class or kind prescribed by the regulations.

*Category 2 complaint* means a complaint that is not a  
Category 1 complaint. 25

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

***conduct*** of a police officer means any action or inaction (or alleged action or inaction) of a police officer: 5

- (a) whether or not it also involves non-police participants, and
- (b) whether or not it occurs while the police officer is officially on duty, and
- (c) whether or not it occurs outside the State or outside Australia. 10

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

***notifiable complaint*** means:

- (a) any Category 2 complaint made otherwise than by a member of the Police Service acting in his or her capacity as a member of the Police Service, or 15
- (b) any Category 2 complaint made by a member of the Police Service acting in his or her capacity as a member of the Police Service, being a 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. 20 25

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

## **122 Application of Part to certain complaints**

- (1) This Part applies to and in respect of a complaint that alleges or indicates one or more of the following: 30
  - (a) conduct of a police officer that constitutes an offence,



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- (b) conduct of a police officer that constitutes corrupt conduct (including, but not limited to, corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988*),
  - (c) conduct of a police officer that constitutes unlawful conduct (not being an offence or corrupt conduct), 5
  - (d) conduct of a police officer that, although not unlawful:
    - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or 10
    - (ii) arises, wholly or in part, from improper motives, or
    - (iii) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or 15
    - (iv) arises, wholly or in part, from a mistake of law or fact, or
    - (v) is conduct of a kind for which reasons should have (but have not) been given, 20
  - (e) conduct of a police officer that is engaged in in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect. 25
- (2) This Part does not apply to or in respect of a complaint of a kind that (in accordance with guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner) need not be dealt with in accordance with this Part. 30

### 123 Application of Part to former police officers

This Part applies to and in respect of a former police officer (in relation only to conduct occurring while he or she was a police officer) in the same way as it applies to

and in respect of a police officer, so that a complaint concerning a former police officer may be made and dealt with as if the former police officer were still a police officer.

**124 Application of Part to anonymous complainants** 5

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

**125 Relationship with Police Integrity Commission Act 1996**

This Part is subject to the *Police Integrity Commission Act 1996*. 10

**Note.** Section 70 (8) of the *Police Integrity Commission Act 1996* provides as follows:

- (8) A Category 1 complaint, to the extent that it is taken over by the Commission, cannot be dealt with as a complaint under Part 8A of the *Police Service Act 1990* and for that purpose is taken not to be a police complaint, except as directed by the Commission either generally or in any particular case or as directed by the regulations. 15

**Division 2      Procedure for making complaints** 20

**126 Right to make complaint**

- (1) Any person may make a complaint about the conduct of a police officer.
- (2) This Part does not affect any other right of a person to complain about the conduct of a police officer. 25

**127 Making of complaints**

- (1) **How made**  
A complaint must be made in writing to an investigating authority.
- (2) It is made to the Commissioner if: 30
- (a) it is delivered to a police officer personally, or

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- (b) it is received by a member of the Police Service by post, facsimile or electronic mail, or
- (c) it is addressed to the Commissioner and lodged at a Local Court, or
- (d) it is referred to the Commissioner by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission. 5
- (3) It is made to the Police Integrity Commission if:
- (a) it is lodged or received at the office of the Commission, or 10
- (b) it is received at the office of the Commission by post, facsimile or electronic mail, or
- (c) it is addressed to the Commission and lodged at a Local Court, or 15
- (d) it is referred to the Commission by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission.
- (4) It is made to the Ombudsman if: 20
- (a) it is lodged or received at the office of the Ombudsman, or
- (b) it is received at the office of the Ombudsman by post, facsimile or electronic mail, or
- (c) it is addressed to the Ombudsman and lodged at a Local Court, or 25
- (d) it is referred to the Ombudsman by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission. 30
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- (1) The regulations may make provision for or with respect to a system for recording information concerning complaints and, in particular, for or with respect to:



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| (a)                                   | the establishment, control, operation and maintenance of the system, and   |    |
| (b)                                   | the registration of complaints in the system, and  |    |
| (c)                                   | the nature of the information about complaints that is to be registered in the system, and   | 5  |
| (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   | 10 |
| (g)                                   | security arrangements for the system, and  |    |
| (h)                                   | mechanisms for identifying, preventing and detecting abuse, misuse or corrupt use of the system or information in the system.  |    |
| (2)                                   | Protocols and memoranda of understanding may be entered into by the PIC Commissioner, by the Ombudsman and by the Commissioner regarding any matter for or with respect to which regulations may be made under this section. | 15 |
| (3)                                   | Any such protocol or memorandum is subject to the provisions of the regulations.   | 20 |
| (4)                                   | A regulation made for the purposes of this section may create an offence punishable by a penalty not exceeding 50 penalty units.   |    |
| <b>129 Registration of complaints</b> |  | 25 |
| (1)                                   | Information about all complaints received by members of the Police Service, by the Police Integrity Commission or by the Ombudsman must be registered in the complaints information system.                                  |    |
| (2)                                   | Despite subsection (1), the Police Integrity Commission may direct that information about a Category 1 complaint (or a specified class of Category 1 complaints):  | 30 |
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- (a) is not to be entered in the complaints information system, or
  - (b) is to be removed from the complaints information system, or
  - (c) is to be entered or re-entered in the complaints information system. 5
- (3) The PIC Commissioner, and such officers of the Police Integrity Commission as are authorised in that regard by the PIC Commissioner, are to have unrestricted access to all information in the complaints information system. 10
- (4) The PIC Commissioner may place a caveat on particular information registered in the complaints information system and, in that event, access to that information by other agencies and other persons is to be restricted in accordance with the terms of the caveat. 15
- (5) The Ombudsman, and such officers of the Ombudsman as are authorised in that regard by the Ombudsman, are to have unrestricted access to all information in the complaints information system, subject to the terms of any caveat under this section. 20
- (6) The Ombudsman may place a caveat on particular information registered in the complaints information system and, in that event, access to that information by other agencies and other persons, other than:
  - (a) the PIC Commissioner, and 25
  - (b) such officers of the Police Integrity Commission as are authorised in that regard by the PIC Commissioner,is to be restricted in accordance with the terms of the caveat. 30

**Division 4      Reference of complaints between authorities**

**130 Complaints received by Commissioner**

- (1) As soon as practicable after receiving a complaint, a police officer or other member of the Police Service must forward the complaint to the Commissioner. 35

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- (2) As soon as practicable after receiving a complaint, whether directly or as a result of it being forwarded as referred to in subsection (1), the Commissioner:
- (a) in the case of a Category 1 complaint or a notifiable complaint, must cause a copy of the complaint to be sent to the Ombudsman, and 5
  - (b) in the case of a Category 1 complaint, must refer the complaint to the Police Integrity Commission.

**131 Complaints received by Police Integrity Commission**

- (1) As soon as practicable after receiving a Category 2 complaint, the Police Integrity Commission: 10
- (a) in the case of a notifiable complaint, must cause a copy of the complaint to be sent to the Ombudsman, and
  - (b) in any case, must refer the complaint to the Commissioner. 15
- (2) If of the opinion that there are reasonable grounds for not referring a Category 2 complaint to the Commissioner, the Police Integrity Commission may instead forward a summary or appropriate details of the complaint. 20

**132 Complaints received by Ombudsman**

- (1) As soon as practicable after receiving a complaint, the Ombudsman must refer the complaint:
- (a) in the case of a Category 1 complaint, to the Police Integrity Commission, or 25
  - (b) in the case of a Category 2 complaint, to the Commissioner.
- (2) If of the opinion that there are reasonable grounds for not referring a Category 2 complaint to the Commissioner, the Ombudsman may instead forward a summary or appropriate details of the complaint. 30

**133 Complaints lodged at Local Courts**

- (1) As soon as practicable after a complaint is lodged at a Local Court, the Clerk of the Court:



- (a) must give the Ombudsman, by telephone, facsimile or electronic mail, brief details of the complaint, and
  - (b) must forward the complaint to the Ombudsman, unless otherwise directed by the Ombudsman. 5
- (2) If directed to do so by the Ombudsman, the Clerk of the Court:
  - (a) must forward the complaint to the Commissioner, and
  - (b) must obtain a receipt for the complaint from the Commissioner, and 10
  - (c) must retain such records of the complaint as the Ombudsman directs, and
  - (d) must send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk. 15
- (3) If directed to do so by the Ombudsman, the Clerk of the Court:
  - (a) must forward the complaint to the Police Integrity Commission, and 20
  - (b) must obtain a receipt for the complaint from the Commission, and
  - (c) must retain such records of the complaint as the Ombudsman directs, and
  - (d) must send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk. 25
- (4) The Ombudsman may give a direction to the Clerk of the Court under subsection (3) only if the complaint appears to the Ombudsman to be likely to be a Category 1 complaint. 30
- (5) The Clerk of a Local Court is taken to be an officer of the Ombudsman in connection with any action of the Clerk under this section.



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

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

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**135 Complaints referred by Minister**

- (1) The Minister does not become the complainant merely because the Minister refers a complaint made by some other person (a *client*) to an investigating authority, except for the purposes of the provisions of this Act that require the complainant to be informed or notified of any matter or given or sent any matter. 10
- (2) If the Minister publishes to a client any matter with respect to the client's complaint that the investigating authority publishes to the Minister, the publication of that matter to the client by the Minister has the same effect, for all purposes, as a publication of that matter to the client by the investigating authority. 15

**136 Complaints made by member of Parliament**

- (1) A member of Parliament does not become the complainant merely because the member of Parliament makes a complaint to an investigating authority on behalf of some other person (a *client*), except for the purposes of the provisions of this Act that require the complainant to be informed or notified of any matter or given or sent any matter. 20 25
- (2) If a member of Parliament publishes to a client any matter with respect to the client's complaint that the investigating authority publishes to the member of Parliament, the publication of that matter to the client by the member of Parliament has the same effect, for all purposes, as a publication of that matter to the client by the investigating authority. 30

**137 Multiple handling of complaints**

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

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

(1) Action taken with respect to a complaint is not to be called into question in any legal proceedings merely because of any failure to comply with the requirements of this Division with respect to the referral of the complaint to an investigating authority or the notification of the complaint to the Ombudsman.

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(2) In particular:

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

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

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**Division 5      Investigation by Commissioner**

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

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

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- (2) The Commissioner may decide that the complaint should be, or does not need to be, investigated.
- (3) If the Commissioner decides that the complaint should be investigated, the Commissioner:
- (a) must notify the Ombudsman and the complainant of the decision, and 5
- (b) must cause the complaint to be investigated.
- (4) If the Commissioner decides that the complaint does not need to be investigated, the Commissioner:
- (a) must notify the Ombudsman and the complainant of the decision, and 10
- (b) may, if of the opinion that it is appropriate to do so, notify the police officer whose conduct is the subject of the complaint of the decision.
- (5) If the Ombudsman disagrees with the Commissioner's decision that the complaint does not need to be investigated: 15
- (a) the Ombudsman must notify the Commissioner and the complainant of that fact, and
- (b) the Commissioner must cause the complaint to be investigated. 20

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

- (1) This section applies to and in respect of complaints received by the Ombudsman, including complaints referred to the Ombudsman by some other person or body, but does not apply to or in respect of complaints that (in accordance with guidelines agreed between the Police Integrity Commission and the Ombudsman after consultation with the Commissioner) do not need to be investigated. 25
- (2) The Ombudsman may decide that the complaint should be, or does not need to be, investigated. 30



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- (3) If the Ombudsman decides that the complaint should be investigated:
    - (a) the Ombudsman must notify the Commissioner and the complainant of the decision, and
    - (b) the Commissioner must cause the complaint to be investigated. 5
  - (4) If the Ombudsman decides that the complaint does not need to be investigated:
    - (a) the Ombudsman:
      - (i) must notify the complainant of the decision and of the Ombudsman's reasons for the decision, and 10
      - (ii) must send to the Commissioner a copy of the notification, and
    - (b) the Commissioner may, if of the opinion that it is appropriate to do so, notify the police officer whose conduct is the subject of the complaint of the decision. 15
  - 141 Factors affecting decision as to investigation of complaint 20**
    - (1) In deciding whether a complaint should be, or does not need to be, investigated, the Commissioner or Ombudsman may have regard to such matters as he or she thinks fit, including whether, in his or her opinion:
      - (a) action has been, is being or will be taken to remedy the subject-matter of the complaint without the need for an investigation, or 25
      - (b) the complaint is frivolous, vexatious or not made in good faith, or
      - (c) the subject-matter of the complaint is trivial, or 30
      - (d) the conduct complained of occurred too long ago to justify investigation, or
      - (e) there is or was available to the complainant an alternative and satisfactory means of redress in relation to the conduct complained of, or 35



- (f) the complainant does not or could not have an interest, or a sufficient interest, in the conduct complained of.

- (2) The Ombudsman is not to direct that a complaint be investigated if of the opinion that the conduct the subject of the complaint is unconnected with the fact that the person concerned is a police officer. 5

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

- (1) For the purpose of determining whether a complaint should be investigated, the Ombudsman may do any one or more of the following: 10
  - (a) request the complainant to attend before the Ombudsman for the purpose of providing further information concerning the complaint, 15
  - (b) request the complainant to provide further written particulars concerning the complaint,
  - (c) request the complainant to verify by statutory declaration his or her complaint, or any particulars given by the complainant concerning his or her complaint. 20
- (2) The Ombudsman may withdraw the request if the complainant objects and the Ombudsman is satisfied that the grounds of the objection are well-founded.
- (3) If the Ombudsman makes a request (and it is not withdrawn), the Ombudsman is to take no further action in connection with the complaint concerned until the request is complied with or until a reasonable time for compliance with the request has elapsed. 25
- (4) If the request is not complied with within a reasonable time, the Ombudsman may treat the complaint concerned as having been dealt with in a manner acceptable to the complainant. 30
- (5) If the Ombudsman does so, the Ombudsman is to inform the Commissioner and the complainant accordingly. 35

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

- (1) For the purpose of determining whether a complaint should be investigated, the Ombudsman may request information from persons other than the complainant. 5
- (2) This section does not authorise the Ombudsman:
  - (a) to investigate the complaint or to collect information for the purposes of the investigation of the complaint or of a report under this Part, or
  - (b) to interview the police officer the subject of the complaint, or 10
  - (c) to require persons to provide information.

**144 Investigation of complaints**

Complaints that under this Division the Commissioner is authorised or required to investigate are to be investigated in accordance with this Division. 15

**145 Conduct of investigation**

- (1) The police officer or police officers carrying out an investigation:
  - (a) must carry out the investigation in a manner that, having regard to the circumstances of the case, is both effective and timely, and 20
  - (b) in carrying out the investigation, must have regard to any matters specified by the Commissioner or Ombudsman as needing to be examined or taken into consideration. 25
- (2) If the complaint under investigation is indicative of a systemic problem involving the Police Service generally, or a particular area of the Police Service, the investigation may extend beyond any police officer to whom the complaint relates: 30
  - (a) to the Police Service generally, or that particular area of the Police Service, and
  - (b) to other police officers and other members of the Police Service. 35

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- (3) While investigating a complaint, a police officer must not disclose to any person the identity of the complainant otherwise than in accordance with guidelines established by the Commissioner.

**146 Ombudsman may monitor investigation**

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

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

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

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**148 Proceedings to be instituted if warranted**

- (1) If it appears to a police officer conducting an investigation that sufficient evidence exists to warrant the prosecution of any person for an offence, the police officer is to cause appropriate proceedings to be instituted against the person.

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- (2) The Commissioner must inform the Ombudsman of the institution of any such proceedings and of the particulars of the proceedings.
- (3) A police officer is not to institute any such proceedings against another police officer without the approval of the Commissioner. 5

**149 Other police investigations not affected**

- (1) Nothing in this Part prevents the Commissioner or any other police officer from investigating, otherwise than under this Division, any matter relating to a complaint, and such an investigation may be made even though an investigation under this Division:
  - (a) is not commenced, or
  - (b) is deferred or discontinued, or
  - (c) is completed, or 15
  - (d) is made the subject of an investigation under the *Ombudsman Act 1974* or any other Act.
- (2) Without affecting the generality of section 70 (8) of the *Police Integrity Commission Act 1996*, a matter that is the subject of a Category 1 complaint must not be investigated as referred to in subsection (1), unless:
  - (a) it is referred or referred back under that Act to be dealt with in accordance with this Part, or
  - (b) such an investigation is authorised to be carried out by the regulations or by the Commission, either generally or in any particular case. 20 25

**Division 6      Procedures following investigation by Commissioner**

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

As soon as practicable after the investigation of a complaint has been concluded and a report of the investigation finalised, the Commissioner: 30



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- (a) if practicable, must consult with the complainant before making a decision concerning any action to be taken as a result of the complaint, and
  - (b) must provide the complainant with advice as to any action already taken, and as to the Commissioner's decision concerning any action to be taken, as a result of the complaint, and 5
  - (c) must provide the Ombudsman with:
    - (i) a copy of the finalised report, and
    - (ii) advice as to any action already taken, and as to the Commissioner's decision concerning any action to be taken, as a result of the complaint, and 10
    - (iii) advice as to whether or not the complainant is satisfied with the action taken, or to be taken, as a result of the complaint. 15

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

- (1) For the purpose of determining whether a complaint has been properly dealt with, the Commissioner must, at the request of the Ombudsman, provide the Ombudsman with the following: 20
  - (a) an explanation of the policies, procedures and practices of the Police Service relevant to the conduct complained of, and 25
  - (b) such documentary and other information (including records of interviews) as the Ombudsman requests with respect to any inquiries made by the Commissioner or other police officers into the complaint, and 30
  - (c) to the extent to which the Commissioner is able to do so, any explanation, comment or information sought by the Ombudsman in connection with the complaint.

- (2) The Ombudsman may withdraw the request if the Commissioner objects to providing what has been requested and the Ombudsman is satisfied that the grounds of the objection are well-founded.
- (3) Instead of making such a request, the Ombudsman may, in accordance with arrangements agreed between the Ombudsman and the Commissioner, seek information from other police officers. 5

**152 Ombudsman may request information concerning investigation of complaint** 10

- (1) If the Ombudsman is not satisfied that a complaint is being investigated in a timely manner, the Ombudsman may request the Commissioner to provide the Ombudsman with information as to the investigation of the complaint. 15
- (2) On receiving such a request, the Commissioner must provide the Ombudsman with information that demonstrates that the complaint is being investigated, or explains why the complaint is not being investigated, in a timely manner. 20

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

- (1) If the Ombudsman is not satisfied that a complaint has been properly investigated, the Ombudsman may request the Commissioner to cause a further investigation to be conducted, specifying what are, in his or her opinion, the deficiencies in the earlier investigation. 25
- (2) If the Ombudsman makes such a request, the Commissioner:
  - (a) may, but is not obliged to, cause a further investigation to be conducted, and 30
  - (b) in either case, must notify the Ombudsman of the Commissioner's decision on the request and (if the decision is not to cause a further investigation to be conducted) of the Commissioner's reasons for the decision. 35

- (3) This Division and Division 5 apply to and in respect of a further investigation under this section in the same way as they apply to and in respect of the earlier investigation.

**154 Ombudsman may request review of Commissioner's decision on action to be taken on complaint** 5

- (1) If the Ombudsman is not satisfied with the Commissioner's decision concerning any action to be taken as a result of an investigation, the Ombudsman may request the Commissioner to review the decision. 10
- (2) If the Ombudsman makes such a request, the Commissioner:
- (a) may, but is not obliged to, change the decision, and
- (b) in either case, must notify the Ombudsman of the Commissioner's decision on the request and (if the decision is not to change the decision under review) of the Commissioner's reasons for the decision. 15

**155 Ombudsman may report on Commissioner's decision on Ombudsman's request** 20

- (1) Instead of or in addition to making a request under section 152, 153 or 154 in relation to an investigation or decision, the Ombudsman may prepare a report on the investigation or decision. 25
- (2) The report may include such comments and recommendations as the Ombudsman considers appropriate.
- (3) The Ombudsman is to provide a copy of the report to the complainant, to the Minister and to the Commissioner. 30
- (4) The Commissioner is then to provide a copy of the report to the police officer whose conduct was the subject of the complaint.
- (5) The issue may be the subject of an Ombudsman's special report. 35



**Division 7      Investigation by Ombudsman**

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

- (1) If of the opinion that it is in the public interest to do so, the Ombudsman may make a complaint, together with any investigation of the complaint and any related issues, the subject of an investigation under the *Ombudsman Act 1974*. 5
- (2) The Ombudsman may take action under this section before the commencement of an investigation under Division 5, during the progress of such an investigation or after the conclusion of such an investigation. 10
- (3) The Ombudsman must notify the Commissioner of any action taken by the Ombudsman under this section.
- (4) On being so notified, the Commissioner is to discontinue any investigation under Division 5. 15
- (5) This section has effect despite anything to the contrary in this Part.

**157 Report following Ombudsman's investigation**

- (1) At the conclusion of an investigation under the *Ombudsman Act 1974* of a complaint referred to in section 156, the Ombudsman must prepare a report on the investigation. 20
- (2) The report may include such comments and recommendations as the Ombudsman considers appropriate. 25
- (3) The Ombudsman is to provide a copy of the report to the complainant, to the Minister and to the Commissioner.
- (4) The Commissioner is then to provide a copy of the report to the police officer whose conduct was the subject of the complaint. 30

### 158 Notification of proposed action on reports

- (1) As soon as practicable after receiving a report under section 157, the Commissioner must notify the Ombudsman of the nature of the action taken, or to be taken, as a result of the report. 5
- (2) If the Ombudsman has provided a copy of the report to the Commissioner and the Ombudsman is of the opinion:
  - (a) that the Commissioner has unreasonably delayed notifying the Ombudsman of the nature of the action taken, or to be taken, as a result of the report, or 10
  - (b) that the nature of the action taken, or to be taken, as a result of the report is, in the circumstances of the case, unreasonable or inadequate, or
  - (c) that the Commissioner has unreasonably delayed taking action as a result of the report, 15the Ombudsman is to advise the Commissioner accordingly by notice in writing served on the Commissioner.
- (3) If the Ombudsman and the Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (2), either or both of them may notify the Minister that the issue is unresolved. 20
- (4) The issue may be the subject of an Ombudsman's special report. 25

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

- (1) If it appears to the Ombudsman that any conduct of a police officer could be, but is not, the subject of a complaint, the Ombudsman may make the conduct the subject of an investigation under the *Ombudsman Act 1974*. 30
- (2) The Ombudsman may make preliminary inquiries for the purpose of deciding whether to make any such conduct the subject of an investigation under the *Ombudsman Act 1974*. 35

- (3) Sections 157 and 158 apply to and in respect of such an investigation as if the Ombudsman had made a complaint about the conduct.

**Division 8      Additional provisions concerning  
                         Ombudsman**

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

- (1) The Ombudsman:
- (a) must inspect the records of the Police Service at least once every 12 months, and
  - (b) may inspect the records of the Police Service at any time,
- for the purpose of ascertaining whether or not the requirements of this Part are being complied with.
- (2) The Ombudsman must also keep under scrutiny the systems established within the Police Service for dealing with complaints. For that purpose, the Ombudsman may require the Commissioner to provide information about those systems and their operation.
- (3) The Ombudsman:
- (a) may, at any time, make a special report to the Presiding Officer of each House of Parliament on any matter arising in connection with the exercise of his or her functions under this Part, and
  - (b) in that event, must provide the Minister with a copy of the report.
- (4) The Ombudsman may include in such a report a recommendation that the report be made public as soon as practicable.

**161 Publicity**

- (1) The Ombudsman is to cause to be prepared pamphlets briefly explaining the rights and duties of police officers and the public under this Part.



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- (2) The pamphlets are to be written in the English language and in such other languages as the Ombudsman considers necessary.
- (3) The Ombudsman:
- (a) must supply the Commissioner with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at each police station in the State, and the Commissioner is to distribute the pamphlets accordingly, and 5
  - (b) must supply the Director-General of the Attorney General's Department with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at the office of each Local Court in the State, and the Director-General is to distribute the pamphlets accordingly, and 10
  - (c) must make such arrangements as the Ombudsman thinks fit with any government department or instrumentality or with any other body or organisation for making the pamphlets available, or distributing them, to any interested person, and 15
  - (d) must take such further or other action as the Ombudsman considers necessary to bring the provisions of this Part to the attention of interested persons. 20

**162 Consultation with Minister** 25

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

- (a) any matters arising from an investigation of the complaint, and 30
- (b) any report or proposed report relating to the complaint, and
- (c) any action taken or proposed to be taken in connection with the complaint. 35

**163 Ombudsman not to publish certain information**

- (1) This section applies to information (referred to as *police information*):
- (a) that is provided to the Ombudsman by the Commissioner or by some other police officer in accordance with a requirement under the *Ombudsman Act 1974*, or 5
  - (b) that is provided to the Ombudsman by the Commissioner in accordance with a requirement under this Part. 10
- (2) The Commissioner may at any time notify the Ombudsman that specified police information (referred to in this section as *critical police information*) is information whose publication may, in the opinion of the Commissioner, prejudice the investigation or prevention of crime, or otherwise be contrary to the public interest. 15
- (3) Any notice under subsection (2) must include the reasons for which the Commissioner has formed the opinion referred to in that subsection.
- (4) The Ombudsman is not to publish critical police information at any time. 20
- (5) The Ombudsman is not to publish police information that is provided to the Ombudsman by the Commissioner or some other police officer in accordance with a requirement under the *Ombudsman Act 1974* (other than critical police information) before the expiry of 21 days after the date on which it was provided to the Ombudsman. 25
- Note.** The 21 day period provides the Commissioner with an opportunity to notify the Ombudsman that the information is critical police information. 30
- (6) Nothing in this section prevents the Ombudsman from publishing police information (including critical police information) to the Commissioner or to any other person to whom the Commissioner authorises publication of the information. 35

- (7) Nothing in this section prevents the Ombudsman from including police information (including critical police information):

- (a) in any report submitted to the Presiding Officer of each House of Parliament, or
- (b) in the copy of any such report submitted to the Minister,

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if, in his or her opinion, the circumstances so warrant.

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

- (1) In the application of section 34 (1) of the *Ombudsman Act 1974* to information received by the Ombudsman, or an officer of the Ombudsman, in the administration or execution of this Part:

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- (a) the reference in that subsection to a public authority is to be construed as a reference to a police officer, and

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- (b) the reference in that subsection to the head of that authority is to be construed as a reference to the Commissioner, and

- (c) the reference in that subsection to the responsible Minister is to be construed as a reference to the Minister administering this Act.

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- (2) This section does not limit the operation of section 34 (1) (a) of the *Ombudsman Act 1974*.

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

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- (1) Neither the Ombudsman, nor an officer or special officer of the Ombudsman who is not a police officer, is competent or compellable, in any legal proceedings, to give evidence or produce documents in respect of any matter in which he or she is or was involved in the course of the administration or execution of this Part.

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- (2) Subsection (1) does not apply to or in respect of any proceedings under section 37 of the *Ombudsman Act 1974* or Part 3 of the *Royal Commissions Act 1923*.
- (3) Subsections (1) and (2) do not prejudice or affect the operation of section 35 of the *Ombudsman Act 1974* in relation to the administration and execution of this Act. 5

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

- (1) The functions of the Ombudsman that may, under section 10 of the *Ombudsman Act 1974*, be delegated to a special officer of the Ombudsman (other than an Assistant Ombudsman) do not include any power or duty to make a report under this Act. 10
- (2) The functions of the Ombudsman that may, under section 10 of the *Ombudsman Act 1974*, be delegated to an Assistant Ombudsman do not include any power or duty to make a report under this Act (other than a report under section 155). 15

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

The functions of the Ombudsman under this Part are to be exercised by the Ombudsman or by such officer of the Ombudsman as the Ombudsman may nominate, either generally or in a particular case. 20

**Division 9      Miscellaneous**

**168 Police Integrity Commission may take over Category 2 complaint 25**

- (1) The Police Integrity Commission may at any time direct that a Category 2 complaint be treated as a Category 1 complaint.
- (2) The complaint is then to be treated as a Category 1 complaint, even though it would not or may not otherwise be a Category 1 complaint. 30

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

- (1) **Tabling**  
A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this Act must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer. 5
- (2) **Public reports**  
If a report includes a recommendation by the Ombudsman that the report be made public forthwith, the Presiding Officer of a House of Parliament may make it public, whether or not that House is in session and whether or not the report has been laid before that House. 10
- (3) **Privileges and immunities**  
A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House. 15
- (4) **Report procedures**  
A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act. 20

**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: 25
- (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. 30

- (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 5
  - (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. 10

**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. 15
- (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. 20
- (3) This section has effect despite any other provision of this Part.

**172 Use of Federal and interstate police for investigations** 25

- (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. 30



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- (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 5 10
- (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 15
- (ii) for the purposes of section 6 of the *Prohibited Weapons Act 1989*, is authorised to possess handcuffs and body armour vests.
- [4] **Part 9, heading** 20
- Omit the heading. Insert instead:
- Part 9 Management of conduct within the Police Service**
- [5] **Part 9, Divisions 1 and 1A**
- Omit the Divisions. Insert instead: 25
- 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: 5
- (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, 10
  - (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. 15 20
- (4) The Commissioner may make an order under subsection (2) or (3) whether or not the misconduct or unsatisfactory performance has been the subject of a complaint under Part 8A and whether or not the police officer has been prosecuted or convicted for an offence in relation to the misconduct or unsatisfactory performance. 25
- (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, 30
  - and 35

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- (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 5
- (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. 10
- (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. 15  
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- (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 25
- (b) whether the order results from a complaint that has been investigated, or is being investigated, under Division 5 of Part 8A, and
- (c) the Commissioner's reasons for making the order.
- (8) An order for action referred to in subsection (2) takes effect: 30
- (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. 5
- (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. 10
- In this subsection, *tribunal* means a court, tribunal or administrative review body, and (without limitation) includes GREAT and the Industrial Relations Commission. 15
- (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. 20
- (12) Despite section 31, the Commissioner's functions under this section may only be delegated to a member of the Police Service who is senior to the police officer in respect of whom those functions are being exercised. 25

**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. 30  
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- (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. 5
- (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. 10
- (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. 15  
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#### **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. 25
- (3) In determining the applicant's claim, the Commission may take into account such matters as it considers relevant. 30
- (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: 35

- (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**

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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: 10
  - (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 15
  - (c) by upholding the order, or
  - (d) by dismissing the application. 20
- (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. 25
- (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.



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**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 5
  - (c) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (2) However, the rules of evidence and other formal procedures of a superior court of record apply to and in respect of the Commission in Court Session. 10

**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. 15
- (2) Proceedings under this Division are to be dealt with by a judicial member of the Commission unless the President of the Commission otherwise directs under section 159 of the *Industrial Relations Act 1996*. 20
- (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. 25

**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. 30

- (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** 5

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. 10

**[6] Section 181K Constitution of Commission for the purposes of Division 1C**

Omit "this Part" wherever occurring.  
Insert instead "Division 1C". 15

**[7] Part 9, Division 2**

Omit the Division. Insert instead:

**Division 2      Resignation of police officers on recommendation of Police Integrity Commission** 20

**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 Police Service if: 25
- (a) the officer tenders his or her resignation, and
  - (b) the Police Integrity Commission has recommended that the officer be allowed to resign.
- (2) This section prevails to the extent of any inconsistency with any other provision of this Act.

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**[8] Part 9A The Police Tribunal of New South Wales**

Omit the Part.

**[9] Section 219 Regulations**

Insert after section 219 (2) (i):

- (j) the reporting by police officers of misconduct or unsatisfactory performance of other police officers. 5
- (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. 10

**[10] Schedule 1**

Insert before Schedule 2: 15

**Schedule 1 Non-reviewable action**

(Section 173)

- coaching
- mentoring
- training and development 20
- increased professional, administrative or educational supervision
- counselling
- reprimand
- warning 25
- 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) 5  
restricted duties  
recording of adverse findings

**[11] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 2 (1): 10

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

**[12] Schedule 4, Part 13**

Insert after Part 12 of Schedule 4:

**Part 13      Provisions consequent on enactment of Police Service Amendment (Complaints and Management Reform) Act 1998** 15

**44 Definitions**

In this Part:

*amending Act* means the *Police Service Amendment (Complaints and Management Reform) Act 1998*. 20

**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. 25

- 
- (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. 5

#### **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. 10  
15

#### **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. 20

#### **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. 25  
30

**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. 5
- (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. 10  
15
- (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. 20  
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## Schedule 2 Amendment of other Acts

(Section 4)

### 2.1 Ombudsman Act 1974 No 68

#### [1] Section 34 Disclosure by Ombudsman or officer

Omit “, the Police Tribunal of New South Wales” from section 34 (1) (b) (ii). 5

#### [2] Section 35 Ombudsman, officer or expert as witness

Omit “, or in any proceedings before the Police Tribunal of New South Wales,” from section 35 (1).

### 2.2 Police Integrity Commission Act 1996 No 28 10

#### [1] Section 4 Definitions

Omit the definition of *police complaint* from section 4 (1).  
Insert instead:

*police complaint* means a complaint to which Part 8A of the *Police Service Act 1990* applies. 15

#### [2] Section 16 Provisions regarding assessments, opinions and recommendations

Omit “Division 1A” from section 16 (4).  
Insert instead “Division 2”.

**[3]      Section 57 Disclosure of information and giving of evidence by  
Ombudsman to Commission**

Omit "Complaints about the conduct" from section 57 (1) (a).  
Insert instead "Complaints about conduct".

**[4]      Section 73 Decision of Commission to investigate part of      5  
complaint**

Omit "Section 141 (6)" from section 73 (4).  
Insert instead "Section 140 (4)".