



New South Wales

Police Service Amendment (NSW Police) Bill 2002

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* so as:

- (a) to rename the Police Service of New South Wales as “NSW Police” and, as a consequence of the proposed change of name, to rename that Act as the *Police Act 1990*, and
- (b) to prohibit persons from carrying on activities under an operating name that includes the word “police” except with the consent of the Commissioner of Police or in other specified circumstances, and
- (c) to enable the Commissioner to make payments to a student of policing who suffers a totally and permanently incapacitating injury while undergoing a police education course, and to the spouse of a student of policing who dies while undergoing such a course, and

- (d) to increase the penalties for the unauthorised use of police uniforms and police insignia, the impersonation of police officers and the unauthorised use of words describing certain police positions or ranks, and
- (e) to enable the regulations under that Act to prescribe educational or other qualifications or experience not only with respect to appointment to NSW Police but also to appointments within NSW Police, and
- (f) to enact provisions of a savings or transitional nature.

The Bill also makes consequential amendments to other Acts and instruments, including amendments to the *Associations Incorporation Act 1984* and the *Business Names Act 1962* with respect to the object referred to in paragraph (b).

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, except in the case of an amendment made as a consequence of the enactment of the (uncommenced) *Compensation Court Repeal Act 2002* which is tied to the commencement of that Act.

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

Clause 4 is a formal provision giving effect to the amendments to certain other Acts and instruments set out in Schedule 2.

Schedule 1 Amendment of Police Service Act 1990

Renaming of Police Service

Schedule 1 [1]–[5] give effect to the object referred to in paragraph (a) of the Overview.

Improper use of word “police”

Schedule 1 [8] inserts proposed sections 204A and 204B, and so gives effect to the object referred to in paragraph (b) of the Overview. Proposed section 204A creates an offence (punishable by a maximum fine of 100 penalty units) of carrying on any activity under an operating name that includes the word “police”, subject to

specified exceptions. Proposed section 204B provides for the granting of consents by the Commissioner of Police that exempt persons from the operation of proposed section 204A.

Payments in relation to students of policing who suffer injury or death while undergoing police education courses

Schedule 1 [10] inserts proposed section 216AA, and so gives effect to the object referred to in paragraph (c) of the Overview. Proposed section 216AA prescribes circumstances in which the Commissioner may make payments in relation to students of policing who are injured or die while undergoing a police education course, and prescribes a formula from which the amount of any such payment is to be calculated. The proposed section mirrors existing section 216, which enables the Commissioner to make payments in relation to police officers who are injured or die while on duty. Payment to a student of policing under the proposed section will generally be 80 per cent of the payment that would be made under section 216 in similar circumstances to a probationary constable of the same age and sex. **Schedule 1 [11], [12] and [13]** make consequential amendments to section 216A.

Increase in penalties

Schedule 1 [6], [7] and [9] increase certain penalties from 10 penalty units to 100 penalty units, and so give effect to the object referred to in paragraph (d) of the Overview.

Regulations with respect to appointments

Schedule 1 [14] substitutes section 219 (2) (d), and so gives effect to the object referred to in paragraph (e) of the Overview. The existing paragraph (d) enables regulations to be made with respect to the educational and other qualifications for appointment to NSW Police. The substituted paragraph extends this power to include appointments within NSW Police, and to include experience (such as experience for an appropriate length of time in a relevant rank or grade) as well as educational and other qualifications. In particular, it makes it clear that the regulations can have regard to relevant experience outside NSW Police.

Savings and transitional provisions

Schedule 1 [15] and [16] give effect to the object referred to in paragraph (f) of the Overview.

Schedule 2 Amendment of other Acts and instruments

Schedule 2.1 and 2.2 amend the *Associations Incorporation Act 1984* and the *Business Names Act 1962* in connection with the object referred to in paragraph (b) of the Overview.

Schedule 2.3–2.13 amend various other Acts and instruments in connection with the object referred to in paragraph (a) of the Overview.



New South Wales

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New South Wales

Police Service Amendment (NSW Police) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Police Service Act 1990* so as to rename the Police Service as NSW Police, to restrict the use of the word “police” as part of a person’s or body’s operating name, to provide for the payment of compensation to persons training to be police officers and to regulate the appointment, promotion and transfer of police officers; 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 (NSW Police) Act 2002</i> .	3
2 Commencement	4
(1) This Act commences on a day or days to be appointed by proclamation, subject to subsection (2).	5 6
(2) Schedule 1 [12] commences:	7
(a) on the commencement of Schedule 1 [11], or	8
(b) on the commencement of Schedule 1.7 to the <i>Compensation Court Repeal Act 2002</i> ,	9 10
whichever is the later.	11
3 Amendment of Police Service Act 1990 No 47	12
The <i>Police Service Act 1990</i> is amended as set out in Schedule 1.	13
4 Amendment of other Acts and instruments	14
Each Act and instrument referred to in Schedule 2 is amended as set out in that Schedule.	15 16

Schedule 1	Amendment of Police Service Act 1990	1
	(Section 3)	2
[1]	Long title	3
	Omit the long title. Insert instead:	4
	An Act to establish NSW Police, to provide for the management of NSW Police and for the employment of its members of staff, and for other purposes.	5 6 7
[2]	The whole Act	8
	Omit “The Police Service”, “The Police Service of New South Wales”, “the Police Service” and “Police Service” wherever occurring (except where specifically referred to elsewhere in this Schedule).	9 10 11
	Insert instead “NSW Police”.	12
[3]	Section 1	13
	Omit the section. Insert instead:	14
	1 Name of Act	15
	This Act is the <i>Police Act 1990</i> .	16
[4]	Section 3 Definitions	17
	Omit the definitions of <i>Police Service</i> and <i>Police Service Senior Executive Service</i> from section 3 (1).	18 19
	Insert instead in alphabetical order:	20
	<i>NSW Police</i> means NSW Police established by this Act.	21
	<i>NSW Police Senior Executive Service</i> means the NSW Police Senior Executive Service established by this Act.	22 23
[5]	Section 4	24
	Omit the section. Insert instead:	25
	4 Establishment of NSW Police	26
	NSW Police is established by this Act.	27

[6] Section 203 Wearing or possession of police uniforms by others	1
Omit “10 penalty units”. Insert instead “100 penalty units”.	2
[7] Section 204 Impersonation of police officers	3
Omit “10 penalty units”. Insert instead “100 penalty units”.	4
[8] Sections 204A and 204B	5
Insert after section 204:	6
204A Use of word “police” in operating name	7
(1) A person or body of persons (whether incorporated or not) must not carry on any activity under an operating name that includes the word “police”.	8 9 10
Maximum penalty: 100 penalty units.	11
(2) An offence under this section committed by an unincorporated body of persons is taken to have been committed by each person who has been a member of the body’s governing body at any time while the offence has been committed.	12 13 14 15
(3) This section does not prevent a person or body of persons from doing anything in accordance with the terms of a consent in force under section 204B.	16 17 18
(4) This section does not apply to:	19
(a) any body that has, among its primary objects, the object of commenting on, objecting to or protesting against the policies or practices of public authorities such as NSW Police, or	20 21 22 23
(b) any other body or class of bodies that is declared by the regulations to be a body or class of bodies to which this section does not apply.	24 25 26
(5) In this section, <i>operating name</i> includes any name, style, title or designation under which a person or body carries on an activity, any name under which an association is incorporated under the <i>Associations Incorporation Act 1984</i> and any business name registered under the <i>Business Names Act 1962</i> in relation to a person, but does not include:	27 28 29 30 31 32

(a)	in the case of an individual, the individual's family name, either alone or together with:	1
	(i) one or more of the individual's given names, or	2
	(ii) one or more of the initials of the individual's given names, or	3
	(iii) a combination of one or more of the individual's given names and one or more of the initials of the individual's remaining given names, or	4
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(b)	in the case of a corporation, the corporation's corporate name, or	9
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(c)	in the case of an industrial organisation registered under the <i>Industrial Relations Act 1996</i> , the name under which the industrial organisation is registered, or	11
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(d)	in the case of any other statutory body, the name under which the body is incorporated, constituted or established.	14
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204B	Consents for the purposes of section 204A	17
(1)	The Commissioner may grant consent to any person or body of persons to carry on any activity under an operating name (within the meaning of section 204A) that includes the word "police", either unconditionally or subject to such conditions as the Commissioner considers appropriate to impose on the consent.	18
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(2)	A consent may be revoked by the Commissioner at any time.	24
(3)	In deciding whether or not to grant or revoke a consent, the Commissioner must have regard to such matters (if any) as are prescribed by the regulations.	25
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(4)	Before revoking a consent, the Commissioner:	28
	(a) must serve notice of the proposed revocation on the person or body of persons having the benefit of the consent, and	29
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	(b) must allow that person or body at least 14 days within which to make submissions with respect to the proposed revocation, and	32
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	(c) must have regard to any submissions that are duly made with respect to the proposed revocation.	35
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- (5) As soon as practicable after revoking a consent, the Commissioner must cause notice of that fact to be given:
- (a) to the person or body of persons concerned, and
 - (b) if the consent relates to:
 - (i) the name under which an association is incorporated under the *Associations Incorporation Act 1984*, or
 - (ii) a business name registered under the *Business Names Act 1962*,
 to the Director-General of the Department of Fair Trading.
- Note.** Notification of the Director-General of Fair Trading will have the following effect:
- (a) In the case of the name under which an association is incorporated under the *Associations Incorporation Act 1984*, it will prompt the Director-General to exercise his or her powers under that Act to direct the association to change its name.
 - (b) In the case of a business name registered under the *Business Names Act 1962*, it will advise the Director-General that continued use of the name is unlawful and will prompt the Director-General to exercise his or her powers under that Act to refuse to re-register, or to cancel, a currently registered business name.
- (6) A consent that is revoked ceases to have effect:
- (a) except as provided by paragraph (b):
 - (i) at the end of 28 days after notice of the revocation is served on the person or body of persons concerned, or
 - (ii) at such later time as may be specified in the notice of revocation, or
 - (b) in the case of a consent that relates to the name under which an association is incorporated under the *Associations Incorporation Act 1984*:
 - (i) on the date on which the Director-General of Fair Trading issues a certificate of incorporation in respect of the association's new name under section 14 (5) of that Act, or
 - (ii) on the date on which the Director-General of Fair Trading cancels the association's incorporation under section 54 (2A) of that Act,
 as the case may be.

[9] Section 205 Use of police designations by others	1
Omit “10 penalty units”. Insert instead “100 penalty units”.	2
[10] Section 216AA	3
Insert after section 216:	4
216AA Special risk benefit where student of policing hurt while undergoing police education	5
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(1) The Commissioner may pay an amount, calculated in accordance with this section, to a student of policing who suffers an injury:	7
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(a) that the Commissioner determines to have been caused while the student was undergoing a police education course, and	10
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(b) that, in the opinion of the Government Medical Officer, renders the student totally and permanently incapacitated for work.	13
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(2) If:	16
(a) a student of policing dies, and	17
(b) the injury causing the death of the student is determined by the Commissioner to have been caused while the student was undergoing a police education course,	18
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the Commissioner may pay an amount, calculated in accordance with this section, to the student’s spouse or (if the student is not survived by a spouse or if the student is survived by more than one spouse) to the student’s personal representative.	21
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(3) The amount calculated in accordance with this section in relation to a student of policing to whom subsection (1) or (2) applies is the amount determined in accordance with the formula:	26
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$A = 0.8 \times S \times CF$	30
where:	31
<i>A</i> is the amount.	32

S is the annual salary of a probationary constable as at the day on which the student was injured while undergoing a police education course. 1
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CF is the capitalisation factor, prescribed for the purposes of section 216, applicable to the student's sex, and the student's age as at the day on which the student was injured while undergoing a police education course. 4
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(4) The Commissioner must not make a payment under this section unless the student of policing concerned was, in the opinion of the Commissioner, injured because the student was required to be exposed to risks to which other tertiary students would normally not be required to be exposed in the course of their studies. 8
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(5) A benefit under this section is payable by the Commissioner out of money made available by Parliament for the purposes of this section. 14
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(6) In this section: 17

Government Medical Officer means the person holding office as, or acting in, such position as is declared by the regulations under the *Public Sector Management Act 1988* to be the office of the Government Medical Officer. 18
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injury includes not only physical injury but also psychological and psychiatric injury. 22
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police education course means a course of education determined by the Commissioner to be a police education course for the purposes of this section. 24
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student of policing means a person (other than a police officer) who is undergoing a police education course. 27
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spouse of a student of policing includes a person with whom the student had a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) at the time of his or her death. 29
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[11] Section 216A Determination by Compensation Court	1
Omit section 216A (1) and (2). Insert instead:	2
(1) An application to the Compensation Court for a determination in relation to a decision of the Commissioner under section 216 or 216AA may be made by:	3
(a) a police officer referred to in section 216 (1), or	4
(b) the spouse or personal representative of a police officer referred to in section 216 (2), or	5
(c) a student of policing referred to in section 216AA (1), or	6
(d) the spouse or personal representative of a student of policing referred to in section 216AA (2),	7
within 6 months after the decision is notified in writing to the police officer, student, spouse or personal representative.	8
(2) If within 6 months after:	9
(a) a police officer to whom section 216 applies retires, or dies, or	10
(b) a student of policing to whom section 216AA applies suffers an injury that renders the student totally and permanently incapacitated for work, or dies,	11
the Commissioner fails or refuses to make a decision under the relevant section in relation to the police officer or student, the Commissioner is taken, for the purposes of this section, to have made a decision under that section to refuse to pay any amount in relation to the police officer or student.	12
[12] Section 216A (1) (as inserted by item [11])	13
Omit “Compensation Court”. Insert instead “District Court”.	14
[13] Section 216A (5)	15
Insert “or 216AA” after “section 216”.	16

[14] Section 219 Regulations	1
Omit section 219 (2) (d). Insert instead:	2
(d) the educational or other qualifications or experience for appointment, whether to NSW Police generally or to a particular rank, grade or position within NSW Police, where experience includes:	3
(i) experience within NSW Police, whether experience generally or experience in relation to a specified rank, grade or position, and	4
(ii) experience otherwise than within NSW Police, as prescribed by the regulations,	5
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[15] Schedule 4 Savings, transitional and other provisions	12
Insert at the end of clause 2 (1):	13
<i>Police Service Amendment (NSW Police) Act 2002</i>	14
[16] Schedule 4	15
Insert at the end of the Schedule, with appropriate Part and clause numbers:	16
Part Provisions consequent on enactment of Police Service Amendment (NSW Police) Act 2002	17
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Construction of references to Police Service	20
Subject to the regulations, in any other Act or instrument:	21
(a) a reference to the Police Service of New South Wales (however expressed) is to be construed as a reference to NSW Police, and	22
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(b) a reference to a member of the Police Service of New South Wales (however expressed) is to be construed as a reference to a member of NSW Police.	25
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Use of word “police” in operating name

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|-------------------------------------------------------------------|----|
| | 1 |
| (1) Any person or body of persons who, immediately before the | 2 |
| commencement of this clause, was lawfully carrying on an | 3 |
| activity under an operating name (within the meaning of section | 4 |
| 204A) that includes the word “police” is taken, on that | 5 |
| commencement, to have been granted a consent under section | 6 |
| 204B (1) to the carrying on of that activity under that name. | 7 |
| (2) The provisions of section 204B apply to a consent referred to | 8 |
| in subclause (1) in the same way as they apply to a consent | 9 |
| granted under section 204B (1). | 10 |

Schedule 2	Amendment of other Acts and instruments	1
	(Section 4)	2
2.1	Associations Incorporation Act 1984 No 143	3
[1]	Section 14 Change of name	4
	Insert after section 14 (1):	5
	(1A) On receiving notice in relation to an association incorporated under a name that includes the word “police” that consent to the carrying on of activities under that name has been revoked under section 204B of the <i>Police Act 1990</i> , the Director-General may, by notice in writing given to the association, direct the association to change its name to a new name that does not include the word “police”.	6 7 8 9 10 11 12
	(1B) The notice given by the Director-General under subsection (1A):	13 14
	(a) must specify a date by which an application for approval of a change of name must be made, and	15 16
	(b) must state that the association’s incorporation will be cancelled if such an application is not made on or before that date.	17 18 19
[2]	Section 54 Cancellation of incorporation	20
	Insert after section 54 (2):	21
	(2A) The Director-General may, by notice published in the Gazette, cancel the incorporation of an association that fails to apply for approval to change its name in accordance with a direction referred to in section 14 (1A).	22 23 24 25
[3]	Section 54 (3) and (6)	26
	Insert “or (2A)” after “subsection (2)” wherever occurring.	27

2.2 Business Names Act 1962 No 11	1
Section 5C	2
Insert after section 5B:	3
5C Registration does not authorise contravention of other Acts and laws	4
Registration of a business name under this Act does not authorise a person to carry on business under that name if the person is prohibited by some other Act or law from carrying on business under that name.	5
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2.3 Interpretation Act 1987 No 15	10
Section 21 Meaning of commonly used words and expressions	11
Omit the definitions of <i>Police Force</i> , <i>police officer</i> and <i>Police Service</i> from section 21 (1).	12
Insert instead in alphabetical order:	13
<i>NSW Police</i> means NSW Police established by the <i>Police Act 1990</i> .	14
<i>Police Force</i> means that part of NSW Police which is comprised of police officers.	15
<i>police officer</i> means a member of NSW Police who is a police officer within the meaning of the <i>Police Act 1990</i> .	16
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2.4 Law Enforcement and National Security (Assumed Identities) Act 1998 No 154	21
	22
[1] Section 3 Definitions	23
Omit “the Police Service” wherever occurring in the definitions of <i>authorised agency</i> and <i>chief executive officer</i> .	24
Insert instead “NSW Police”.	25
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[2] Section 16 Delegations	1
Omit “the Police Service” from section 16 (4).	2
Insert instead “NSW Police”.	3
2.5 Law Enforcement and National Security (Assumed Identities) Regulation 1999	4 5
[1] Clause 6 Delegations	6
Omit “the Police Service of New South Wales” from clause 6 (a).	7
Insert instead “NSW Police”.	8
[2] Clause 6 (a) (ii)	9
Omit “Police Service Senior Executive Service”.	10
Insert instead “NSW Police Senior Executive Service”.	11
2.6 Law Enforcement (Controlled Operations) Act 1997 No 136	12
[1] Section 3 Definitions	13
Omit “the Police Service” wherever occurring in the definitions of <i>chief executive officer</i> and <i>law enforcement agency</i> .	14 15
Insert instead “NSW Police”.	16
[2] Section 29 Delegations	17
Omit “the Police Service” from section 29 (4).	18
Insert instead “NSW Police”.	19
2.7 Law Enforcement (Controlled Operations) Regulation 1998	20
[1] Clause 13 Delegations: section 29	21
Omit “the Police Service of New South Wales” from clause 13 (a).	22
Insert instead “NSW Police”.	23

[2] Clause 13 (a) (ii)	1
Omit “Police Service Senior Executive Service”.	2
Insert instead “NSW Police Senior Executive Service”.	3
2.8 Ombudsman Act 1974 No 68	4
The whole Act	5
Omit “the <i>Police Service Act 1990</i> ” wherever occurring.	6
Insert instead “the <i>Police Act 1990</i> ”.	7
2.9 Police Association Employees (Superannuation) Act 1969 No 33	8
Section 2 Definitions	9
Omit “the Police Service” from the definition of <i>member of the police force</i> in section 2 (1).	10
Insert instead “NSW Police”.	11
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2.10 Police Integrity Commission Act 1996 No 28	13
The whole Act	14
Omit “the Police Service”, “the Police Service of New South Wales” and “the <i>Police Service Act 1990</i> ” wherever occurring.	15
Insert instead “NSW Police”, “NSW Police” and “the <i>Police Act 1990</i> ”, respectively.	16
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2.11	Police Powers (Internally Concealed Drugs) Act 2001 No 31	1
[1]	Section 3 Definitions	2
	Omit “the Police Service” from the definition of <i>police station</i> in section 3 (1).	3
	Insert instead “NSW Police”.	4
[2]	Section 39 Restrictions on publication	5
	Omit “the Police Service” wherever occurring.	6
	Insert instead “NSW Police”.	7
2.12	Police Regulation (Superannuation) Act 1906 No 28	8
	The whole Act	9
	Omit “the Police Service”, “the police service” and “the <i>Police Service Act 1990</i> ” wherever occurring.	10
	Insert instead “NSW Police”, “NSW Police” and “the <i>Police Act 1990</i> ”, respectively.	11
2.13	Police Service Regulation 2000	12
[1]	The whole Regulation	13
	Omit “the Police Service”, “Police Service” and “ <i>NSW Police Service</i> ” wherever occurring (except where specifically referred to elsewhere in this Schedule).	14
	Insert instead “NSW Police”.	15
[2]	Clause 1	16
	Omit the clause. Insert instead:	17
	1 Name of Regulation	18
	This Regulation is the <i>Police Regulation 2000</i> .	19

[3] Clause 3 Definitions	1
Omit the definitions of <i>Police Service</i> and <i>the Act</i> .	2
Insert instead in alphabetical order:	3
<i>NSW Police</i> means NSW Police established by the Act.	4
<i>the Act</i> means the <i>Police Act 1990</i> .	5
[4] Clause 12 Certificate of discharge	6
Omit “ <i>Police Service Act 1990</i> ” from clause 12 (1) (c) (ii).	7
Insert instead “ <i>Police Act 1990</i> ”.	8
[5] Clause 13 Appointment of constables on probation	9
Omit “any other Police Service” from clause 13 (2).	10
Insert instead “any other police service or police force”.	11
[6] Clause 66 General	12
Omit “ <i>Police Service Act 1990</i> ” from clause 66 (1) (b).	13
Insert instead “ <i>Police Act 1990</i> ”.	14
[7] Clause 107	15
Insert after clause 106:	16
107 Bodies authorised to carry on business under operating name that includes “police”: section 204A	17
The following bodies of persons are declared to be bodies to which section 204A of the Act does not apply:	18
Justice & Police Museum	19
Police & Community Youth Clubs Pty Ltd	20
Police Legacy	21
Police Credit Union	22
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