

Passed by both Houses



New South Wales

Police Service Amendment (NSW Police) Bill 2002

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2002

Clerk of the Parliaments



New South Wales

Police Service Amendment (NSW Police) Bill 2002

Act No , 2002

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 Name of Act**

This Act is the *Police Service Amendment (NSW Police) Act 2002*.

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation, subject to subsection (2).

(2) Schedule 1 [12] commences:

(a) on the commencement of Schedule 1 [11], or

(b) on the commencement of Schedule 1.7 to the *Compensation Court Repeal Act 2002*,

whichever is the later.

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 and instruments

Each Act and instrument referred to in Schedule 2 is amended as set out in that Schedule.

Schedule 1 Amendment of Police Service Act 1990

(Section 3)

[1] Long title

Omit the long title. Insert instead:

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.

[2] The whole Act

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).

Insert instead “NSW Police”.

[3] Section 1

Omit the section. Insert instead:

1 Name of Act

This Act is the *Police Act 1990*.

[4] Section 3 Definitions

Omit the definitions of *Police Service* and *Police Service Senior Executive Service* from section 3 (1).

Insert instead in alphabetical order:

NSW Police means NSW Police established by this Act.

NSW Police Senior Executive Service means the NSW Police Senior Executive Service established by this Act.

[5] Section 4

Omit the section. Insert instead:

4 Establishment of NSW Police

NSW Police is established by this Act.

[6] Section 203 Wearing or possession of police uniforms by others

Omit “10 penalty units”. Insert instead “100 penalty units”.

[7] Section 204 Impersonation of police officers

Omit “10 penalty units”. Insert instead “100 penalty units”.

[8] Sections 204A and 204B

Insert after section 204:

204A Use of word “police” in operating name

- (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”.

Maximum penalty: 100 penalty units.

- (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.

- (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.

- (4) This section does not apply to:

(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

(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.

- (5) In this section, *operating name* 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 *Associations Incorporation Act 1984* and any business name registered under the *Business Names Act 1962* in relation to a person, but does not include:

- (a) in the case of an individual, the individual's family name, either alone or together with:
 - (i) one or more of the individual's given names, or
 - (ii) one or more of the initials of the individual's given names, or
 - (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
- (b) in the case of a corporation, the corporation's corporate name, or
- (c) in the case of an industrial organisation registered under the *Industrial Relations Act 1996*, the name under which the industrial organisation is registered, or
- (d) in the case of any other statutory body, the name under which the body is incorporated, constituted or established.

204B Consents for the purposes of section 204A

- (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.
- (2) A consent may be revoked by the Commissioner at any time.
- (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.
- (4) Before revoking a consent, the Commissioner:
 - (a) must serve notice of the proposed revocation on the person or body of persons having the benefit of the consent, and
 - (b) must allow that person or body at least 14 days within which to make submissions with respect to the proposed revocation, and
 - (c) must have regard to any submissions that are duly made with respect to the proposed revocation.

- (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

Omit “10 penalty units”. Insert instead “100 penalty units”.

[10] Section 216AA

Insert after section 216:

216AA Special risk benefit where student of policing hurt while undergoing police education

(1) The Commissioner may pay an amount, calculated in accordance with this section, to a student of policing who suffers an injury:

- (a) that the Commissioner determines to have been caused while the student was undergoing a police education course, and
- (b) that, in the opinion of the Government Medical Officer, renders the student totally and permanently incapacitated for work.

(2) If:

- (a) a student of policing dies, and
- (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,

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.

(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:

$$A = 0.8 \times S \times CF$$

where:

A is the amount.

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.

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) 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.
- (5) A benefit under this section is payable by the Commissioner out of money made available by Parliament for the purposes of this section.
- (6) In this section:

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.

injury includes not only physical injury but also psychological and psychiatric injury.

police education course means a course of education determined by the Commissioner to be a police education course for the purposes of this section.

student of policing means a person (other than a police officer) who is undergoing a police education course.

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.

[11] Section 216A Determination by Compensation Court

Omit section 216A (1) and (2). Insert instead:

(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:

- (a) a police officer referred to in section 216 (1), or
- (b) the spouse or personal representative of a police officer referred to in section 216 (2), or
- (c) a student of policing referred to in section 216AA (1), or
- (d) the spouse or personal representative of a student of policing referred to in section 216AA (2),

within 6 months after the decision is notified in writing to the police officer, student, spouse or personal representative.

(2) If within 6 months after:

- (a) a police officer to whom section 216 applies retires, or dies, or
- (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,

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] Section 216A (1) (as inserted by item [11])

Omit “Compensation Court”. Insert instead “District Court”.

[13] Section 216A (5)

Insert “or 216AA” after “section 216”.

[14] Section 219 Regulations

Omit section 219 (2) (d). Insert instead:

- (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:
 - (i) experience within NSW Police, whether experience generally or experience in relation to a specified rank, grade or position, and
 - (ii) experience otherwise than within NSW Police, as prescribed by the regulations,

[15] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Police Service Amendment (NSW Police) Act 2002

[16] Schedule 4

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Police Service Amendment (NSW Police)
Act 2002**

Construction of references to Police Service

Subject to the regulations, in any other Act or instrument:

- (a) a reference to the Police Service of New South Wales (however expressed) is to be construed as a reference to NSW Police, and
- (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.

Use of word “police” in operating name

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

Schedule 2 Amendment of other Acts and instruments

(Section 4)

2.1 Associations Incorporation Act 1984 No 143

[1] Section 14 Change of name

Insert after section 14 (1):

- (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 *Police Act 1990*, 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”.
- (1B) The notice given by the Director-General under subsection (1A):
 - (a) must specify a date by which an application for approval of a change of name must be made, and
 - (b) must state that the association’s incorporation will be cancelled if such an application is not made on or before that date.

[2] Section 54 Cancellation of incorporation

Insert after section 54 (2):

- (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).

[3] Section 54 (3) and (6)

Insert “or (2A)” after “subsection (2)” wherever occurring.

2.2 Business Names Act 1962 No 11

Section 5C

Insert after section 5B:

5C Registration does not authorise contravention of other Acts and laws

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.

2.3 Interpretation Act 1987 No 15

Section 21 Meaning of commonly used words and expressions

Omit the definitions of *Police Force*, *police officer* and *Police Service* from section 21 (1).

Insert instead in alphabetical order:

NSW Police means NSW Police established by the *Police Act 1990*.

Police Force means that part of NSW Police which is comprised of police officers.

police officer means a member of NSW Police who is a police officer within the meaning of the *Police Act 1990*.

2.4 Law Enforcement and National Security (Assumed Identities) Act 1998 No 154

[1] Section 3 Definitions

Omit “the Police Service” wherever occurring in the definitions of *authorised agency* and *chief executive officer*.

Insert instead “NSW Police”.

[2] Section 16 Delegations

Omit “the Police Service” from section 16 (4).
Insert instead “NSW Police”.

2.5 Law Enforcement and National Security (Assumed Identities) Regulation 1999

[1] Clause 6 Delegations

Omit “the Police Service of New South Wales” from clause 6 (a).
Insert instead “NSW Police”.

[2] Clause 6 (a) (ii)

Omit “Police Service Senior Executive Service”.
Insert instead “NSW Police Senior Executive Service”.

2.6 Law Enforcement (Controlled Operations) Act 1997 No 136

[1] Section 3 Definitions

Omit “the Police Service” wherever occurring in the definitions of *chief executive officer* and *law enforcement agency*.
Insert instead “NSW Police”.

[2] Section 29 Delegations

Omit “the Police Service” from section 29 (4).
Insert instead “NSW Police”.

2.7 Law Enforcement (Controlled Operations) Regulation 1998

[1] Clause 13 Delegations: section 29

Omit “the Police Service of New South Wales” from clause 13 (a).
Insert instead “NSW Police”.

[2] Clause 13 (a) (ii)

Omit “Police Service Senior Executive Service”.
Insert instead “NSW Police Senior Executive Service”.

2.8 Ombudsman Act 1974 No 68

The whole Act

Omit “the *Police Service Act 1990*” wherever occurring.
Insert instead “the *Police Act 1990*”.

2.9 Police Association Employees (Superannuation) Act 1969 No 33

Section 2 Definitions

Omit “the Police Service” from the definition of *member of the police force* in section 2 (1).
Insert instead “NSW Police”.

2.10 Police Integrity Commission Act 1996 No 28

The whole Act

Omit “the Police Service”, “the Police Service of New South Wales” and “the *Police Service Act 1990*” wherever occurring.
Insert instead “NSW Police”, “NSW Police” and “the *Police Act 1990*”, respectively.

2.11 Police Powers (Internally Concealed Drugs) Act 2001 No 31

[1] Section 3 Definitions

Omit “the Police Service” from the definition of *police station* in section 3 (1).

Insert instead “NSW Police”.

[2] Section 39 Restrictions on publication

Omit “the Police Service” wherever occurring.

Insert instead “NSW Police”.

2.12 Police Regulation (Superannuation) Act 1906 No 28

The whole Act

Omit “the Police Service”, “the police service” and “the *Police Service Act 1990*” wherever occurring.

Insert instead “NSW Police”, “NSW Police” and “the *Police Act 1990*”, respectively.

2.13 Police Service Regulation 2000

[1] The whole Regulation

Omit “the Police Service”, “Police Service” and “*NSW Police Service*” wherever occurring (except where specifically referred to elsewhere in this Schedule).

Insert instead “NSW Police”.

[2] Clause 1

Omit the clause. Insert instead:

1 Name of Regulation

This Regulation is the *Police Regulation 2000*.

[3] Clause 3 Definitions

Omit the definitions of *Police Service* and *the Act*.

Insert instead in alphabetical order:

NSW Police means NSW Police established by the Act.

the Act means the *Police Act 1990*.

[4] Clause 12 Certificate of discharge

Omit “*Police Service Act 1990*” from clause 12 (1) (c) (ii).

Insert instead “*Police Act 1990*”.

[5] Clause 13 Appointment of constables on probation

Omit “any other Police Service” from clause 13 (2).

Insert instead “any other police service or police force”.

[6] Clause 66 General

Omit “*Police Service Act 1990*” from clause 66 (1) (b).

Insert instead “*Police Act 1990*”.

[7] Clause 107

Insert after clause 106:

107 Bodies authorised to carry on business under operating name that includes “police”: section 204A

The following bodies of persons are declared to be bodies to which section 204A of the Act does not apply:

Justice & Police Museum

Police & Community Youth Clubs Pty Ltd

Police Legacy

Police Credit Union