

CONCURRENCE COPY

OMBUDSMAN (POLICE REGULATION) AMENDMENT BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Police Regulation (Allegations of Misconduct) Amendment Bill, 1983.

The object of this Bill is to amend the Ombudsman Act, 1974 ("the Act"), as a consequence of amendments to be made to the Police Regulation (Allegations of Misconduct) Act, 1978, so as—

- (a) to provide that, where the Ombudsman is unable to determine (from information supplied by the Commissioner of Police) whether a complaint made against a member of the Police Force has not been sustained or has been sustained, a further investigation may be carried out under the Act (Schedule 1 (2));
- (b) to ensure that any such further investigation carried out under the Act by officers of the Ombudsman may be carried out only by officers who are members of the investigative staff of the Internal Affairs Branch within the Police Force (Schedule 1 (3) (c) and (9)); and
- (c) to make provision with respect to the production in evidence of information obtained in the course of any such further investigation (Schedule 1 (10) and (11)).

The Bill also contains other provisions of a minor or consequential nature.

**OMBUDSMAN (POLICE REGULATION) AMENDMENT
BILL, 1983**

No. , 1983.

A BILL FOR

An Act to amend the Ombudsman Act, 1974, so as to enable the investigation under that Act of conduct the subject of a complaint made under the Police Regulation (Allegations of Misconduct) Act, 1978.

[MR ANDERSON—10 *November*, 1983.]

Ombudsman (Police Regulation) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the “Ombudsman (Police Regulation) Amendment Act, 1983”.

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

10 (2) Except as provided by subsection (1), this Act shall commence on the day on which Schedule 3 to the Police Regulation (Allegations of Misconduct) Amendment Act, 1983, commences.

Principal Act.

3. The Ombudsman Act, 1974, is referred to in this Act as the Principal
15 Act.

Amendment of Act No. 68, 1974.

4. The Principal Act is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 4.)

20

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 3, matter relating to Part IV—

Omit “26”, insert instead “25A”.

Ombudsman (Police Regulation) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (2) (a) Section 5 (1), definition of “prescribed conduct”—

After the definition of “person”, insert:—

- 5 “prescribed conduct” means conduct, within the meaning of the Police Regulation (Allegations of Misconduct) Act, 1978, of a member of the Police Force;

- (b) Section 5 (1A)—

After section 5 (1), insert:—

- 10 (1A) In this Act, a reference to an investigation under this Act includes a reference to an investigation of prescribed conduct made under this Act pursuant to section 25A (1) of the Police Regulation (Allegations of Misconduct) Act, 1978.

- (3) (a) Section 10 (2) (c)—

- 15 Omit “subsection (1); or”, insert instead “subsection (1);”.

- (b) Section 10 (2) (d)—

Omit “1975.”, insert instead “1975; or”.

- (c) Section 10 (2) (e)—

After section 10 (2) (d), insert:—

- 20 (e) any of the Ombudsman’s powers, authorities, duties and functions with respect to an investigation of prescribed conduct, otherwise than to a special officer of the Ombudsman who is a member of the investigative staff of the Internal Affairs Branch within the Police Force.

- 25 (4) (a) Section 13 (3)—

After “investigation”, insert “under this Act”.

Ombudsman (Police Regulation) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 13 (4A)—

After section 13 (4), insert:—

5 (4A) In deciding whether to discontinue an investigation of prescribed conduct, the Ombudsman shall have regard to the public interest.

(5) (a) Section 15 (a)—

After “Ombudsman”, insert “under section 12”.

10 (b) Section 15 (2)—

At the end of section 15, insert:—

15 (2) Where the Ombudsman discontinues an investigation of prescribed conduct, the Ombudsman shall inform the complainant and the Commissioner of Police in writing of the decision and the reasons for the decision.

(6) Sections 16, 24 (1), 25 (1)—

After “conduct” wherever occurring, insert “or prescribed conduct”.

(7) Section 25A—

Before section 26, insert:—

20 **Application of Part IV.**

25A. This Part, section 29 excepted, does not apply to or in respect of the investigation under this Act of prescribed conduct.

(8) Section 29—

25 Omit “to him”, insert instead “under section 12 or investigates prescribed conduct”.

Ombudsman (Police Regulation) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(9) Section 32 (4), (5)—

After section 32 (3), insert:—

5 (4) While a member of the Police Force is an officer of the Ombudsman by reason of the services of the member being made use of under subsection (2)—

(a) the member may, under section 9, be appointed to be a special officer of the Ombudsman;

10 (b) where the member is a special officer of the Ombudsman, the Ombudsman may, under and subject to section 10, delegate to the member the exercise and performance of powers, authorities, duties and functions of the Ombudsman in respect of the investigation under this Act of prescribed conduct; and

15 (c) the member shall retain rank, seniority and remuneration as such a member and may continue to act as a constable.

(5) An officer of the Ombudsman may not be concerned in the investigation under this Act of prescribed conduct unless the officer is a member of the investigative staff of the Internal Affairs Branch within the Police Force.

20

(10) (a) Section 34 (b)—

Omit the paragraph, insert instead:—

25 (b) where the information is obtained from any other person—

(i) with the consent of that person; or

30 (ii) for the purpose of proceedings (including an inquiry under section 45 of the Police Regulation (Allegations of Misconduct) Act, 1978) with respect to the discipline of the Police Force before the Commissioner of Police, the Police Tribunal of New South Wales or the Government and Related Employees Appeal Tribunal;

Ombudsman (Police Regulation) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 34 (2), (3)—

At the end of section 34, insert:—

5 (2) Subsection (1) does 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 (3) Without limiting the operation of subsection (1) (a), in the application of subsection (1) to and in respect of information received in the course of an investigation under this Act of prescribed conduct, the reference in that subsection—

 (a) to a public authority—shall be construed as a reference to a member of the Police Force;

15 (b) to the head of that authority—shall be construed as a reference to the Commissioner; and

 (c) to the responsible Minister—shall be construed as a reference to the Minister administering the Police Regulation Act, 1899.

(11) (a) Section 35 (1)—

20 After “Ombudsman” where secondly occurring, insert “who is not a member of the Police Force”.

(b) Section 35 (1)—

After “proceedings”, insert “, or in any proceedings before the Police Tribunal of New South Wales,”.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

**OMBUDSMAN (POLICE REGULATION) AMENDMENT ACT,
1983, No. 193**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 193, 1983.

An Act to amend the Ombudsman Act, 1974, so as to enable the investigation under that Act of conduct the subject of a complaint made under the Police Regulation (Allegations of Misconduct) Act, 1978.
[Assented to, 31st December, 1983.]

Ombudsman (Police Regulation) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Ombudsman (Police Regulation) Amendment Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the day on which Schedule 3 to the Police Regulation (Allegations of Misconduct) Amendment Act, 1983, commences.

Principal Act.

3. The Ombudsman Act, 1974, is referred to in this Act as the Principal Act.

Amendment of Act No. 68, 1974.

4. The Principal Act is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 3, matter relating to Part IV—

Omit "26", insert instead "25A".

Ombudsman (Police Regulation) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) (a) Section 5 (1), definition of “prescribed conduct”—

After the definition of “person”, insert:—

“prescribed conduct” means conduct, within the meaning of the Police Regulation (Allegations of Misconduct) Act, 1978, of a member of the Police Force;

(b) Section 5 (1A)—

After section 5 (1), insert:—

(1A) In this Act, a reference to an investigation under this Act includes a reference to an investigation of prescribed conduct made under this Act pursuant to section 25A (1) of the Police Regulation (Allegations of Misconduct) Act, 1978.

(3) (a) Section 10 (2) (c)—

Omit “subsection (1); or”, insert instead “subsection (1);”.

(b) Section 10 (2) (d)—

Omit “1975.”, insert instead “1975; or”.

(c) Section 10 (2) (e)—

After section 10 (2) (d), insert:—

(e) any of the Ombudsman’s powers, authorities, duties and functions with respect to an investigation of prescribed conduct, otherwise than to a special officer of the Ombudsman who is a member of the investigative staff of the Internal Affairs Branch within the Police Force.

(4) (a) Section 13 (3)—

After “investigation”, insert “under this Act”.

Ombudsman (Police Regulation) Amendment.

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT—continued.****(b) Section 13 (4A)—**

After section 13 (4), insert:—

(4A) In deciding whether to discontinue an investigation of prescribed conduct, the Ombudsman shall have regard to the public interest.

(5) (a) Section 15 (a)—

After “Ombudsman”, insert “under section 12”.

(b) Section 15 (2)—

At the end of section 15, insert:—

(2) Where the Ombudsman discontinues an investigation of prescribed conduct, the Ombudsman shall inform the complainant and the Commissioner of Police in writing of the decision and the reasons for the decision.

(6) Sections 16, 24 (1), 25 (1)—

After “conduct” wherever occurring, insert “or prescribed conduct”.

(7) Section 25A—

Before section 26, insert:—

Application of Part IV.

25A. This Part, section 29 excepted, does not apply to or in respect of the investigation under this Act of prescribed conduct.

(8) Section 29—

Omit “to him”, insert instead “under section 12 or investigates prescribed conduct”.

Ombudsman (Police Regulation) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(9) Section 32 (4), (5)—

After section 32 (3), insert:—

(4) While a member of the Police Force is an officer of the Ombudsman by reason of the services of the member being made use of under subsection (2)—

- (a) the member may, under section 9, be appointed to be a special officer of the Ombudsman;
- (b) where the member is a special officer of the Ombudsman, the Ombudsman may, under and subject to section 10, delegate to the member the exercise and performance of powers, authorities, duties and functions of the Ombudsman in respect of the investigation under this Act of prescribed conduct; and
- (c) the member shall retain rank, seniority and remuneration as such a member and may continue to act as a constable.

(5) An officer of the Ombudsman may not be concerned in the investigation under this Act of prescribed conduct unless the officer is a member of the investigative staff of the Internal Affairs Branch within the Police Force.

(10) (a) Section 34 (b)—

Omit the paragraph, insert instead:—

- (b) where the information is obtained from any other person—
 - (i) with the consent of that person; or
 - (ii) for the purpose of proceedings (including an inquiry under section 45 of the Police Regulation (Allegations of Misconduct) Act, 1978) with respect to the discipline of the Police Force before the Commissioner of Police, the Police Tribunal of New South Wales or the Government and Related Employees Appeal Tribunal;

Ombudsman (Police Regulation) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 34 (2), (3)—

At the end of section 34, insert:—

(2) Subsection (1) does 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.

(3) Without limiting the operation of subsection (1) (a), in the application of subsection (1) to and in respect of information received in the course of an investigation under this Act of prescribed conduct, the reference in that subsection—

- (a) to a public authority—shall be construed as a reference to a member of the Police Force;
- (b) to the head of that authority—shall be construed as a reference to the Commissioner; and
- (c) to the responsible Minister—shall be construed as a reference to the Minister administering the Police Regulation Act, 1899.

(11) (a) Section 35 (1)—

After “Ombudsman” where secondly occurring, insert “who is not a member of the Police Force”.

(b) Section 35 (1)—

After “proceedings”, insert “, or in any proceedings before the Police Tribunal of New South Wales,”.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
By Deputation from
His Excellency the Governor.

Government House,
Sydney, 31st December, 1983.



