

# CONCURRENCE COPY

## **POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) AMENDMENT BILL, 1983**

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### **EXPLANATORY NOTE**

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

The following Bills are cognate with this Bill:—

Police Regulation (Further Amendment) Bill, 1983;

Ombudsman (Police Regulation) Amendment Bill, 1983.

The object of this Bill is to amend the Police Regulation (Allegations of Misconduct) Act, 1978 ("the Act"), so as—

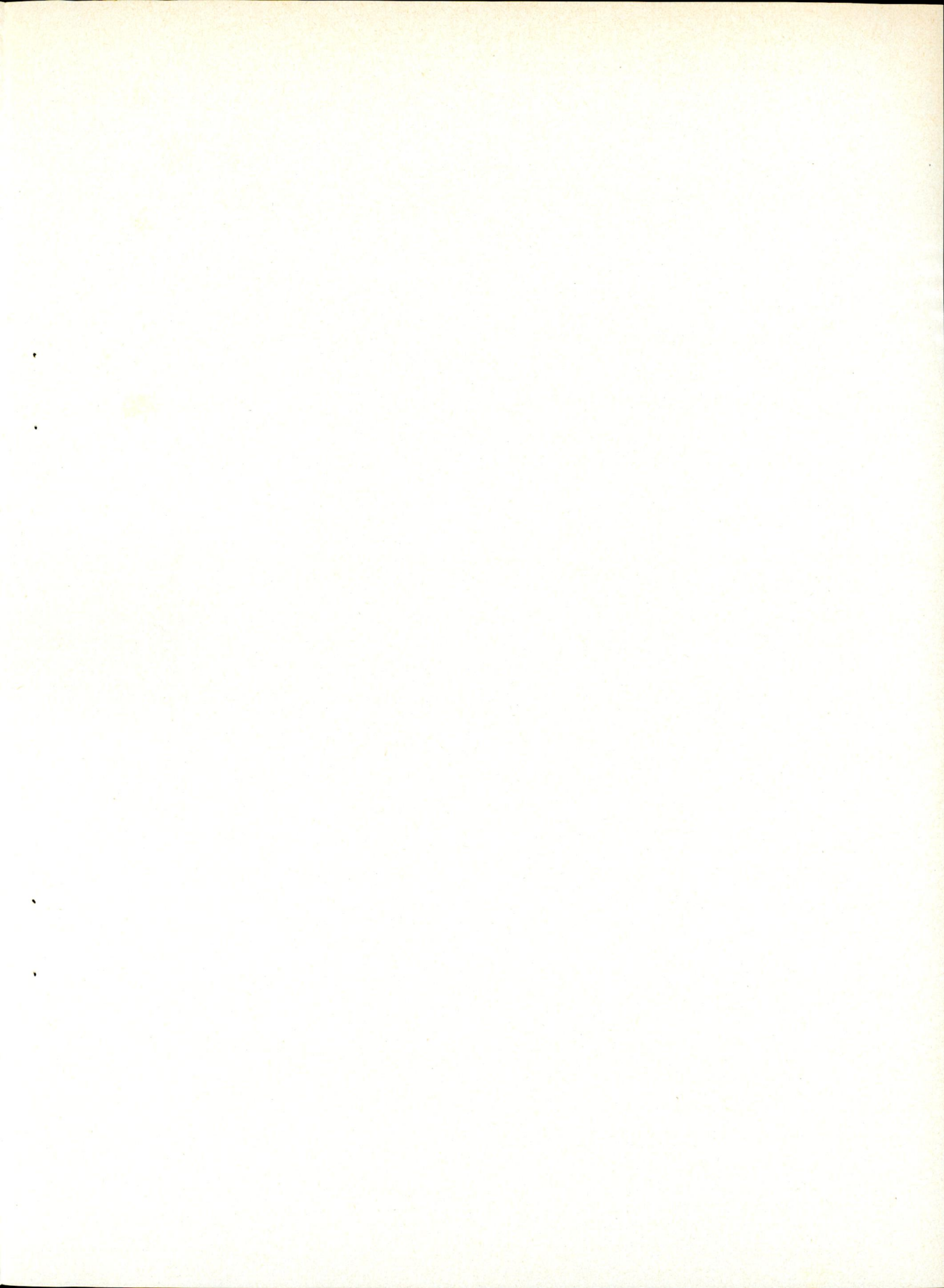
- (a) to restrict the disclosure of the identity of a complainant by members of the Police Force who are investigating complaints made under Part II of the Act (Schedule 1 (2));
- (b) to provide that a person holding the rank of Assistant Commissioner shall be appointed as the Officer-in-Charge of the Internal Affairs Branch within the Police Force ("the Internal Affairs Branch") (Schedule 1 (3) (a));
- (c) to enable a prescribed member of the Police Force serving for the time being on the staff of the Internal Affairs Branch to act in the office of the Officer-in-Charge of that Branch in specified circumstances (Schedule 1 (3) (b));
- (d) to prevent a member of the Police Force from serving in the Internal Affairs Branch unless the Minister has considered a report on that member prepared by the Officer-in-Charge of that Branch (Schedule 1 (3) (c));
- (e) to impose a duty on the Internal Affairs Branch to identify, and report upon, practices and procedures the following of which may lead to corruption in the Police Force and to investigate, and report upon, whether corruption is occurring within that Force as a consequence of the following of those practices and procedures (Schedule 1 (4));
- (f) to require the Officer-in-Charge of the Internal Affairs Branch to prepare and submit to the Minister certain periodic and other reports (Schedule 1 (5));

- (g) to declare that, in certain circumstances, complaints in which the complainant is not identified may be investigated under the Act (Schedule 2 (1) (e), (2) (a) and (4) (b));
- (h) to enable the conduct to which complaints made under the Act relate to be further investigated under the Ombudsman Act, 1974, after the complaint has been investigated under the Act (Schedule 3 (2));
- (i) to provide that, where the Ombudsman (after the investigation of a complaint under the Act) is not satisfied that the complaint has not been sustained and is not satisfied that the complaint has been sustained, the Ombudsman may dispense with a further investigation under the Ombudsman Act, 1974 (Schedule 3 (2));
- (j) to declare that, where the Ombudsman dispenses with a further investigation as referred to in paragraph (i) or, after a further investigation under the Ombudsman Act, 1974, is not satisfied that a complaint has not been sustained and is not satisfied that the complaint has been sustained, the complaint shall be deemed not to have been sustained (Schedule 3 (2) and (4) (b));
- (k) to enable the Police Tribunal of New South Wales ("the Police Tribunal") to resolve certain differences between the Commissioner of Police and the Ombudsman relating to—
  - (i) the deferring or discontinuing of the investigation of a complaint under the Act (Schedule 4 (1)); or
  - (ii) the action to be taken by the Commissioner of Police in consequence of a report made under the Act by the Ombudsman (Schedule 4 (2)); and
- (l) to require the Minister or the Commissioner of Police, as the case may be, to take into consideration recommendations made with respect to penalties by the Police Tribunal in certain circumstances and to require the making of those recommendations (Schedule 4 (7) and (8)).

The Bill also contains other provisions of a minor, ancillary, consequential and transitional nature.

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**POLICE REGULATION (ALLEGATIONS OF MISCONDUCT)  
AMENDMENT BILL, 1983**

No.       , 1983.

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**A BILL FOR**

An Act to amend the Police Regulation (Allegations of Misconduct) Act, 1978, with respect to the constitution and functions of the Internal Affairs Branch of the Police Force; to make further provision with respect to complaints about the conduct of members of the Police Force; and for other purposes.

[MR ANDERSON—10 November, 1983.]

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See also Police Regulation (Further Amendment) Bill, 1983; Ombudsman (Police Regulation) Amendment Bill, 1983.

*Police Regulation (Allegations of Misconduct) 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 "Police Regulation (Allegations of Misconduct) Amendment Act, 1983".

**Commencement.**

2. (1) Except as provided by subsections (2) and (3), this Act shall  
10 commence on the date of assent to this Act.

(2) Section 5, in its application to a provision of Schedules 1–4, shall commence on the day on which the provision commences.

(3) Schedule 1 (3), Schedule 3 and Schedule 4 (1)–(3) shall  
15 commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal Act.**

3. The Police Regulation (Allegations of Misconduct) Act, 1978, is referred to in this Act as the Principal Act.

**20 Schedules.**

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
THE INTERNAL AFFAIRS BRANCH.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
25 ANONYMOUS COMPLAINTS.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO INVESTIGATIONS BY THE OMBUDSMAN.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL OF NEW SOUTH WALES.

**5 Amendment of Act No. 84, 1978.**

**5.** The Principal Act is amended in the manner set forth in Schedules 1–4.

**Transitional provisions.**

**6. (1)** Where, before the commencement of section 25A of the Principal Act, as amended by this Act, a determination was made by the Ombudsman that the Ombudsman was not satisfied that a complaint had not been sustained and was not satisfied that the complaint had been sustained, section 25A of the Principal Act, as so amended, does not apply to or in respect of the complaint.

**15 (2)** Subsections (1) and (2) of section 35A of the Principal Act, as amended by this Act, apply in respect of the appointment of the Officer-in-Charge of the Internal Affairs Branch within the Police Force which firstly takes effect on or after the appointed day as if—

**20 (a)** the references to the Officer-in-Charge of the Internal Affairs Branch, where firstly, secondly and fourthly occurring in section 35A (1) and wherever occurring in section 35A (2) (b) and (e) (ii), were references to the Commissioner of Police; and

**(b)** section 35A (2) (e) (i) were omitted.

**25 (3)** In subsection (2), “appointed day” means the day on which Schedule 1 (3) commences.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL  
AFFAIRS BRANCH.

5 (1) Section 3—

From the matter relating to Part VI, omit “, 35”, insert instead  
“–35A”.

(2) Section 19 (2), (3)—

At the end of section 19, insert:—

10 (2) While investigating a complaint, a member of the Police  
Force shall not, without the consent—

(a) of the Officer-in-Charge of the Internal Affairs Branch; or

15 (b) of any other member of the Police Force serving for the  
time being on the staff of the Internal Affairs Branch and  
nominated for the purpose of granting consents under this  
subsection by that Officer-in-Charge either generally or in  
the particular case,

20 disclose to any person, other than that Officer-in-Charge or a member  
of the Police Force so nominated, the identity of the complainant,  
except for the purposes of a report under section 23.

(3) A person shall not grant a consent under subsection (2)  
unless the person considers that the disclosure of the identity of the  
complainant is necessary for the effective conduct of the investigation  
of the complaint.

25 (3) (a) Section 34 (3)—

Omit “or above the rank of Inspector”, insert instead “the rank  
of Assistant Commissioner”.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL  
AFFAIRS BRANCH—*continued.*

## (b) Section 34 (3A), (3B)—

5           After section 34 (3), insert:—

          (3A) The prescribed officer, being a member of the Police  
Force appointed by the Governor and serving for the time  
being on the staff of the Internal Affairs Branch, may exercise  
the powers and authorities, and shall perform the duties and  
10           functions, of the Officer-in-Charge during—

          (a) any absence of the Officer-in-Charge; or

          (b) any vacancy, not exceeding 6 months, in the office  
of the Officer-in-Charge.

          (3B) Any act, matter or thing done under subsection (3A)  
15           by the prescribed officer referred to in that subsection shall  
be deemed to have been done by the Officer-in-Charge.

## (c) Section 34 (6A)—

          After section 34 (6), insert:—

          (6A) A person shall not be appointed as the Officer-in-Charge  
20           of, or as a member of the investigative or other staff of, or be  
seconded under subsection (8) to, the Internal Affairs Branch  
unless the Minister has considered a report upon the person  
submitted under section 35A (1) (c).

## (4) Section 35 (1) (c1)—

25           After section 35 (1) (c), insert:—

          (c1) to identify, and report upon, practices and procedures followed  
by members of the Police Force as a consequence of the  
following of which corruption may occur within the Police  
Force and to investigate, and report upon, whether corruption  
30           is occurring within the Police Force as a consequence of the  
following of those practices or procedures;



*Police Regulation (Allegations of Misconduct) Amendment.*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL  
AFFAIRS BRANCH—*continued.*

(5) Section 35A—

5 After section 35, insert:—

**Reports.**

35A. (1) The Officer-in-Charge of the Internal Affairs Branch shall—

- 10 (a) not later than on 1st March in each year, submit a report to the Minister setting out details of the work and activities of the Internal Affairs Branch during the year concluding with 31st December immediately preceding that 1st March;
- 15 (b) not later than 30 days after the end of each of the periods of 3 months concluding with the last day of March, June, September and December in each year, submit a report to the Minister setting out details of the work and activities of the Internal Affairs Branch during that period of 3 months; and
- 20 (c) where the Officer-in-Charge is notified by a prescribed authority that a person is being considered for appointment—
  - 25 (i) as the Commissioner, a Deputy Commissioner, an Assistant Commissioner or a Superintendent of a grade prescribed for the purposes of section 5AAA of the Police Regulation Act, 1899; or
  - (ii) as the Officer-in-Charge of, or to the investigative or other staff of, or for secondment under section 34 (8) to, the Internal Affairs Branch,
- 30 submit a report upon the person to the prescribed authority, as soon as practicable after the Officer-in-Charge has been so notified, being a report setting out the details required to be inserted in it by subsection (2).



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL  
AFFAIRS BRANCH—*continued.*

- 5           (2) The details required by this subsection to be inserted in  
a report upon a person are as follows:—
- 10           (a) particulars of the previous employment of the person,  
including particulars of the names of previous employers of  
the person, the offices or positions in which the person has  
been employed (whether or not in the Police Force of New  
South Wales) and the dates between which the person has  
been employed in those offices or positions;
- 15           (b) particulars of any criminal proceedings commenced against  
the person in New South Wales and, in so far as the  
Officer-in-Charge of the Internal Affairs Branch can reason-  
ably ascertain, elsewhere, and the results of those  
proceedings;
- (c) particulars of any complaint which has been made against  
the person;
- 20           (d) where the person has been referred to—  
            (i) in an investigation commenced under Part IV;  
            (ii) in any proceedings commenced before the Tribunal;  
            (iii) at an inquiry or commission held under any other  
Act (including an Act of the Commonwealth or of  
another State or a Territory); or
- 25           (iv) at an inquiry authorised by any Minister,  
particulars of that investigation or of those proceedings, or  
of the findings of that inquiry or commission, as the case  
may be, in so far as they relate to the person;
- 30           (e) particulars relating to such matters or things, if any, as—  
            (i) the Commissioner requires to be included in the  
report; or  
            (ii) the Officer-in-Charge of the Internal Affairs Branch  
considers appropriate to include in the report;



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL  
AFFAIRS BRANCH—*continued.*

5 (f) particulars relating to such other matters or things as are prescribed.

(3) A report under subsection (1) (a) shall be presented to Parliament.

(4) In subsection (1) (c), “prescribed authority” means the Minister or the Commissioner.

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING  
TO ANONYMOUS COMPLAINTS.

(1) (a) Section 5 (3)—

15 Omit “A person may not make a complaint in accordance with this Part about the conduct of a member of the Police Force”, insert instead “A complaint by a person about the conduct of a member of the Police Force is not a complaint made in accordance with this Part”.

20 (b) Section 5 (3) (a), (b)—

Omit “he has already” wherever occurring, insert instead “the person has already”.

(c) Section 5 (3) (a)—

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



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING  
TO ANONYMOUS COMPLAINTS—*continued.*

- (d) Section 5 (3) (b)—  
5 Omit “complainant.”, insert instead “complainant; or”.
- (e) Section 5 (3) (c)—  
After section 5 (3) (b), insert:—  
10 (c) the person is not identified in the complaint, the  
complaint is made in relation to a particular incident  
and another complaint has already been made in  
accordance with this Part in relation to that incident  
about the same conduct of the member of the Police  
Force.
- (2) (a) Section 6 (1), (1A), (1B)—  
15 Omit section 6 (1), insert instead:—
- (1) Except as provided by section 5 (3), a complaint is made  
in accordance with this Part if it complies with subsections (1A)  
and (1B).
- 20 (1A) A complaint complies with this subsection if it is in  
writing and—
- (a) where the complaint—  
(i) was made before the date of assent to the Police  
Regulation (Allegations of Misconduct) Amend-  
ment Act, 1983; or  
25 (ii) is made on or after that date and the terms of  
the complaint provide reasonable grounds to  
believe that the complaint relates to conduct  
which occurred wholly before that date,  
only if the complainant is identified in the complaint; or  
30 (b) in any other case, except as provided by section 5 (3)  
(c), whether or not the complainant is identified in the  
complaint.

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING  
TO ANONYMOUS COMPLAINTS—*continued.*

(1B) A complaint complies with this subsection if—

- 5 (a) it is delivered to a member of the Police Force personally or by post;
- (b) it is lodged at the office of the Ombudsman while that office is open for business or it is delivered to that office by post;
- 10 (c) it is addressed to the Ombudsman and lodged at the office of a court of petty sessions while that office is open for business; or
- (d) it is referred to the Ombudsman by the Minister.

(b) Section 6 (4), (5)—

- 15 Omit “subsection (1) (d)” wherever occurring, insert instead “subsection (1B) (d)”.

(3) (a) Section 13 (a)—

Omit “or”.

(b) Section 13 (b)—

- 20 Omit “Part IV.”, insert instead “Part IV; or”.

(c) Section 13 (c)—

After section 13 (b), insert:—

(c) the complainant is not identified.

(4) (a) Section 18 (1) (e)—

- 25 Omit the paragraph, insert instead:—

(e) the complainant does not or, where the complainant is not identified, the complainant could not have an interest, or a sufficient interest, in the conduct complained of.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING  
TO ANONYMOUS COMPLAINTS—*continued.*

## (b) Section 18 (1A)—

5           After section 18 (1), insert:—

(1A) Without affecting the generality of subsection (1), the  
Ombudsman shall not determine that a complaint, in which the  
complainant is not identified, should be investigated, unless the  
Ombudsman is of the opinion—

10           (a) that the complaint appears to contain sufficient  
information to enable an investigation to be carried out;  
and

(b) that the conduct the subject of the complaint would—

15           (i) if the conduct had occurred, provide reasonable  
grounds to believe that a criminal offence had  
been committed by a member of the Police  
Force; or

20           (ii) if a departmental charge were proved against a  
member of the Police Force in relation to the  
conduct, warrant the imposition of a substantial  
punishment upon the member.

## (c) Section 18 (2)—

After “complainant”, insert “, if the complainant is identified,”.

## (d) Section 18 (4)—

25           After “shall” where firstly occurring, insert “, if the complainant  
is identified,”.

## (5) Sections 27 (a), 44 (2) (d)—

After “complainant” wherever occurring, insert “, if the complainant  
is identified”.

## 30 (6) Section 29 (3)—

After “complainant”, insert “, if the complainant is identified,”.

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING  
TO ANONYMOUS COMPLAINTS—*continued.*

(7) Section 31—

5 After “complaint”, insert “made by a complainant who is identified”.

(8) Section 51—

After “may”, insert “, where the complainant is identified,”.

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SCHEDULE 3.

(Sec. 5.)

10 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO INVESTIGATIONS BY  
THE OMBUDSMAN.

(1) Section 25 (1)—

After “properly investigated”, insert “under this Part”.

(2) Section 25A—

15 After section 25, insert:—

**Investigation under the Ombudsman Act, 1974.**

20 25A. (1) Where, after considering all the material and information provided for the Ombudsman under this Part, the Ombudsman is not satisfied that a complaint has not been sustained and is not satisfied that the complaint has been sustained, the Ombudsman may—

- (a) make the conduct to which the complaint relates the subject of an investigation under the Ombudsman Act, 1974; or
- 25 (b) having regard to the public interest, determine that no further investigation of the complaint should be carried out.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO INVESTIGATIONS BY  
THE OMBUDSMAN—*continued.*

- 5                   (2) Where the Ombudsman determines under subsection  
      (1) (b) that no further investigation of a complaint should be  
      carried out—
- (a) the Ombudsman shall, if the complainant is identified, notify  
                      the complainant accordingly, giving the reasons for the  
                      determination, and shall send a copy of the notification to—
- 10                   (i) the Commissioner; and  
                      (ii) the member of the Police Force whose conduct was  
                          the subject of the complaint; and
- (b) the complaint shall be deemed not to have been sustained.
- (3) (a) Section 26 (1)—
- 15                   Omit “information which he is under this Part required to pro-  
                      vide for the Ombudsman”, insert instead:—  
                      information—
- (a) which, under this Part, the Commissioner is required  
                          to provide for the Ombudsman; or
- 20                   (b) which, under the Ombudsman Act, 1974, the  
                          Commissioner or any other member of the Police  
                          Force is required, in the course of an investigation  
                          under that Act of the conduct to which a complaint  
                          relates, to provide for the Ombudsman,
- 25                   (b) Section 26 (1)—  
                      Omit “he shall”, insert instead “the Commissioner shall”.
- (c) Section 26 (1A)—  
                      After section 26 (1), insert:—
- 30                   (1A) Where the Ombudsman, pursuant to a requirement  
                      made under the Ombudsman Act, 1974, in the course of an  
                      investigation under that Act of the conduct to which a complaint



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*Police Regulation (Allegations of Misconduct) Amendment.*

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**SCHEDULE 3—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO INVESTIGATIONS  
BY THE OMBUDSMAN—continued.**

5 relates, receives material or information from a member of the Police Force, the Ombudsman may not, except as provided in subsection (2) (b) or with the consent of the Commissioner, publish that material or information, otherwise than to the Commissioner, until the expiration of 21 days after that receipt.

10 (4) (a) Section 27—

After “a complaint”, insert “or after an investigation, under the Ombudsman Act, 1974, of the conduct to which a complaint relates”.

(b) Section 27 (2)—

15 At the end of section 27, insert:—

(2) Where, after an investigation under the Ombudsman Act, 1974, of the conduct to which a complaint relates, the Ombudsman is not satisfied that a complaint has not been sustained and is not satisfied that the complaint has been  
20 sustained, he shall so report to—

(a) the complainant, if the complainant is identified;

(b) the Commissioner; and

(c) the member of the Police Force whose conduct was the subject of the complaint,

25 and the complaint shall be deemed not to have been sustained.

(5) Section 28 (1)—

After “Part IV”, insert “with respect to a complaint or after an investigation, under the Ombudsman Act, 1974, of the conduct to which a complaint relates,”.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO INVESTIGATIONS  
BY THE OMBUDSMAN—*continued.*

- (6) (a) Section 57—  
5 Omit “34” wherever occurring, insert instead “34 (1)”.
- (b) Section 57—  
Omit “that section”, insert instead “that subsection”.
- (7) Section 58 (1)—  
10 After “Ombudsman” where secondly occurring, insert “who is not a member of the Police Force”.
- (8) Section 59 (1) (a)–(c)—  
Omit section 59 (1) (a) and (b), insert instead:—  
    (a) the Commissioner;  
    (b) the Tribunal; or  
15 (c) the Government and Related Employees Appeal Tribunal.

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SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE  
TRIBUNAL OF NEW SOUTH WALES.

- 20 (1) Section 20—  
Omit the section, insert instead:—
- Deferral or discontinuance.**
20. (1) The Commissioner may apply to the Ombudsman for consent—  
25 (a) to defer the commencement or continuation of the investigation of a complaint; or



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

(b) to discontinue the investigation of a complaint.

5           (2) The Ombudsman may—

(a) consent to deferring the commencement or continuation of the investigation of a complaint pending the conclusion of criminal proceedings which have been instituted and in which the subject of the complaint is, or may be, in issue; or

10          (b) consent to the discontinuance of the investigation of a complaint if continuation of the investigation would be, in the circumstances of the case, unreasonable or impracticable.

15           (3) Where the Ombudsman grants a consent under subsection (2), the Ombudsman shall, if the complainant is identified, notify the complainant in writing accordingly, giving the reasons for granting the consent, and shall send to the Commissioner a copy of the notification.

20           (4) Where the Ombudsman does not, within the prescribed time, grant a consent applied for under subsection (1), the Commissioner may appeal to the Tribunal in accordance with the regulations.

(5) The Tribunal shall determine an appeal under subsection (4)—

25          (a) by granting the consent applied for under subsection (1) subject to such conditions, if any, as are specified by the Tribunal; or

(b) by refusing to grant the consent,

and by causing a copy of its determination to be sent to the Commissioner, the Ombudsman and, if the complainant is identified, the complainant.

30           (6) In exercising the jurisdiction conferred by this section, the Tribunal shall be constituted by one member, not being the President.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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**SCHEDULE 4—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—continued.**

- 5           (7) The commencement or continuation of the investigation of a complaint under this Part may not be deferred, and the investigation of a complaint under this Part may not be discontinued, except in accordance with a consent granted under subsection (2) or (5).

(2) Sections 30, 30A—

Omit section 30, insert instead:—

10           **Notification of proposed action on report.**

30. (1) The Commissioner shall, as soon as is practicable after receiving a report under section 28, notify the Ombudsman of the nature of the action, if any, proposed to be taken by the Commissioner in consequence of the report.

- 15           (2) A notification under subsection (1) shall not contain particulars of the quantum of any penalty proposed to be imposed.

(3) Where the Ombudsman has given a copy of a report under section 28 to the Commissioner and the Ombudsman is of the opinion—

- 20           (a) that the Commissioner has unreasonably delayed notifying the Ombudsman under subsection (1) with respect to the report;
- (b) that the nature of the action, as notified under subsection (1), proposed to be taken by the Commissioner in consequence of the report is, in the circumstances of the case, unreasonable or inadequate; or
- 25           (c) that the Commissioner has unreasonably delayed taking action in consequence of the report,

30           the Ombudsman shall advise the Commissioner accordingly by notice in writing served on the Commissioner.



*Police Regulation (Allegations of Misconduct) Amendment.*

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

(4) Where the Ombudsman and the Commissioner do not,  
within the prescribed time, resolve any issue the subject of a notice  
under subsection (3), either or both of them may appeal to the  
Tribunal in accordance with the regulations.

(5) The Tribunal shall determine an appeal under subsection  
(4)—

(a) by directing—

(i) that a notification be made under subsection (1)  
forthwith or within a period specified in the direction;

(ii) that the Commissioner take action of a nature  
described in the direction; or

(iii) that action of a nature described in the direction be  
taken by the Commissioner forthwith or within a  
period specified in the direction; or

(b) by refusing to give any such direction,

and by causing a copy of its determination to be sent to the  
Commissioner and the Ombudsman.

(6) Any direction given by the Tribunal under subsection  
(5) (a) shall be carried into effect by the Commissioner in so far as  
the Commissioner is capable of carrying the direction into effect.

(7) In exercising the jurisdiction conferred by this section,  
the Tribunal shall be constituted by one member, not being the  
President.

(8) Nothing in this section—

(a) permits an appeal to be made to the Tribunal against a  
determination made by the Ombudsman that a complaint has  
been sustained; or

(b) affects the exercise by the Tribunal of its jurisdiction under  
section 41 or 43.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*

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AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.***Notification of action taken on report.**

5           30A. (1) The Commissioner shall, forthwith after taking action  
in consequence of a report under section 28, being action with  
respect to a member of the Police Force whose conduct is the subject  
of a complaint, notify the Ombudsman of the nature of the action  
so taken.

10           (2) A notification under subsection (1) shall, where the  
action to which the notification relates consists of or includes the  
imposition of a penalty, contain particulars of the nature and quantum  
of the penalty imposed.

15           (3) The Ombudsman shall determine whether, in the  
circumstances of the case, action notified under subsection (1) was,  
in the opinion of the Ombudsman—

(a) appropriate; and

(b) taken within a reasonable time.

(3) Section 32 (2), (3)—

20           Omit “or under section 30 (2)” wherever occurring.

(4) Section 41 (1)—

Omit “and denied by him”, insert instead “, being a charge which  
that member does not admit,”.

(5) (a) Section 42—

25           Omit “(1)” where firstly occurring.

(b) Section 42—

After “41” where firstly and secondly occurring, insert “or 45A”.



*Police Regulation (Allegations of Misconduct) Amendment.*

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

(c) Section 42—

5           After “41 (1) (a)”, insert “or arise under section 45A”.

(6) Section 44 (2)—

After “before it”, insert “under section 41 or 43”.

(7) Section 45 (6)—

After section 45 (5), insert:—

10           (6) Where a departmental charge recommended in a report under subsection (1) has been preferred against a member of the Police Force and, otherwise than after the Tribunal has commenced to hear the charge under section 41, the charge is admitted by the member—

15           (a) the Minister, before making a recommendation, if any, to the Governor with respect to the penalty which might be imposed by the Governor on the member; or

(b) the Commissioner, before imposing a penalty, if any, on the member,

as the case may require, shall—

20           (c) refer, for the consideration of the Tribunal as constituted for the purposes of this section, the matter of an assessment of an appropriate penalty; and

25           (d) take into consideration the recommendation made under section 45A (1) by the Tribunal with respect to the penalty.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

## (8) Section 45A—

5       After section 45, insert:—

**Recommendations as to penalties.**

10       45A. (1) Where, under section 45 (6) (c), the Minister or the  
Commissioner refers to the Tribunal, as constituted for the purposes  
of section 45, the matter of an assessment of an appropriate penalty  
which might be imposed on a member of the Police Force in respect  
of a departmental charge preferred against the member, the Tribunal,  
as so constituted, shall make an assessment of the penalty, if any,  
which the Tribunal considers would be appropriate to be imposed  
upon the member and advise the Minister or the Commissioner, as  
15       the case may require, of its recommendation with respect to that  
penalty.

## (2) Where—

- 20       (a) while a departmental charge preferred against a member  
of the Police Force is being heard by the Tribunal exercising  
its jurisdiction under section 41, the member admits the  
charge; or
- (b) the Tribunal, exercising that jurisdiction, determines that  
a departmental charge preferred against a member of the  
Police Force has been proved,

25       the Tribunal shall make an assessment of the penalty, if any, which  
the Tribunal considers would be appropriate to be imposed upon  
the member and advise the Minister or the Commissioner, as the  
case may require, of its recommendation with respect to that penalty.

## (3) Before—

- 30       (a) the Minister makes a recommendation, if any, to the  
Governor with respect to the penalty which might  
be imposed by the Governor on a member of the Police  
Force; or



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

5 (b) the Commissioner imposes a penalty, if any, on a member  
of the Police Force,

in relation to a departmental charge preferred against the member  
and heard or partly heard by the Tribunal exercising its jurisdiction  
under section 41, the Minister or the Commissioner, as the case  
10 may be, shall take into consideration the recommendation made  
under subsection (2) by the Tribunal with respect to that penalty.

(4) At any proceedings before the Tribunal under this  
section—

15 (a) the Commissioner and the member of the Police Force with  
respect to whom a recommendation under this section is  
required to be made are each entitled to be represented  
by counsel, solicitor or agent; and

(b) the public shall not be excluded unless the Tribunal exercis-  
ing jurisdiction at those proceedings otherwise orders.

20 (5) For the purposes of this section, but subject to sections  
41 (2) and 45 (2) (a), there may be contemporaneous sittings of  
the Tribunal constituted by the President or different members and  
those sittings may be in different places.

(9) Section 61 (2)—

Omit “and the implementation of its determinations”.

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BY AUTHORITY

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









**POLICE REGULATION (ALLEGATIONS OF MISCONDUCT)  
AMENDMENT ACT, 1983, No. 191**

**New South Wales**



**ANNO TRICESIMO SECUNDO**

**ELIZABETHÆ II REGINÆ**

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**Act No. 191, 1983.**

An Act to amend the Police Regulation (Allegations of Misconduct) Act, 1978, with respect to the constitution and functions of the Internal Affairs Branch of the Police Force; to make further provision with respect to complaints about the conduct of members of the Police Force; and for other purposes. [Assented to, 31st December, 1983.]

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See also Police Regulation (Further Amendment) Act, 1983; Ombudsman (Police Regulation) Amendment Act, 1983.

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*Police Regulation (Allegations of Misconduct) Amendment.*

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**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 "Police Regulation (Allegations of Misconduct) Amendment Act, 1983".

**Commencement.**

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Section 5, in its application to a provision of Schedules 1–4, shall commence on the day on which the provision commences.

(3) Schedule 1 (3), Schedule 3 and Schedule 4 (1)–(3) shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal Act.**

3. The Police Regulation (Allegations of Misconduct) Act, 1978, is referred to in this Act as the Principal Act.

**Schedules.**

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL AFFAIRS BRANCH.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ANONYMOUS COMPLAINTS.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO INVESTIGATIONS BY THE OMBUDSMAN.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL OF NEW SOUTH WALES.

**Amendment of Act No. 84, 1978.**

**5.** The Principal Act is amended in the manner set forth in Schedules 1–4.

**Transitional provisions.**

**6. (1)** Where, before the commencement of section 25A of the Principal Act, as amended by this Act, a determination was made by the Ombudsman that the Ombudsman was not satisfied that a complaint had not been sustained and was not satisfied that the complaint had been sustained, section 25A of the Principal Act, as so amended, does not apply to or in respect of the complaint.

**(2)** Subsections (1) and (2) of section 35A of the Principal Act, as amended by this Act, apply in respect of the appointment of the Officer-in-Charge of the Internal Affairs Branch within the Police Force which firstly takes effect on or after the appointed day as if—

- (a) the references to the Officer-in-Charge of the Internal Affairs Branch, where firstly, secondly and fourthly occurring in section 35A (1) and wherever occurring in section 35A (2) (b) and (e) (ii), were references to the Commissioner of Police; and
- (b) section 35A (2) (e) (i) were omitted.

**(3)** In subsection (2), “appointed day” means the day on which Schedule 1 (3) commences.

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*Police Regulation (Allegations of Misconduct) Amendment.*

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## SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL  
AFFAIRS BRANCH.

## (1) Section 3—

From the matter relating to Part VI, omit “, 35”, insert instead “-35A”.

## (2) Section 19 (2), (3)—

At the end of section 19, insert:—

(2) While investigating a complaint, a member of the Police Force shall not, without the consent—

- (a) of the Officer-in-Charge of the Internal Affairs Branch; or
- (b) of any other member of the Police Force serving for the time being on the staff of the Internal Affairs Branch and nominated for the purpose of granting consents under this subsection by that Officer-in-Charge either generally or in the particular case,

disclose to any person, other than that Officer-in-Charge or a member of the Police Force so nominated, the identity of the complainant, except for the purposes of a report under section 23.

(3) A person shall not grant a consent under subsection (2) unless the person considers that the disclosure of the identity of the complainant is necessary for the effective conduct of the investigation of the complaint.

## (3) (a) Section 34 (3)—

Omit “or above the rank of Inspector”, insert instead “the rank of Assistant Commissioner”.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL  
AFFAIRS BRANCH—*continued.*

(b) Section 34 (3A), (3B)—

After section 34 (3), insert:—

(3A) The prescribed officer, being a member of the Police Force appointed by the Governor and serving for the time being on the staff of the Internal Affairs Branch, may exercise the powers and authorities, and shall perform the duties and functions, of the Officer-in-Charge during—

(a) any absence of the Officer-in-Charge; or

(b) any vacancy, not exceeding 6 months, in the office of the Officer-in-Charge.

(3B) Any act, matter or thing done under subsection (3A) by the prescribed officer referred to in that subsection shall be deemed to have been done by the Officer-in-Charge.

(c) Section 34 (6A)—

After section 34 (6), insert:—

(6A) A person shall not be appointed as the Officer-in-Charge of, or as a member of the investigative or other staff of, or be seconded under subsection (8) to, the Internal Affairs Branch unless the Minister has considered a report upon the person submitted under section 35A (1) (c).

(4) Section 35 (1) (c1)—

After section 35 (1) (c), insert:—

(c1) to identify, and report upon, practices and procedures followed by members of the Police Force as a consequence of the following of which corruption may occur within the Police Force and to investigate, and report upon, whether corruption is occurring within the Police Force as a consequence of the following of those practices or procedures;

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL  
AFFAIRS BRANCH—*continued.*

## (5) Section 35A—

After section 35, insert:—

**Reports.**

35A. (1) The Officer-in-Charge of the Internal Affairs Branch shall—

- (a) not later than on 1st March in each year, submit a report to the Minister setting out details of the work and activities of the Internal Affairs Branch during the year concluding with 31st December immediately preceding that 1st March;
- (b) not later than 30 days after the end of each of the periods of 3 months concluding with the last day of March, June, September and December in each year, submit a report to the Minister setting out details of the work and activities of the Internal Affairs Branch during that period of 3 months; and
- (c) where the Officer-in-Charge is notified by a prescribed authority that a person is being considered for appointment—
  - (i) as the Commissioner, a Deputy Commissioner, an Assistant Commissioner or a Superintendent of a grade prescribed for the purposes of section 5AAA of the Police Regulation Act, 1899; or
  - (ii) as the Officer-in-Charge of, or to the investigative or other staff of, or for secondment under section 34 (8) to, the Internal Affairs Branch,

submit a report upon the person to the prescribed authority, as soon as practicable after the Officer-in-Charge has been so notified, being a report setting out the details required to be inserted in it by subsection (2).



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL  
AFFAIRS BRANCH—*continued.*

(2) The details required by this subsection to be inserted in a report upon a person are as follows:—

- (a) particulars of the previous employment of the person, including particulars of the names of previous employers of the person, the offices or positions in which the person has been employed (whether or not in the Police Force of New South Wales) and the dates between which the person has been employed in those offices or positions;
- (b) particulars of any criminal proceedings commenced against the person in New South Wales and, in so far as the Officer-in-Charge of the Internal Affairs Branch can reasonably ascertain, elsewhere, and the results of those proceedings;
- (c) particulars of any complaint which has been made against the person;
- (d) where the person has been referred to—
  - (i) in an investigation commenced under Part IV;
  - (ii) in any proceedings commenced before the Tribunal;
  - (iii) at an inquiry or commission held under any other Act (including an Act of the Commonwealth or of another State or a Territory); or
  - (iv) at an inquiry authorised by any Minister,particulars of that investigation or of those proceedings, or of the findings of that inquiry or commission, as the case may be, in so far as they relate to the person;
- (e) particulars relating to such matters or things, if any, as—
  - (i) the Commissioner requires to be included in the report; or
  - (ii) the Officer-in-Charge of the Internal Affairs Branch considers appropriate to include in the report;

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE INTERNAL  
AFFAIRS BRANCH—*continued.*

- (f) particulars relating to such other matters or things as are prescribed.
- (3) A report under subsection (1) (a) shall be presented to Parliament.
- (4) In subsection (1) (c), “prescribed authority” means the Minister or the Commissioner.

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING  
TO ANONYMOUS COMPLAINTS.

(1) (a) Section 5 (3)—

Omit “A person may not make a complaint in accordance with this Part about the conduct of a member of the Police Force”, insert instead “A complaint by a person about the conduct of a member of the Police Force is not a complaint made in accordance with this Part”.

(b) Section 5 (3) (a), (b)—

Omit “he has already” wherever occurring, insert instead “the person has already”.

(c) Section 5 (3) (a)—

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



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING  
TO ANONYMOUS COMPLAINTS—*continued.*

(d) Section 5 (3) (b)—

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

(e) Section 5 (3) (c)—

After section 5 (3) (b), insert:—

- (c) the person is not identified in the complaint, the complaint is made in relation to a particular incident and another complaint has already been made in accordance with this Part in relation to that incident about the same conduct of the member of the Police Force.

(2) (a) Section 6 (1), (1A), (1B)—

Omit section 6 (1), insert instead:—

(1) Except as provided by section 5 (3), a complaint is made in accordance with this Part if it complies with subsections (1A) and (1B).

(1A) A complaint complies with this subsection if it is in writing and—

(a) where the complaint—

- (i) was made before the date of assent to the Police Regulation (Allegations of Misconduct) Amendment Act, 1983; or
- (ii) is made on or after that date and the terms of the complaint provide reasonable grounds to believe that the complaint relates to conduct which occurred wholly before that date,

only if the complainant is identified in the complaint; or

- (b) in any other case, except as provided by section 5 (3) (c), whether or not the complainant is identified in the complaint.

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING  
TO ANONYMOUS COMPLAINTS—*continued.*

- (1B) A complaint complies with this subsection if—
  - (a) it is delivered to a member of the Police Force personally or by post;
  - (b) it is lodged at the office of the Ombudsman while that office is open for business or it is delivered to that office by post;
  - (c) it is addressed to the Ombudsman and lodged at the office of a court of petty sessions while that office is open for business; or
  - (d) it is referred to the Ombudsman by the Minister.
- (b) Section 6 (4), (5)—
  - Omit “subsection (1) (d)” wherever occurring, insert instead “subsection (1B) (d)”.
- (3) (a) Section 13 (a)—
  - Omit “or”.
- (b) Section 13 (b)—
  - Omit “Part IV.”, insert instead “Part IV; or”.
- (c) Section 13 (c)—
  - After section 13 (b), insert:—
    - (c) the complainant is not identified.
- (4) (a) Section 18 (1) (e)—
  - Omit the paragraph, insert instead:—
    - (e) the complainant does not or, where the complainant is not identified, the complainant could not have an interest, or a sufficient interest, in the conduct complained of.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING  
TO ANONYMOUS COMPLAINTS—*continued.*

(b) Section 18 (1A)—

After section 18 (1), insert:—

(1A) Without affecting the generality of subsection (1), the Ombudsman shall not determine that a complaint, in which the complainant is not identified, should be investigated, unless the Ombudsman is of the opinion—

- (a) that the complaint appears to contain sufficient information to enable an investigation to be carried out; and
- (b) that the conduct the subject of the complaint would—
  - (i) if the conduct had occurred, provide reasonable grounds to believe that a criminal offence had been committed by a member of the Police Force; or
  - (ii) if a departmental charge were proved against a member of the Police Force in relation to the conduct, warrant the imposition of a substantial punishment upon the member.

(c) Section 18 (2)—

After “complainant”, insert “, if the complainant is identified,”.

(d) Section 18 (4)—

After “shall” where firstly occurring, insert “, if the complainant is identified,”.

(5) Sections 27 (a), 44 (2) (d)—

After “complainant” wherever occurring, insert “, if the complainant is identified”.

(6) Section 29 (3)—

After “complainant”, insert “, if the complainant is identified,”.

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING  
TO ANONYMOUS COMPLAINTS—*continued.*

## (7) Section 31—

After “complaint”, insert “made by a complainant who is identified”.

## (8) Section 51—

After “may”, insert “, where the complainant is identified,”.

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SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO INVESTIGATIONS BY  
THE OMBUDSMAN.

## (1) Section 25 (1)—

After “properly investigated”, insert “under this Part”.

## (2) Section 25A—

After section 25, insert:—

**Investigation under the Ombudsman Act, 1974.**

25A. (1) Where, after considering all the material and information provided for the Ombudsman under this Part, the Ombudsman is not satisfied that a complaint has not been sustained and is not satisfied that the complaint has been sustained, the Ombudsman may—

- (a) make the conduct to which the complaint relates the subject of an investigation under the Ombudsman Act, 1974; or
- (b) having regard to the public interest, determine that no further investigation of the complaint should be carried out.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO INVESTIGATIONS BY  
THE OMBUDSMAN—*continued.*

(2) Where the Ombudsman determines under subsection (1) (b) that no further investigation of a complaint should be carried out—

- (a) the Ombudsman shall, if the complainant is identified, notify the complainant accordingly, giving the reasons for the determination, and shall send a copy of the notification to—
  - (i) the Commissioner; and
  - (ii) the member of the Police Force whose conduct was the subject of the complaint; and

(b) the complaint shall be deemed not to have been sustained.

(3) (a) Section 26 (1)—

Omit “information which he is under this Part required to provide for the Ombudsman”, insert instead:—

information—

- (a) which, under this Part, the Commissioner is required to provide for the Ombudsman; or
- (b) which, under the Ombudsman Act, 1974, the Commissioner or any other member of the Police Force is required, in the course of an investigation under that Act of the conduct to which a complaint relates, to provide for the Ombudsman,

(b) Section 26 (1)—

Omit “he shall”, insert instead “the Commissioner shall”.

(c) Section 26 (1A)—

After section 26 (1), insert:—

(1A) Where the Ombudsman, pursuant to a requirement made under the Ombudsman Act, 1974, in the course of an investigation under that Act of the conduct to which a complaint

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO INVESTIGATIONS  
BY THE OMBUDSMAN—*continued.*

relates, receives material or information from a member of the Police Force, the Ombudsman may not, except as provided in subsection (2) (b) or with the consent of the Commissioner, publish that material or information, otherwise than to the Commissioner, until the expiration of 21 days after that receipt.

## (4) (a) Section 27—

After “a complaint”, insert “or after an investigation, under the Ombudsman Act, 1974, of the conduct to which a complaint relates”.

## (b) Section 27 (2)—

At the end of section 27, insert:—

(2) Where, after an investigation under the Ombudsman Act, 1974, of the conduct to which a complaint relates, the Ombudsman is not satisfied that a complaint has not been sustained and is not satisfied that the complaint has been sustained, he shall so report to—

- (a) the complainant, if the complainant is identified;
- (b) the Commissioner; and
- (c) the member of the Police Force whose conduct was the subject of the complaint,

and the complaint shall be deemed not to have been sustained.

## (5) Section 28 (1)—

After “Part IV”, insert “with respect to a complaint or after an investigation, under the Ombudsman Act, 1974, of the conduct to which a complaint relates,”.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO INVESTIGATIONS  
BY THE OMBUDSMAN—*continued.*

(6) (a) Section 57—

Omit “34” wherever occurring, insert instead “34 (1)”.

(b) Section 57—

Omit “that section”, insert instead “that subsection”.

(7) Section 58 (1)—

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

(8) Section 59 (1) (a)–(c)—

Omit section 59 (1) (a) and (b), insert instead:—

(a) the Commissioner;

(b) the Tribunal; or

(c) the Government and Related Employees Appeal Tribunal.

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SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE  
TRIBUNAL OF NEW SOUTH WALES.

(1) Section 20—

Omit the section, insert instead:—

**Deferral or discontinuance.**

20. (1) The Commissioner may apply to the Ombudsman for consent—

(a) to defer the commencement or continuation of the investigation of a complaint; or

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

(b) to discontinue the investigation of a complaint.

(2) The Ombudsman may—

- (a) consent to deferring the commencement or continuation of the investigation of a complaint pending the conclusion of criminal proceedings which have been instituted and in which the subject of the complaint is, or may be, in issue; or
- (b) consent to the discontinuance of the investigation of a complaint if continuation of the investigation would be, in the circumstances of the case, unreasonable or impracticable.

(3) Where the Ombudsman grants a consent under subsection (2), the Ombudsman shall, if the complainant is identified, notify the complainant in writing accordingly, giving the reasons for granting the consent, and shall send to the Commissioner a copy of the notification.

(4) Where the Ombudsman does not, within the prescribed time, grant a consent applied for under subsection (1), the Commissioner may appeal to the Tribunal in accordance with the regulations.

(5) The Tribunal shall determine an appeal under subsection (4)—

- (a) by granting the consent applied for under subsection (1) subject to such conditions, if any, as are specified by the Tribunal; or
- (b) by refusing to grant the consent,

and by causing a copy of its determination to be sent to the Commissioner, the Ombudsman and, if the complainant is identified, the complainant.

(6) In exercising the jurisdiction conferred by this section, the Tribunal shall be constituted by one member, not being the President.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

(7) The commencement or continuation of the investigation of a complaint under this Part may not be deferred, and the investigation of a complaint under this Part may not be discontinued, except in accordance with a consent granted under subsection (2) or (5).

(2) Sections 30, 30A—

Omit section 30, insert instead:—

**Notification of proposed action on report.**

30. (1) The Commissioner shall, as soon as is practicable after receiving a report under section 28, notify the Ombudsman of the nature of the action, if any, proposed to be taken by the Commissioner in consequence of the report.

(2) A notification under subsection (1) shall not contain particulars of the quantum of any penalty proposed to be imposed.

(3) Where the Ombudsman has given a copy of a report under section 28 to the Commissioner and the Ombudsman is of the opinion—

- (a) that the Commissioner has unreasonably delayed notifying the Ombudsman under subsection (1) with respect to the report;
- (b) that the nature of the action, as notified under subsection (1), proposed to be taken by the Commissioner in consequence of the report is, in the circumstances of the case, unreasonable or inadequate; or
- (c) that the Commissioner has unreasonably delayed taking action in consequence of the report,

the Ombudsman shall advise the Commissioner accordingly by notice in writing served on the Commissioner.

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

(4) Where the Ombudsman and the Commissioner do not, within the prescribed time, resolve any issue the subject of a notice under subsection (3), either or both of them may appeal to the Tribunal in accordance with the regulations.

(5) The Tribunal shall determine an appeal under subsection (4)—

(a) by directing—

- (i) that a notification be made under subsection (1) forthwith or within a period specified in the direction;
- (ii) that the Commissioner take action of a nature described in the direction; or
- (iii) that action of a nature described in the direction be taken by the Commissioner forthwith or within a period specified in the direction; or

(b) by refusing to give any such direction,

and by causing a copy of its determination to be sent to the Commissioner and the Ombudsman.

(6) Any direction given by the Tribunal under subsection (5) (a) shall be carried into effect by the Commissioner in so far as the Commissioner is capable of carrying the direction into effect.

(7) In exercising the jurisdiction conferred by this section, the Tribunal shall be constituted by one member, not being the President.

(8) Nothing in this section—

- (a) permits an appeal to be made to the Tribunal against a determination made by the Ombudsman that a complaint has been sustained; or
- (b) affects the exercise by the Tribunal of its jurisdiction under section 41 or 43.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

**Notification of action taken on report.**

30A. (1) The Commissioner shall, forthwith after taking action in consequence of a report under section 28, being action with respect to a member of the Police Force whose conduct is the subject of a complaint, notify the Ombudsman of the nature of the action so taken.

(2) A notification under subsection (1) shall, where the action to which the notification relates consists of or includes the imposition of a penalty, contain particulars of the nature and quantum of the penalty imposed.

(3) The Ombudsman shall determine whether, in the circumstances of the case, action notified under subsection (1) was, in the opinion of the Ombudsman—

- (a) appropriate; and
- (b) taken within a reasonable time.

(3) Section 32 (2), (3)—

Omit “or under section 30 (2)” wherever occurring.

(4) Section 41 (1)—

Omit “and denied by him”, insert instead “, being a charge which that member does not admit,”.

(5) (a) Section 42—

Omit “(1)” where firstly occurring.

(b) Section 42—

After “41” where firstly and secondly occurring, insert “or 45A”.

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

## (c) Section 42—

After “41 (1) (a)”, insert “or arise under section 45A”.

## (6) Section 44 (2)—

After “before it”, insert “under section 41 or 43”.

## (7) Section 45 (6)—

After section 45 (5), insert:—

(6) Where a departmental charge recommended in a report under subsection (1) has been preferred against a member of the Police Force and, otherwise than after the Tribunal has commenced to hear the charge under section 41, the charge is admitted by the member—

- (a) the Minister, before making a recommendation, if any, to the Governor with respect to the penalty which might be imposed by the Governor on the member; or
- (b) the Commissioner, before imposing a penalty, if any, on the member,

as the case may require, shall—

- (c) refer, for the consideration of the Tribunal as constituted for the purposes of this section, the matter of an assessment of an appropriate penalty; and
- (d) take into consideration the recommendation made under section 45A (1) by the Tribunal with respect to the penalty.



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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

## (8) Section 45A—

After section 45, insert:—

**Recommendations as to penalties.**

45A. (1) Where, under section 45 (6) (c), the Minister or the Commissioner refers to the Tribunal, as constituted for the purposes of section 45, the matter of an assessment of an appropriate penalty which might be imposed on a member of the Police Force in respect of a departmental charge preferred against the member, the Tribunal, as so constituted, shall make an assessment of the penalty, if any, which the Tribunal considers would be appropriate to be imposed upon the member and advise the Minister or the Commissioner, as the case may require, of its recommendation with respect to that penalty.

## (2) Where—

- (a) while a departmental charge preferred against a member of the Police Force is being heard by the Tribunal exercising its jurisdiction under section 41, the member admits the charge; or
- (b) the Tribunal, exercising that jurisdiction, determines that a departmental charge preferred against a member of the Police Force has been proved,

the Tribunal shall make an assessment of the penalty, if any, which the Tribunal considers would be appropriate to be imposed upon the member and advise the Minister or the Commissioner, as the case may require, of its recommendation with respect to that penalty.

## (3) Before—

- (a) the Minister makes a recommendation, if any, to the Governor with respect to the penalty which might be imposed by the Governor on a member of the Police Force; or

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*Police Regulation (Allegations of Misconduct) Amendment.*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE POLICE TRIBUNAL  
OF NEW SOUTH WALES—*continued.*

- (b) the Commissioner imposes a penalty, if any, on a member of the Police Force,

in relation to a departmental charge preferred against the member and heard or partly heard by the Tribunal exercising its jurisdiction under section 41, the Minister or the Commissioner, as the case may be, shall take into consideration the recommendation made under subsection (2) by the Tribunal with respect to that penalty.

- (4) At any proceedings before the Tribunal under this section—

- (a) the Commissioner and the member of the Police Force with respect to whom a recommendation under this section is required to be made are each entitled to be represented by counsel, solicitor or agent; and
- (b) the public shall not be excluded unless the Tribunal exercising jurisdiction at those proceedings otherwise orders.

- (5) For the purposes of this section, but subject to sections 41 (2) and 45 (2) (a), there may be contemporaneous sittings of the Tribunal constituted by the President or different members and those sittings may be in different places.

- (9) Section 61 (2)—

Omit “and the implementation of its determinations”.

*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.*





