

FIRST PRINT

**POLICE REGULATION (ALLEGATIONS OF  
MISCONDUCT) AMENDMENT BILL 1987**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The Ombudsman (Amendment) Bill 1987 is cognate with this Bill.

The object of this Bill is to amend the Police Regulation (Allegations of Misconduct) Act 1978 to enable the Ombudsman to investigate complaints against members of the Police Force if action has not been taken by the Internal Affairs Branch in relation to a complaint within the required time.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 applies the Principal Act, as amended by the proposed Act, to complaints made before the commencement of the proposed Act.

Schedule 1 (1) inserts proposed sections 24A (Investigation under the Ombudsman Act 1974 where complaint not dealt with in time), 24B (Extension of time where complaint not dealt with) and 24C (Extension of time where application for deferral etc.) into the Principal Act.

*Police Regulation (Allegations of Misconduct) Amendment 1987*

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Proposed section 24A enables the Ombudsman to investigate a complaint under the Ombudsman Act 1974 if the Ombudsman has not received a report on the investigation of the complaint within 180 days after the Commissioner notifies the Ombudsman that the complaint is being investigated or the Ombudsman notifies the Commissioner of a determination by the Ombudsman that the complaint should be investigated.

Proposed section 24B enables the Commissioner to ask the Ombudsman for an extension of the 180 day period and provides a right of appeal to the Police Tribunal if the Ombudsman refuses or fails to grant the extension. An application may be made for one or more extensions.

Proposed section 24C extends the 180 day period while an application under section 20 is being dealt with and stops the period from running while the commencement or continuation of an investigation is deferred.

Schedule 1 (2) amends section 60 (Publicity) of the Principal Act to update an out of date reference.

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# **POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) AMENDMENT BILL 1987**

NEW SOUTH WALES

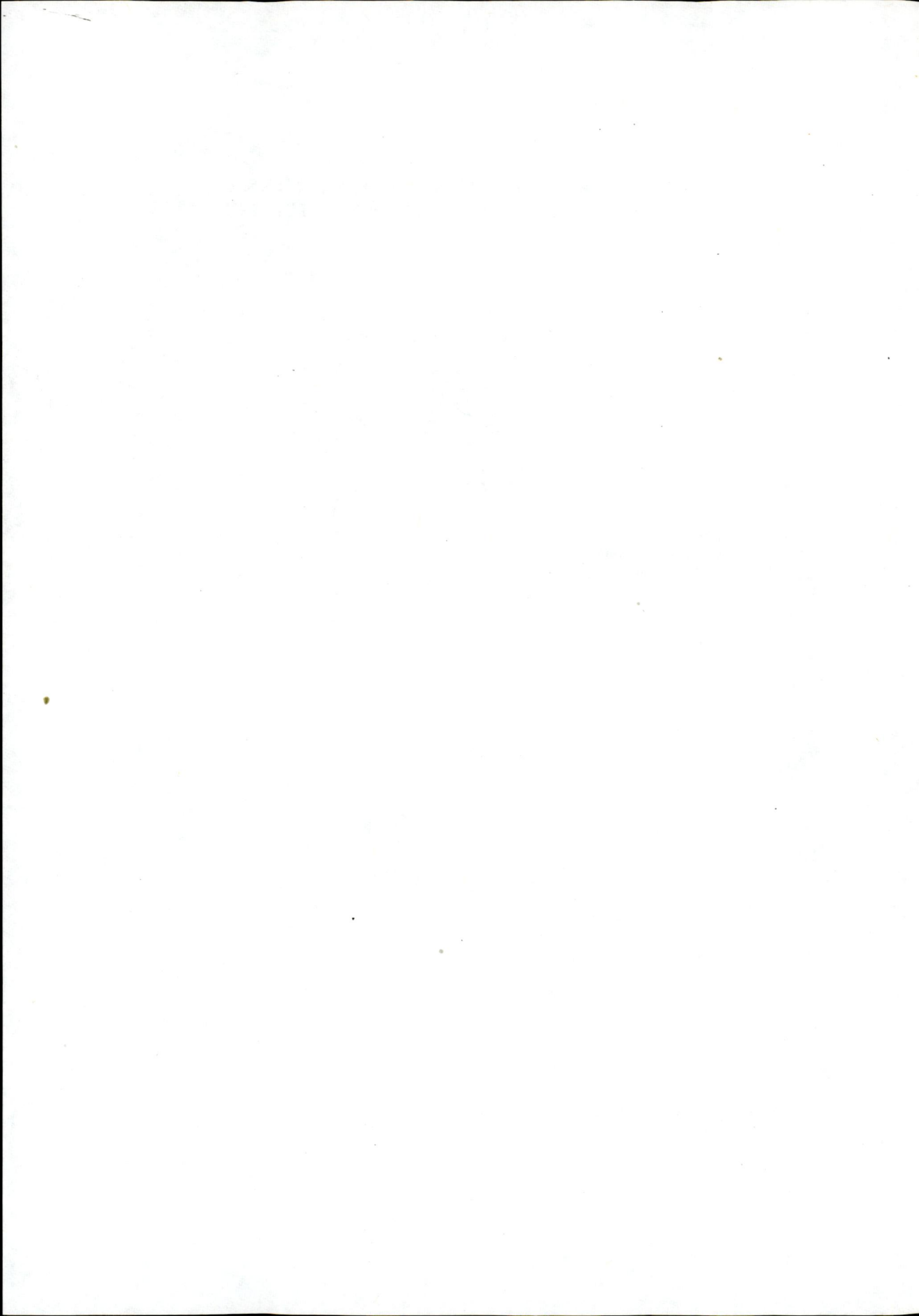


## **TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Act No. 84, 1978
4. Transitional

**SCHEDULE 1—AMENDMENTS TO THE POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT 1978**

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**POLICE REGULATION (ALLEGATIONS OF  
MISCONDUCT) AMENDMENT BILL 1987**

NEW SOUTH WALES



No.           , 1987

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**A BILL FOR**

An Act to amend the Police Regulation (Allegations of Misconduct) Act 1978 to enable the Ombudsman to investigate a complaint against a member of the Police Force if the complaint has not been dealt with, and for other purposes.

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See also Ombudsman (Amendment) Bill 1987.

**B 1**

*Police Regulation (Allegations of Misconduct) Amendment 1987*

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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:

**5 Short title**

1. This Act may be cited as the "Police Regulation (Allegations of Misconduct) Amendment Act 1987".

**Commencement**

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

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

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

15 3. The Police Regulation (Allegations of Misconduct) Act 1978 is amended in the manner set forth in Schedule 1.

**Transitional**

20 4. The Police Regulation (Allegations of Misconduct) Act 1978, as amended by this Act, applies to and in respect of complaints made before the commencement of this Act in the same way as it applies to and in respect of complaints made after that commencement.

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## SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE POLICE REGULATION (ALLEGATIONS  
OF MISCONDUCT) ACT 1978

5 (1) Sections 24A, 24B, 24C—

After section 24, insert:

**Investigation under the Ombudsman Act 1974 where complaint not  
dealt with in time**

10 24A. (1) If the Ombudsman has not, in relation to a  
complaint, received from the Commissioner the information  
referred to in section 24 (1) within the relevant period referred to  
in this section, the Ombudsman may make the conduct to which  
the complaint relates the subject of an investigation under the  
Ombudsman Act 1974.

15 (2) The Ombudsman shall notify the Commissioner in writing  
when the Ombudsman commences such an investigation.

(3) The relevant period is the period of 180 days after—

- (a) the Commissioner notifies the Ombudsman pursuant to  
section 17 (3) that the complaint is being investigated; or
- 20 (b) the Ombudsman notifies the Commissioner pursuant to  
section 18 (3) of the Ombudsman's determination that the  
complaint should be investigated,

or that period as extended under section 24B or 24C.

**Extension of time where complaint not dealt with**

25 24B. (1) The Commissioner may apply to the Ombudsman  
for an extension of the relevant period referred to in section 24A,  
and the Ombudsman may grant the extension.

(2) More than one such application may be made, but no such  
application may be made after the relevant period has expired.

30 (3) If the Ombudsman grants the extension, the Ombudsman  
shall, if the complainant is identified, notify the complainant in  
writing, giving the reasons for granting the extension, and shall  
send to the Commissioner a copy of the notification.

*Police Regulation (Allegations of Misconduct) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT 1978—*continued*

(4) If the Ombudsman does not, within the prescribed time, grant the extension, the Commissioner may appeal to the Tribunal in accordance with the regulations.

(5) The Tribunal shall determine an appeal under this section—

5 (a) by granting the extension applied for subject to such conditions, if any, as are specified by the Tribunal; or

(b) by refusing to grant the extension,

10 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.

15 (7) If an application for an extension is made in accordance with this section, the relevant period is extended until—

(a) the application is granted by the Ombudsman;

(b) the application is withdrawn; or

(c) if the application is not granted by the Ombudsman—

20 (i) the time specified in the regulations for the making of an appeal to the Tribunal expires; or

(ii) if an appeal is made within that time to the Tribunal—the appeal is determined by the Tribunal or withdrawn.

25 (8) If an extension is granted by the Ombudsman or the Tribunal, the relevant period is extended by the period specified by the Ombudsman or the Tribunal when granting the extension.



*Police Regulation (Allegations of Misconduct) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE POLICE REGULATION (ALLEGATIONS  
OF MISCONDUCT) ACT 1978—*continued***Extension of time where application for deferral etc.**

24C. (1) If an application for consent is made under section 20, the relevant period referred to in section 24A is extended until—

- 5 (a) the application is granted by the Ombudsman;  
 (b) the application is withdrawn; or  
 (c) if the application is not granted by the Ombudsman—
- 10 (i) the time specified in the regulations for the making of an appeal to the Tribunal expires; or  
 (ii) if an appeal is made within that time to the Tribunal—the appeal is determined by the Tribunal or withdrawn.

15 (2) If an application for consent under section 20 to the deferral of the commencement or continuation of an investigation is granted by the Ombudsman or the Tribunal, the relevant period shall be deemed—

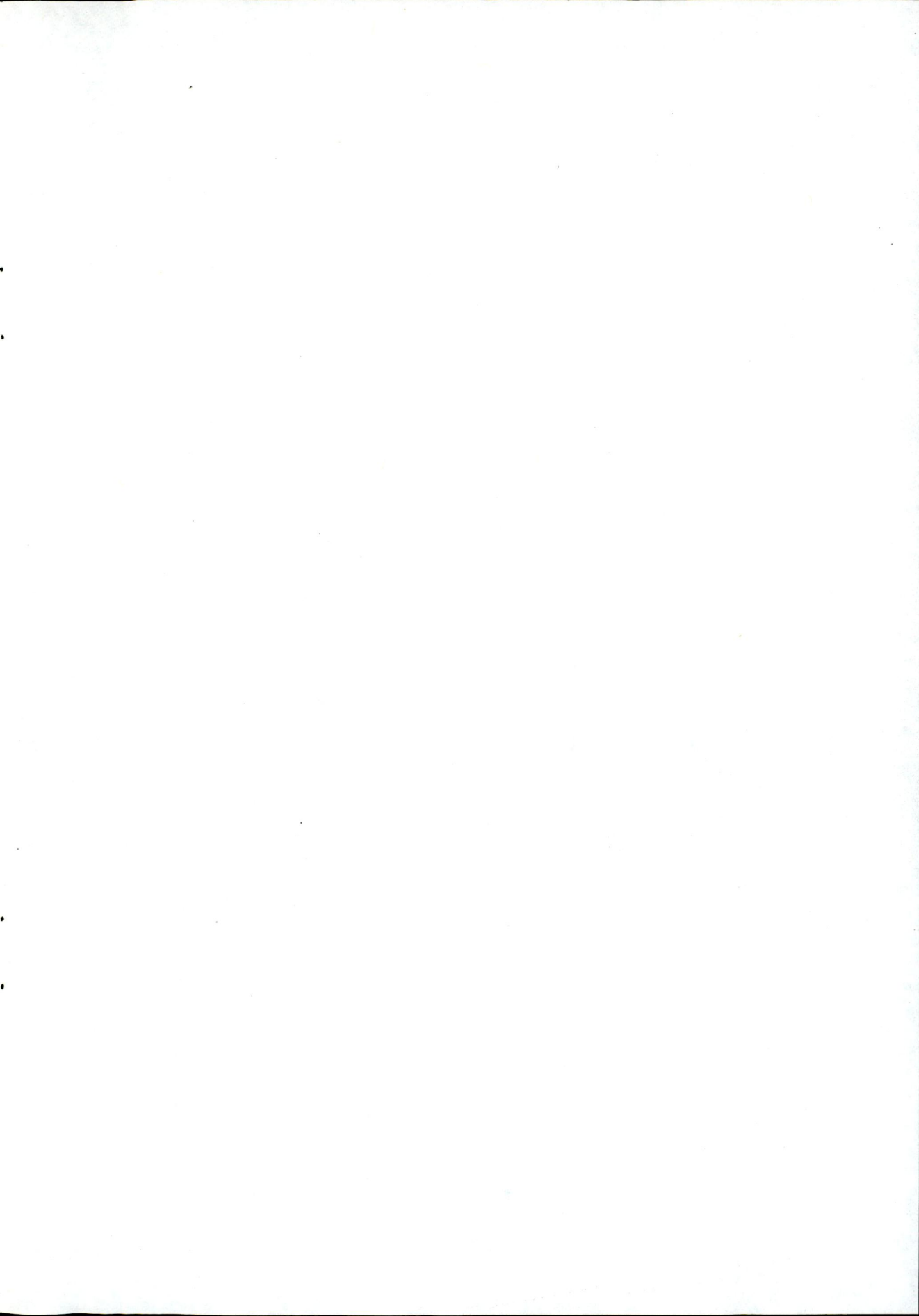
- (a) to have ceased to run on the day the application was made; and  
 20 (b) to recommence to run from the day to which the commencement or continuation is deferred.

(2) Section 60 (**Publicity**)—

Section 60 (3) (b)—

25 Omit “permanent head of the Department of the Attorney General and of Justice”, insert instead “Secretary of the Attorney General’s Department”.







**POLICE REGULATION (ALLEGATIONS OF  
MISCONDUCT) AMENDMENT ACT 1987 No. 135**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Act No. 84, 1978
4. Transitional

**SCHEDULE 1—AMENDMENTS TO THE POLICE REGULATION (ALLEGATIONS  
OF MISCONDUCT) ACT 1978**

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**POLICE REGULATION (ALLEGATIONS OF  
MISCONDUCT) AMENDMENT ACT 1987 No. 135**

**NEW SOUTH WALES**



**Act No. 135, 1987**

**An Act to amend the Police Regulation (Allegations of Misconduct) Act 1978 to enable the Ombudsman to investigate a complaint against a member of the Police Force if the complaint has not been dealt with, and for other purposes. [Assented to 16 June 1987]**

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See also Ombudsman (Amendment) Act 1987.

*Police Regulation (Allegations of Misconduct) Amendment 1987*

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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 1987".

**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 such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

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

3. The Police Regulation (Allegations of Misconduct) Act 1978 is amended in the manner set forth in Schedule 1.

**Transitional**

4. The Police Regulation (Allegations of Misconduct) Act 1978, as amended by this Act, applies to and in respect of complaints made before the commencement of this Act in the same way as it applies to and in respect of complaints made after that commencement.

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## SCHEDULE 1

(Sec. 3)

## AMENDMENTS TO THE POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT 1978

## (1) Sections 24A, 24B, 24C—

After section 24, insert:

**Investigation under the Ombudsman Act 1974 where complaint not dealt with in time**

24A. (1) If the Ombudsman has not, in relation to a complaint, received from the Commissioner the information referred to in section 24 (1) within the relevant period referred to in this section, the Ombudsman may make the conduct to which the complaint relates the subject of an investigation under the Ombudsman Act 1974.

(2) The Ombudsman shall notify the Commissioner in writing when the Ombudsman commences such an investigation.

(3) The relevant period is the period of 180 days after—

(a) the Commissioner notifies the Ombudsman pursuant to section 17 (3) that the complaint is being investigated; or

(b) the Ombudsman notifies the Commissioner pursuant to section 18 (3) of the Ombudsman's determination that the complaint should be investigated,

or that period as extended under section 24B or 24C.

**Extension of time where complaint not dealt with**

24B. (1) The Commissioner may apply to the Ombudsman for an extension of the relevant period referred to in section 24A, and the Ombudsman may grant the extension.

(2) More than one such application may be made, but no such application may be made after the relevant period has expired.

*Police Regulation (Allegations of Misconduct) Amendment 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE POLICE REGULATION (ALLEGATIONS  
OF MISCONDUCT) ACT 1978—*continued*

(3) If the Ombudsman grants the extension, the Ombudsman shall, if the complainant is identified, notify the complainant in writing, giving the reasons for granting the extension, and shall send to the Commissioner a copy of the notification.

(4) If the Ombudsman does not, within the prescribed time, grant the extension, the Commissioner may appeal to the Tribunal in accordance with the regulations.

(5) The Tribunal shall determine an appeal under this section—

(a) by granting the extension applied for subject to such conditions, if any, as are specified by the Tribunal; or

(b) by refusing to grant the extension,

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.

(7) If an application for an extension is made in accordance with this section, the relevant period is extended until—

(a) the application is granted by the Ombudsman;

(b) the application is withdrawn; or

(c) if the application is not granted by the Ombudsman—

(i) the time specified in the regulations for the making of an appeal to the Tribunal expires; or



*Police Regulation (Allegations of Misconduct) Amendment 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE POLICE REGULATION (ALLEGATIONS  
OF MISCONDUCT) ACT 1978—*continued*

- (ii) if an appeal is made within that time to the Tribunal—the appeal is determined by the Tribunal or withdrawn.

(8) If an extension is granted by the Ombudsman or the Tribunal, the relevant period is extended by the period specified by the Ombudsman or the Tribunal when granting the extension.

**Extension of time where application for deferral etc.**

24C. (1) If an application for consent is made under section 20, the relevant period referred to in section 24A is extended until—

- (a) the application is granted by the Ombudsman;
- (b) the application is withdrawn; or
- (c) if the application is not granted by the Ombudsman—
  - (i) the time specified in the regulations for the making of an appeal to the Tribunal expires; or
  - (ii) if an appeal is made within that time to the Tribunal—the appeal is determined by the Tribunal or withdrawn.

(2) If an application for consent under section 20 to the deferral of the commencement or continuation of an investigation is granted by the Ombudsman or the Tribunal, the relevant period shall be deemed—

- (a) to have ceased to run on the day the application was made; and
- (b) to recommence to run from the day to which the commencement or continuation is deferred.

*Police Regulation (Allegations of Misconduct) Amendment 1987*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE POLICE REGULATION (ALLEGATIONS  
OF MISCONDUCT) ACT 1978—*continued*

(2) Section 60 (**Publicity**)—

Section 60 (3) (b)—

Omit “permanent head of the Department of the Attorney General and of Justice”, insert instead “Secretary of the Attorney General’s Department”.