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John Eans



FIRST PRINT

POLICE SERVICE BILL 1990

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Police and Superannuation Legislation (Amendment) Bill 1990 is cognate with this Bill.

The object of this Bill is to establish the Police Service of New South Wales and to provide for its management and for the employment of its members. The Police Service is to be an integrated body that replaces the Police Force and the Police Department.

The Bill enacts modern legislation relating to police administration to replace the Police Regulation Act 1899 and the Police Board Act 1983. The legislation relating to allegations of misconduct against police officers and to appeals by police officers in connection with discipline or promotion has not been revised.

PART 1 - PRELIMINARY

Part 1 (clauses 1-3) contains the usual provisions relating to the short title of the proposed Act and its commencement and to definitions. The Bill uses the expression "police officer" to describe the specially designated members of the Police Service who carry out operational and certain other police duties. The expression "administrative officer" is used in the Bill to describe all other members of the Police Service except temporary employees. The definition of "merit" in relation to appointments reflects existing requirements.

PART 2 - THE POLICE SERVICE OF NEW SOUTH WALES

Part 2 (clauses 4-14) establishes the Police Service and provides for its composition, functions and management.

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Clause 4 establishes the Police Service.

Clause 5 provides that the Police Service is comprised of the Commissioner of Police, members of the Police Service Senior Executive Service, all other police officers and administrative officers and temporary employees.

Clause 6 specifies the mission and general functions of the Police Service. In addition to police services for the prevention and detection of crime, the clause includes existing police services relating to rescues and emergencies.

Clause 7 requires members of the Police Service to act in accordance with certain stated values.

Clause 8 makes the Commissioner responsible (subject to the direction of the Minister) for the management and control of the Police Service. The clause reflects the existing arrangements for police administration.

Clause 9 enables the Treasurer to determine the maximum number of staff in the Police Service.

Clause 10 enables the Commissioner to create, abolish and otherwise deal with positions in the Police Service. Apart from police officers of the rank of constable and temporary employees, all appointments to the Police Service are to be to specified positions and not to specified ranks.

Clause 11 provides for the designation by the Commissioner of those positions in the Police Service which involve operational or other police duties and which are to be held by police officers.

Clauses 12-14 specify the ranks and grades of police officers, requires an oath to be taken by police officers and preserves the common law and other functions of police officers.

PART 3 - THE POLICE BOARD OF NEW SOUTH WALES

Part 3 (clauses 15-23) continues the Police Board and re-enacts provisions at present contained in the Police Board Act 1983. The membership and functions of the Board are not changed except for the additional personnel management functions conferred on the Board in connection with the proposed Police Service Senior Executive Service.

PART 4 - THE COMMISSIONER OF POLICE

Part 4 (clauses 24-31) provides for the appointment and conditions of employment of the Commissioner of Police. The Part re-enacts existing provisions relating to the Commissioner, including the requirement that the Police Board invite applications for the position and recommend the applicant with the greatest merit and the requirement that any applicant who is not already a police officer be appointed for a fixed term. The Part enables the appointment of an acting Commissioner and provides a general power of delegation instead of the detailed existing statutory requirements for a Deputy Commissioner or Assistant Commissioner to act as Commissioner in certain circumstances.

PART 5 - THE POLICE SERVICE SENIOR EXECUTIVE SERVICE

Part 5 (clauses 32-61) provides for a senior executive service within the Police Service. The provisions dealing with the Police Service Senior Executive Service are similar to those dealing with the senior executive service in the Public Sector Management Act 1988, except that the employer functions are to be exercised by the Police Board. The members eligible for inclusion are police officers (other than the Commissioner) of or above the rank of superintendent and administrative officers who are to be paid remuneration that exceeds that for a Grade 12 administrative officer in the Public Service.

Division 1 (clause 32) contains definitions.

Division 2 (clauses 33-35) provides that the senior executive service comprises the persons holding the positions specified in Schedule 2 to the proposed Act. The positions are to be included by proclamation on the recommendation of the Police Board.

Division 3 (clauses 36-39) provides for the appointment of members of the senior executive service. Appointments are to be made on the recommendation of the Police Board. The person recommended for appointment must be the applicant with the greatest merit. Vacant positions must be advertised both within and outside the Police Service unless the Minister approves of the position being advertised only within the Police Service.

Division 4 (clauses 40-44) deals with the employment of senior executive officers. Officers are to be employed for a term (not exceeding 5 years) and their employment is to be governed by a contract of employment. The employment of a senior executive officer is excluded from the jurisdiction of industrial tribunals and judicial review by the courts.

Division 5 (clauses 45-47) deals with the remuneration of senior executive officers. The total remuneration package is to be determined by the Statutory and Other Officers Remuneration Tribunal and the agreement of the parties as to whether any part of that package is to be taken in the form of specified employment benefits is to be set out in the contract of employment.

Division 6 (clauses 48-54) provides for the retirement and removal from office of senior executive officers. Officers may be removed at any time. An officer who has not elected and paid for a right of return to the public sector (or who elects to forgo that right) is entitled to compensation of a maximum of 12 months' salary if removed from the office except for disciplinary reasons.

Division 7 (clauses 55-61) contains general provisions, including the preservation of the rights of incumbent officers whose positions become senior executive positions and the transfer of senior executive officers.

PART 6 - NON-EXECUTIVE OFFICERS OF THE POLICE SERVICE

Part 6 (clauses 62-89) deals with the appointment and employment of police or administrative officers other than senior executive officers.

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Division 1 (clauses 62 and 63) contains preliminary matters, including definitions.

Division 2 (clauses 64-67) contains general provisions relating to appointments. Non-executive commissioned police officers (such as inspectors) are to be appointed on the recommendation of the Police Board. Other police and administrative officers are to be appointed by the Commissioner. Provision is made to enable certain positions to be advertised for appointment by either police officers or administrative officers. Provision is also made for temporary appointments and transfers.

Division 3 (clauses 68-72) provides for the appointment of non-executive commissioned police officers. As at present, only police officers are eligible. The Police Board must recommend for appointment the applicant with the greatest merit.

Division 4 (clauses 73-78) provides for the appointment of police officers of the rank of sergeant or constable. The existing provisions for the appointment of constables are retained (except for the removal of the maximum age for appointment of 35 years). The existing provisions for merit-based appointments of sergeants and the restriction of appointments to existing police officers are also retained.

Division 5 (clauses 79-81) provides for the appointment of non-executive administrative officers. The existing provisions of the Public Sector Management Act 1988 for merit-based appointments (from within or outside the Service) are retained.

Division 6 (clauses 82 and 83) deals with the retirement and vacation of office of non-executive officers.

Division 7 (clauses 84-86) retains the existing provisions for the Public Employment Industrial Relations Authority to act as employer for the purposes of the determination of salary, industrial agreements and awards relating to non-executive officers.

Division 8 (clauses 87-89) contains general provisions relating to non-executive officers, including the right of administrative officers in the Police Service to apply for positions in the Public Service as if they had continued to be public servants.

PART 7 - TEMPORARY EMPLOYEES OF THE POLICE SERVICE

Part 7 (clauses 90 and 91) provides for the employment in the Police Service of temporary employees in similar terms to the provisions for the employment of temporary employees of the Public Service.

PART 8 - GENERAL PROVISIONS RELATING TO EMPLOYMENT OF ALL MEMBERS OF THE POLICE SERVICE

Part 8 (clauses 92-96) enacts general provisions relating to the employment of members of the Police Service, including the re-enactment of existing provisions for members contesting parliamentary elections and the attachment of the wages of members.

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PART 9 - DISCIPLINE OF MEMBERS OF THE POLICE SERVICE

Part 9 (clauses 97 and 98) retains the existing provisions relating to discipline of police officers and administrative officers. The discipline of police officers is dealt with in the regulations and in the Police Regulation (Allegations of Misconduct) Act 1978. The discipline of administrative officers is dealt with by preserving the application of the relevant provisions of the Public Sector Management Act 1988.

PART 10 - OFFENCES RELATING TO THE POLICE SERVICE

Part 10 (clauses 99-106) retains existing offences under the Police Regulation Act 1899 and the Police Board Act 1983. In particular, offences relating to bribery, neglect of duty, the wearing of police uniforms and the use of police designations are retained.

PART 11 - CHARGES FOR POLICE SERVICES

Part 11 (clauses 107-110) re-enacts provisions recently included in the Police Regulation Act 1899 relating to charges for police services (including charges for attending sporting events, for escorts and for responding to false security alarms).

PART 12 - MISCELLANEOUS

Part 12 (clauses 111-119) contains miscellaneous provisions, including the protection from personal liability of police officers engaged in rescues etc., and the existing special risk benefit payable to police officers hurt on duty who are not contributors to the Police Superannuation Fund (and therefore not eligible for the compensation entitlements of those contributors). The Part also contains a power to make regulations for the management and control of the Police Service.

Schedule 1 contains provisions relating to the members and procedure of the Police Board.

Schedule 2 is the Schedule in which the positions of senior executive officers are to be included by proclamation.

Schedule 3 contains a list of the Acts which are to be repealed, including the Police Regulation Act 1899 and the Police Board Act 1983.

Schedule 4 contains savings and transitional provisions. In particular, the Schedule continues the existing appointments of the members of the Police Board, the Commissioner and existing police officers and officers of the Police Department.

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POLICE SERVICE BILL 1990

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to establish the Police Service of New South Wales; to provide for the management of the Police Service and for the employment of its members; and for other purposes.

See also Police and Superannuation Legislation (Amendment) Bill 1990.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Police Service Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"**administrative officer**" means a member of the Police Service other than a police officer or a temporary employee;

"**commissioned police officer**" means a police officer of or above the rank of inspector;

"**Commissioner**" means the Commissioner of Police;

"**merit**", in relation to a decision of the Police Board or the Commissioner to appoint or recommend for appointment a person to a position in the Police Service, means:

- (a) the possession by the person of qualifications determined in respect of the position by the Police Board or the Commissioner, as the case requires; and
- (b) the aptitude of the person for the discharge of the duties of the position; and
- (c) the integrity, diligence and good conduct of the person;

"**Police Board**" means the Police Board of New South Wales established by this Act;

"**police officer**" means a member of the Police Service holding a position which is designated under this Act as a position to be held by a police officer;

"**Police Service**" means the Police Service of New South Wales established by this Act;

"**Police Service Senior Executive Service**" means the Police Service Senior Executive Service established by this Act;

"temporary employee" means a person temporarily employed in the Police Service under Part 7.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act, a reference to an **official report** on a person's previous employment and conduct is a reference to a report under section 35A (1) (c) of the Police Regulation (Allegations of Misconduct) Act 1978.

PART 2 - THE POLICE SERVICE OF NEW SOUTH WALES

Establishment of Police Service

4. There is established by this Act the Police Service of New South Wales.

Composition of Police Service

5. The Police Service comprises the following members:

- (a) the Commissioner;
- (b) members of the Police Service Senior Executive Service;
- (c) all other police officers and administrative officers employed under this Act;
- (d) temporary employees.

Mission and functions of Police Service

6. (1) The mission of the Police Service is to have the police and the community working together to establish a safer environment by reducing violence, crime and fear.

(2) The Police Service has the following functions:

- (a) to provide police services for New South Wales;
- (b) to exercise any other function conferred on it by or under this or any other Act;
- (c) to do anything necessary for, or incidental to, the exercise of its functions.

(3) In this section:

"police services" includes:

- (a) services by way of prevention and detection of crime; and
- (b) the protection of persons from injury or death, and property from damage, whether arising from criminal acts or in any other way; and
- (c) the provision of essential services in emergencies; and
- (d) any other service prescribed by the regulations.

(4) A reference in this section to the functions of the Police Service includes a reference to the functions of members of the Police Service.

(5) The provision of police services in emergencies and rescue operations is subject to the State Emergency and Rescue Management Act 1989 and to the Essential Services Act 1988.

Statement of values of members of Police Service

7. Each member of the Police Service is to act in a manner which:

- (a) places integrity above all;
- (b) upholds the rule of law;
- (c) preserves the rights and freedoms of individuals;
- (d) seeks to improve the quality of life by community involvement in policing;
- (e) strives for citizen and police personal satisfaction;
- (f) capitalises on the wealth of human resources;
- (g) makes efficient and economical use of public resources; and
- (h) ensures that authority is exercised responsibly.

Commissioner to manage and control Police Service

8. (1) The Commissioner is, subject to the direction of the Minister, responsible for the management and control of the Police Service.

(2) The responsibility of the Commissioner includes the effective, efficient and economical management of the functions and activities of the Police Service.

(3) The Commissioner may classify the various duties that members of the Police Service are required to perform and allocate the duties to be carried out by each such member.

(4) The Commissioner may issue (and from time to time amend or revoke) instructions to members of the Police Service with respect to the management and control of the Police Service.

(5) This section is subject to the other provisions of this Act and the regulations.

Maximum number of staff in Police Service

9. (1) The Treasurer may, after obtaining a report from the Commissioner, determine from time to time the maximum number of police officers and administrative officers to be employed in the Police Service, being the number the Treasurer considers necessary for the effective, efficient and economical management of the functions and activities of the Police Service.

(2) The total number of police officers and administrative officers employed in the Police Service is not to exceed the maximum number so determined by the Treasurer.

Positions in Police Service

10. (1) In addition to the position of Commissioner, the positions in the Police Service consist of such positions as the Commissioner may determine in accordance with this Act.

(2) The Commissioner:

(a) may create, abolish or otherwise deal with any position in the Police Service; and

(b) must classify and grade each such position.

(3) The Commissioner is required to obtain the approval of the Police Board before exercising any function under this section in relation to a position in the Police Service Senior Executive Service or which it is proposed to include in that Service.

(4) Police officers of the rank of constable (or such of those police officers as the Commissioner determines) are to be appointed to that rank or to a grade within that rank, and not to a separate position in the Police Service.

(5) Temporary employees are members of, but do not hold positions in, the Police Service.

(6) The Commissioner may establish, or abolish, or change the name of, any branch or other part of the Police Service (other than the Police Service Senior Executive Service).

Designation of police officers

11. (1) The Commissioner is required to designate the positions in the Police Service which are to be held by police officers.

(2) A position in the Police Service is to be so designated if the Commissioner is satisfied that the holder will be required to carry out, or will be concerned in, operational police duties or that it is otherwise appropriate to do so.

(3) The Commissioner may not designate such a position while it is being held by an administrative officer or remove the designation of such a position while it is being held by a police officer.

(4) The Commissioner is a police officer.

(5) A temporary employee is not eligible to be a police officer.

Ranks and grades of police officers

12. (1) The ranks of police officers within the Police Service are (in descending order) as follows:

- (a) Commissioner.
- (b) Member of the Police Service Senior Executive Service.
- (c) Superintendent (other than a member of the Police Service Senior Executive Service).
- (d) Inspector.
- (e) Sergeant.
- (f) Constable.

(2) The Police Board may specify different ranks for police officers within the Police Service Senior Executive Service.

(3) The regulations may specify grades within the ranks of superintendent, inspector, sergeant and constable.

Oath to be taken by police officers

13. (1) Before a person exercises any of the functions of a police officer, the person must take the oath or make the affirmation of office as a police officer in accordance with the regulations.

(2) A police officer is not required to take a further oath or make a further affirmation after a change in the officer's position in the Police Service, so long as the officer remains in the Police Service.

Additional functions of police officers

14. In addition to any other functions, a police officer has the functions conferred or imposed on a constable by or under any law (including the common law) of the State.

PART 3 - THE POLICE BOARD OF NEW SOUTH WALES

Constitution of the Board

15. (1) There is constituted by this Act a body corporate with the corporate name of the Police Board of New South Wales.

(2) The Police Board is, for the purposes of any Act, a statutory body representing the Crown.

Board subject to Ministerial control

16. The Police Board is, in the exercise of its functions, subject to the control and direction of the Minister.

Composition and procedure of the Board

17. (1) The Police Board is to consist of 3 members, of whom:

- (a) 1 is to be the Commissioner; and
- (b) 2 are to be appointed by the Governor as part-time members.

(2) Of the part-time members, one is (by the member's instrument of appointment or another instrument executed by the Governor) to be appointed as Chairperson of the Police Board.

(3) Schedule 1 has effect with respect to the members and procedure of the Police Board.

Functions of the Board

18. (1) The functions of the Police Board are to promote the improvement of the Police Service and to ensure the maintenance of an efficient and effective Police Service.

(2) Without affecting the generality of subsection (1), the Police Board is to:

- (a) exercise the functions conferred on it by this Act in connection with the employment of members of the Police Service Senior Executive Service and other members of the Police Service;
- (b) formulate plans for the provision of a comprehensive, balanced and co-ordinated Police Service;
- (c) make recommendations to the Minister on policy matters relating to the Police Service;
- (d) ensure the development of modern personnel practices within the Police Service;
- (e) make, in relation to the Police Service, recommendations to the Minister as to financial resources, property management, priorities and allocation of finance;
- (f) initiate research into new police methods and other research related to law enforcement generally; and
- (g) make reports or recommendations to the Minister on any matter referred to the Police Board by the Minister.

(3) The Police Board has such other functions as are conferred or imposed on it by or under this or any other Act.

Commissioner to implement decisions of the Board etc.

19. (1) The Commissioner must implement, by the exercise of the Commissioner's functions in accordance with law, decisions of the Police Board.

(2) Subject to subsection (1), nothing in this Part affects the responsibility of the Commissioner for the operational command and day-to-day management of the Police Service.

Staff of the Board

20. (1) The Police Board may, with the approval of the Minister, arrange for the use of the services of any staff (by secondment or otherwise) or facilities of the Police Service, a government department, an administrative office or a public authority.

(2) Without limiting subsection (1), such staff as may be necessary to enable the Police Board to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.

Delegation by the Board

21. (1) The Police Board may delegate to an authorised person any of the functions of the Police Board under this or any other Act, other than this power of delegation.

(2) In this section, "authorised person" means the Commissioner or a member of the staff of the Board (including staff whose services are made use of by the Board).

Powers of entry etc.

22. (1) The Police Board or a person authorised by the Police Board in writing under the hand of the Chairperson of the Police Board may, for the purpose of exercising the Board's functions under this Act, enter into and on any police premises at any time and call for and inspect all or any police records, documents or files or other matter, whether of the same or a different kind, on those premises and may question and seek information from any member of the Police Service.

(2) A member of the Police Service who fails to comply with any requirement made of the member under subsection (1) or to give all assistance and co-operation to the Police Board or a person authorised under that subsection is guilty of an offence.

Maximum penalty: 20 penalty units or 6 months imprisonment, or both.

Annual report of the Board

23. (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Police Board is required to prepare and forward to the Minister a report on the effectiveness and performance of the Police Service and on its own work and activities for the 12 months ending on 30 June in that year.

(2) The Minister is required to lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

PART 4 - THE COMMISSIONER OF POLICE

Appointment of Commissioner

24. (1) The Commissioner of Police is to be appointed by the Governor on the recommendation of the Minister.

(2) It does not matter whether the person appointed is or is not already a member of the Police Service.

(3) Before a person is appointed:

- (a) the Police Board is required to invite applications for appointment to the office from persons generally or, with the approval of the Minister, from police officers only; and
- (b) the Minister is required to obtain and have regard to the recommendation of the Police Board in relation to the appointment; and
- (c) the Minister is required to obtain and have regard to an official report (referred to in section 3 (3)) on the previous employment and conduct of any police officer proposed to be appointed or (if the person proposed to be appointed is not a police officer) to a similar report.

(4) In deciding to make a recommendation in relation to an appointment under this section, the Police Board must, from among the applicants eligible for appointment, select the applicant who has, in the opinion of the Police Board, the greatest merit.

Acting Commissioner

25. (1) The Minister may appoint a member of the Police Service recommended by the Police Board to act as Commissioner during the illness or absence of the Commissioner, during any vacancy in the office of Commissioner or during any suspension of the Commissioner from office.

(2) Any such member, while acting as Commissioner, has all the functions of the Commissioner.

(3) The Minister may, at any time, terminate the appointment of any such member to act as Commissioner.

Term appointment

26. (1) Subject to this Act, the Commissioner holds office for such period (not exceeding 5 years) as is specified in the Commissioner's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) This section does not apply to a Commissioner who was a police officer immediately before being appointed as Commissioner, other than a police officer whose first appointment as a police officer was as a member of the Police Service Senior Executive Service.

Suspension or removal from office of Commissioner

27. (1) The Governor may suspend the Commissioner from office for incompetence or misbehaviour.

(2) If the Commissioner is suspended from office, the Minister must cause a full statement of the grounds of the suspension to be laid before each House of Parliament within 7 sitting days of that House after the day of the suspension.

(3) If each House of Parliament resolves, within 21 days after the statement of the grounds of suspension has been laid before that House, that the Commissioner ought to be removed from office, the Governor is required to remove the Commissioner from office.

(4) If either House of Parliament does not make such a resolution within that time, the Governor is required to restore the Commissioner to office.

(5) The Governor may remove the Commissioner from office if the Commissioner:

- (a) engages in any paid employment outside the duties of his or her office, except with the consent of the Minister; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (c) is absent from duty for a period of 14 consecutive days, unless on leave granted by the Minister or unless the absence is caused by illness or other unavoidable cause; or
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic

patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983.

Retirement of Commissioner

28. (1) The Commissioner:

- (a) may retire on or after reaching 60 years of age; and
- (b) if not appointed for a term - is required to retire on reaching 65 years of age.

(2) If the Commissioner has not been appointed for a term, the date of retirement may be extended from time to time by the Governor beyond the date on which the Commissioner reaches 65 years of age, but only if any such extension does not exceed 12 months at any one time.

(3) If the Commissioner has been appointed or re-appointed for a term, the period of appointment or re-appointment:

- (a) if the Commissioner has not reached 64 years of age - must not extend beyond the time that the Commissioner would reach 65 years of age; and
- (b) if the Commissioner has reached 64 years of age - must not exceed 12 months at any one time.

(4) Nothing in this section affects the provisions of an Act relating to any superannuation scheme of which the Commissioner is a member.

Vacation of office of Commissioner

29. (1) The office of Commissioner becomes vacant if the Commissioner:

- (a) dies; or
- (b) if appointed for a term, completes the term of office and is not re-appointed; or
- (c) is removed from office, or retires or is retired from office, under this or any other Act; or
- (d) resigns his or her office in writing addressed to the Minister.

(2) The retirement or resignation of a Commissioner does not take effect until:

- (a) the Minister accepts the retirement or resignation; or
- (b) the Commissioner has given the Minister at least 4 weeks' notice in writing of the day on which the Commissioner intends to retire or resign and the Commissioner is not under suspension from office on that day.

Remuneration of Commissioner

30. The Commissioner is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975.

Delegation by Commissioner

31. The Commissioner may delegate to another member of the Police Service any of the functions of the Commissioner under this or any other Act, other than this power of delegation.

PART 5 - THE POLICE SERVICE SENIOR EXECUTIVE SERVICE

Division 1 - Preliminary

Definitions

32. (1) In this Part:

- "contract of employment" means a contract of employment under this Part between an executive officer and the Police Board;
- "executive officer" means a person holding a position referred to in Schedule 2;
- "executive position" means a position referred to in Schedule 2;
- "remuneration package" means the remuneration package for an executive officer determined for the time being under the Statutory and Other Offices Remuneration Act 1975.

(2) In this Part, a reference to the remuneration package for an executive officer is, if a range of amounts has been determined by the Statutory and Other Offices Remuneration Tribunal, a reference to:

- (a) the amount within that range nominated in the officer's contract of employment; or

- (b) in any other case - the minimum amount within that range.

Division 2 - Composition of Police Service Senior Executive Service

Composition of Police Service Senior Executive Service

33. The Police Service Senior Executive Service comprises the persons holding the positions referred to in Schedule 2.

Amendment or substitution of Schedule 2

34. (1) The Governor may, by proclamation, amend Schedule 2 by inserting the description of any position, or by omitting or amending any such description.

(2) The Governor may, by proclamation, omit Schedule 2 and insert instead a Schedule containing descriptions of positions.

Positions which may be included in Schedule 2

35. (1) The description of a position may be included in Schedule 2 by proclamation under this Division only if the position is a position in the Police Service recommended by the Police Board for inclusion in the Police Service Senior Executive Service.

(2) The position of either a police officer or an administrative officer may be included in Schedule 2.

(3) The position of a police officer may not be included in Schedule 2 unless it is held or to be held by a police officer who is of or above the rank of superintendent.

(4) The position of the Commissioner may not be included in Schedule 2.

Division 3 - Appointment of executive officers

Appointments to executive positions

36. (1) Appointments to vacant executive positions are to be made by the Governor on the recommendation of the Police Board.

(2) It does not matter whether the person appointed is or is not already a member of the Police Service.

(3) Subsection (1) is subject to any express provision to the contrary in this or any other Act.

Acting appointments to executive positions

37. (1) The Police Board may appoint a member of the Police Service to act in an executive position which is vacant or the holder of which is suspended, sick or absent.

(2) A person, while acting in any such executive position, has all the functions of the holder of the position (but is not to be taken to be an executive officer for the purposes of this Part).

(3) The Police Board may, at any time, terminate the appointment of a person to act in any such executive position.

Advertising of vacancies

38. If it is proposed to make an appointment under this Part to a vacant executive position, the Police Board:

- (a) may advertise the vacancy (in such manner as it thinks fit) generally or (with the approval of the Minister) among members of the Police Service only, or
- (b) may, in such cases as it considers appropriate and with the approval of the Minister, recommend the appointment of a member of the Police Service without advertising the vacancy.

Appointment to be made on merit

39. (1) In deciding to make a recommendation for the appointment of a person to a vacant executive position which has been duly advertised:

- (a) the Police Board may only select a person who has duly applied for appointment to the vacant position; and
- (b) the Police Board must, from among the applicants eligible for appointment to the position, select the applicant who has, in the opinion of the Police Board, the greatest merit.

(2) In deciding to make a recommendation for the appointment of a person to a vacant executive position which has not been duly advertised:

- (a) the Police Board may only select a member of the Police Service who is a police officer or an administrative officer (as the case requires); and

(b) the Police Board must, from among the eligible members of the Police Service, select the member who has, in the opinion of the Police Board, the greatest merit.

(3) The Police Board is required to obtain and have regard to an official report (referred to in section 3 (3)) on the previous employment and conduct of any police officer recommended for appointment to a vacant executive position or (if the person recommended is not a police officer) to a similar report.

Division 4 - Employment of executive officers

Term appointments

40. Subject to this Act, an executive officer holds office for such period (not exceeding 5 years) as is specified in the officer's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Employment of executive officers to be governed by contract of employment

41. (1) The employment of an executive officer shall be governed by a contract of employment between the officer and the Police Board.

(2) A contract of employment may be made before or after the appointment of the executive officer concerned.

(3) An executive officer is not appointed by, nor is an executive officer's term of office fixed by, the contract of employment.

(4) A contract of employment may be varied at any time by a further contract between the parties.

(5) A contract of employment may not vary or exclude a provision of this Act or the regulations.

(6) The Police Board acts for and on behalf of the Crown in any contract of employment between the officer and the Police Board.

Matters regulated by contract of employment

42. (1) The matters to be dealt with in a contract of employment between an executive officer and the Police Board include the following:

- (a) the duties of the executive officer's position (including performance criteria for the purpose of reviews of the officer's performance);
 - (b) the monetary remuneration and employment benefits for the executive officer as referred to in Division 5 (including the nomination of the amount of the remuneration package if a range of amounts has been determined for the remuneration package);
 - (c) any election by the executive officer to retain a right of return to the public sector under section 52.
- (2) A contract of employment may provide for any matter to be determined:
- (a) by further agreement between the parties; or
 - (b) by further agreement between the executive officer and some other person specified in the contract; or
 - (c) by the Police Board or other person or body specified in the contract.

Performance reviews

43. (1) An executive officer's performance must be reviewed, at least annually, by the Police Board or by some person nominated by the Police Board.

(2) Any such review is to have regard to the agreed performance criteria for the position and any other relevant matter.

Industrial arbitration or legal proceedings excluded

44. (1) In this section, a reference to the employment of an executive officer is a reference to:

- (a) the appointment of, or failure to appoint, a person to a vacant executive position; or
- (b) the removal, retirement, termination of employment or other cessation of office of an executive officer; or
- (c) any disciplinary proceedings or disciplinary action taken against an executive officer; or
- (d) the remuneration or conditions of employment of an executive officer.

(2) The employment of an executive officer, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the Industrial Arbitration Act 1940.

(3) Subsection (2) applies whether or not any person has been appointed to a vacant executive position.

(4) Any award or industrial agreement (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of executive officers.

(5) Subsection (4) does not prevent the regulations or other statutory instruments under this Act from applying the provisions of an award or industrial agreement to the employment of an executive officer.

(6) An appeal does not lie to the Police Tribunal or the Government and Related Employees Appeal Tribunal in relation to the employment of an executive officer.

(7) No proceedings for an order in the nature of prohibition, certiorari or mandamus, or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to a vacant executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.

(8) In this section, "industrial agreement" includes any determination under section 85 and any agreement under section 86.

Division 5 - Remuneration of executive officers

Definitions

45. In this Division:

"approved" means approved for the time being for the purposes of this Division by the Police Board, either generally or in relation to any executive officer or class of executive officers;

"employment benefit" means:

- (a) contributions payable to a superannuation scheme by the Crown in respect of the officer, including any liability of the Crown to make any such contributions or to pay approved costs associated with that scheme; or

- (b) the provision by the Crown of a motor vehicle for private use by the officer; or
- (c) the right of return to the public sector under section 52 by an executive officer who elects to retain that right; or
- (d) the entitlement of an executive officer to approved leave with pay; or
- (e) any other approved benefit provided to an executive officer at the cost of the Crown (being a benefit of a private nature);

"monetary remuneration" includes allowances paid in money, but does not include:

- (a) travelling or subsistence allowances; or
- (b) allowances in relation to relocation expenses; or
- (c) any other allowances in relation to expenses incurred in the discharge of an executive officer's duties;

"superannuation scheme" means a superannuation scheme established by or under an Act or approved for the purposes of this definition.

Monetary remuneration and employment benefits for executive officers

46. (1) Executive officers are entitled to monetary remuneration at such rate, and employment benefits of such kinds, as are provided in their contracts of employment.

- (2) The total amount of:
 - (a) the annual rate of monetary remuneration for an executive officer; and
 - (b) the annual cost of employment benefits provided for the executive officer under the contract of employment,

is to be equal to the amount of the remuneration package for the executive officer.

(3) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner.

- (4) This section does not affect:
 - (a) any approved performance-related incentive payments made to an executive officer; or

(b) any remuneration or benefits to which an executive officer is otherwise entitled by law (such as statutory or agreed fees for attendance at meetings or the like).

(5) A contract of employment may provide for the payment of part of the monetary remuneration under the contract to be made in the form of a periodic leave loading.

(6) An executive officer is entitled to be paid an amount equivalent to the cost of a part of any entitlement to take annual or extended leave with pay if:

- (a) the officer forgoes with the approval of the Police Board the right to take that part of that leave; and
- (b) the cost of that part of that leave has been included in the officer's contract of employment as an employment benefit.

(7) Subsection (6) has effect despite anything to the contrary in the Annual Holidays Act 1944 or any other Act.

(8) During any period when the monetary remuneration and employment benefits for an executive officer cannot be determined under subsection (1), the officer is entitled to monetary remuneration at the rate of the amount of the remuneration package for the officer, subject to any subsequent adjustment of payments in accordance with the officer's contract of employment.

(9) If the remuneration package for an executive officer is varied, the officer is entitled to monetary remuneration and employment benefits in accordance with the officer's contract of employment pending any necessary variation of the contract and adjustment of payments to comply with this section with effect from the date of the variation.

Travelling and subsistence allowances etc.

47. (1) An executive officer is entitled to be paid:

- (a) such travelling and subsistence allowances; and
- (b) such allowances in relation to relocation expenses; and
- (c) such other allowances in relation to expenses incurred in the discharge of the officer's duties,

as the Police Board may from time to time determine in respect of the officer.

- (2) An executive officer's contract of employment:
 - (a) may provide for the payment to the officer of allowances of the kinds referred to in this section; and
 - (b) may regulate the payment of allowances to the officer under this section.

Division 6 - Removal, retirement etc. of executive officers

Definitions

- 48. A reference in this Division to:
 - (a) employment in the public sector is a reference to employment as a member of the Police Service or as an officer in the Public Service or a Teaching Service or as an officer in the service of a public authority; and
 - (b) engagement in the public sector is a reference to employment in the public sector or to the holding of a statutory office.

Vacation of executive positions

- 49. (1) The position of an executive officer becomes vacant if the officer:
 - (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) is removed from office, or retires or is retired from office, under this or any other Act; or
 - (d) resigns his or her position in writing addressed to the Police Board.
- (2) The retirement or resignation of an executive officer does not take effect until:
 - (a) the Police Board accepts the retirement or resignation; or
 - (b) the executive officer has given the Police Board at least 4 weeks' notice in writing of the day on which the officer intends to retire or resign and the officer is not under suspension from office on that day.

Retirement of executive officers

50. (1) An executive officer:
- (a) may retire on or after reaching 55 years of age; or
 - (b) may be retired by the Governor at any time after the officer has reached 60 years of age.
- (2) An executive officer is not required to retire on reaching 65 years of age.
- (3) However, the period of appointment or re-appointment of:
- (a) an executive officer who has not reached 64 years of age must not extend beyond the time that the officer would reach 65 years of age; or
 - (b) an executive officer who has reached 64 years of age but who has not reached 65 years of age must not exceed 12 months; or
 - (c) an executive officer who has reached 65 years of age must not exceed 12 months at any one time.
- (4) Nothing in this section affects the provisions of an Act relating to any superannuation scheme of which an executive officer is a member.

Removal of executive officers from office

51. (1) The Governor may remove an executive officer from an executive position at any time.
- (2) The Governor:
- (a) may declare an executive officer who is removed from an executive position under subsection (1) to be an unattached officer in the Police Service; and
 - (b) may revoke any such declaration.
- (3) While a declaration under subsection (2) remains in force, the person to whom the declaration relates:
- (a) is to be regarded as an executive officer, although not holding an executive position; and
 - (b) is entitled to monetary remuneration and employment benefits as if the person had not been removed from his or her position.

(4) If

- (a) an executive officer is removed from an executive position under subsection (1) and a declaration is not made in relation to the officer under subsection (2); or
- (b) a declaration under subsection (2) made in relation to an executive officer is revoked,

the officer ceases to be an executive officer, unless appointed to another executive position.

(5) A member of the Police Service who ceases to be an executive officer because of subsection (4) ceases to be a member of the Police Service, unless appointed to another position in the Police Service.

(6) The making of a declaration under subsection (2) in relation to an executive officer does not prevent the officer from ceasing to be an executive officer because of the completion of the officer's term of office.

(7) This section does not prevent an executive officer being removed from office apart from this section.

Right to return to public sector for certain executive officers

52. (1) An executive officer may elect to retain a right of return to the public sector if:

- (a) the officer was engaged in the public sector on a full-time basis when he or she first became an executive officer; and
- (b) for at least some part of that engagement the person was an employee in the public sector.

(2) Any such election:

- (a) may be made in the first contract of employment entered into by the executive officer, but (unless made in that first contract) may not be made in any subsequent contract for the same or another executive position; and
- (b) is revoked if the election is not made by the executive officer in a subsequent contract of employment; and
- (c) may be revoked by the executive officer by notice in writing to the Police Board; and
- (d) if revoked, may not be made again.

(3) If an executive officer has elected to retain a right of return to the public sector, the officer's contract of employment must provide for

the cost of that right as part of the officer's remuneration package under Division 5.

(4) An executive officer who has elected to retain a right of return to the public sector is entitled to an engagement in the public sector if the person ceases to be an executive officer and is not re-appointed to the same or another executive position.

(5) A person is not entitled to an engagement in the public sector under this section if:

- (a) the person ceased to be an executive officer because the person resigned or was (after due inquiry) removed from office for misbehaviour; or
- (b) the person is over 60 years of age.

(6) The engagement in the public sector to which a person is entitled under this section is to be an engagement in any part of the public sector at a salary not lower than the current maximum salary for:

- (a) the previous engagement of the person as such an employee within the public sector; or
- (b) a clerk (grade 12) in the Public Service, whichever is the lesser.

(7) A person who is entitled to such an engagement is not entitled to any compensation for ceasing to hold office as an executive officer or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).

(8) Subsection (7) does not prevent the payment of additional remuneration to a person who is engaged in the public sector under this section in order to maintain, in accordance with the Crown's redeployment policy, the level of the person's previous remuneration package for a period after the person ceases to be an executive officer.

(9) If an executive officer has not entered into a contract of employment and is eligible to make an election under this section:

- (a) the officer is (until the officer enters into a contract of employment) to be taken to have made an election under this section, but may revoke that election; and
- (b) the cost (under Division 5) of the right of return to the public sector in accordance with that election is to be deducted from the officer's remuneration.

(10) A reference in this section to an executive officer ceasing to be an executive officer is, in the case of an executive officer removed from office under section 51, a reference to an executive officer ceasing to be such an officer as referred to in section 51 (4).

Compensation etc. where executive officer has no right to return to public sector

53. (1) This section applies to:

- (a) an executive officer who is removed from office under section 51 and who ceases to be an executive officer as referred to in section 51 (4); or
- (b) an executive officer who is otherwise removed from office (except for misbehaviour after due inquiry); or
- (c) an executive officer who is, after reaching the age of 60 years and before reaching the age of 65 years, retired from office under section 50; or
- (d) an executive officer who was employed in the public sector when first appointed as an executive officer, whose term of office as an executive officer expires, who has not reached the age of 60 years and who is not re-appointed,

being a person who is not entitled to be engaged in the public sector under section 52.

(2) A person to whom this section applies is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The Statutory and Other Offices Remuneration Tribunal:

- (a) may determine that compensation is payable for the failure to re-appoint an executive officer only if the Tribunal is satisfied that the person had a reasonable expectation of being re-appointed; and
- (b) must have regard to any general directions given to the Tribunal by the Minister administering the Statutory and Other Offices Remuneration Act 1975 as to the matters to be taken into consideration when it makes determinations under this section.

(4) The maximum compensation payable is an amount equal to the person's remuneration package for:

- (a) the period of one year; or
- (b) if the person was removed or retired from office - the period starting from that removal or retirement and ending when the person's term of office would have expired; or
- (c) if the person's term of office expired - the period starting from that expiry and ending when the person would reach the age of 60 years,

whichever is the shorter or shortest period.

(5) The person is not entitled to any other compensation for the removal or retirement from office or for the failure to re-appoint the person or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).

(6) An executive officer who is removed from office or not re-appointed is not entitled to compensation under this section if:

- (a) the person is appointed on that removal or expiry of the term of office to another executive position; and
- (b) the remuneration package for the holder of that position is not less than the remuneration package for the holder of the former position.

(7) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation relates.

(8) The person may not be engaged in the public sector during the period so specified, unless arrangements are made for a refund of the proportionate amount of the compensation.

Election to take compensation

54. (1) An executive officer who is entitled to be engaged in the public sector under section 52 may, before being so engaged, elect in writing to take compensation referred to in section 53.

(2) On the election taking effect, the person ceases to be entitled to be engaged in the public sector under section 52.

Division 7 - General

Appointment of incumbent officers to executive positions

55. (1) When a position becomes an executive position, the person (if any) holding the position is to continue to hold that position until the person or some other person is duly appointed to the position.

(2) While the person continues to hold the position, the conditions of employment (including remuneration) of the person are to be the same as those that applied to the person immediately before the position became an executive position.

(3) The person who continues to hold the position may be appointed to the position without the vacancy being advertised.

(4) If the person who continues to hold the position is not appointed to the position or to any other executive position, sections 52-54 apply to the person as if he or she had elected to retain a right of return to the public sector.

Incumbent officers - accrued leave

56. (1) A person who:

- (a)** was engaged in the public sector when appointed to an executive position (not being a person who held another executive position immediately before that appointment); and
- (b)** had a right to accrued extended or annual leave with pay immediately before that appointment; and
- (c)** has not taken that leave before taking up duties in the executive position,

is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.

(2) An election under this section is to be made within the time and in the manner determined by the Police Board.

(3) The money value of leave is to be calculated at the rate of pay of the person immediately before appointment to the executive position.

(4) A person who was engaged in the public sector when appointed to an executive position retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the

appointment (except any accrued leave which is paid out by a gratuity under subsection (1)).

(5) A reference in this section to an engagement in the public sector is a reference to such an engagement as defined in Division 6.

Change in status of positions

57. (1) If a position ceases to be an executive position because of its omission from Schedule 2 by a proclamation:

- (a) the position is not thereby abolished; and
- (b) any person holding the position is to be taken to have been appointed to the position in accordance with the relevant provisions.

(2) However, the proclamation by which a position is omitted from Schedule 2 may direct that the person holding the position is to cease to hold the position, but only if the person was not employed in the public sector (within the meaning of Division 6) immediately before last becoming an executive officer.

(3) The person to whom any such direction relates ceases to hold the position concerned and has the same rights and obligations as the person would have if the person had ceased to be an executive officer as referred to in section 51 (4).

(4) A proclamation that amends Schedule 2 may contain other provisions of a savings or transitional nature consequent on a position becoming or ceasing to be an executive position.

Change in title of positions

58. A position referred to in Schedule 2 does not cease to be an executive position merely because of a change in the title of the position.

Approval to engage in other paid employment

59. An executive officer must not engage in any paid employment outside the duties of the executive position without the consent of the Police Board.

Transfer of executive officers

60. (1) If the Police Board considers it to be in the interests of the Police Service to do so, the Police Board may transfer an executive officer from one executive position to another executive position (being a position with the same remuneration package).

(2) A transfer under this section may be made only if the executive officer possesses the qualifications determined by the Board for the other position.

Operation of Part

61. This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of or a contract with a person.

PART 6 - NON-EXECUTIVE OFFICERS OF THE POLICE SERVICE

Division 1 - Preliminary

Officers to whom Part applies

62. This Part applies to all members of the Police Service (other than the Commissioner, members of the Police Service Senior Executive Service and temporary employees).

Definitions

63. In this Part:

"**appointment**" means appointment by way of promotion or transfer or otherwise;

"**non-executive commissioned police officer**" means a commissioned police officer to whom this Part applies;

"**non-executive officer**" means a member of the Police Service to whom this Part applies;

"**non-executive position**" means the position of a member of the Police Service to whom this Part applies.

Division 2 - Appointment of non-executive officers generally

Appointments to non-executive positions

64. (1) Appointments to vacant non-executive positions are to be made:

- (a) in the case of non-executive commissioned police officers - by the Governor on the recommendation of the Police Board; or
- (b) in any other case - by the Commissioner.

(2) This section is subject to any express provision to the contrary in this or any other Act.

Filling non-executive positions by either police or administrative officers

65. (1) If the Commissioner is satisfied that a non-executive position is suitable for either a police officer or an administrative officer, the position may, for the purpose of the selection process, be designated as a position available to both police and administrative officers.

(2) Before a person is appointed to any such vacant non-executive position, the Commissioner must determine whether it is to be the position of a police officer or an administrative officer (and the provisions of this Part relating to the filling of such a vacancy apply accordingly).

Temporary appointments to non-executive positions

66. (1) The Commissioner may appoint an officer temporarily to a non-executive position which is vacant or the holder of which is suspended, sick or absent.

(2) The Commissioner may, at any time, terminate a temporary appointment under this section.

(3) The provisions of Divisions 3 - 5 do not apply to a temporary appointment under this section.

(4) An administrative officer may not be appointed under this section to the position of a police officer.

Transfer of non-executive officers

67. (1) If the Commissioner considers it to be in the interests of the Police Service to do so, the Commissioner may transfer a

non-executive officer from one non-executive position to another non-executive position (being a position the holder of which is entitled to the same remuneration as the officer's former remuneration).

(2) A transfer under this section may be made only if the officer possesses the qualifications determined by the Commissioner for the other position.

(3) A transfer under this section of a police officer of the rank of superintendent may not be made without the approval of the Police Board.

(4) The transfer under this section of a police officer to a position that is not that of a police officer may not be made without the approval of the police officer.

(5) The provisions of Divisions 3 - 5 do not apply to a transfer under this section.

Division 3 - Appointment of non-executive commissioned police officers

Only police officers eligible for appointment

68. A vacancy in the position of a non-executive commissioned police officer may be filled only by a person who is already a police officer of the highest grade of constable or above the rank of constable.

Advertising of vacancies

69. If it is proposed to make an appointment under this Part to a vacant position of a non-executive commissioned police officer, the Commissioner is required to advertise the vacancy (in such manner as the Police Board directs) among police officers.

Commissioner to consider applications and advise Board

70. The Commissioner is required to consider each application for appointment as a non-executive commissioned police officer and advise the Police Board on the appointment.

Appointment to be made on merit

71. (1) In deciding to make a recommendation for the appointment of a person to a vacant position of a non-executive commissioned police officer:

- (a) the Police Board may only recommend a person who has duly applied for appointment to the vacant position; and
- (b) the Police Board is to have regard to the advice of the Commissioner; and
- (c) the Police Board must, from among the applicants eligible for appointment to the position, recommend the applicant who has, in the opinion of the Police Board, the greatest merit.

(2) The Police Board is required to obtain and have regard to an official report (referred to in section 3 (3)) on the previous employment and conduct of any person recommended for appointment as a non-executive commissioned police officer.

Appointment of inspectors subject to appeal

72. (1) An appointment of a person to a vacant position of a non-executive commissioned police officer of the rank of inspector must not be made unless:

- (a) notification of the recommendation of the Police Board has been given to each applicant for the position; and
- (b) the time for lodging an appeal under the Police Regulation (Appeals) Act 1923 against the decision of the Police Board to make the recommendation has expired or, if such an appeal has been lodged, the appeal has been withdrawn or determined.

(2) If any such appeal is allowed, the successful appellant is to be regarded as the person recommended for appointment by the Police Board.

(3) A notification under this section may be given personally or by post, or by publication of the notification in any official publication which is circulated to police officers.

Division 4 - Appointment of constables and sergeants

Appointment of constables

73. (1) The Commissioner may, subject to this Act and the regulations, appoint any person of good character and with satisfactory educational qualifications as a police officer of the rank of constable.

(2) A person when first appointed as such a police officer is to be appointed on probation in accordance with the regulations.

(3) The Commissioner may dismiss any such probationary police officer from the Police Service at any time and without giving any reason.

Promotion of constables

74. The promotion of police officers within the rank of constable is subject to the regulations and the Police Regulation (Appeals) Act 1923.

Only police officers eligible for appointment as sergeants

75. A vacancy in the position of a police officer of the rank of sergeant may be filled only by a person who is already a police officer of the highest grade of constable or above the rank of constable.

Advertising of vacancies - sergeants

76. If it is proposed to make an appointment under this Part to a vacant position of a police officer of the rank of sergeant, the Commissioner is required to advertise the vacancy (in such manner as the Commissioner thinks fit) among police officers.

Appointment of sergeants to be made on merit

77. (1) In deciding to appoint a person to a vacant position of a police officer of the rank of sergeant:

- (a) the Commissioner may only select a person who has duly applied for appointment to the vacant position; and
- (b) the Commissioner must, from among the applicants eligible for appointment to the position, select the applicant who has, in the opinion of the Commissioner, the greatest merit.

(2) The Commissioner is required to obtain and have regard to an official report on the previous employment and conduct of any person recommended for appointment as a police officer of the rank of sergeant.

Appointment of sergeants subject to appeal

78. (1) An appointment of a person to a vacant position of a police officer of the rank of sergeant must not be made unless:

- (a) notification of the decision of the Commissioner has been given to each applicant for the position; and

- (b) the time for lodging an appeal under the Police Regulation (Appeals) Act 1923 against the decision of the Commissioner has expired or, if such an appeal has been lodged, the appeal has been withdrawn or determined.
- (2) If any such appeal is allowed, the successful appellant is to be regarded as the applicant who has the greatest merit for appointment.
- (3) A notification under this section may be given personally or by post, or by publication of the notification in any official publication which is circulated to police officers.

**Division 5 - Appointment of non-executive
administrative officers**

Eligibility for appointment

79. In the case of a vacancy in the position of a non-executive officer (being an administrative officer), it does not matter whether the person appointed to fill the vacancy is or is not already a member of the Police Service.

Advertising of vacancies

80. If it is proposed to make an appointment under this Part to a vacant non-executive position of an administrative officer, the Commissioner:

- (a) may advertise the vacancy (in such manner as the Commissioner thinks fit) among police or administrative officers (or only administrative officers) or generally; or
- (b) may, in such cases as the Commissioner considers appropriate and with the approval of the Minister, appoint an administrative officer without advertising the vacancy.

Appointment on merit

81. (1) In deciding to appoint a person to a vacant non-executive position of administrative officer which has been duly advertised:

- (a) the Commissioner may only select a person who has duly applied for appointment to the vacant position; and
- (b) the Commissioner must, from among the applicants eligible for appointment to the position, select the applicant who has, in the opinion of the Commissioner, the greatest merit.

(2) In deciding to appoint a person to a vacant non-executive position of administrative officer which has not been duly advertised:

- (a) the Commissioner may only select an administrative officer; and
- (b) the Commissioner must, from among the eligible officers, select the officer who has, in the opinion of the Commissioner, the greatest merit.

(3) If an administrative officer has a right of appeal to the Government and Related Employees Appeal Tribunal against an officer to be appointed by the Commissioner, the appointment is not to be made (except by way of temporary appointment under Division 2):

- (a) until the expiration of the time for lodging notice of such an appeal; or
- (b) if such a notice of appeal is lodged, until the Tribunal has determined the appeal or the appeal is withdrawn.

(4) Despite anything to the contrary in this section, appointments of persons (whether or not already members of the Police Service) to non-executive positions which have not been duly advertised may be made in accordance with the regulations if they have duly passed competitive examinations prescribed by the regulations.

Division 6 - Retirement etc. of non-executive officers

Vacation of non-executive positions

82. (1) The position of a non-executive officer becomes vacant if the officer:

- (a) dies; or
- (b) is removed from office, or retires or is retired from office, under this or any other Act; or
- (c) resigns his or her position in writing addressed to the Commissioner.

(2) The retirement or resignation of a non-executive officer does not take effect until:

- (a) the Commissioner accepts the retirement or resignation; or
- (b) the non-executive officer has given the Commissioner at least 4 weeks' notice in writing of the day on which the officer intends

to retire or resign and the officer is not under suspension from office on that day.

Retirement of non-executive officers

83. (1) A non-executive officer:

- (a) may retire on or after reaching 55 years of age; or
- (b) may be retired by the Commissioner at any time after the officer has reached 60 years of age.

(2) A non-executive officer is required to retire on reaching 65 years of age.

(3) However, the retirement of a non-executive officer who has reached 65 years of age may, with the approval of the officer, be deferred by the Commissioner from time to time for such periods (not exceeding 12 months at any one time) as the Commissioner determines.

(4) Nothing in this section affects the provisions of an Act relating to any superannuation scheme of which a non-executive officer is a member.

Division 7 - Industrial matters relating to non-executive officers

Industrial Authority to be employer for industrial matters

84. (1) The Public Employment Industrial Relations Authority is to be the employer of non-executive officers for the purposes of any proceedings relating to non-executive officers held before a competent tribunal having jurisdiction to deal with industrial matters.

(2) This section does not apply to proceedings relating to:

- (a) the dismissal, suspension or reinstatement of a police officer; or
- (b) the functions of the Police Board or the Commissioner with respect to the discipline, promotion or transfer of a police officer.

Industrial Authority may determine salary, wages etc.

85. (1) The salary, wages or other remuneration of a non-executive officer is, except in so far as provision is otherwise made by law, such

as may be determined from time to time by the Public Employment Industrial Relations Authority.

(2) A non-executive officer may sue for and recover the amount of the remuneration of the officer that is determined under this section.

Industrial Authority may enter into agreements

86. (1) The Public Employment Industrial Relations Authority may enter into an agreement with any association or organisation representing a group or class of non-executive officers with respect to industrial matters.

(2) This section does not apply to agreements relating to:

- (a) the dismissal, suspension or reinstatement of a member of the Police Service; or
- (b) the functions of the Police Board or the Commissioner with respect to the discipline, promotion or transfer of a member of the Police Service.

(3) An agreement under this section binds all non-executive officers in the class or group affected by the agreement, and no such officer (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.

**Division 8 - General provisions relating to
non-executive officers**

Eligibility of administrative officers for appointment to Public Service

87. (1) A non-executive officer (being an administrative officer) may apply for a position in the Public Service as if the officer were an officer of the Public Service.

(2) A non-executive officer (other than a police officer) who applies for such a position, or is appointed as an officer of the Public Service, is to be taken (for the purposes of the Public Sector Management Act 1988, the Government and Related Employees Appeal Tribunal Act 1980 and the Industrial Arbitration Act 1940 and for any other purposes) to be an officer of the Public Service in relation to the application or appointment.

Approval to engage in other paid employment

88. A non-executive officer must not engage in any paid employment outside the duties of the position without the approval of the Commissioner.

Industrial arbitration or legal proceedings excluded in relation to appointments

89. (1) The appointment of or failure to appoint a person to a vacant non-executive position, or any matter, question or dispute relating to such an appointment or failure, is not an industrial matter for the purposes of the Industrial Arbitration Act 1940.

(2) Subsection (1) applies whether or not any person has been appointed to a vacant non-executive position.

(3) No proceedings for an order in the nature of prohibition, certiorari or mandamus, or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to a vacant non-executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.

(4) Subsection (3) does not affect the operation of the Government and Related Employees Appeal Tribunal Act 1980.

PART 7 - TEMPORARY EMPLOYEES OF THE POLICE SERVICE

Appointment of temporary employees

90. (1) The Commissioner may, if of the opinion that it is necessary to do so, employ temporarily a person who has appropriate qualifications to carry out work in the Police Service.

(2) The employment of any such person is subject to the regulations (if any) concerning the employment of temporary employees.

Period of employment

91. (1) The Commissioner:

- (a) may employ a person under this Part for a period not exceeding 4 months; and

- (b) may from time to time employ the person at the end of that period, or at the end of any subsequent period, for a further period not exceeding 4 months.
- (2) The Commissioner may dispense with the services of a temporary employee at any time.

**PART 8 - GENERAL PROVISIONS RELATING TO
EMPLOYMENT OF ALL MEMBERS OF THE
POLICE SERVICE**

Member contesting State election

92. (1) A member of the Police Service who nominates for election to the Legislative Assembly or Legislative Council is to be granted leave of absence until the day on which the result of the election is declared.

(2) If the member is elected, the member is required to resign from the Police Service.

(3) Unless the member is entitled to leave with pay (and duly applies for such leave), any leave of absence under this section is to be leave without pay.

Re-appointment of member resigning to contest Commonwealth election

93. (1) If a member of the Police Service:

- (a) resigns in writing from the Police Service and the resignation takes effect not earlier than 3 months before the date appointed for the taking of the poll at an election of a member or members of either House of the Parliament of the Commonwealth and before the day fixed for nominations for that election; and
- (b) includes in the written resignation notice of the member's intention to become a candidate at that election; and
- (c) becomes a candidate at that election; and
- (d) fails to be elected at that election; and
- (e) makes written application for appointment as a member of the Police Service within 2 months after the declaration of the result of the poll at that election,

the member is entitled to be re-appointed to a position in the Police Service not lower in remuneration than the current remuneration for the position held by the member at the date of the member's resignation (or a similar position).

(2) A member of the Police Service who was a police officer is entitled to be re-appointed to the position of a police officer.

(3) A member of the Police Service is, on re-appointment under this section, to be taken:

- (a) never to have resigned as a member; and
- (b) to have been on leave without pay during the period between resignation and re-appointment.

Requirements as to citizenship

94. (1) A person is eligible to be appointed as a member of the Police Service only if the person is an Australian citizen or a permanent Australian resident.

(2) A member of the Police Service who ceases to be so eligible (or is not so eligible) for appointment as such a member is to be dismissed from the Police Service.

(3) In this section, "permanent Australian resident" means a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

(4) This section does not apply to temporary employees.

Arrangements for use of public servants

95. (1) The Commissioner may, with the approval of the appropriate Department Head within the meaning of the Public Sector Management Act 1988, and on such terms and conditions as may be arranged, make use of the services of any public servant.

(2) The services of a public servant may not be made use of under this section for:

- (a) a continuous period exceeding 12 months; or
- (b) 2 or more periods that together exceed 12 months in any period of 2 years,

without the approval of the Public Employment Industrial Relations Authority.

Attachment of wages or salary of members of Police Service

96. (1) Schedule 6 to the Public Sector Management Act 1988 applies to members of the Police Service in the same way as it applies to members of the Public Service.

- (2) For that purpose, a reference in that Schedule to:
- (a) an officer is to be read as a reference to a police or administrative officer; or
 - (b) a Department Head is to be read as a reference to the Commissioner.

PART 9 - DISCIPLINE OF MEMBERS OF THE POLICE SERVICE

Discipline of police officers

97. (1) The regulations may make provision for or with respect to the discipline of police officers, including:

- (a) the imposition by the Commissioner of one or more of the following penalties:
 - (i) the dismissal of a police officer (other than a commissioned police officer);
 - (ii) the demotion of a police officer (other than a commissioned police officer) to a lower rank or grade;
 - (iii) the reduction in seniority of a police officer of the rank of constable;
 - (iv) the suspension from office (with or without pay) of a police officer (other than a commissioned police officer);
 - (v) the reduction in salary of a police officer (other than a commissioned police officer);
 - (vi) the imposition of a fine on a police officer;
 - (vii) the caution or reprimand of a police officer; and
- (b) the implementation of the determinations of the Police Tribunal.

(2) The Governor may, with respect to the discipline of commissioned police officers, impose one or more of the following penalties:

- (a) the dismissal of a commissioned police officer;
- (b) the demotion of a commissioned police officer to a lower rank or grade.

(3) Any fine imposed by the Commissioner under the regulations may be recovered in a court of competent jurisdiction as a debt due to the Crown or from the pay of the police officer in accordance with the regulations.

(4) This section and the regulations under this section are subject to the Police Regulation (Allegations of Misconduct) Act 1978.

Discipline of administrative officers

98. (1) The provisions of Part 5 of the Public Sector Management Act 1988 and the regulations made under that Part (Discipline and conduct of officers of the Public Service) apply to administrative officers in the same way as they apply to officers of the Public Service.

(2) For that purpose:

- (a) a reference to the appropriate Department Head is to be read as a reference to the Commissioner; and
- (b) a reference to the Public Service is to be read as a reference to the Police Service.

PART 10 - OFFENCES RELATING TO THE POLICE SERVICE

Bribery or corruption

99. (1) A member of the Police Service who receives or solicits any bribe, pecuniary or otherwise, is guilty of an offence.

(2) A person (including a member of the Police Service) who:

- (a) gives, or offers or promises to give, any bribe (pecuniary or otherwise) or any other benefit to a member of the Police Service; or
- (b) makes any collusive agreement with a member of the Police Service,

for the purpose of inducing the member to neglect his or her duty, of influencing the member in the exercise of his or her functions or of improperly taking advantage of the member's position is guilty of an offence.

(3) Proceedings for an offence against this section may be taken within 2 years after the act or omission alleged to constitute the offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

Neglect of duty etc.

100. A police officer who neglects or refuses to obey any lawful order or carry out any lawful duty as a police officer is guilty of an offence.

Maximum penalty: 20 penalty units.

Admission to Police Service as police officer under false pretences

101. A person who gains admission to the Police Service as a police officer:

- (a) without disclosing any previous dismissal of the person from the Police Service or the Police Force; or
- (b) by any false representation or the use of any false document, is guilty of an offence.

Maximum penalty: 5 penalty units or imprisonment for 3 months, or both.

Wearing of police uniform by others

102. (1) A person (not being a police officer) who wears the uniform, or a reasonable imitation of the uniform, of a police officer is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

(2) A person is not guilty of an offence under this section if the person establishes that:

- (a) the person had the permission of the Commissioner to wear the uniform or imitation; or
- (b) the person wore the uniform or imitation for the purpose of a public entertainment.

Impersonation of police officers

103. A person who impersonates a police officer is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Use of police designations by others

104. A person (not being a police officer) who, in connection with any business, occupation or employment uses:

- (a) the designation of "detective"; or
- (b) the designation of "private detective" or any other designation that includes the word "detective"; or
- (c) any other designation, or any rank or description, implying that the person is a police officer (whether or not the designation, rank or description was previously applicable to the person as a police officer),

is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Disclosure of information relating to Police Board functions

105. (1) A person who discloses any relevant information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Police Board) is guilty of an offence unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act (or any such other Act); or
- (c) for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974 or the Police Regulation (Allegations of Misconduct) Act 1978; or
- (e) with other lawful excuse.

(2) In this section, "relevant information" means information relating to the exercise of the functions of the Police Board.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

Proceedings for offences

106. (1) Proceedings for an offence against this Act or the regulations may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Nothing prevents proceedings for an offence against this Act or the regulations from being brought against a person who has ceased to be a member of the Police Service, but who was such a member when the offence was allegedly committed.

PART 11 - CHARGES FOR POLICE SERVICES

Charges payable for attendance at sporting events, escorts and other services

107. (1) If a member of the Police Service (whether or not in compliance with any law):

- (a) attends a sporting or entertainment event, at the request of the person conducting or organising that event, for the purpose of maintaining order; or
- (b) provides, at the request of a person, an escort for a vehicle or trailer carrying a long or wide load; or
- (c) provides any information to a person, at the person's request, in respect of a visa application,

the Commissioner is entitled to demand payment by the person of such amount as may be prescribed by the regulations or, if no amount is so prescribed, of such amount as the Commissioner thinks fit.

(2) The regulations may make provision with respect to payment for such services provided by members of the Police Service as are specified in the regulations.

(3) Without limiting the generality of subsection (2), the regulations may specify:

- (a) a service whether or not it is provided in compliance with any law; and

- (b) a service whether or not it is the same as or of a similar kind to a service referred to in subsection (1); and
- (c) the circumstances in which the service is provided; and
- (d) the amount which may be demanded for the provision of the service or the means by which the amount is to be calculated or assessed; and
- (e) the person by whom the payment is to be made or from whom the payment may be demanded, whether or not the person requested the provision of the service concerned.

(4) Nothing in this section entitles the Commissioner to any payment for the performance of a service if a fee or other payment for the performance of that service is prescribed by or under any other Act.

Charges payable for false security alarms

108. (1) If, within any period of 28 days, a member of the Police Service (whether or not the same member) responds on more than one occasion to false alarms from the same security device installed in respect of a building (not being a dwelling), the Commissioner is entitled to payment by an owner of the building of the prescribed charge for each occasion (except the first).

(2) For the purposes of this section, an alarm is to be taken to be a false alarm unless the owner of the building establishes that it was not a false alarm.

(3) The regulations may specify the matters which the Commissioner is to take into account in determining who is to pay the Commissioner the prescribed charge when there is more than one owner of the building.

(4) In this section:

"**building**" includes part of a building;

"**owner**", in relation to a building, means:

- (a) the owner of the building; or
- (b) the occupier of the building;

"prescribed charge" means \$200 or such other amount as may be prescribed by the regulations.

Recovery of charges

109. The Commissioner may recover an amount payable under this Part as a debt in a court of competent jurisdiction.

Waiver or reduction of charges

110. The Commissioner or a person authorised by the Commissioner may, at the discretion of the Commissioner or the person, refund or waive any charge paid or payable under this Part or reduce any charge so payable by such proportion as the Commissioner or person thinks fit.

PART 12 - MISCELLANEOUS

Crown bound by this Act

111. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Protection from personal liability

112. (1) A member of the Police Service is not liable for any injury or damage caused by any act or omission of the member in the exercise by the member in good faith of a function conferred or imposed by or under this or any other Act or law with respect to the protection of persons from injury or death or property from damage.

(2) This section applies to acts or omissions before as well as after the commencement of this section.

Repute to be evidence of appointment of police officer

113. If any question arises as to the right of any police officer to hold or execute his or her office, common reputation is to be taken as evidence of that right, and it is not necessary for a police officer to have or to produce any written appointment or other document to prove that right.

Protection of police officers acting in execution of warrants

114. (1) If any proceedings (whether criminal or not) are brought against any police officer for anything done or purportedly done by the police officer in execution of a warrant of a justice or judicial officer, the police officer is not to be convicted or held liable merely because:

- (a) there was an irregularity or defect in the issuing of the warrant;
or
- (b) the person who issued the warrant lacked the jurisdiction to do so.

(2) In any such proceedings, the court must acquit the police officer or dismiss the proceedings if the police officer:

- (a) produces the warrant; and
- (b) proves that the signature on the warrant is that of the person whose signature it purports to be; and
- (c) proves that such a person has the reputation of being, and acts as, a person who has the jurisdiction to issue the warrant; and
- (d) the act complained of was done in execution of the warrant.

Special risk benefit where certain police officers hurt on duty

115. (1) The Commissioner may pay to a police officer who:

- (a) is retired from the Police Service on the ground of physical or mental incapacity (being an incapacity which the Commissioner determines to have been caused by the police officer being hurt on duty); and
- (b) is not a contributor to the Police Superannuation Fund,
an amount not exceeding 24 months' pay at the rate of the police officer's salary at the date of retirement.

(2) If:

- (a) a police officer dies; and
- (b) the police officer's death is determined by the Commissioner to have been caused by the police officer being hurt on duty; and
- (c) the police officer is not a contributor to the Police Superannuation Fund,

the Commissioner may pay an amount, not exceeding 24 months' pay at the rate of the police officer's salary at the date the police officer was hurt on duty, to the spouse of the police officer or (if the police officer

is not survived by a spouse) to the personal representative of the police officer.

(3) The Commissioner must not make a payment under this section unless the police officer concerned was, in the opinion of the Commissioner, hurt on duty because the police officer was required to be exposed to risks to which members of the general work force would normally not be required to be exposed in the course of their employment.

(4) The amount of any such payment is to be commensurate, in the opinion of the Commissioner, with the risks to which the police officer concerned was so required to be exposed.

(5) A benefit under this section is payable by the Commissioner and is not payable from the Police Superannuation Fund.

(6) In this section:

"hurt on duty", in relation to a police officer, means injured in such circumstances as would entitle the police officer to compensation under the Workers Compensation Act 1987;

"spouse" includes de facto partner.

Service of documents on Police Board

116. (1) A document may be served on the Police Board by leaving it at, or by sending it by post to, the office of the Board.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Police Board in a manner not provided for by subsection (1).

Regulations

117. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to the following:

- (a) the use and custody of the seal of the Police Board;
- (b) the hours of attendance of members of the Police Service;
- (c) the extended, annual and other leave that may be granted to members of the Police Service;

- (d) the educational or other qualifications for appointment to the Police Service;
- (e) the disposal of unclaimed property in the possession of any member of the Police Service (other than property which is in the custody of such a member in connection with any offence);
- (f) travelling and subsistence allowances and other allowances for members of the Police Service;
- (g) the payment of gratuities to police officers on their ceasing to be police officers;
- (h) providing for the exercise of the functions of suspended, sick or absent members of the Police Service (or of the functions attaching to vacant positions) by other members;
- (i) any other matter relating to the management or control of the Police Service.

(3) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

Repeals

118. (1) The Acts specified in Part 1 of Schedule 3 are repealed.

(2) The regulations and rules specified in Part 2 of Schedule 3 are repealed.

(3) Different days may be appointed for the commencement of this section and Schedule 3 for the purpose of repealing different Acts or statutory instruments, or different provisions of an Act or statutory instrument, on different days.

Savings, transitional and other provisions

119. Schedule 4 has effect.

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE POLICE BOARD**

(Sec. 17)

Definitions

1. In this Schedule:

"Board" means the Police Board;

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE POLICE BOARD - *continued***

"member" means a member of the Board;

"part-time member" means a part-time member of the Board.

Chairperson of Board

2. (1) The Governor may at any time remove a part-time member from the office of Chairperson of the Board.

(2) A person who is a part-time member and Chairperson of the Board vacates the office of Chairperson if the person:

- (a) is removed from that office by the Governor; or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a part-time member.

Acting members

3. (1) The Governor may, from time to time, appoint a person to act in the office of a part-time member, during the illness or absence of the part-time member, and the person, while so acting, has all the functions of the part-time member and is to be taken to be a part-time member.

(2) The Governor may, from time to time, appoint a part-time member to act in the office of the Chairperson of the Board during the illness or absence of the Chairperson, and the part-time member, while so acting, has all the functions of the Chairperson and is to be taken to be the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister from time to time determines in respect of the person.

(5) For the purposes of this clause:

- (a) a vacancy in the office of a part-time member or the Chairperson of the Board is to be taken to be an absence from the office of the member or Chairperson; and

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE POLICE BOARD - *continued***

- (b) a part-time member is to be taken to be absent from office as a part-time member during any period that the member acts in the office of Chairperson of the Board under this clause.

Terms of office

4. Subject to this Schedule, a part-time member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

5. A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister from time to time determines in respect of the member.

Vacancy in office

6. (1) The office of a part-time member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Governor under this clause or under Part 8 of the Public Sector Management Act 1988; or
- (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE POLICE BOARD - *continued***

patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or

- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove a part-time member from office for incapacity, incompetence or misbehaviour.

Filling of vacancy

7. If the office of a part-time member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a part-time member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office;
or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

Personal liability of members etc.

9. A matter or thing done by the Board, a member of the Board or any person acting under the direction of the Board does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE POLICE BOARD - *continued***

General procedure

10. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

Quorum

11. The quorum for a meeting of the Board is 2 members.

Presiding member

12. (1) The Chairperson of the Board or, in the absence of the Chairperson, the other part-time member is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote but, in the event of an equality of votes, does not have a second or casting vote.

Voting

13. A decision supported by at least 2 votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Transaction of business outside meetings or by telephone etc.

14. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by at least 2 of those members is to be taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1); or

**SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS
AND PROCEDURE OF THE POLICE BOARD - *continued***

(b) a meeting held in accordance with subclause (2),
the Chairperson of the Board and each other member have the same
voting rights they have at an ordinary meeting of the Board.

(4) A resolution approved under subclause (1) is, subject to the
regulations, to be recorded in the minutes of the meetings of the
Board.

(5) Papers may be circulated among members for the purposes of
subclause (1) by facsimile or other transmission of the information in
the papers concerned.

**Member applying for appointment as Commissioner not to act on
Board**

15. (1) An applicant for appointment to the office of Commissioner
who is a member of the Board must not:

- (a) be present during any deliberation of the Board, or take part in
any decision of the Board, with respect to the appointment; or
- (b) exercise any functions of the Board with respect to the
appointment.

(2) Even though a member of the Board contravenes this section,
that contravention does not invalidate any decision of the Board or the
exercise by the Board of any of its functions.

Proof of certain matters not required

16. In any legal proceedings proof is not required (until evidence is
given to the contrary) of:

- (a) the constitution of the Board; or
- (b) any resolution of the Board; or
- (c) the appointment of, or the holding of office by, any member of
the Board; or
- (d) the presence of a quorum at any meeting of the Board.

**SCHEDULE 2 - POLICE SERVICE SENIOR EXECUTIVE
POSITIONS**

(Sec. 33)

SCHEDULE 3 - REPEALS

(Sec. 118)

PART 1 - ACTS

Police Regulation Act 1899 No. 20
Constitution and Police Regulation (Amendment) Act 1964 No. 9
Police Regulation (Amendment) Act 1971 No. 57
Police Regulation (Priority Lists and Appeals) Amendment Act
1980 No. 92
Police Board Act 1983 No. 135
Police Regulation (Further Amendment) Act 1983 No. 192
Police Regulation (Amendment) Act 1985 No. 210
Police Regulation (Merit Appointments) Amendment Act 1987 No.
291
Police Regulation (Emergencies) Amendment Act 1988 No. 88
Police Regulation (False Security Alarms) Amendment Act 1989
No. 46
Police Regulation (Imposition of Charges) Amendment Act 1989
No. 166

PART 2 - REGULATIONS AND RULES

Police Rules 1977
Police Board Regulation 1984

**SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS**

(Sec. 119)

PART 1 - GENERAL

Definitions

1. (1) In this Schedule:
"former Act" means the Police Regulation Act 1899.
- (2) In this Schedule, a reference to the repeal of the former Act is
(if different days are appointed for the repeal of different provisions)
a reference to the repeal of the relevant provisions.

SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

Savings and transitional regulations

2. (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the following Acts:

this Act;
the Police and Superannuation Legislation (Amendment) Act 1990.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

PART 2 - PROVISIONS CONSEQUENT ON ENACTMENT OF THIS ACT

Dissolution of Police Force and Police Department

3. The Police Force of New South Wales and the Police Department are, on the repeal of the former Act, dissolved.

Continuation of former Police Board and its members

4. (1) The part-time members of the Police Board under the Police Board Act 1983 holding office immediately before the repeal of that Act are to be taken to have been appointed as part-time members of the Police Board established by this Act for the balance of their terms of office.

(2) The part-time member holding office as Chairman of the Police Board under the Police Board Act 1983 immediately before the repeal of that Act is to be taken to have been appointed as Chairperson of the Police Board under this Act for the balance of his or her term of office.

SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

(3) Anything done by or in relation to the Police Board under the Police Board Act 1983 is to be taken to have been done by or in relation to the Police Board under this Act.

Existing Commissioner of Police

5. The person holding office as Commissioner of Police under the former Act immediately before the repeal of the former Act is to be taken to have been appointed as the Commissioner of Police under this Act.

Existing members of the Police Force

6. A person who, immediately before the repeal of the former Act, held office as a member of the Police Force is to be taken to be a police officer appointed to that office under this Act.

Existing officers and employees of the Police Department

7. A person who, immediately before the repeal of the former Act, was an officer or temporary employee of the Police Department is to be taken to be an administrative officer or temporary employee, respectively, appointed or employed under this Act.

Superseded references

8. In any other Act, in any instrument made under any Act, or in any document:

- (a) a reference to the Police Force of New South Wales is a reference to that part of the Police Service which is comprised of police officers; and
- (b) a reference to the Police Department is a reference to that part of the Police Service which is comprised of administrative officers;
- (c) a reference to the rules under the former Act is a reference to the regulations under this Act.

Pending appointments

9. Any advertisement for the filling of a vacancy in the Police Force or the Police Department published before the repeal of the former

SCHEDULE 4 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

Act, any applications duly made or any recommendations for appointment in accordance with the former Act and the Police Board Act 1983 are to be taken to have been done under this Act, and may be acted on accordingly.

Pending disciplinary matters

10. Any disciplinary proceedings which, on the repeal of the former Act, are pending against a member of the Police Force under the former Act or against a member of the Police Department under the Public Sector Management Act 1988 are to be taken to be pending under this Act, and may be disposed of accordingly.

Continuation of oath of office

11. An oath taken, or affirmation made, by a member of the Police Force under the former Act is to be taken to be an oath taken, or affirmation made, under this Act.

Continuation of protection from personal liability

12. Sections 26 and 26A of the former Act continue to apply to any act done by a member of the Police Force before the repeal of the former Act.

Application of s. 26

13. A person who was appointed for a term under the former Act as a Deputy or Assistant Commissioner of Police is, for the purposes of section 26 of this Act, to be taken to be a police officer whose first appointment as a police officer was as a member of the Police Service Senior Executive Service.

