

**POLICE SERVICE (COMPLAINTS) AMENDMENT ACT 1994**  
**No. 9**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Police Service Act 1990 No. 47
4. Consequential amendment of Ombudsman Act 1974 No. 68

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OMBUDSMAN ACT  
1974

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**POLICE SERVICE (COMPLAINTS) AMENDMENT ACT 1994**  
**No. 9**

NEW SOUTH WALES



**Act No. 9, 1994**

An Act to amend the Police Service Act 1990 in relation to the conduct of police officers that may be the subject of complaint and investigation under that Act, and to make consequential amendments to the Ombudsman Act 1974. [Assented to 4 May 1994]

*Police Service (Complaints) Amendment Act 1994 No. 9*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Police Service (Complaints) Amendment Act 1994.

**Commencement**

2. This Act commences on the date of assent.

**Amendment of Police Service Act 1990 No. 47**

3. The Police Service Act 1990 is amended as set out in Schedule 1.

**Consequential amendment of Ombudsman Act 1974 No. 68**

4. The Ombudsman Act 1974 is amended as set out in Schedule 2.

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**SCHEDULE 1—AMENDMENT OF POLICE SERVICE  
ACT 1990**

(Sec. 3)

(1) Section 121:

Omit section 121, insert instead:

**Definition of “conduct” of police officer**

121. (1) In this Part, “**conduct**” of a police officer means any action or inaction (or alleged action or inaction) of the police officer, whether or not:

- (a) it occurs while the police officer is officially on duty;  
or
- (b) it involves the commission of an offence by the police officer; or
- (c) it is within the usual functions of a police officer.

(2) However, in this Part, “**conduct**” of a police officer does not include anything that may be made the subject of a complaint under section 12 of the Ombudsman Act 1974 (which relates to complaints about matters of administration).

*Police Service (Complaints) Amendment Act 1994 No. 9*

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990—*continued*

(2) Section 141A:

After section 141, insert:

**Investigations not to proceed for complaints unconnected with fact person a police officer**

141A. (1) The Ombudsman is not to determine that a complaint should be investigated under this Division if of the opinion that the conduct the subject of the complaint is unconnected with the fact that the person concerned is a police officer.

(2) If the Ombudsman forms that opinion after an investigation has begun, the Ombudsman is to consent to or direct a discontinuation of the investigation under section 143.

(3) Schedule 4 (**Savings, transitional and other provisions**):

(a) At the end of clause 2 (1), insert:

the Police Service (Complaints) Amendment Act 1994.

(b) After Part 7, insert:

**PART 8—PROVISIONS CONSEQUENTIAL ON  
ENACTMENT OF POLICE SERVICE  
(COMPLAINTS) AMENDMENT ACT 1994**

**Operation of amendments**

29. (1) An amendment of this Act or the Ombudsman Act 1974 made by the Police Service (Complaints) Amendment Act 1994 extends to conduct occurring or complaints made before the commencement of the amendment.

(2) Anything done, or purporting to have been done, under this Act or the Ombudsman Act 1974 at any time after the commencement of the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 on 1 July 1993 and before the commencement of any amendment made by the Police Service (Complaints) Amendment Act 1994 that would have been validly done only if that amendment had been in force at that time is validated.



*Police Service (Complaints) Amendment Act 1994 No. 9*

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT  
1990—*continued*

(3) This clause applies to a matter despite any legal proceedings pending with respect to the matter on the commencement of this clause. However, this clause does not affect any judgment or order given or made by a court before that commencement with respect to a particular matter as between the parties to the proceedings.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF  
OMBUDSMAN ACT 1974

(Sec. 4)

(1) Section 5 (**Definitions**):

Omit the definition of “police conduct” in section 5 (1), insert instead:

“**police conduct**” means conduct of a police officer within the meaning of Part 8A of the Police Service Act 1990;

(2) Schedule 1 (**Excluded conduct of public authorities**):

Omit item 13, insert instead:

13. Conduct of a police officer when exercising the functions of a police officer with respect to crime and the preservation of the peace.

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[Minister's second reading speech made in—  
*Legislative Assembly on 14 April 1994*  
*Legislative Council on 20 April 1994*]

FIRST PRINT

## POLICE SERVICE (COMPLAINTS) AMENDMENT BILL 1994

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to amend the Police Service Act 1990 so as to put beyond any doubt the power of the Commissioner of Police and the Ombudsman to deal with a complaint about the conduct of a police officer that involves the commission of a criminal offence or other conduct outside the usual functions of a police officer.

The Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 repealed the previous legislation on complaints about police conduct. That Act (as indicated in the explanatory note to the Bill for that Act) implemented recommendations in the report of a Parliamentary Joint Committee on the role of the Ombudsman in investigating complaints against the police (dated April 1992). The report included a recommendation (No. 28 at page 152) that "Complaints regarding off-duty conduct should continue to be notified to the Ombudsman and dealt with in the same manner as any other allegation of misconduct, provided that the Ombudsman shall take no action where off-duty conduct bears no relationship to an officer's status as a member of the Police Service". The amending Act inserted a definition of "conduct" of a police officer using the expression used in the Ombudsman Act 1974 of conduct of a police officer "when acting as a constable" (see section 121 of the Police Service Act 1990).

The Ombudsman, in a special report to Parliament on 1 December 1993, drew attention to advice he received from counsel that the effect of the amending Act is that "it is not possible to investigate complaints that a police officer has committed a crime, if that allegation is one which accuses the police officer of conduct which would not have been an honest attempt to exercise his or her powers and duties as a constable". Crown law officers have advised, however, that any complaint against a police officer may be investigated so long as it has some connection with the fact that the person is a police officer.

The Ombudsman, in a further report to Parliament on 16 December 1993, drew attention to a legal challenge on the matter and reiterated his previous recommendation that the words "when acting as a constable" be deleted from the definition of "police conduct" and that the amendment should apply retrospectively. In that report, the Ombudsman indicated that the changes sought would be consistent with the recommendation of the Joint Parliamentary Committee that complaints about off-duty police continue to be notified and declined when they are trivial or do not relate to police duties.

*Police Service (Complaints) Amendment 1994*

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The Bill makes the changes recommended by the Ombudsman in order to remove any doubt about the matter.

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on the date of assent.

**Clause 3** gives effect to the Schedule of amendments to the Police Service Act 1990.

**Clause 4** gives effect to the Schedule of consequential amendments to the Ombudsman Act 1974.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990**

**Schedule 1 (1)** substitutes the definition of “conduct” of a police officer in Part 8A of the Principal Act. The substituted definition deletes the words “when acting as a constable” and expressly puts beyond any doubt the power of the Commissioner of Police and the Ombudsman to deal with complaints about the conduct of a police officer:

- (a) that occurs while the police officer is not officially on duty; or
- (b) that involves the commission of an offence; or
- (c) that is otherwise outside the usual functions of a police officer.

**Schedule 1 (2)** inserts proposed section 141A into the Principal Act to give effect expressly to the Joint Parliamentary Committee’s recommendation that complaints notified to the Ombudsman should not be pursued under Part 8A of the Principal Act if they have no connection with the fact that the person concerned is a police officer.

**Schedule 1 (3)** amends the savings and transitional provisions of the Principal Act to ensure that the above amendments apply to past conduct and pending complaints (and so apply despite pending legal proceedings). The item also authorises the making of further savings and transitional provisions by regulation if necessary.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OMBUDSMAN ACT 1974**

**Schedule 2 (1)** makes a consequential amendment to the definition of “police conduct” in the Ombudsman Act 1974 so that it continues to reflect the meaning of that expression in Part 8A of the Police Service Act 1990.

**Schedule 2 (2)** amends the list that excludes certain police conduct from investigation under the Ombudsman Act 1974. The expression “when exercising the functions of a police officer with respect to crime and the preservation of the peace” is to be used instead of the expression “when acting as a constable”. The amendment maintains the current provisions that enable the investigation of complaints under the Ombudsman Act 1974 of any matter relating to administration but ensures that conduct in respect of operational police matters is subject to investigation under Part 8A of the Police Service Act 1990.

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FIRST PRINT

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**POLICE SERVICE (COMPLAINTS) AMENDMENT BILL 1994**

NEW SOUTH WALES



No. , 1994

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**A BILL FOR**

An Act to amend the Police Service Act 1990 in relation to the conduct of police officers that may be the subject of complaint and investigation under that Act, and to make consequential amendments to the Ombudsman Act 1974.

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*Police Service (Complaints) Amendment 1994*

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*Police Service (Complaints) Amendment 1994*

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1990—*continued*

(2) Section 141A:

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141A. (1) The Ombudsman is not to determine that a complaint should be investigated under this Division if of the opinion that the conduct the subject of the complaint is unconnected with the fact that the person concerned is a police officer.

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(2) If the Ombudsman forms that opinion after an investigation has begun, the Ombudsman is to consent to or direct a discontinuation of the investigation under section 143.

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(3) Schedule 4 (Savings, transitional and other provisions):

(a) At the end of clause 2 (1), insert:

the Police Service (Complaints) Amendment Act 1994.

(b) After Part 7, insert:

**PART 8—PROVISIONS CONSEQUENT ON  
ENACTMENT OF POLICE SERVICE  
(COMPLAINTS) AMENDMENT ACT 1994**

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**Operation of amendments**

29. (1) An amendment of this Act or the Ombudsman Act 1974 made by the Police Service (Complaints) Amendment Act 1994 extends to conduct occurring or complaints made before the commencement of the amendment.

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(2) Anything done, or purporting to have been done, under this Act or the Ombudsman Act 1974 at any time after the commencement of the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993 on 1 July 1993 and before the commencement of any amendment made by the Police Service (Complaints) Amendment Act 1994 that would have been validly done only if that amendment had been in force at that time is validated.

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*Police Service (Complaints) Amendment 1994*

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1990—*continued*

- 5 (3) This clause applies to a matter despite any legal proceedings pending with respect to the matter on the commencement of this clause. However, this clause does not affect any judgment or order given or made by a court before that commencement with respect to a particular matter as between the parties to the proceedings.

10 SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF  
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