



New South Wales

# Police Legislation Further Amendment Bill 1996

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Police Service Act 1990* so as to do the following:

- (a) to abolish the Police Board and transfer to the Commissioner of Police those of its functions that relate to the employment of police officers,
  - (b) to modify the procedures for the appointment and removal from office of the Commissioner of Police, the Deputy and Assistant Commissioners of Police and other senior executive officers,
  - (c) to require the Commissioner of Police to have regard to a person's integrity before appointing the person to a position in the Police Service,
  - (d) to empower the Commissioner of Police to conduct integrity testing on police officers,
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- (e) to empower the Commissioner of Police to remove a police officer from office if he or she ceases to have confidence in the police officer's suitability to continue as a police officer,
- (f) to abolish the upper age limit that currently applies to employment in the Police Service,
- (g) to protect a police officer from reprisal action arising from an allegation made by the police officer about the misconduct or criminal activity of other police officers,
- (h) to make provision with respect to the abuse of alcohol and drugs by police officers,
- (i) to empower the Minister to authorise persons to conduct inquiries into the administration and management of the Police Service,
- (j) to make other minor, consequential and ancillary amendments,
- (k) to enact consequential savings and transitional provisions.

The Bill also makes minor, consequential and ancillary amendments to other Acts and instruments.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the Schedule of amendments to the *Police Service Act 1990*.

**Clause 4** is a formal provision giving effect to the Schedule of amendments to other Acts and instruments.

**Schedule 1** contains amendments to the *Police Service Act 1990*.

### **Abolition of the Police Board and transfer of the Board's functions to the Commissioner of Police**

There is currently a Police Board, whose functions include the appointment and employment of some police officers. It is proposed to abolish the Police Board (proposed clause 34 of Schedule 4) and transfer its functions,

including its status as a party to all contracts of employment with executive officers of the Police Service, to the Commissioner of Police (proposed clause 37 of Schedule 4). Consequential amendments will involve the repeal of Part 3 and Schedule 1, which provide for the constitution and functions of the Police Board, and the conversion of references to the Police Board in other provisions of the Act.

**Modification of the procedures for the appointment and removal from office of the Commissioner of Police, the Deputy and Assistant Commissioners of Police and other senior executive officers**

The Commissioner of Police is currently appointed by the Governor on the recommendation of the Minister whose recommendation is based on reports from the Police Board, the internal affairs branch of the Police Service and the Parliamentary Joint Committee on the Independent Commission Against Corruption. It is proposed that in future the Minister's recommendation will be based on a report from the Police Integrity Commission (proposed section 24 (6)).

The Deputy Commissioner of Police, as with all other executive officers, is currently appointed by the Governor on the recommendation of the Police Board. It is proposed that in future the recommendation will come from the Commissioner of Police, but be subject to the approval of the Minister (proposed section 36 (1A)). The same provisions will apply to Assistant Commissioners of Police.

Other senior executive officers will no longer be appointed by the Governor but will instead be appointed by the Commissioner (proposed section 36 (1) (b)).

**Requirement for Commissioner of Police to have regard to a person's integrity before appointing the person to a position in the Police Service**

At present, appointments of both executive and non-executive positions within the Police Service are required to be the subject of a report by an internal affairs officer under section 94A. It is proposed to repeal that section, and to provide instead for the Commissioner of Police to seek information regarding a proposed appointee's integrity and, in particular, to have regard to any report by the Police Integrity Commission that bears on a proposed appointee's integrity (proposed sections 39 (3), 64 (4) and 71 (2)).

### **Power of Commissioner of Police to conduct integrity testing on police officers**

It is proposed to authorise the Commissioner to conduct integrity testing programs, being programs that are designed to test the integrity of police officers. It is further proposed to make it clear that certain acts and omissions occurring in the course of such a program are not themselves unlawful, even though they may involve the doing of things that could be construed as invitations to other persons to engage in unlawful behaviour (proposed section 207A).

### **Power of Commissioner of Police to remove a police officer from office if he or she ceases to have confidence in the police officer's suitability to continue as a police officer**

At present, a police officer can be dismissed from office only as a result of disciplinary proceedings (sections 179 and 180) or as a result of adverse information arising from the Police Royal Commission (section 181B). In some cases, an appeal against dismissal lies to the Government and Related Employees Appeal Tribunal. It is proposed to empower the Commissioner to remove a police officer from the Police Service, in circumstances where there is no proven misbehaviour, on the ground that the Commissioner no longer has confidence in the police officer's suitability (proposed section 181D).

It is proposed to confer on the Supreme Court a power to review decisions or orders of the Commissioner of Police to remove a police officer under the proposed section, but otherwise no appeal or review mechanism is to be available. The Supreme Court's jurisdiction to review such a decision or order is cast in terms that will attract the kind of judicial review referred to in such cases as *Avon Downs Pty Ltd v Federal Commissioner of Taxation* (1949) 78 CLR 353, *Buck v Bavone* (1976) 135 CLR 110, and *Minister for Immigration v Wu Shan Liang* (1996) 70 ALJR 568. These cases relate to the review of decisions dependent on the *opinion* or *satisfaction* of an authority making a decision. In the *Wu Shan Liang* case, it was said that the judgment of Gibbs J in *Buck v Bavone* accurately reflects the position relating to judicial review at common law of such decisions (prior, in the case of Commonwealth enactments, to the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth). Gibbs J said:

It is not uncommon for statutes to provide that a board or other authority shall or may take certain action if it is satisfied of the existence of certain matters specified in the statute. Whether the decision of the authority under such a statute can be effectively

reviewed by the courts will often largely depend on the nature of the matters of which the authority is *required to be satisfied*. In all such cases the authority must act in good faith; it cannot act merely arbitrarily or capriciously. Moreover, a person affected will obtain relief from the courts if he can show that the authority has misdirected itself in law or that it has failed to consider matters that it was required to consider or has taken irrelevant matters into account. Even if none of these things can be established, the courts will interfere if the decision reached by the authority appears so unreasonable that no reasonable authority could properly have arrived at it. However, where the matter of which the authority is required to be satisfied is a matter of opinion or policy or taste it may be very difficult to show that it has erred in one of these ways, or that its decision could not reasonably have been reached. In such cases the authority will be left with a very wide discretion which cannot be effectively reviewed by the courts. (Italics supplied.)

These principles will be made applicable to the judicial review of a decision or order of the Commissioner to remove an officer under the proposed section.

The new section will supersede section 181B, which is therefore proposed to be repealed. Also, the distinction between the dismissal procedures under sections 179 and 180 is proposed to be abolished, so enabling section 180 to be repealed.

### **Abolition of the upper age limit that currently applies to employment in the Police Service**

It is proposed to abolish the upper age limit of 65 years that currently applies to members of the Police Service. This proposal will bring the Police Service into line with the rest of the public sector.

### **Protection of police officers from reprisal action arising from allegations about the misconduct or criminal activity of other police officers**

It is proposed to encourage police officers to make use of established procedures for reporting alleged corruption and misbehaviour in the Police Service by protecting them from reprisal action from other police officers. The protection is proposed to be provided by the creation of an offence, having a maximum penalty of \$5,000 or 12 months' imprisonment, for the taking of reprisal action where an allegation has been made by a police officer in the course of his or her duty or in accordance with the complaint procedures set out in the Act (proposed section 206).

### **The abuse of alcohol and drugs by police officers**

It is proposed to provide for the random or targeted testing of on-duty police officers for the presence in their bodies of alcohol or prohibited drugs. It is further proposed to provide for the regulations to establish a code of behaviour regarding the use of alcohol and prohibited drugs by members of the Police Service and to set out the consequences for police officers who test positive for alcohol or prohibited drugs, including counselling, rehabilitation and disciplinary action (proposed sections 211A and 211B).

### **Authorisation of persons to conduct inquiries into the administration and management of the Police Service**

The Police Board is currently empowered to conduct inquiries into the administration and management of the Police Service. In the conduct of such inquiries, any person authorised by it can enter police premises, look at police files and seek information from police officers and other members of the Police Service. Following the abolition of the Police Board, it is proposed to allow these functions to be exercised by a Ministerial appointee (proposed section 217).

**Schedule 2** contains amendments to the following Acts and instruments:

- *Anti-Discrimination Act 1977 No 48*
- *Independent Commission Against Corruption Act 1988 No 35*
- *New South Wales Crime Commission Act 1985 No 117*
- *Police Integrity Commission Act 1996 No 28*
- *Police Service Regulation 1990*
- *Royal Commission (Police Service) Act 1994 No 60*

These amendments are consequential on the amendments proposed to be made to the *Police Service Act 1990*.

First print



New South Wales

# Police Legislation Further Amendment Bill 1996

## Contents

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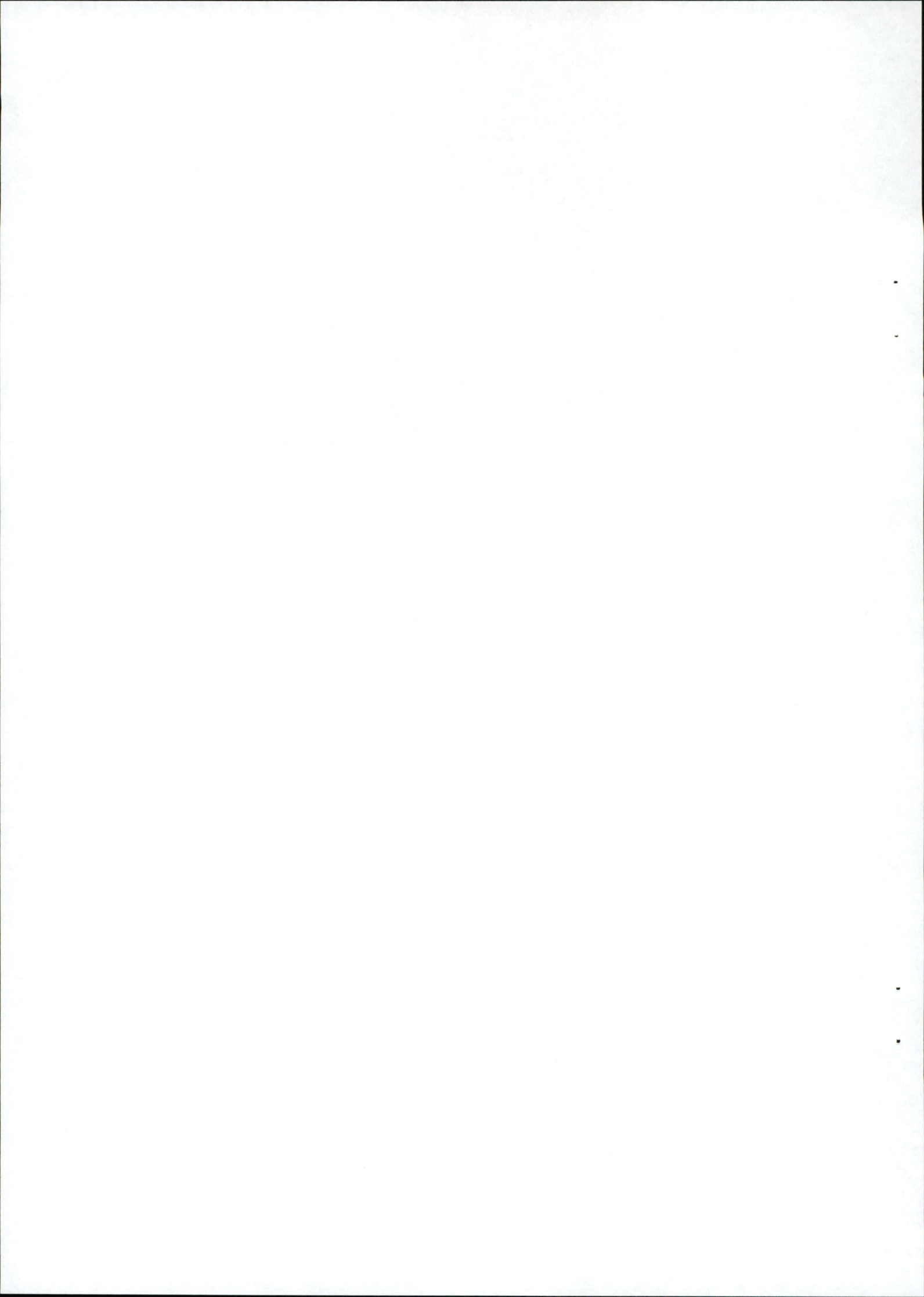
	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Police Service Act 1990 No 47	2
4 Amendment of other Acts and instruments	2

---

### Schedules

1 Amendment of Police Service Act 1990	3
2 Amendment of other Acts and instruments	28

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New South Wales

## **Police Legislation Further Amendment Bill 1996**

No      , 1996

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### **A Bill for**

An Act to amend the *Police Service Act 1990* with respect to the employment of police officers, to abolish the Police Board and to provide for the removal from the Police Service of police officers in whom the Commissioner of Police does not have confidence; and for other purposes.

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

**1 Name of Act**

This Act is the *Police Legislation Further Amendment Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

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

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

**4 Amendment of other Acts and instruments**

- (1) Each Act and instrument referred to in Schedule 2 is amended as set out in that Schedule. 10
- (2) The amendment of an instrument by a provision of Schedule 2 does not prevent the future amendment or repeal of that instrument.

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## Schedule 1 Amendment of Police Service Act 1990

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

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*Assistant Commissioner* means a member of the Police Service whose position is described in Schedule 2 as that of an Assistant Commissioner.

*Deputy Commissioner* means a member of the Police Service whose position is described in Schedule 2 as that of a Deputy Commissioner.

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*non-commissioned police officer* means a police officer under the rank of inspector.

### [2] Section 3 (1), definition of "merit"

Omit "the Police Board or" wherever occurring.

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### [3] Section 3 (1), paragraph (a) of the definition of "merit"

Omit ", as the case requires".

### [4] Section 3 (1)

Omit the definition of *Police Board*.

### [5] Section 9 Maximum number of staff in Police Service

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Omit the section.

### [6] Section 10 Positions in Police Service

Omit section 10 (3).

**[7] Section 12 Ranks and grades of police officers**

Omit "Police Board" from section 12 (2).  
Insert instead "Commissioner, with the approval of the Minister,".

**[8] Part 3**

Omit the Part. 5

**[9] Section 24**

Omit the section. Insert instead:

**24 Appointment of Commissioner**

- (1) The Commissioner of Police is to be appointed by the Governor on the recommendation of the Minister. 10
- (2) It does not matter whether the person appointed is or is not already a member of the Police Service.
- (3) In particular, it does not matter whether the person appointed is or is not a police officer at the time of appointment. 15
- (4) If it is proposed to make an appointment to the office of Commissioner, the Minister is required to invite applications for appointment to that office.
- (5) However, the Minister is not required to invite applications for appointment if the Minister proposes to recommend the re-appointment of the person currently holding office as Commissioner. 20
- (6) It is the duty of the Minister, before recommending the appointment of a person to the office of Commissioner:
  - (a) to make inquiries (from the Police Integrity Commission and from any other person or body the Minister considers appropriate) as to the person's integrity, and 25

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- (b) to have regard to any information that comes to the Minister's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
- (7) The Police Integrity Commission is required to furnish a report to the Minister (on the basis of information available to it and without the need for any special investigation or inquiry) on any person the subject of an inquiry referred to in subsection (6) (a). 5
- [10] Section 25 Acting Commissioner** 10  
Omit "Minister" from section 25 (1). Insert instead "Governor".
- [11] Section 25 (1)**  
Omit "Police Board". Insert instead "Minister".
- [12] Section 25 (3)**  
Omit the subsection. Insert instead: 15
- (3) The Governor, on the recommendation of the Minister, may at any time terminate the appointment of any such member to act as Commissioner.
- [13] Sections 27 (2), 32 (1) (definition of "contract of employment"), 35 (1), 37 (1) and (3), 38, 39 (1) and (2), 41 (1) and (6), 42 (1) and (2), 43 (1), 46 (6), 47 (1), 49 (1) and (2), 52 (2), 56 (2), 59, 60 (1) and 72 (1) and (2)** 20  
Omit "Police Board" wherever occurring.  
Insert instead "Commissioner".
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**[14] Section 28 Removal of Commissioner**

Omit section 28 (3). Insert instead:

- (3) A recommendation of the Minister under subsection (1) may be made only after the Minister:
  - (a) has notified the Police Integrity Commission that the Minister intends to recommend that the Commissioner be removed from office, and 5
  - (b) has given the Police Integrity Commission a reasonable opportunity to comment on the proposed recommendation. 10

**[15] Section 29 Retirement of Commissioner**

Omit the section.

**[16] Section 30 Vacation of office by Commissioner**

Omit "with the concurrence in writing of the Chairperson of the Police Board" from section 30 (3). 15

**[17] Section 36 Appointments to executive positions**

Omit the section. Insert instead:

**36 Appointments to executive positions**

- (1) Appointments to vacant executive positions are to be made: 20
  - (a) by the Governor on the recommendation of the Commissioner, in the case of appointments to the position of Deputy Commissioner or Assistant Commissioner, or
  - (b) by the Commissioner, in any other case. 25
- (2) A recommendation referred to in subsection (1) (a) may not be submitted to the Governor except with the approval of the Minister.

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- (3) It does not matter whether the person appointed is or is not already a member of the Police Service.
- (4) In particular, it does not matter whether a person appointed to a position designated as a position to be held by a police officer is or is not a police officer at the time of appointment. 5

**[18] Section 38 Advertising of vacancies**

Omit "as it" wherever occurring.  
Insert instead "as the Commissioner".

**[19] Section 39 Appointment to be made on merit** 10

Omit section 39 (3). Insert instead:

- (3) It is the duty of the Commissioner, before recommending the appointment of, or appointing, a person to a vacant executive position:
- (a) to make inquiries (from the Police Integrity Commission and from any other person or body the Commissioner considers appropriate) as to the person's integrity, and 15
- (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity. 20
- (4) The Police Integrity Commission is required to furnish a report to the Commissioner (on the basis of information available to it and without the need for any special investigation or inquiry) on any person the subject of an inquiry referred to in subsection (3) (a). 25
- (5) As soon as practicable after a person is appointed to a vacant executive position, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed. 30

**[20] Section 44 Industrial arbitration and legal proceedings excluded**

Omit "the Government and Related Employees Appeals Tribunal" from section 44 (6).

Insert instead "to GREAT".

**[21] Section 45 Definitions**

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Omit "Police Board" from the definition of *approved*.

Insert instead "Minister".

**[22] Section 50 Retirement of executive officers**

Omit the section.

**[23] Section 51 Removal of executive officers from office**

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Omit section 51 (1). Insert instead:

(1) An executive officer may be removed from office at any time:

(a) by the Governor on the recommendation of the Commissioner, in the case of a Deputy Commissioner or Assistant Commissioner, or

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(b) by the Commissioner, in any other case.

(1A) A recommendation referred to in subsection (1) (a) may not be submitted to the Governor except with the approval of the Minister.

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**[24] Section 51 (2)**

Omit "The Governor, on the recommendation of the Police Board".

Insert instead "The Commissioner".



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**[25] Section 52 Right to return to public sector for certain executive officers**

Insert after section 52 (2):

- (2A) Despite any other provision of this section, an executive officer may not make an election under this section after the commencement of this subsection (as inserted by the *Police Legislation Further Amendment Act 1996*) unless an election by the executive officer under this section was in force immediately before the commencement of this subsection. 5  
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**[26] Section 52 (5)**

Omit the subsection. Insert instead:

- (5) A person is not entitled to an engagement in the public sector under this section if the person ceased to be an executive officer because the person resigned, was (after due inquiry) removed from office for misbehaviour or was removed from the Police Service under section 181D. 15

**[27] Section 53 Compensation where executive officer has no right to return to public sector** 20

Omit section 53 (1) (c).

**[28] Section 53 (1) (d)**

Omit “, who has not reached the age of 60 years”.

**[29] Section 53 (4)**

Omit the subsection. Insert instead: 25

- (4) The maximum compensation payable is an amount equal to the person’s remuneration package for the period of 38 weeks.

**[30] Section 60 Transfer of executive officers**

Omit "Board" from section 60 (2).  
Insert instead "Commissioner".

**[31] Section 64**

Omit the section. Insert instead: 5

**64 Appointments to non-executive positions**

- (1) An appointment (whether by way of transfer or promotion or otherwise) to a non-executive position is to be made by the Commissioner.
- (2) It does not matter whether the person appointed is or is not already a member of the Police Service. 10
- (3) In particular, it does not matter whether a person appointed to a position designated as a position to be held by a police officer is or is not a police officer at the time of appointment. 15
- (4) It is the duty of the Commissioner, before appointing a person to a vacant non-executive position:
  - (a) to make inquiries (from any person or body the Commissioner considers appropriate) as to the person's integrity, and 20
  - (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
- (5) The Police Integrity Commission is authorised (but not required) to furnish a report to the Commissioner on any person the subject of an inquiry referred to in subsection (4) (a). 25
- (6) As soon as practicable after a person is appointed to a vacant non-executive position, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed. 30

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**[32] Section 65A Specially designated non-executive positions above rank of constable open to outside appointment**

Omit the section.

**[33] Section 67 Transfer of non-executive officers**

Omit section 67 (3).

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**[34] Section 68 Only police officers eligible for appointment**

Omit the section.

**[35] Section 69 Advertising of vacancies**

Omit "(in such manner as the Police Board directs) among police officers or, in the case of a special designated position under section 65A, generally".

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**[36] Section 70 Commissioner to consider applications and advise Board**

Omit the section.

**[37] Section 71**

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Omit the section. Insert instead:

**71 Appointment to be made on merit**

(1) In deciding to appoint a person to a vacant position of a non-executive commissioned police officer:

(a) the Commissioner may only appoint a person who has duly applied for appointment to the position, and

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- (b) the Commissioner must, from among the applicants eligible for appointment, appoint the applicant who has, in the opinion of the Commissioner, the greatest merit.
  - (2) It is the duty of the Commissioner, before appointing a person to a vacant position of a non-executive commissioned police officer: 5
    - (a) to make inquiries (from any person or body the Commissioner considers appropriate) as to the person's integrity, and 10
    - (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
  - (3) The Police Integrity Commission is authorised (but not required) to furnish a report to the Commissioner on any person the subject of an inquiry referred to in subsection (2) (a). 15
  - (4) As soon as practicable after a person is appointed to a vacant position of a non-executive commissioned police officer, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed. 20
- [38] Section 72 Appointment of inspectors subject to appeal**
- Omit "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". 25
- Insert instead "If a police officer has a right of appeal to GREAT against an officer to be appointed to a vacant position of the rank of inspector, the appointment must not be made (except by way of temporary appointment under Division 2) unless". 30
- [39] Section 72 (1) (a)**
- Omit "recommendation". Insert instead "decision".

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- [40] Section 72 (1) (b)**  
Omit “to make the recommendation”.
- [41] Section 72 (4)**  
Omit the subsection.
- [42] Section 72A Five year term contracts** 5  
Omit “Governor” from section 72A (2).  
Insert instead “Commissioner”.
- [43] Section 72F Powers of dismissal, removal and suspension not affected**  
Omit “suspend or dismiss”. 10  
Insert instead “dismiss, remove or suspend”.
- [44] Section 75 Only police officers eligible for appointment as sergeants**  
Omit the section.
- [45] Section 76 Advertising of vacancies—sergeants** 15  
Omit “(in such manner as the Commissioner thinks fit) among police officers or, in the case of a special designated position under section 65A, generally”.
- [46] Section 77 Appointment of sergeants to be made on merit**  
Omit section 77 (2). 20
- [47] Section 78 Appointment of sergeants subject to appeal**  
Omit “An appointment of a person to a vacant position of a police officer of the rank of sergeant must not be made unless”.  
Insert instead “If a police officer has a right of appeal to GREAT against an officer to be appointed to a vacant position of the rank of sergeant, the appointment must not be made (except by way of temporary appointment under Division 2) unless”. 25

**[48] Section 78 (4)**

Omit the subsection.

**[49] Section 81 Appointment on merit**

Omit "the Government and Related Employees Appeals Tribunal"  
from section 81 (3).

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Insert instead "GREAT".

**[50] Section 81C Appeal to GREAT against promotion to inspector**

Omit "recommendation of the Police Board under section 71 for the  
appointment of" from section 81C (1).

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Insert instead "decision of the Commissioner to appoint".

**[51] Section 81E**

Omit the section. Insert instead:

**81E Membership of GREAT**

In order to determine the membership of and to  
constitute GREAT for the purpose of hearing and  
determining an appeal under this Division:

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(a) a police officer is taken to be an employee, and

(b) the Commissioner is taken to be the police  
officer's employer,

within the meaning of the *Government and Related  
Employees Appeal Tribunal Act 1980*.

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**[52] Section 83 Retirement of non-executive officers**

Omit the section.

**[53] Section 94A Reports by police internal affairs for proposed  
police appointments**

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Omit the section.

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**[54] Section 97**

Insert after section 96:

**97 Periodic financial and integrity statements to be furnished**

- (1) A member of the Police Service may be required: 5
- (a) by the Minister, in the case of the Commissioner,  
or
  - (b) by the Commissioner, in any other case,  
to furnish a financial statement or integrity statement to  
the Minister or Commissioner, as the case requires. 10
- (2) A member of the Police Service may also be required to  
furnish a financial statement or integrity statement on  
such other occasions as are prescribed by the regulations.
- (3) A financial statement or integrity statement must be  
verified by statutory declaration of the person who is  
required to furnish the statement. 15
- (4) The regulations:
- (a) may provide for the nature of the information to  
be included in a financial statement or integrity  
statement, and 20
  - (b) may provide for the form in which a financial  
statement or integrity statement is to be prepared.
- (5) A member of the Police Service may be required:
- (a) by the Minister, in the case of the Commissioner,  
or 25
  - (b) by the Commissioner, in any other case,  
to furnish an explanation to the Minister or  
Commissioner, as the case requires, of any matter arising  
out of a financial statement or integrity statement  
furnished by the member. 30

- (6) A member of the Police Service may be required to satisfy the Minister or Commissioner, as the case requires, that any assets or income in which the member has an interest, which are used by the member or which are available for the member's use, have been lawfully acquired or gained. 5
- (7) The Commissioner may furnish the Police Integrity Commission with any financial statement or integrity statement furnished under this section and any other information that has come to the Commissioner's attention under this section. 10
- (8) In this section:
- financial statement* means a statement of:
- (a) assets and liabilities, or
  - (b) income and expenditure, 15
- or both.
- integrity statement* means a statement to the effect that the person by whom the statement is made has not engaged in any criminal activity or corrupt conduct during the period to which the statement relates. 20

**[55] Section 122 Other definitions**

Insert at the end of the section:

- (2) A report by the Police Integrity Commission of the kind referred to in section 24 (7), 39 (4), 64 (5) or 71 (3) is not a complaint for the purposes of this Part merely because it contains matter that brings a police officer's conduct or integrity into question. 25

**[56] Section 179 Disciplinary action by Commissioner**

Omit section 179 (2) (e), (f) and (g). Insert instead:

- (e) reduce the salary of the police officer, 30
- (f) demote the police officer to a lower rank or grade,
- (g) dismiss the police officer.



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**[57] Section 180 Disciplinary action by Governor**

Omit the section.

**[58] Section 181B Dismissal of police officers—information arising out of Police Royal Commission**

Omit the section.

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**[59] Section 181C Acceptance of resignation of police officers in certain cases**

Omit “(or in the case of an executive officer within the meaning of section 32, the Police Board)”.

**[60] Part 9, Division 1B**

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Insert after Division 1A:

**Division 1B Summary removal of police officers in whom Commissioner does not have confidence**

**181D Commissioner may remove police officers**

(1) The Commissioner may, by order in writing, remove a police officer from the Police Service if the Commissioner does not have confidence in the police officer’s suitability to continue as a police officer, having regard to the police officer’s competence, integrity, performance or conduct.

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(2) Action may not be taken under subsection (1) in relation to a Deputy Commissioner or Assistant Commissioner except with the approval of the Minister.

(3) Before making an order under this section, the Commissioner:

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(a) must give the police officer a notice setting out the grounds on which the Commissioner does not have confidence in the officer’s suitability to continue as a police officer, and

- (b) must give the police officer at least 21 days within which to make written submissions to the Commissioner in relation to the proposed action, and
  - (c) must take into consideration any written submissions received from the police officer during that period. 5
- (4) The order must set out the reasons for which the Commissioner has decided to remove the police officer from the Police Service. 10
- (5) The removal takes effect when the order is made.
- (6) The Supreme Court has jurisdiction to review a decision or order of the Commissioner to remove a police officer under this section. Any such review is to be conducted in accordance with the administrative law principles applicable to the review of decisions that turn on the opinion of a decision-maker. 15
- (7) Except as provided by subsection (6):
  - (a) no tribunal has jurisdiction or power to review or consider any decision or order of the Commissioner under this section, and 20
  - (b) no appeal lies to any tribunal in connection with any decision or order of the Commissioner under this section.
- In this subsection, *tribunal* means a court, tribunal or administrative review body, and (without limitation) includes GREAT and the Industrial Relations Commission. 25
- (8) For the purposes of this Act, removal of a police officer from the Police Service under this section has the same effect as if the police officer had resigned (or, in the case of a police officer who is of or above the age of 55 years, had retired) from the Police Service. 30
- (9) The Commissioner may take action under this section despite any action with respect to the removal or dismissal of the police officer that is in progress under some other provision of this Act and despite the decision of any court with respect to any such action. 35

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**[61] Section 206**

Omit the section. Insert instead:

**206 Protection against reprisals**

- (1) This section applies to an allegation of misconduct or criminal activity made by a police officer about one or more other police officers where the allegation (a *protected allegation*) is made: 5
- (a) in the performance of the duty imposed on the police officer by or under this or any other Act, or
  - (b) in accordance with the procedures for making allegations set out in this or any other Act, 10
- and so applies even if the person who is the subject of the allegation is no longer a police officer.
- (2) A police officer who takes detrimental action against another police officer or former police officer (being action that is substantially in reprisal for the other police officer or former police officer making a protected allegation) is guilty of an offence. 15
- Maximum penalty: 50 penalty units or imprisonment for 12 months, or both. 20
- (3) It is a defence to a prosecution under this section that the allegation was made frivolously, vexatiously or in bad faith.
- (4) This section does not limit or affect the operation of the *Protected Disclosures Act 1994*. 25
- (5) In this section:
- detrimental action* means action causing, comprising or involving any of the following:
- (a) injury, damage or loss,
  - (b) intimidation or harassment, 30
  - (c) discrimination, disadvantage or adverse treatment in relation to employment,
  - (d) dismissal from, or prejudice in, employment,
  - (e) disciplinary proceedings.

**[62] Part 10A**

Insert after Part 10:

**Part 10A Integrity testing of police officers**

**207A Commissioner may conduct integrity testing programs**

- (1) The Commissioner may conduct, or authorise any police officer or other person to conduct, a program (an *integrity testing program*) to test the integrity of any particular police officer or class of police officers. 5
- (2) An integrity testing program may involve an act or omission (by a person who is participating in the program) that offers a police officer whose integrity is being tested the opportunity to engage in behaviour, whether lawful or unlawful, in contravention of the principles of integrity required of a police officer. 10
- (3) Any such act or omission is declared to be lawful, despite any other Act or law to the contrary, but to the extent only to which it occurs in the course of and for the purposes of the integrity testing program. 15
- (4) In particular, a police officer or other person who participates in any such act or omission is not guilty of any of the following: 20
  - (a) an offence against section 200 of this Act,
  - (b) an offence against section 89 or 90 of, or corrupt conduct within the meaning of, the *Independent Commission Against Corruption Act 1988*, 25
  - (c) an offence against section 109 or 110 of the *Police Integrity Commission Act 1996*,
  - (d) an offence against section 314, 319, 323, 325, 546A or 547B of the *Crimes Act 1900*,
  - (e) an offence of conspiring to commit an offence, 30
  - (f) an offence of aiding, abetting, urging, inciting, soliciting, encouraging, counselling or procuring the commission of an offence (in whatever terms expressed), including an offence against section 100 of the *Justices Act 1902*, section 2 or 3 of the *Crimes Prevention Act 1916* or section 546 of the *Crimes Act 1900*. 35

- 
- (5) Subsections (3) and (4) do not exempt a police officer or other person from liability in respect of any offence other than those referred to in subsection (4).
- (6) A certificate that is issued by the Commissioner, or by a Deputy Commissioner or Assistant Commissioner authorised by the Commissioner in that regard, being a certificate that states that, on a specified date or during a specified period, a specified police officer or other person was authorised to participate in an integrity testing program involving a specified act or omission is admissible in any legal proceedings and is conclusive evidence of the matters so specified. 5 10
- (7) The Commissioner is to furnish to the Police Integrity Commission, within 14 days after the end of each quarter, a report on all integrity testing programs conducted during that quarter. For the purposes of this subsection, *quarter* means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December. 15
- (8) Such a report must be prepared in accordance with any guidelines established by the Police Integrity Commission and notified to the Commissioner. 20

**[63] Sections 211A and 211B**

Insert before section 212:

**211A Testing of police officers for alcohol and prohibited drugs** 25

- (1) An authorised person may require any police officer who is on duty in accordance with a roster:
- (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence of alcohol, or 30
- (b) to provide a sample of the police officer's urine or hair for the purpose of testing for the presence of prohibited drugs,

- in accordance with the directions of the authorised person and the regulations.
- (2) The selection of a police officer for testing may be conducted on a random or targeted basis.
- (3) A police officer may be breath tested or required to undergo breath analysis whether or not there is any suspicion that the officer has recently consumed alcohol. 5
- (4) If a police officer is selected for testing because there is a suspicion that the officer has recently consumed alcohol, any authorised person may administer the breath test or breath analysis. However, if the police officer is selected on a random basis, the authorised person who administers the breath test or breath analysis must not be a police officer. 10
- (5) The regulations may make provision for or with respect to the following: 15
- (a) the authorisation of persons:
- (i) to administer breath tests, breath analyses or other tests for the purpose of detecting the presence of alcohol or prohibited drugs, and 20
- (ii) to operate equipment for that purpose,
- (b) the conduct of testing, which may include the taking of blood (but only with the consent of the person being tested) if a breath test or breath analysis indicates the presence of alcohol, 25
- (c) the taking of samples of urine, hair or blood,
- (d) the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices, 30
- (e) the accreditation of persons conducting analyses for the presence of prohibited drugs,
- (f) the procedure for the handling and analysis of samples of urine, hair or blood,

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(g)	offences relating to interference with test results or the testing procedure,	
(h)	the confidentiality of test results.	
(6)	The annual report of the Police Service prepared under the <i>Annual Reports (Departments) Act 1985</i> must include details of:	5
(a)	the number of breath tests, or drug tests involving the collection of samples, conducted during the relevant year, and	
(b)	the number of those tests in which a police officer tested positive for alcohol in the officer's blood, and	10
(c)	the number of those tests that indicated that a police officer had a prohibited drug in the officer's body.	15
(7)	In this section:	
	<b>authorised person</b> means a person authorised in accordance with the regulations to conduct breath tests, breath analyses or other tests for the purposes of this section and the regulations.	20
	<b>breath test</b> means a test:	
(a)	that is designed to indicate the concentration of alcohol present in a person's blood, and	
(b)	that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the <i>Traffic Act 1909</i> .	25
	<b>prohibited drug</b> has the same meaning as in the <i>Drug Misuse and Trafficking Act 1985</i> .	30
<b>211B Code of behaviour regarding the consumption of alcohol and the use of prohibited drugs</b>		
(1)	The regulations may establish a code of behaviour regarding the consumption of alcohol and the use of prohibited drugs by members of the Police Service.	35

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- (2) Regulations under this section may make provision for or with respect to the following:
- (a) the consequences for police officers of testing positive for alcohol or prohibited drugs, or of otherwise breaching the code of behaviour, 5
  - (b) the consequences for any member of the Police Service conspiring with, or aiding or abetting, any police officer to breach the code of behaviour,
  - (c) the evidentiary value of a certificate relating to the analysis of a sample, 10
  - (d) the conduct of follow-up testing of police officers who have tested positive for alcohol or prohibited drugs, including provisions as to the frequency of any such follow-up testing.

**[64] Section 217** 15

Omit the section. Insert instead:

**217 Ministerial inquiries**

- (1) The Minister may appoint any person (an *authorised person*) to inquire into, and to report to the Minister on, any matter on which the Minister wishes to be advised in relation to the management and administration of the Police Service. 20
- (2) For the purpose of conducting such an inquiry, an authorised person may, at any time, do any of the following: 25
  - (a) enter any police premises,
  - (b) call for, and inspect, all or any police records, documents, files or other matter, whether of the same or of a different kind, on police premises,
  - (c) question and seek information from any member of the Police Service. 30



- 
- (3) A member of the Police Service who fails:
- (a) to comply with any requirement made of the member by an authorised person under this section, or
  - (b) to give all assistance and co-operation to an authorised person,
- is guilty of an offence.
- Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.
- [65] Section 219 Regulations** 10
- Omit section 219 (2) (a).
- [66] Section 222**
- Insert after section 221:
- 222 Review of Act**
- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 15
  - (2) The review is to be undertaken as soon as possible after 1 January 2002. 20
  - (3) A report on the outcome of the review is to be tabled in each House of Parliament on or before 31 December 2002.
- [67] Schedule 1 Provisions relating to the members and procedure of the Police Board** 25
- Omit the Schedule.

**[68]    Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Police Legislation Further Amendment Act 1996*

**[69]    Schedule 4, Part 11**

Insert at the end of Schedule 4:

5

**Part 11    Provisions consequent on enactment of  
Police Legislation Further Amendment Act  
1996**

**33 Definitions**

In this Part:

10

*amended Act* means this Act, as amended by the  
amending Act.

*amending Act* means the *Police Legislation Further  
Amendment Act 1996*.

**34 Abolition of Police Board**

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- (1) The Police Board is abolished.
- (2) Part 8 of the *Public Sector Management Act 1988* applies to each member of the Police Board as if the member had been removed from office by the Governor under section 90 of that Act.

20

**35 Saving of action in which Police Board involved**

Any function exercised by the Police Board with respect to a process (such as the appointment of staff to, or the removal of staff from, the Police Service) that had not been completed before the commencement of this clause is, for the purpose of enabling that process to be completed, taken to have been exercised:

25

- (a) by the Commissioner, in the case of a function that is required by the amended Act to be exercised by the Commissioner, or

30

- 
- (b) by the Minister, in the case of a function that is required by the amended Act to be exercised by the Minister.

**36 Saving of existing appointments**

Nothing in an amendment made by the amending Act affects the appointment of a member of the Police Service who held office as such immediately before the commencement of that amendment. 5

**37 Contracts held by executive officers**

A contract of employment between an executive officer and the Police Board that was in force under Part 5 immediately before the abolition of the Police Board is taken to be a contract of employment, between the executive officer and the Commissioner, for the remainder of the term fixed by the contract. 10  
15

**38 Application of section 206 (Protection against reprisals)**

Section 206, as inserted by the amending Act, applies to a protected allegation referred to in section 206 (1) even if the allegation relates to conduct or activities engaged in, or to matters arising, before the commencement of that section. 20

**39 Continued operation of section 181B (Dismissal of police officers—information arising out of Police Royal Commission)**

- (1) Any action that had been commenced under section 181B but had not been completed before the repeal of that section may be completed, and an application may be made under Part 6 of Chapter 2 of the *Industrial Relations Act 1996* in respect of any such action, as if that section had not been repealed. 25  
30
- (2) Any application under Part 6 of Chapter 2 of the *Industrial Relations Act 1996* in respect of action under section 181B, being an application made before or after the repeal of that section, may be dealt with under that Act as if section 181B had not been repealed. 35

## **Schedule 2 Amendment of other Acts and instruments**

(Section 4)

- 2.1 Anti-Discrimination Act 1977 No 48**
- Section 49ZX Exceptions to this Part** 5
- Omit section 49ZX (b).
- 2.2 Independent Commission Against Corruption Act 1988 No 35**
- Section 111A Secrecy provisions in other Acts**
- Omit section 111A (b). 10
- 2.3 New South Wales Crime Commission Act 1985 No 117**
- [1] Section 24 The Management Committee**
- Omit "Commission; and" from section 24 (1) (d).  
Insert instead "Commission,".
- [2] Section 24 (1) (e)** 15
- Omit the paragraph.
- 2.4 Police Integrity Commission Act 1996 No 28**
- [1] Section 15 Other functions regarding evidence and information collected**
- Omit "the Police Board," from section 15 (1) (b). 20
- [2] Section 61 Secrecy provisions in other Acts**
- Omit section 61 (1) (c).

**2.5 Police Service Regulation 1990**

**[1] Clause 3 Definitions**

Omit the definition of *Police Board*.

**[2] Clause 62 Conditions of service—application of public service conditions**

5

Omit “Police Board” from clause 62 (3).  
Insert instead “Commissioner”.

**2.6 Royal Commission (Police Service) Act 1994 No 60**

**Section 32 Secrecy provisions in other Acts**

Omit section 32 (1) (c).

10





New South Wales

# Police Legislation Further Amendment Act 1996 No 108

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Police Service Act 1990 No 47	2
4 Amendment of other Acts and instruments	2

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## Schedules

1 Amendment of Police Service Act 1990	3
2 Amendment of other Acts and instruments	29







New South Wales

## **Police Legislation Further Amendment Act 1996 No 108**

Act No 108, 1996

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An Act to amend the *Police Service Act 1990* with respect to the employment of police officers, to abolish the Police Board and to provide for the removal from the Police Service of police officers in whom the Commissioner of Police does not have confidence; and for other purposes.  
[Assented to 2 December 1996]

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

**1 Name of Act**

This Act is the *Police Legislation Further Amendment Act 1996*.

**2 Commencement**

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

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

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

**4 Amendment of other Acts and instruments**

- (1) Each Act and instrument referred to in Schedule 2 is amended as set out in that Schedule.
- (2) The amendment of an instrument by a provision of Schedule 2 does not prevent the future amendment or repeal of that instrument.

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## Schedule 1    **Amendment of Police Service Act 1990**

(Section 3)

### [1]    **Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*Assistant Commissioner* means a member of the Police Service whose position is described in Schedule 2 as that of an Assistant Commissioner.

*Deputy Commissioner* means a member of the Police Service whose position is described in Schedule 2 as that of a Deputy Commissioner.

*non-commissioned police officer* means a police officer under the rank of inspector.

### [2]    **Section 3 (1), definition of "merit"**

Omit "the Police Board or" wherever occurring.

### [3]    **Section 3 (1), paragraph (a) of the definition of "merit"**

Omit ", as the case requires".

### [4]    **Section 3 (1)**

Omit the definition of *Police Board*.

### [5]    **Section 9 Maximum number of staff in Police Service**

Omit the section.

### [6]    **Section 10 Positions in Police Service**

Omit section 10 (3).

**[7] Section 12 Ranks and grades of police officers**

Omit "Police Board" from section 12 (2).

Insert instead "Commissioner, with the approval of the Minister,".

**[8] Part 3**

Omit the Part.

**[9] Section 24**

Omit the section. Insert instead:

**24 Appointment of Commissioner**

- (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) In particular, it does not matter whether the person appointed is or is not a police officer at the time of appointment.
- (4) If it is proposed to make an appointment to the office of Commissioner, the Minister is required to invite applications for appointment to that office.
- (5) However, the Minister is not required to invite applications for appointment if the Minister proposes to recommend the re-appointment of the person currently holding office as Commissioner.
- (6) It is the duty of the Minister, before recommending the appointment of a person to the office of Commissioner:
  - (a) to make inquiries (from the Police Integrity Commission and from any other person or body the Minister considers appropriate) as to the person's integrity, and

- (b) to have regard to any information that comes to the Minister's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
- (7) The Police Integrity Commission is required to furnish a report to the Minister (on the basis of information available to it and without the need for any special investigation or inquiry) on any person the subject of an inquiry referred to in subsection (6) (a).

**[10] Section 25 Acting Commissioner**

Omit "Minister" from section 25 (1). Insert instead "Governor".

**[11] Section 25 (1)**

Omit "Police Board". Insert instead "Minister".

**[12] Section 25 (3)**

Omit the subsection. Insert instead:

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

**[13] Sections 27 (2), 32 (1) (definition of "contract of employment"), 35 (1), 37 (1) and (3), 38, 39 (1) and (2), 41 (1) and (6), 42 (1) and (2), 43 (1), 46 (6), 47 (1), 49 (1) and (2), 52 (2), 56 (2), 59, 60 (1) and 72 (1) and (2)**

Omit "Police Board" wherever occurring.  
Insert instead "Commissioner".

**[14] Section 28 Removal of Commissioner**

Omit section 28 (3). Insert instead:

- (3) A recommendation of the Minister under subsection (1) may be made only after the Minister:
  - (a) has notified the Police Integrity Commission that the Minister intends to recommend that the Commissioner be removed from office, and
  - (b) has given the Police Integrity Commission a reasonable opportunity to comment on the proposed recommendation.

**[15] Section 29 Retirement of Commissioner**

Omit the section.

**[16] Section 30 Vacation of office by Commissioner**

Omit "with the concurrence in writing of the Chairperson of the Police Board" from section 30 (3).

**[17] Section 36 Appointments to executive positions**

Omit the section. Insert instead:

**36 Appointments to executive positions**

- (1) Appointments to vacant executive positions are to be made:
  - (a) by the Governor on the recommendation of the Commissioner, in the case of appointments to the position of Deputy Commissioner or Assistant Commissioner, or
  - (b) by the Commissioner, in any other case.
- (2) A recommendation referred to in subsection (1) (a) may not be submitted to the Governor except with the approval of the Minister.

- (3) It does not matter whether the person appointed is or is not already a member of the Police Service.
- (4) In particular, it does not matter whether a person appointed to a position designated as a position to be held by a police officer is or is not a police officer at the time of appointment.

**[18] Section 38 Advertising of vacancies**

Omit "as it" wherever occurring.

Insert instead "as the Commissioner".

**[19] Section 39 Appointment to be made on merit**

Omit section 39 (3). Insert instead:

- (3) It is the duty of the Commissioner, before recommending the appointment of, or appointing, a person to a vacant executive position:
  - (a) to make inquiries (from the Police Integrity Commission and from any other person or body the Commissioner considers appropriate) as to the person's integrity, and
  - (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
- (4) The Police Integrity Commission is required to furnish a report to the Commissioner (on the basis of information available to it and without the need for any special investigation or inquiry) on any person the subject of an inquiry referred to in subsection (3) (a).
- (5) As soon as practicable after a person is appointed to a vacant executive position, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed.

**[20]    Section 44 Industrial arbitration and legal proceedings excluded**

Omit "the Government and Related Employees Appeals Tribunal" from section 44 (6).

Insert instead "to GREAT".

**[21]    Section 45 Definitions**

Omit "Police Board" from the definition of *approved*.

Insert instead "Minister".

**[22]    Section 50 Retirement of executive officers**

Omit the section.

**[23]    Section 51 Removal of executive officers from office**

Omit section 51 (1). Insert instead:

(1)    An executive officer may be removed from office at any time:

(a)    by the Governor on the recommendation of the Commissioner, in the case of a Deputy Commissioner or Assistant Commissioner, or

(b)    by the Commissioner, in any other case.

(1A)   A recommendation referred to in subsection (1) (a) may not be submitted to the Governor except with the approval of the Minister.

**[24]    Section 51 (2)**

Omit "The Governor, on the recommendation of the Police Board".

Insert instead "The Commissioner".



**[25] Section 52 Right to return to public sector for certain executive officers**

Insert after section 52 (2):

- (2A) Despite any other provision of this section, an executive officer may not make an election under this section after the commencement of this subsection (as inserted by the *Police Legislation Further Amendment Act 1996*) unless an election by the executive officer under this section was in force immediately before the commencement of this subsection.

**[26] Section 52 (5)**

Omit the subsection. Insert instead:

- (5) A person is not entitled to an engagement in the public sector under this section if the person ceased to be an executive officer because the person resigned, was (after due inquiry) removed from office for misbehaviour or was removed from the Police Service under section 181D.

**[27] Section 53 Compensation where executive officer has no right to return to public sector**

Omit section 53 (1) (c).

**[28] Section 53 (1) (d)**

Omit “, who has not reached the age of 60 years”.

**[29] Section 53 (4)**

Omit the subsection. Insert instead:

- (4) The maximum compensation payable is an amount equal to the person’s remuneration package for the period of 38 weeks.

**[30] Section 60 Transfer of executive officers**

Omit "Board" from section 60 (2).  
Insert instead "Commissioner".

**[31] Section 64**

Omit the section. Insert instead:

**64 Appointments to non-executive positions**

- (1) An appointment (whether by way of transfer or promotion or otherwise) to a non-executive position is to be made by the Commissioner.
- (2) It does not matter whether the person appointed is or is not already a member of the Police Service.
- (3) In particular, it does not matter whether a person appointed to a position designated as a position to be held by a police officer is or is not a police officer at the time of appointment.
- (4) It is the duty of the Commissioner, before appointing a person to a vacant non-executive position:
  - (a) to make inquiries (from any person or body the Commissioner considers appropriate) as to the person's integrity, and
  - (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
- (5) The Police Integrity Commission is authorised (but not required) to furnish a report to the Commissioner on any person the subject of an inquiry referred to in subsection (4) (a).
- (6) As soon as practicable after a person is appointed to a vacant non-executive position, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed.

**[32] Section 65A Specially designated non-executive positions above rank of constable open to outside appointment**

Omit the section.

**[33] Section 67 Transfer of non-executive officers**

Omit section 67 (3).

**[34] Section 68 Only police officers eligible for appointment**

Omit the section.

**[35] Section 69 Advertising of vacancies**

Omit "(in such manner as the Police Board directs) among police officers or, in the case of a special designated position under section 65A, generally".

**[36] Section 70 Commissioner to consider applications and advise Board**

Omit the section.

**[37] Section 71**

Omit the section. Insert instead:

**71 Appointment to be made on merit**

- (1) In deciding to appoint a person to a vacant position of a non-executive commissioned police officer:
  - (a) the Commissioner may only appoint a person who has duly applied for appointment to the position, and

- (b) the Commissioner must, from among the applicants eligible for appointment, appoint the applicant who has, in the opinion of the Commissioner, the greatest merit.
- (2) It is the duty of the Commissioner, before appointing a person to a vacant position of a non-executive commissioned police officer:
  - (a) to make inquiries (from any person or body the Commissioner considers appropriate) as to the person's integrity, and
  - (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
- (3) The Police Integrity Commission is authorised (but not required) to furnish a report to the Commissioner on any person the subject of an inquiry referred to in subsection (2) (a).
- (4) As soon as practicable after a person is appointed to a vacant position of a non-executive commissioned police officer, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed.

**[38] Section 72 Appointment of inspectors subject to appeal**

Omit "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".

Insert instead "If a police officer has a right of appeal to GREAT against an officer to be appointed to a vacant position of the rank of inspector, the appointment must not be made (except by way of temporary appointment under Division 2) unless".

**[39] Section 72 (1) (a)**

Omit "recommendation". Insert instead "decision".

**[40] Section 72 (1) (b)**

Omit "to make the recommendation".

**[41] Section 72 (4)**

Omit the subsection.

**[42] Section 72A Five year term contracts**

Omit "Governor" from section 72A (2).  
Insert instead "Commissioner".

**[43] Section 72F Powers of dismissal, removal and suspension not affected**

Omit "suspend or dismiss".  
Insert instead "dismiss, remove or suspend".

**[44] Section 75 Only police officers eligible for appointment as sergeants**

Omit the section.

**[45] Section 76 Advertising of vacancies—sergeants**

Omit "(in such manner as the Commissioner thinks fit) among police officers or, in the case of a special designated position under section 65A, generally".

**[46] Section 77 Appointment of sergeants to be made on merit**

Omit section 77 (2).

**[47] Section 78 Appointment of sergeants subject to appeal**

Omit "An appointment of a person to a vacant position of a police officer of the rank of sergeant must not be made unless".  
Insert instead "If a police officer has a right of appeal to GREAT against an officer to be appointed to a vacant position of the rank of sergeant, the appointment must not be made (except by way of temporary appointment under Division 2) unless".

**[48] Section 78 (4)**

Omit the subsection.

**[49] Section 81 Appointment on merit**

Omit "the Government and Related Employees Appeals Tribunal" from section 81 (3).

Insert instead "GREAT".

**[50] Section 81C Appeal to GREAT against promotion to inspector**

Omit "recommendation of the Police Board under section 71 for the appointment of" from section 81C (1).

Insert instead "decision of the Commissioner to appoint".

**[51] Section 81E**

Omit the section. Insert instead:

**81E Membership of GREAT**

In order to determine the membership of and to constitute GREAT for the purpose of hearing and determining an appeal under this Division:

- (a) a police officer is taken to be an employee, and
- (b) the Commissioner is taken to be the police officer's employer,

within the meaning of the *Government and Related Employees Appeal Tribunal Act 1980*.

**[52] Section 83 Retirement of non-executive officers**

Omit the section.

**[53] Section 94A Reports by police internal affairs for proposed police appointments**

Omit the section.

**[54] Section 97**

Insert after section 96:

**97 Periodic financial and integrity statements to be furnished**

- (1) A member of the Police Service may be required:
  - (a) by the Minister, in the case of the Commissioner, or
  - (b) by the Commissioner, in any other case,to furnish a financial statement or integrity statement to the Minister or Commissioner, as the case requires.
- (2) A member of the Police Service may also be required to furnish a financial statement or integrity statement on such other occasions as are prescribed by the regulations.
- (3) A financial statement or integrity statement must be verified by statutory declaration of the person who is required to furnish the statement.
- (4) The regulations:
  - (a) may provide for the nature of the information to be included in a financial statement or integrity statement, and
  - (b) may provide for the form in which a financial statement or integrity statement is to be prepared.
- (5) A member of the Police Service may be required:
  - (a) by the Minister, in the case of the Commissioner, or
  - (b) by the Commissioner, in any other case,to furnish an explanation to the Minister or Commissioner, as the case requires, of any matter arising out of a financial statement or integrity statement furnished by the member.

- (6) A member of the Police Service may be required to satisfy the Minister or Commissioner, as the case requires, that any assets or income in which the member has an interest, which are used by the member or which are available for the member's use, have been lawfully acquired or gained.
- (7) The Commissioner may furnish the Police Integrity Commission with any financial statement or integrity statement furnished under this section and any other information that has come to the Commissioner's attention under this section.
- (8) In this section:
- financial statement* means a statement of:
- (a) assets and liabilities, or
  - (b) income and expenditure,
- or both.

*integrity statement* means a statement to the effect that the person by whom the statement is made has not engaged in any criminal activity or corrupt conduct during the period to which the statement relates.

**[55] Section 122 Other definitions**

Insert at the end of the section:

- (2) A report by the Police Integrity Commission of the kind referred to in section 24 (7), 39 (4), 64 (5) or 71 (3) is not a complaint for the purposes of this Part merely because it contains matter that brings a police officer's conduct or integrity into question.

**[56] Section 179 Disciplinary action by Commissioner**

Omit section 179 (2) (e), (f) and (g). Insert instead:

- (e) reduce the salary of the police officer,
- (f) demote the police officer to a lower rank or grade,
- (g) dismiss the police officer.



**[57] Section 180 Disciplinary action by Governor**

Omit the section.

**[58] Section 181B Dismissal of police officers—information arising out of Police Royal Commission**

Omit the section.

**[59] Section 181C Acceptance of resignation of police officers in certain cases**

Omit “(or in the case of an executive officer within the meaning of section 32, the Police Board)”.

**[60] Part 9, Division 1B**

Insert after Division 1A:

**Division 1B Summary removal of police officers in whom Commissioner does not have confidence**

**181D Commissioner may remove police officers**

- (1) The Commissioner may, by order in writing, remove a police officer from the Police Service if the Commissioner does not have confidence in the police officer’s suitability to continue as a police officer, having regard to the police officer’s competence, integrity, performance or conduct.
- (2) Action may not be taken under subsection (1) in relation to a Deputy Commissioner or Assistant Commissioner except with the approval of the Minister.
- (3) Before making an order under this section, the Commissioner:
  - (a) must give the police officer a notice setting out the grounds on which the Commissioner does not have confidence in the officer’s suitability to continue as a police officer, and

- (b) must give the police officer at least 21 days within which to make written submissions to the Commissioner in relation to the proposed action, and
  - (c) must take into consideration any written submissions received from the police officer during that period.
- (4) The order must set out the reasons for which the Commissioner has decided to remove the police officer from the Police Service.
  - (5) The removal takes effect when the order is made.
  - (6) The Supreme Court has jurisdiction to review a decision or order of the Commissioner to remove a police officer under this section. Any such review is to be conducted in accordance with the administrative law principles applicable to the review of decisions that turn on the opinion of a decision-maker.
  - (7) Except as provided by subsection (6):
    - (a) no tribunal has jurisdiction or power to review or consider any decision or order of the Commissioner under this section, and
    - (b) no appeal lies to any tribunal in connection with any decision or order of the Commissioner under this section.

In this subsection, *tribunal* means a court, tribunal or administrative review body, and (without limitation) includes GREAT and the Industrial Relations Commission.

- (8) For the purposes of this Act, removal of a police officer from the Police Service under this section has the same effect as if the police officer had resigned (or, in the case of a police officer who is of or above the age of 55 years, had retired) from the Police Service.
- (9) The Commissioner may take action under this section despite any action with respect to the removal or dismissal of the police officer that is in progress under some other provision of this Act and despite the decision of any court with respect to any such action.

**[61] Section 206**

Omit the section. Insert instead:

**206 Protection against reprisals**

- (1) This section applies to an allegation of misconduct or criminal activity made by a police officer about one or more other police officers where the allegation (*protected allegation*) is made:
- (a) in the performance of the duty imposed on the police officer by or under this or any other Act, or
  - (b) in accordance with the procedures for making allegations set out in this or any other Act,

and so applies even if the person who is the subject of the allegation is no longer a police officer.

- (2) A police officer who takes detrimental action against another police officer or former police officer (being action that is substantially in reprisal for the other police officer or former police officer making a protected allegation) is guilty of an offence.

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

- (3) It is a defence to a prosecution under this section that the allegation was made frivolously, vexatiously or in bad faith.

- (4) This section does not limit or affect the operation of the *Protected Disclosures Act 1994*.

- (5) In this section:

*detrimental action* means action causing, comprising or involving any of the following:

- (a) injury, damage or loss,
- (b) intimidation or harassment,
- (c) discrimination, disadvantage or adverse treatment in relation to employment,
- (d) dismissal from, or prejudice in, employment,
- (e) disciplinary proceedings.

**[62] Part 10A**

Insert after Part 10:

**Part 10A Integrity testing of police officers**

**207A Commissioner may conduct integrity testing programs**

- (1) The Commissioner may conduct, or authorise any police officer or other person to conduct, a program (an *integrity testing program*) to test the integrity of any particular police officer or class of police officers.
- (2) An integrity testing program may involve an act or omission (by a person who is participating in the program) that offers a police officer whose integrity is being tested the opportunity to engage in behaviour, whether lawful or unlawful, in contravention of the principles of integrity required of a police officer.
- (3) Any such act or omission is declared to be lawful, despite any other Act or law to the contrary, but to the extent only to which it occurs in the course of and for the purposes of the integrity testing program.
- (4) In particular, a police officer or other person who participates in any such act or omission is not guilty of any of the following:
  - (a) an offence against section 200 of this Act,
  - (b) an offence against section 89 or 90 of, or corrupt conduct within the meaning of, the *Independent Commission Against Corruption Act 1988*,
  - (c) an offence against section 109 or 110 of the *Police Integrity Commission Act 1996*,
  - (d) an offence against section 314, 319, 323, 325, 546A or 547B of the *Crimes Act 1900*,
  - (e) an offence of conspiring to commit an offence,
  - (f) an offence of aiding, abetting, urging, inciting, soliciting, encouraging, counselling or procuring the commission of an offence (in whatever terms expressed), including an offence against section 100 of the *Justices Act 1902*, section 2 or 3 of the *Crimes Prevention Act 1916* or section 546 of the *Crimes Act 1900*.

- (5) Subsections (3) and (4) do not exempt a police officer or other person from liability in respect of any offence other than those referred to in subsection (4).
- (6) A certificate that is issued by the Commissioner, or by a Deputy Commissioner or Assistant Commissioner authorised by the Commissioner in that regard, being a certificate that states that, on a specified date or during a specified period, a specified police officer or other person was authorised to participate in an integrity testing program involving a specified act or omission is admissible in any legal proceedings and is conclusive evidence of the matters so specified.
- (7) The Commissioner is to furnish to the Police Integrity Commission, within 14 days after the end of each quarter, a report on all integrity testing programs conducted during that quarter. For the purposes of this subsection, *quarter* means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.
- (8) Such a report must be prepared in accordance with any guidelines established by the Police Integrity Commission and notified to the Commissioner.

**[63] Sections 211A and 211B**

Insert before section 212:

**211A Testing of police officers for alcohol and prohibited drugs**

- (1) An authorised person may require any police officer who is on duty in accordance with a roster:
  - (a) to undergo a breath test, or submit to a breath analysis, for the purpose of testing for the presence of alcohol, or
  - (b) to provide a sample of the police officer's urine or hair for the purpose of testing for the presence of prohibited drugs,

- in accordance with the directions of the authorised person and the regulations.
- (2) The selection of a police officer for testing may be conducted on a random or targeted basis.
  - (3) A police officer may be breath tested or required to undergo breath analysis whether or not there is any suspicion that the officer has recently consumed alcohol.
  - (4) If a police officer is selected for testing because there is a suspicion that the officer has recently consumed alcohol, any authorised person may administer the breath test or breath analysis. However, if the police officer is selected on a random basis, the authorised person who administers the breath test or breath analysis must not be a police officer.
  - (5) The regulations may make provision for or with respect to the following:
    - (a) the authorisation of persons:
      - (i) to administer breath tests, breath analyses or other tests for the purpose of detecting the presence of alcohol or prohibited drugs, and
      - (ii) to operate equipment for that purpose,
    - (b) the conduct of testing, which may include the taking of blood (but only with the consent of the person being tested) if a breath test or breath analysis indicates the presence of alcohol,
    - (c) the taking of samples of urine, hair or blood,
    - (d) the devices used in carrying out the breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,
    - (e) the accreditation of persons conducting analyses for the presence of prohibited drugs,
    - (f) the procedure for the handling and analysis of samples of urine, hair or blood,

- (g) offences relating to interference with test results or the testing procedure,
  - (h) the confidentiality of test results.
- (6) The annual report of the Police Service prepared under the *Annual Reports (Departments) Act 1985* must include details of:
- (a) the number of breath tests, or drug tests involving the collection of samples, conducted during the relevant year, and
  - (b) the number of those tests in which a police officer tested positive for alcohol in the officer's blood, and
  - (c) the number of those tests that indicated that a police officer had a prohibited drug in the officer's body.

- (7) In this section:

***authorised person*** means a person authorised in accordance with the regulations to conduct breath tests, breath analyses or other tests for the purposes of this section and the regulations.

***breath test*** means a test:

- (a) that is designed to indicate the concentration of alcohol present in a person's blood, and
- (b) that is carried out on the person's breath by means of a device (not being a breath analysing instrument) of a type approved by the Governor for the conduct of breath tests under the *Traffic Act 1909*.

***prohibited drug*** has the same meaning as in the *Drug Misuse and Trafficking Act 1985*.

**211B Code of behaviour regarding the consumption of alcohol and the use of prohibited drugs**

- (1) The regulations may establish a code of behaviour regarding the consumption of alcohol and the use of prohibited drugs by members of the Police Service.

- (2) Regulations under this section may make provision for or with respect to the following:
- (a) the consequences for police officers of testing positive for alcohol or prohibited drugs, or of otherwise breaching the code of behaviour,
  - (b) the consequences for any member of the Police Service conspiring with, or aiding or abetting, any police officer to breach the code of behaviour,
  - (c) the evidentiary value of a certificate relating to the analysis of a sample,
  - (d) the conduct of follow-up testing of police officers who have tested positive for alcohol or prohibited drugs, including provisions as to the frequency of any such follow-up testing.

**[64] Section 217**

Omit the section. Insert instead:

**217 Ministerial inquiries**

- (1) The Minister may appoint any person (an *authorised person*) to inquire into, and to report to the Minister on, any matter on which the Minister wishes to be advised in relation to the management and administration of the Police Service.
- (2) For the purpose of conducting such an inquiry, an authorised person may, at any time, do any of the following:
  - (a) enter any police premises,
  - (b) call for, and inspect, all or any police records, documents, files or other matter, whether of the same or of a different kind, on police premises,
  - (c) question and seek information from any member of the Police Service.



- (3) A member of the Police Service who fails:
- (a) to comply with any requirement made of the member by an authorised person under this section, or
  - (b) to give all assistance and co-operation to an authorised person,
- is guilty of an offence.
- Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

**[65] Section 219 Regulations**

Omit section 219 (2) (a).

**[66] Sections 222, 223**

Insert after section 221:

**222 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after 1 January 2002.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament on or before 31 December 2002.

**223 Review of Commissioner's powers**

- (1) The Minister is to review this Act each year to determine whether the terms of the Act with respect to the Commissioner's functions remain appropriate.
- (2) The review is to be undertaken as soon as possible after 1 January in each year.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament on or before 30 June in the same year.

**[67] Schedule 1 Provisions relating to the members and procedure of the Police Board**

Omit the Schedule.

**[68] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Police Legislation Further Amendment Act 1996*

**[69] Schedule 4, Part 11**

Insert at the end of Schedule 4:

**Part 11 Provisions consequent on enactment of Police Legislation Further Amendment Act 1996**

**33 Definitions**

In this Part:

*amended Act* means this Act, as amended by the amending Act.

*amending Act* means the *Police Legislation Further Amendment Act 1996*.

**34 Abolition of Police Board**

- (1) The Police Board is abolished.
- (2) Part 8 of the *Public Sector Management Act 1988* applies to each member of the Police Board as if the member had been removed from office by the Governor under section 90 of that Act.

**35 Saving of action in which Police Board involved**

Any function exercised by the Police Board with respect to a process (such as the appointment of staff to, or the removal of staff from, the Police Service) that had not been completed before the commencement of this clause is, for the purpose of enabling that process to be completed, taken to have been exercised:

- (a) by the Commissioner, in the case of a function that is required by the amended Act to be exercised by the Commissioner, or
- (b) by the Minister, in the case of a function that is required by the amended Act to be exercised by the Minister.

### **36 Saving of existing appointments**

Nothing in an amendment made by the amending Act affects the appointment of a member of the Police Service who held office as such immediately before the commencement of that amendment.

### **37 Contracts held by executive officers**

A contract of employment between an executive officer and the Police Board that was in force under Part 5 immediately before the abolition of the Police Board is taken to be a contract of employment, between the executive officer and the Commissioner, for the remainder of the term fixed by the contract.

### **38 Application of section 206 (Protection against reprisals)**

Section 206, as inserted by the amending Act, applies to a protected allegation referred to in section 206 (1) even if the allegation relates to conduct or activities engaged in, or to matters arising, before the commencement of that section.

### **39 Continued operation of section 181B (Dismissal of police officers—information arising out of Police Royal Commission)**

- (1) Any action that had been commenced under section 181B but had not been completed before the repeal of that section may be completed, and an application may be made under Part 6 of Chapter 2 of the *Industrial Relations Act 1996* in respect of any such action, as if that section had not been repealed.

- (2) Any application under Part 6 of Chapter 2 of the *Industrial Relations Act 1996* in respect of action under section 181B, being an application made before or after the repeal of that section, may be dealt with under that Act as if section 181B had not been repealed.

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## **Schedule 2    Amendment of other Acts and instruments**

(Section 4)

### **2.1    Anti-Discrimination Act 1977 No 48**

#### **Section 49ZX Exceptions to this Part**

Omit section 49ZX (b).

### **2.2    Independent Commission Against Corruption Act 1988 No 35**

#### **Section 111A Secrecy provisions in other Acts**

Omit section 111A (b).

### **2.3    New South Wales Crime Commission Act 1985 No 117**

#### **[1]    Section 24 The Management Committee**

Omit "Commission; and" from section 24 (1) (d).  
Insert instead "Commission,".

#### **[2]    Section 24 (1) (e)**

Omit the paragraph.

### **2.4    Police Integrity Commission Act 1996 No 28**

#### **[1]    Section 15 Other functions regarding evidence and information collected**

Omit "the Police Board," from section 15 (1) (b).

#### **[2]    Section 61 Secrecy provisions in other Acts**

Omit section 61 (1) (c).

**2.5      Police Service Regulation 1990**

**[1]      Clause 3 Definitions**

Omit the definition of *Police Board*.

**[2]      Clause 62 Conditions of service—application of public service conditions**

Omit “Police Board” from clause 62 (3).  
Insert instead “Commissioner”.

**2.6      Royal Commission (Police Service) Act 1994 No 60**

**Section 32 Secrecy provisions in other Acts**

Omit section 32 (1) (c).

[Minister's second reading speech made in—  
Legislative Assembly on 13 November 1996  
Legislative Council on 26 November 1996]