

First print



New South Wales

Police Service Amendment Bill 1997

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 provide that an order made by the Commissioner of Police under section 181D of that Act (that is, an order by which the Commissioner removes a police officer from the Police Service) is to be reviewable by the Industrial Relations Commission, both as to its validity and as to its merits.

The Bill also makes a consequential amendment to the *Police Integrity Commission Act 1996*.

Outline of provisions

Clause 1 specifies 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 a Schedule of amendments to the *Police Service Act 1990*.

Clause 4 is a formal provision giving effect to a Schedule of amendments to the *Police Integrity Commission Act 1996*.

Schedule 1 Amendment of Police Service Act 1990

Schedule 1 amends the *Police Service Act 1990* in relation to the removal of police officers from the Police Service. Under the existing section 181D, the Commissioner of Police (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. Under section 181D (6), such an order is open to review by the Supreme Court, to the exclusion of any other court or tribunal.

It is proposed that an order under section 181D be open to review by the Industrial Relations Commission (the **Commission**) instead of the Supreme Court. This is effected by repealing section 181D (6) (Schedule 1 [1]) and by inserting new Divisions 1C and 1D into Part 9 to provide for the conduct of reviews by the Commission (Schedule 1 [4]). The new Division 1C is to be flagged within section 181D (Schedule 1 [2]). Further amendments to section 181D will preserve the jurisdiction of the Supreme Court to review administrative action apart from the Act (Schedule 1 [3], proposed section 181D (7A)) and make it clear that nothing in proposed Division 1C affects the power of the Commissioner to vary or revoke an order that has been made under section 181D (Schedule 1 [3], proposed section 181D (7B)).

The new Division 1C contains the following provisions:

Proposed section 181E entitles a police officer who has been removed from the Police Service by an order under section 181D to apply to the Commission for a review of the removal on the ground that it is harsh, unreasonable or unjust. The Commissioner will be required to make available to the applicant all documents and other material relevant to the Commissioner's decision to make the order, except to the extent to which regulations under the Act otherwise provide.

Proposed section 181F dictates how the Commission is to conduct such a review. Briefly, it must first consider the Commissioner's reasons for removing the police officer, then it must consider the police officer's case and finally it must consider the Commissioner's case in reply. The police officer has at all times the burden of establishing that his or her removal from the Police Service is harsh, unreasonable or unjust.

Proposed section 181G applies the provisions of the *Industrial Relations Act 1996* to the conduct of proceedings on a review, subject to specified modifications.

Proposed section 181H provides that neither the Commissioner nor any member of a Commissioner's Advisory Panel (being a panel established by the Commissioner to advise on the exercise of the functions conferred on the Commissioner by section 181D) is compellable to give evidence as to the Commissioner's exercise of those functions.

Proposed section 181I makes it clear that the protection of section 128 of the *Evidence Act 1995* with respect to self-incriminating evidence applies to witnesses giving evidence in hearings before the Commission under the proposed Division, and that nothing in the proposed Division limits or otherwise affects the admissibility in evidence of the transcripts of proceedings of other courts and tribunals.

Proposed section 181J makes it clear that the proposed Division applies not only to proceedings before the Commission at first instance but also to proceedings before the Full Bench of the Commission on appeal from decisions of the Commission at first instance.

The new Division 1D provides for the constitution of the Commission when hearing proceedings under Part 9. The new Division contains the following provision:

Proposed section 181K provides for reviews conducted under Part 9 of the *Police Service Act 1990*, and appeals from such reviews, to be conducted before judicial members of the Commission, and further provides that proceedings before the Commission under Part 9 are taken not to be proceedings of the Commission in Court Session for the purposes of the *Industrial Relations Act 1996*.

A new Part 12 is proposed to be added to Schedule 4 (Savings, transitional and other provisions) (Schedule 1 [6]). The savings and transitional regulation making power contained in clause 2 of that Schedule is extended to cover matters arising under the proposed Act (Schedule 1 [5]).

**Schedule 2 Amendment of Police Integrity Commission
Act 1996**

Schedule 2 amends section 40 of the *Police Integrity Commission Act 1996* so as to make it clear that evidence given in accordance with that section in proceedings before the Police Integrity Commission (being evidence that is generally inadmissible in proceedings before any other court or tribunal) is admissible in proceedings before the Industrial Relations Commission under proposed Division 1C of Part 9 of the *Police Service Act 1990* in the same way as it is admissible in disciplinary proceedings under Division 1 of that Part.

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New South Wales

Police Service Amendment Bill 1997

No , 1997

A Bill for

An Act to amend the *Police Service Act 1990* so as to enable the Industrial Relations Commission to review the removal of police officers from the Police Service by the Commissioner of Police; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

 This Act is the *Police Service Amendment Act 1997*.

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 Police Integrity Commission Act 1996 No 28

 The *Police Integrity Commission Act 1996* is amended as set out in Schedule 2. 10

Schedule 1 Amendment of Police Service Act 1990

(Section 3)

[1] Section 181D Commissioner may remove police officers

Omit section 181D (6).

5

[2] Section 181D (7)

Omit "subsection (6)". Insert instead "Division 1C".

[3] Section 181D (7A) and (7B)

Insert after section 181D (7):

(7A) Nothing in this section limits or otherwise affects the jurisdiction of the Supreme Court to review administrative action.

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(7B) Nothing in Division 1C limits or otherwise affects the Commissioner's power to vary or revoke an order in force under this section.

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[4] Part 9, Divisions 1C and 1D

Insert after Division 1B:

**Division 1C Review of Commissioner's decision under
Division 1B**

181E Review generally

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(1) A police officer who is removed from the Police Service by an order under section 181D may apply to the Industrial Relations Commission (referred to in this Division as the *Commission*) for a review of the order on the ground that the removal is harsh, unreasonable or unjust.

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Schedule 1 Amendment of Police Service Act 1990

- (2) An application under this section does not operate to stay the operation of the order in respect of which it is made.
- (3) Except to the extent to which the regulations otherwise provide, it is the duty of the Commissioner to make available to the applicant all of the documents and other material on which the Commissioner has relied in deciding that the Commissioner does not have confidence in the applicant's suitability to continue as a police officer, as referred to in section 181D (1). 5

181F Proceedings on a review 10

- (1) In conducting a review under this Division, the Commission must proceed as follows:
 - (a) firstly, it must consider the Commissioner's reasons for the decision to remove the applicant from the Police Service, 15
 - (b) secondly, it must consider the case presented by the applicant as to why the removal is harsh, unreasonable or unjust,
 - (c) thirdly, it must consider the case presented by the Commissioner in answer to the applicant's case. 20
- (2) The applicant has at all times the burden of establishing that the removal of the applicant from the Police Service is harsh, unreasonable or unjust. This subsection has effect despite any law or practice to the contrary.
- (3) Without limiting the matters to which the Commission is otherwise required or permitted to have regard in making its decision, the Commission must have regard to: 25
 - (a) the interests of the applicant, and
 - (b) the public interest (which is taken to include the interest of maintaining the integrity of the Police Service, and the fact that the Commissioner made the order pursuant to section 181D (1)). 30

181G Application of Industrial Relations Act 1996 to reviews

- (1) The provisions of the *Industrial Relations Act 1996* apply to an application for a review under this Division in the same way as they apply to an application under Part 6 (Unfair dismissals) of Chapter 2 of that Act, subject to this Division and to the following modifications: 5
- (a) section 83 (Application of Part) is to be read as if subsection (3) were omitted,
 - (b) section 85 (Time for making applications) is to be read: 10
 - (i) as if a reference to 21 days in that section were instead a reference to 14 days, starting from the day on which the applicant is given a copy of the order to which the application relates, and 15
 - (ii) as if subsection (3) were omitted,
 - (c) section 86 (Conciliation of applications) is to be read as if it provided that a judicial member of the Commission who is involved in any endeavour to settle the applicant's claim by conciliation must not subsequently be involved in the conduct of proceedings on the review, 20
 - (d) section 89 is to be read as if subsection (7) (Threat of dismissal) were omitted, 25
 - (e) section 162 (Procedure generally) is to be read as if the requirement of subsection (2) (a) of that section that the Commission is to act as quickly as is practicable were instead a requirement for the Commission to commence hearing the application within 4 weeks after the application is made, 30
 - (f) section 163 (Rules of evidence and legal formality) is to be read as if it provided that new evidence may not be adduced before the Commission unless: 35
 - (i) notice of intention to do so, and of the substance of the new evidence, has been given in accordance with the regulations under this Act, or
 - (ii) the Commission gives leave. 40

- (2) The Commission may grant leave as referred to in subsection (1) (f) (ii) in such circumstances as it thinks fit and having regard to the nature of proceedings under section 181F, and without limiting the generality of the foregoing, the Commission must grant leave in the following circumstances: 5
- (a) where the Commission is satisfied that there is a real probability that the applicant may be able to show that the Commissioner has acted upon wrong or mistaken information, 10
- (b) where the Commission is satisfied that there is cogent evidence to suggest that the information before the Commissioner was unreliable, having been placed before the Commissioner maliciously, fraudulently or vexatiously, 15
- (c) where the Commission is satisfied that the new evidence might materially have affected the Commissioner's decision.

181H Commissioner and members of Commissioner's Advisory Panels compellable witnesses only by leave 20

- (1) In any proceedings before the Commission under this Division, neither the Commissioner nor any member of a Commissioner's Advisory Panel is compellable to give evidence in relation to the exercise of the Commissioner's functions under section 181D unless the Commission gives leave. 25
- (2) The Commission may give such leave only if it considers that extraordinary grounds exist that warrant leave being given.
- (3) In this section, *Commissioner's Advisory Panel* means a panel established by the Commissioner to assist in the exercise of the Commissioner's functions under section 181D. 30

181I Matters relating to evidence

- (1) Section 128 (Privilege in respect of self-incrimination in other proceedings) of the *Evidence Act 1995* applies to a witness giving evidence before the Commission in proceedings under this Division in the same way as it applies to a witness giving evidence in proceedings before a court, and so applies as if a reference in that section to a court were a reference to the Commission. 5
- (2) Subject to subsection (1) of section 163 (Rules of evidence and legal formality) of the *Industrial Relations Act 1996*, nothing in this Division limits or otherwise affects the admissibility in evidence in proceedings before the Commission under this Division of any transcript of the proceedings of any other court or tribunal. 10
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181J Application of Division to both reviews and appeals from review decisions

This Division applies not only to proceedings before the Commission on a review under this Division but also to proceedings before the Full Bench of the Commission on an appeal from a decision of the Commission under this Division. 20

Division 1D Constitution of Industrial Relations Commission for the purposes of proceedings under this Part

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181K Constitution of Commission for the purposes of this Part

- (1) A review under this Part is to be conducted before the Industrial Relations Commission (referred to in this Division as the *Commission*) constituted by a single judicial member. 30
- (2) An appeal from the decision of the Commission on a review under this Part is to be conducted before a Full Bench of the Commission constituted by 3 judicial members. 35

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Schedule 1 Amendment of Police Service Act 1990

- (3) Proceedings on a review under this Part, or on an appeal from the decision of the Commission on a review under this Part, are taken not to be proceedings of the Commission in Court Session.

[5] Schedule 4 Savings, transitional and other provisions 5

Insert at the end of clause 2 (1):

Police Service Amendment Act 1997

[6] Schedule 4, Part 12

Insert after Part 11:

Part 12 Provisions consequent on enactment of 10
Police Service Amendment Act 1997

40 Definitions

In this Part:

amended Act means this Act, as amended by the
amending Act. 15

amending Act means the *Police Service Amendment Act*
1997.

**41 Application of amendments to existing orders under
section 181D**

An amendment made by Schedule 1 to the amending Act 20
does not apply to any order made under section 181D
before the commencement of that amendment.

42 Continuation of certain proceedings

Any proceedings before the Supreme Court:

- (a) that were commenced before the commencement 25
of Schedule 1 [4] to the amending Act in
connection with a decision or order made under
section 181D, or

-
- (b) that are commenced after the commencement of Schedule 1 [4] to the amending Act in connection with a decision or order made under section 181D before that commencement,

are to be dealt with, and any judgment, order or direction of the Supreme Court in any such proceedings is to be given effect to, as if the amending Act had not been enacted. 5

43 Application of amendment to section 40 of Police Integrity Commission Act 1996 10

- (1) This clause applies to an answer made, or document or other thing produced, by a witness at a hearing before the Police Integrity Commission, as referred to in section 40 (3) of the *Police Integrity Commission Act 1996*.
- (2) The amendment made to section 40 (3) of the *Police Integrity Commission Act 1996* by Schedule 2 to the amending Act applies to an answer made, or document or other thing produced, before the commencement of that Schedule in the same way as it applies to an answer made, or document or other thing produced, after the commencement of that Schedule. 15 20

**Schedule 2 Amendment of Police Integrity
Commission Act 1996**

(Section 4)

Section 40 Privilege as regards answers, documents etc

Insert “and in any proceedings under Division 1C of Part 9 of the
Police Service Act 1990 with respect to an order under section 181D
of that Act” after “in any disciplinary proceedings” in
section 40 (3).

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New South Wales

Police Service Amendment Act 1997 No 23

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New South Wales

Police Service Amendment Act 1997 No 23

Act No 23, 1997

An Act to amend the *Police Service Act 1990* so as to enable the Industrial Relations Commission to review the removal of police officers from the Police Service by the Commissioner of Police; and for other purposes.
[Assented to 24 June 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Service Amendment Act 1997*.

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 Police Integrity Commission Act 1996 No 28

The *Police Integrity Commission Act 1996* is amended as set out in Schedule 2.

Schedule 1 Amendment of Police Service Act 1990

(Section 3)

[1] Section 181D Commissioner may remove police officers

Omit section 181D (6).

[2] Section 181D (7)

Omit "subsection (6)". Insert instead "Division 1C".

[3] Section 181D (7A) and (7B)

Insert after section 181D (7):

(7A) Nothing in this section limits or otherwise affects the jurisdiction of the Supreme Court to review administrative action.

(7B) Nothing in Division 1C limits or otherwise affects the Commissioner's power to vary or revoke an order in force under this section.

[4] Part 9, Divisions 1C and 1D

Insert after Division 1B:

**Division 1C Review of Commissioner's decision under
Division 1B**

181E Review generally

- (1) A police officer who is removed from the Police Service by an order under section 181D may apply to the Industrial Relations Commission (referred to in this Division as the *Commission*) for a review of the order on the ground that the removal is harsh, unreasonable or unjust.

- (2) An application under this section does not operate to stay the operation of the order in respect of which it is made.
- (3) Except to the extent to which the regulations otherwise provide, it is the duty of the Commissioner to make available to the applicant all of the documents and other material on which the Commissioner has relied in deciding that the Commissioner does not have confidence in the applicant's suitability to continue as a police officer, as referred to in section 181D (1).

181F Proceedings on a review

- (1) In conducting a review under this Division, the Commission must proceed as follows:
 - (a) firstly, it must consider the Commissioner's reasons for the decision to remove the applicant from the Police Service,
 - (b) secondly, it must consider the case presented by the applicant as to why the removal is harsh, unreasonable or unjust,
 - (c) thirdly, it must consider the case presented by the Commissioner in answer to the applicant's case.
- (2) The applicant has at all times the burden of establishing that the removal of the applicant from the Police Service is harsh, unreasonable or unjust. This subsection has effect despite any law or practice to the contrary.
- (3) Without limiting the matters to which the Commission is otherwise required or permitted to have regard in making its decision, the Commission must have regard to:
 - (a) the interests of the applicant, and
 - (b) the public interest (which is taken to include the interest of maintaining the integrity of the Police Service, and the fact that the Commissioner made the order pursuant to section 181D (1)).

181G Application of Industrial Relations Act 1996 to reviews

- (1) The provisions of the *Industrial Relations Act 1996* apply to an application for a review under this Division in the same way as they apply to an application under Part 6 (Unfair dismissals) of Chapter 2 of that Act, subject to this Division and to the following modifications:
- (a) section 83 (Application of Part) is to be read as if subsection (3) were omitted,
 - (b) section 85 (Time for making applications) is to be read:
 - (i) as if a reference to 21 days in that section were instead a reference to 14 days, starting from the day on which the applicant is given a copy of the order to which the application relates, and
 - (ii) as if subsection (3) were omitted,
 - (c) section 86 (Conciliation of applications) is to be read as if it provided that a judicial member of the Commission who is involved in any endeavour to settle the applicant's claim by conciliation must not subsequently be involved in the conduct of proceedings on the review,
 - (d) section 89 is to be read as if subsection (7) (Threat of dismissal) were omitted,
 - (e) section 162 (Procedure generally) is to be read as if the requirement of subsection (2) (a) of that section that the Commission is to act as quickly as is practicable were instead a requirement for the Commission to commence hearing the application within 4 weeks after the application is made,
 - (f) section 163 (Rules of evidence and legal formality) is to be read as if it provided that new evidence may not be adduced before the Commission unless:
 - (i) notice of intention to do so, and of the substance of the new evidence, has been given in accordance with the regulations under this Act, or
 - (ii) the Commission gives leave.

- (2) The Commission may grant leave as referred to in subsection (1) (f) (ii) in such circumstances as it thinks fit and having regard to the nature of proceedings under section 181F, and without limiting the generality of the foregoing, the Commission must grant leave in the following circumstances:
- (a) where the Commission is satisfied that there is a real probability that the applicant may be able to show that the Commissioner has acted upon wrong or mistaken information,
 - (b) where the Commission is satisfied that there is cogent evidence to suggest that the information before the Commissioner was unreliable, having been placed before the Commissioner maliciously, fraudulently or vexatiously,
 - (c) where the Commission is satisfied that the new evidence might materially have affected the Commissioner's decision.

**181H Commissioner and members of Commissioner's
Advisory Panels compellable witnesses only by leave**

- (1) In any proceedings before the Commission under this Division, neither the Commissioner nor any member of a Commissioner's Advisory Panel is compellable to give evidence in relation to the exercise of the Commissioner's functions under section 181D unless the Commission gives leave.
- (2) The Commission may give such leave only if it considers that extraordinary grounds exist that warrant leave being given.
- (3) In this section, *Commissioner's Advisory Panel* means a panel established by the Commissioner to assist in the exercise of the Commissioner's functions under section 181D.

181I Matters relating to evidence

- (1) Section 128 (Privilege in respect of self-incrimination in other proceedings) of the *Evidence Act 1995* applies to a witness giving evidence before the Commission in proceedings under this Division in the same way as it applies to a witness giving evidence in proceedings before a court, and so applies as if a reference in that section to a court were a reference to the Commission.
- (2) Subject to subsection (1) of section 163 (Rules of evidence and legal formality) of the *Industrial Relations Act 1996*, nothing in this Division limits or otherwise affects the admissibility in evidence in proceedings before the Commission under this Division of any transcript of the proceedings of any other court or tribunal.

181J Application of Division to both reviews and appeals from review decisions

This Division applies not only to proceedings before the Commission on a review under this Division but also to proceedings before the Full Bench of the Commission on an appeal from a decision of the Commission under this Division.

Division 1D Constitution of Industrial Relations Commission for the purposes of proceedings under this Part

181K Constitution of Commission for the purposes of this Part

- (1) A review under this Part is to be conducted before the Industrial Relations Commission (referred to in this Division as the *Commission*) constituted by a single judicial member.
- (2) An appeal from the decision of the Commission on a review under this Part is to be conducted before a Full Bench of the Commission constituted by 3 judicial members.

- (3) Proceedings on a review under this Part, or on an appeal from the decision of the Commission on a review under this Part, are taken not to be proceedings of the Commission in Court Session.

[5] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Police Service Amendment Act 1997

[6] Schedule 4, Part 12

Insert after Part 11:

**Part 12 Provisions consequent on enactment of
Police Service Amendment Act 1997**

40 Definitions

In this Part:

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

amending Act means the *Police Service Amendment Act 1997*.

41 Application of amendments to existing orders under section 181D

An amendment made by Schedule 1 to the amending Act does not apply to any order made under section 181D before the commencement of that amendment.

42 Continuation of certain proceedings

Any proceedings before the Supreme Court:

- (a) that were commenced before the commencement of Schedule 1 [4] to the amending Act in connection with a decision or order made under section 181D, or

- (b) that are commenced after the commencement of Schedule 1 [4] to the amending Act in connection with a decision or order made under section 181D before that commencement,

are to be dealt with, and any judgment, order or direction of the Supreme Court in any such proceedings is to be given effect to, as if the amending Act had not been enacted.

43 Application of amendment to section 40 of Police Integrity Commission Act 1996

- (1) This clause applies to an answer made, or document or other thing produced, by a witness at a hearing before the Police Integrity Commission, as referred to in section 40 (3) of the *Police Integrity Commission Act 1996*.
- (2) The amendment made to section 40 (3) of the *Police Integrity Commission Act 1996* by Schedule 2 to the amending Act applies to an answer made, or document or other thing produced, before the commencement of that Schedule in the same way as it applies to an answer made, or document or other thing produced, after the commencement of that Schedule.

Schedule 2 Amendment of Police Integrity Commission Act 1996

(Section 4)

Section 40 Privilege as regards answers, documents etc

Insert “and in any proceedings under Division 1C of Part 9 of the *Police Service Act 1990* with respect to an order under section 181D of that Act” after “in any disciplinary proceedings” in section 40 (3).

[Minister's second reading speech made in—
Legislative Assembly on 18 June 1997
Legislative Council on 19 June 1997]

BY AUTHORITY