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New South Wales

Police Service Further Amendment Bill 1995

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to provide for random breath testing of police officers, and
 - (b) to protect police officers who make allegations concerning police misconduct from reprisals.
-

Outline of provisions

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

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

Clause 3 is a formal provision giving effect to the amendments to the *Police Service Act 1990* set out in Schedule 1.

Schedule 1 Amendments

Random breath testing

Schedule 1 [1] provides for the random breath testing of on-duty police officers.

Proposed section 201A prohibits a police officer from being under the influence of alcohol while on duty. A police officer who breaches the prohibition may be subject to disciplinary action under Part 9 of the *Police Service Act 1990*.

Proposed section 201B provides for the breath testing of police officers for the presence of alcohol in their blood. Testing is to be random, that is, any police officer who is on duty may be tested. (However, this does not prevent the testing of any person who is suspected of being under the influence of alcohol while on duty.)

The Bill provides that one consequence of a breath test showing the presence of alcohol is that the results of the breath test may be used as evidence in disciplinary proceedings for a breach of the prohibition in proposed section 201A (that is, the results may be used to support a case that the police officer was under the influence of alcohol while on duty).

The regulations will provide the details as to how breath tests are conducted.

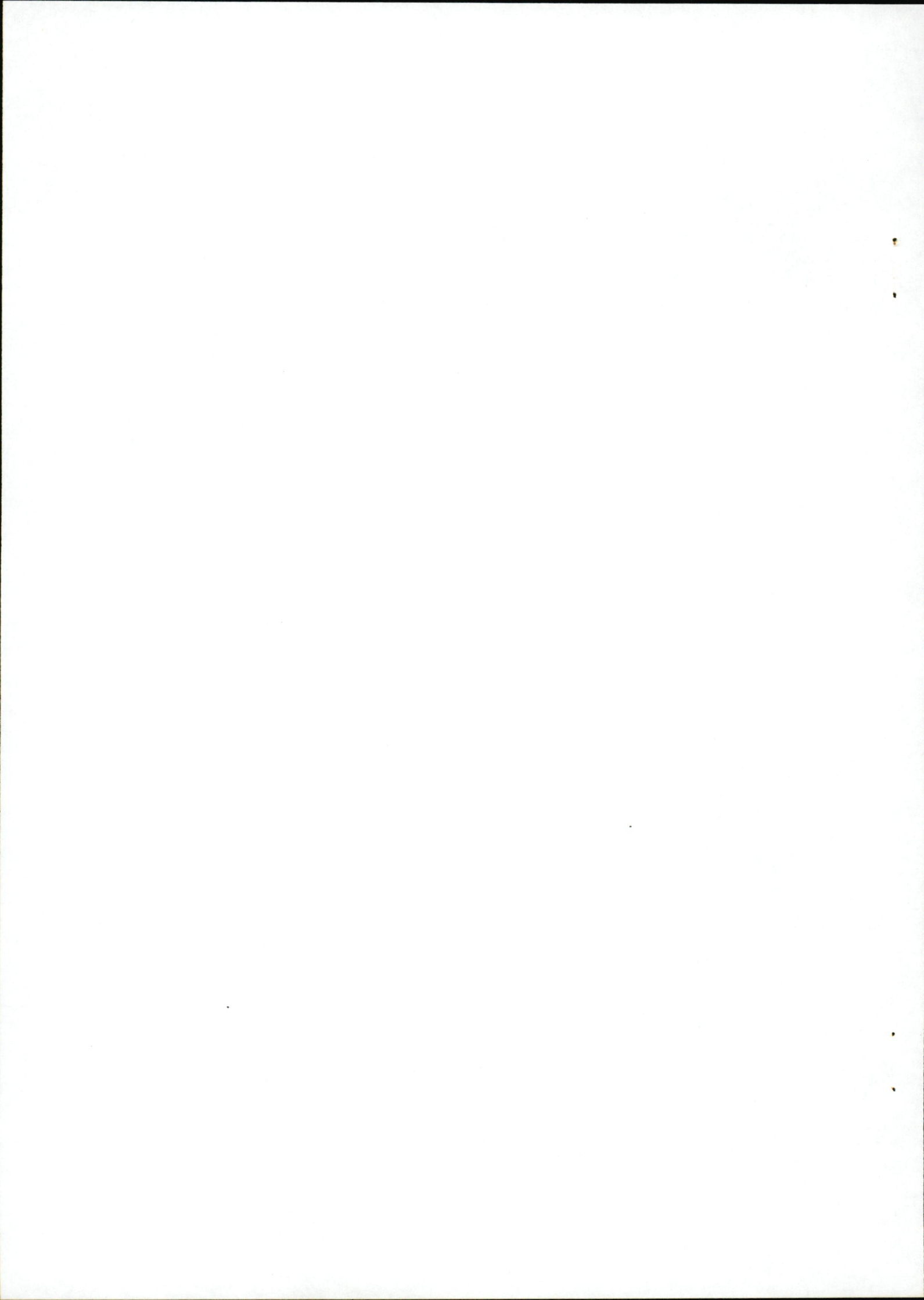
Protection against reprisals

Schedule 1 [2] protects police officers who have reported police misconduct from reprisals from other police officers.

Explanatory note

Proposed section 206A makes it an offence for a police officer to take certain detrimental action against a police officer who has raised allegations of police misconduct. A police officer is only protected from reprisal if:

- (a) the allegations were made because the police officer had a duty to raise any such allegations (including a duty imposed by a Royal Commission or a duty arising under the *Police Service Act 1990* or the regulations made under that Act), or
- (b) the allegations were made in accordance with a formal system of reporting allegations set out in an Act (for example, Part 8A of the *Police Service Act 1990*, the *Ombudsman Act 1974* or the *Independent Commission Against Corruption Act 1988*).



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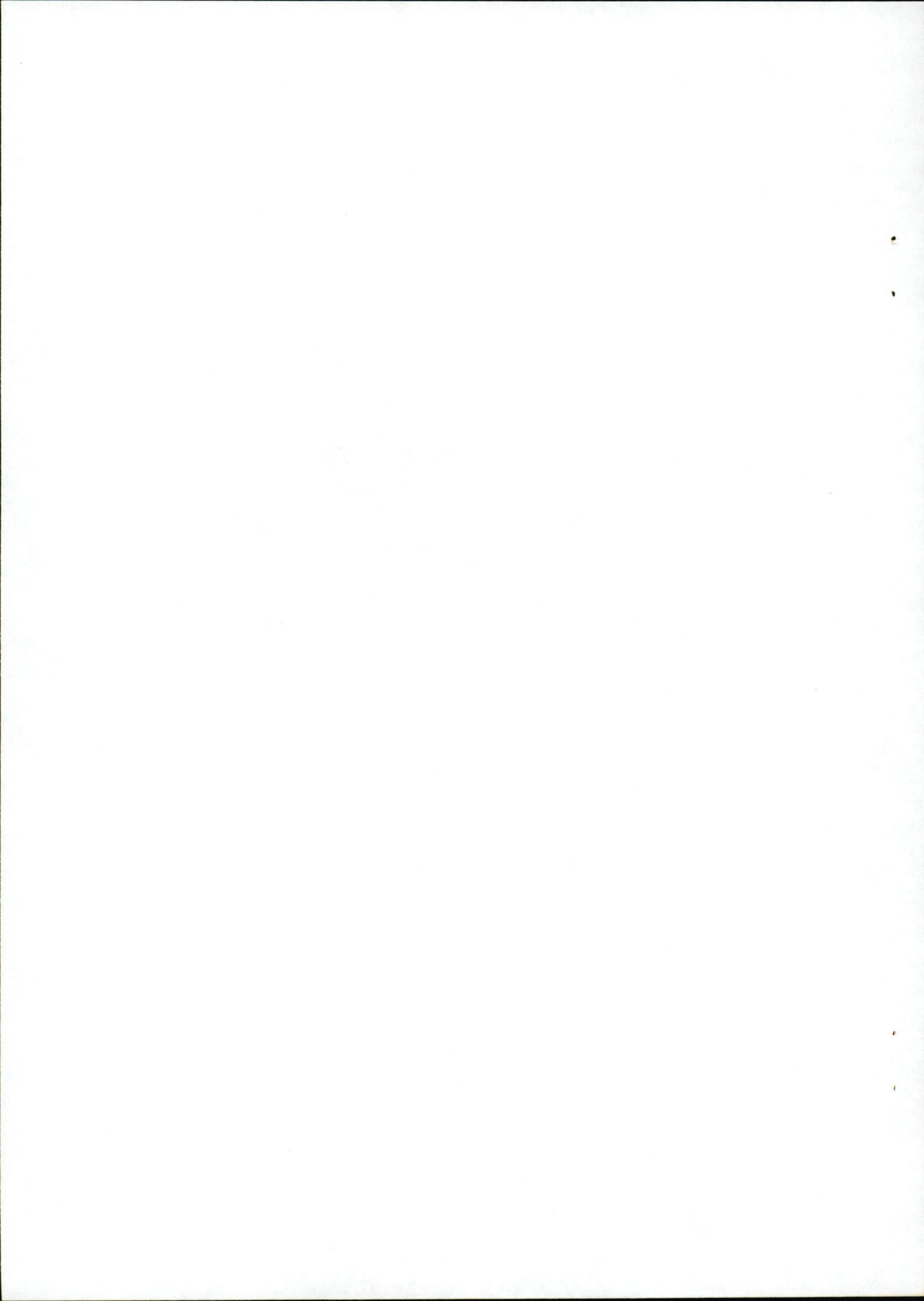


New South Wales

Police Service Further Amendment Bill 1995

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Police Service Act 1990 No 47	2
 Schedule 1 Amendments	 3





New South Wales

Police Service Further Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *Police Service Act 1990* to allow for random breath testing of on-duty police officers and to enhance protection for police internal informants.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Service Further Amendment Act 1995*.

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.

Schedule 1 Amendments

(Section 3)

[1] Sections 201A and 201B

Insert after section 201:

- 201A Police officer must not be under the influence of alcohol** 5
- (1) A police officer must not be under the influence of alcohol while the police officer is officially on duty.
 - (2) A police officer who breaches this section is liable to disciplinary action under Part 9. 10
- 201B Breath testing of police officers**
- (1) The Commissioner may at any time arrange for the breath testing of any police officer for the presence of alcohol in his or her blood.
 - (2) A police officer may be breath tested only if the officer is officially on duty. 15
 - (3) A breath test must be administered in the manner prescribed by the regulations and may be administered only by a police officer authorised by the Commissioner for that purpose. 20
 - (4) Breath testing may be conducted on a random basis. That is, a police officer may be breath tested whether or not there is any suspicion that the police officer is under the influence of alcohol.
 - (5) A police officer must not refuse or fail to be breath tested or to comply with a reasonable requirement or direction of the person administering, or seeking to administer, a test. A police officer who breaches this subsection is liable to disciplinary action under Part 9. 25
 - (6) Without affecting its admissibility for any other purpose, the result of any breath test conducted under this section is admissible as evidence in any disciplinary proceedings under Part 9. 30

[2] Section 206A

Insert after section 206:

206A 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 that allegation is made: 5
- (a) in the performance of a duty imposed on the police officer by or under this or any other Act, or
 - (b) in accordance with the procedure for making allegations set out in this or any other Act. 10
- (2) This section applies to an allegation:
- (a) even if the allegation relates to conduct or activities engaged in, or to matters arising, before the commencement of this section (that is, before the commencement of Schedule 1 [2] to the *Police Service Further Amendment Act 1995*), and 15
 - (b) even if the person who is the subject of the allegation is no longer a police officer.
- (3) A police officer who takes detrimental action against another police officer (including a former police officer) that is substantially in reprisal for the other police officer making an allegation to which this section applies is guilty of an offence. 20
- Maximum penalty: 50 penalty units or imprisonment for 12 months, or both. 25
- (4) It is a defence to a prosecution under this section that the allegation to which this section applies was made frivolously, vexatiously or in bad faith.

- (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, 5
 - (d) dismissal from, or prejudice in, employment,
 - (e) disciplinary proceedings.

