

FIRST PRINT

POLICE SERVICE (COMPLAINTS, DISCIPLINE AND APPEALS) AMENDMENT BILL 1993

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to consolidate and reform the law relating to complaints about police conduct, discipline of police officers and police disciplinary and promotional appeals.

The Bill repeals the Police Regulation (Allegations of Misconduct) Act 1978 ("the PRAM Act") and the Police Regulation (Appeals) Act 1923. The Bill substantially re-enacts, in modern form, the provisions of those two Acts in the Police Service Act 1990. The Bill also transfers to the Police Service Act 1990 some significant provisions of the regulations relating to police discipline.

Changes to existing procedures are summarised below. In particular, the Bill changes the procedures for the conciliation of complaints about police conduct. Those new procedures generally follow the recommendations of the Joint Committee Report entitled "Inquiry Upon the Role of the Ombudsman in Investigating Complaints Against Police" which was tabled in Parliament on 30 April 1992.

COMPLAINTS ABOUT POLICE CONDUCT

Existing procedure

Currently, the PRAM Act sets out procedures for dealing with complaints about the conduct of police officers. Complaints must be in writing and made or referred to a police officer or the Ombudsman. A complaint may be made the subject of conciliation by the police officer or Ombudsman receiving the complaint. If a matter cannot be resolved through conciliation, the complaint may be formally investigated. A formal investigation may be carried out by the Commissioner of Police at his or her discretion or at the direction of the Ombudsman and a formal report made to the Ombudsman. The Ombudsman is required to decide whether or not the complaint has been sustained. If the Ombudsman is not satisfied with the police investigation, the complaint may be investigated by the Ombudsman in accordance with the Ombudsman Act 1974. Following an investigation and report by the Ombudsman, the Commissioner of Police

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is required to consider any criminal charges, disciplinary action or other action against a police officer the subject of a sustained complaint. The Ombudsman is authorised to dispute the action of the Commissioner and report his or her conclusions to the Minister and Parliament.

Changes to complaints procedure

The proposed Act excludes from the complaints procedure certain internal police reports that concern the internal management of the Police Service. Those matters will not be excluded unless they are of a "class or kind" agreed between the Commissioner of Police and the Ombudsman. An example of a matter intended to be excluded by such an agreement is a complaint by a police officer about a police promotion that contravenes the principles of equal opportunity in employment.

Changes to conciliation procedure

The existing procedures for conciliation of complaints (that is, attempting to deal with a complaint in a manner acceptable to the complainant) are to be extended in order to reduce delay and cost in the dispute resolution process.

At present, the decision to conciliate a complaint is at the discretion of the police officer or officer of the Ombudsman dealing with the complaint. The proposed Act makes the conciliation process mandatory in certain circumstances.

The Commissioner of Police and the Ombudsman will determine which complaints are of a class or kind to be dealt with by conciliation. It is envisaged that the types of complaints which will be required to be conciliated will be complaints about conduct which are not of a serious nature. The conciliation process will not apply to complaints about conduct which, if proven, would amount to an indictable offence.

If a complaint is made to a police officer it may be conciliated by the police. If the complaint is made to the Ombudsman, the Ombudsman may conduct the conciliation or refer it to a police officer for conciliation. In either case, a third-party mediator may now be engaged to assist in the conciliation.

The proposed Act also provides that any statement made by a police officer in a conciliation in good faith for the purposes of that conciliation is not admissible in any disciplinary proceedings against the police officer relating to the conduct concerned.

In order to enable the Ombudsman to monitor the conciliation of complaints, the Ombudsman will be able to conduct random audits of the conciliation records at police stations and contact and interview any person involved in the conciliation.

Changes to investigation procedure

Currently under the PRAM Act investigations are undertaken by the Commissioner of Police. The investigations are, with certain exceptions, conducted by a specially constituted Internal Affairs Branch.

The requirement that investigations be carried out by that Branch will not be retained. Instead, the Commissioner will be able to make appropriate arrangements for police investigations (including investigations by police internal affairs staff located in Regional Commands).

The proposed Act will allow the Ombudsman to take over investigations (before, during or after a police investigation) if the Ombudsman is satisfied it is in the public interest to do so.

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The Ombudsman will also be able to monitor police investigations in the public interest. For that purpose, the new provisions will allow officers of the Ombudsman to be present as an observer at police interviews conducted for the purpose of an investigation and to consult with those officers about the conduct and progress of the investigation. The Commissioner will be required to provide the Ombudsman with a wider range of information or records relating to an investigation if requested by the Ombudsman. The Ombudsman will also be able to contact police officers or third parties to determine whether a complaint should be formally investigated.

Changes to report procedure

At present, the Commissioner must conclude an investigation of a complaint and report to the Ombudsman within 180 days after notification of the complaint. If not, the Ombudsman may investigate the complaint. The proposed Act aims to achieve a faster resolution of complaints by reducing this period to 90 days for complaints of a class or kind agreed between the Commissioner and the Ombudsman. The 180 day period will be retained for other complaints that require a longer period of investigation.

The Ombudsman is to be excused from compiling a report on a sustained complaint if the Ombudsman is satisfied with the action taken by the Commissioner as a result of the complaint.

Other changes

Police personnel records. The proposed Act will provide that complaints against police officers which are not sustained will not be included on the police internal affairs report which is provided when that police officer is being considered for an appointment or promotion. However, the report will include details of any investigation or proceedings in respect of that officer which have not yet been concluded.

Privileged documents. The provisions of section 59 of the PRAM Act will not be re-enacted. Under that section, documents specially created under the police complaints system are not admissible in any criminal or other proceedings (other than police disciplinary proceedings). Accordingly the admissibility of those documents will be regulated by the general rules relating to admissibility. The documents concerned include records of police interviews and reports by police officers or the Ombudsman of the result of an investigation.

DISCIPLINARY PROVISIONS

The Bill re-enacts, in modern form, the existing provisions relating to discipline, subject to consequential changes and the inclusion of express provision to enable the Commissioner to formally admonish a police officer in those cases where the conduct of the officer is not satisfactory but does not justify the preferment of a departmental charge.

At present, the Commissioner may take disciplinary proceedings against police officers by authorising criminal proceedings or by preferring a departmental charge.

The Police Tribunal is required to hear and determine all departmental charges that are not admitted by the officer charged, where those charges relate to conduct the subject of a complaint that has been investigated under the PRAM Act, or where they relate to other conduct and the person charged requests that they be dealt with by the

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Tribunal. The Police Tribunal makes a finding as to whether the charge is proved, but may only recommend a penalty to be imposed by the Commissioner or the Governor. A further appeal lies to the Review Division of the Tribunal.

An appeal to the Government and Related Employees Appeal Tribunal (GREAT) lies against disciplinary action by the Commissioner of Police (except in respect of members of the Police Service Senior Executive Service). If the departmental charge concerned is one that was heard by the Police Tribunal, an appeal to GREAT may only be made against the severity of the punishment imposed by the Commissioner.

Discipline and disciplinary appeals procedure in respect of administrative officers of the Police Service are the same as the procedure for public servants.

PROVISIONS OF BILL

Clause 1 specifies 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 gives effect to Schedules 1–3 which contain amendments to the Police Service Act 1990.

Clause 4 gives effect to Schedule 4 which contains consequential amendments to other Acts.

Clause 5 gives effect to Schedule 5 which repeals the PRAM Act and Police Regulation (Appeals) Act 1923 and the regulations under those Acts.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS OF
POLICE SERVICE**

This Schedule inserts Part 8A into the Police Service Act 1990 (Complaints about conduct of police officers), substitutes Part 9 (Discipline and disciplinary appeals relating to members of Police Service) and inserts Part 9A (Police Tribunal).

The provisions re-enact in modern form, and change (in the manner described above), the provisions presently contained in the PRAM Act, section 6 of the Police Regulation (Appeals) Act 1923, Part 9 of the Police Service Act 1990 and regulations under those Acts.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE SERVICE
ACT 1990 RELATING TO PROMOTIONAL APPEALS BY POLICE
OFFICERS**

This Schedule re-enacts in modern form, as Divisions 5A and 5B of Part 6 of the Police Service Act 1990, the provisions of the Police Regulation (Appeals) Act 1923 relating to promotional appeals to GREAT by members of the Police Service.

The provisions relate to promotional appeals up to the rank of Inspector.

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**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990**

This Schedule contains the following amendments to the Police Service Act 1990:

- (a) **Reports by police internal affairs for proposed police appointments**—Schedule 3 (1), (2), (4) and (8).

The provision relating to this matter in the PRAM Act (s. 35A) has been transferred to the Police Service Act 1990 as section 94A. The new section includes the changes mentioned earlier concerning the re-organisation of the Internal Affairs Branch and the removal of the requirement to record complaints that have not been sustained in police officers' records.

- (b) **Statute law revision**—Schedule 3 (3), (5) and (12).

- (c) **Consequential amendments**—Schedule 3 (6) and (7).

Consequential amendments are made to the provisions of the Act relating to police volunteers.

- (d) **Secondment of staff**—Schedule 3 (9).

New provisions are inserted to formalise arrangements for the secondment of public service and other staff to the Police Service and for the secondment of Police Service staff to other agencies.

- (e) **Renumbering**—Schedule 3 (10).

Existing sections 99–120 are renumbered because of the inclusion of new Parts 8A, 9 and 9A into the Act.

- (f) **Police uniform**—Schedule 3 (11).

The offence relating to the unauthorised wearing of a police uniform is extended to the unauthorised possession of such a uniform and the unauthorised wearing or possession of a part of a police uniform or an accoutrement of a police officer. The former offence in the Police Regulation Act 1899 extended to those matters.

- (g) **Savings and transitional**—Schedule 3 (12).

The amendments authorise the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Specific savings and transitional provisions are made with respect to the new complaints procedures and the re-enactment of the discipline and appeal procedures. Generally speaking, the new procedures are applied except in respect to any matter that has been dealt with under the existing procedures.

SCHEDULE 4—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

This Schedule contains consequential amendments to the following Acts:

- (a) Ombudsman Act 1974;
- (b) Police Department (Transit Police) Act 1989;
- (c) Police Service (Volunteer Police) Amendment Act 1992.

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SCHEDULE 5—REPEALS

This Schedule lists the Acts and regulations to be repealed, namely:

- (a) the Police Regulation (Allegations of Misconduct) Act 1978;
 - (b) the Police Regulation (Appeals) Act 1923;
 - (c) Acts amending those Acts;
 - (d) Regulations made under those Acts.
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TABLE OF PROVISIONS

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SCHEDULE 5—REPEALS

**POLICE SERVICE (COMPLAINTS, DISCIPLINE AND
APPEALS) AMENDMENT BILL 1993**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend the Police Service Act 1990 with respect to police complaints, discipline and appeals, and in other respects; to repeal the Police Regulation (Allegations of Misconduct) Act 1978 and the Police Regulation (Appeals) Act 1923; and to amend certain other Acts.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993.

5 Commencement

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

Amendment of Police Service Act 1990 No. 47

10 3. The Police Service Act 1990 is amended as set out in Schedules 1-3.

Consequential amendments to other Acts

4. The Acts specified in Schedule 4 are amended as set out in that Schedule.

Repeals

15 5. (1) The Acts specified in Part 1 of Schedule 5 are repealed.
 (2) The regulations specified in Part 2 of Schedule 5 are repealed.
 (3) Different days may be appointed for the commencement of this section and Schedule 5 for the purpose of repealing different Acts or regulations, or different provisions of an Act or regulation, on different
 20 days.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT
 1990 RELATING TO COMPLAINTS AND DISCIPLINE OF
 MEMBERS OF POLICE SERVICE**

(Sec. 3)

25 (1) Section 3 (**Definitions**):

Insert in alphabetical order:

30 "GREAT" means the Government and Related Employees Appeal Tribunal established under the Government and Related Employees Appeal Tribunal Act 1980;

"Police Tribunal" means the Police Tribunal of New South Wales established under Part 9A;

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**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

(2) Part 8A:

After Part 8, insert:

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**PART 8A—COMPLAINTS ABOUT CONDUCT OF
POLICE OFFICERS**

Division 1—Definitions

Definition of “conduct” of police officer

121. (1) In this Part, “conduct” of a police officer means any action or inaction, or alleged action or inaction, of a police officer when acting as a constable. 10

(2) Such conduct does not include conduct relating to a matter of administration that may be made the subject of a complaint under section 12 of the Ombudsman Act 1974. 15

Other definitions

122. In this Part:

“complaint” means a complaint made in accordance with Division 2;

“conciliation” means conciliation under Division 3; 20

“investigation” means investigation under Division 4;

“telephone” includes facsimile transmission or other means of electronic transmission.

Division 2—Complaints against police officers

Right to make complaint 25

123. (1) Any person may make a complaint about the conduct of a police officer.

(2) If the complaint is made in accordance with this Division, it is to be dealt with under this Part.

(3) However, the complaint is not to be so dealt with if it is excluded by this Division. 30

(4) This section does not affect any other right of a person to complain about the conduct of a police officer.

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

Excluded complaints

5 124. (1) **Internal management.** A complaint by a person
about the conduct of a police officer is not to be dealt with
under this Part if the conduct is of a class or kind that the
Ombudsman and the Commissioner have agreed concerns the
10 internal management of the Police Service and should not be
subject to this Part.

(2) **Previous complaints.** A complaint by a person about
the conduct of a police officer is not to be dealt with under
this Part if:

- 15 (a) the person has already made another complaint in
accordance with this Division about the same conduct
of the police officer and that other complaint is being
dealt with, or has been dealt with, under this Part; or
20 (b) the person has already made another complaint (not
being a complaint in accordance with this Division)
about the same conduct of the police officer and that
other complaint:

- (i) is being officially investigated; or
(ii) has been dealt with after such an investigation,
25 including, for example, an official investigation by a
Royal Commission or by a Parliamentary Committee,
but not including an investigation by the
Commissioner, the Independent Commission Against
Corruption or the New South Wales Crime
Commission; or
30 (c) the person is not identified in the complaint and
another complaint in which the complainant is
identified has already been made in accordance with
this Division about the same conduct of the police
officer.

35 **Making of complaints**

125. (1) **In writing.** A complaint must be in writing.

(2) **Anonymous complaints.** It is not necessary for the
complainant to be identified in a complaint.

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

- (3) **How made.** A complaint is duly made if:
- (a) it is delivered to a police officer personally or received by a police officer by post or by facsimile transmission; or 5
 - (b) it is lodged at the office of the Ombudsman while that office is open for business or it is received in that office by post or by facsimile transmission; or 10
 - (c) it is addressed to the Ombudsman and lodged at a Local Court while that Court is open for business; or
 - (d) it is referred to the Ombudsman by the Minister or by the Independent Commission Against Corruption.
- (4) **M.P. may act for complainant.** A complaint may, with the written consent of the complainant, be made on his or her behalf by a member of Parliament. 15
- (5) **Complaints by prisoners.** If a prisoner informs a prison officer that the prisoner wishes to make a complaint to a police officer, or to the Ombudsman, the prison officer must: 20
- (a) take all steps necessary to facilitate the making of the complaint; and
 - (b) send immediately to the addressee, unopened, any written matter addressed to a police officer (whether by name or by reference to an office held by the officer) or to the Ombudsman. 25
- In this subsection, **prisoner** means any person in lawful detention or custody and **prison officer** means any person by whom the prisoner is detained, or in whose custody the prisoner is or who is in charge of the prisoner. 30
- Complaints received by police to be forwarded to Commissioner**
126. (1) A police officer who receives a complaint must, as soon as practicable, forward the complaint to the Commissioner or a police officer nominated by the Commissioner. 35

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

5 (2) This section does not apply if the complaint has
previously been forwarded to the Commissioner or
nominated officer.

**Ombudsman to be sent copies of complaints received by
police**

10 127. If the Commissioner or nominated police officer
receives a complaint, either directly or forwarded by another
police officer, the Commissioner or nominated officer must,
as soon as practicable, cause a copy of the complaint to be
sent to the Ombudsman.

Provisions relating to complaints lodged at Local Courts

15 128. (1) If a complaint is lodged at a Local Court, the
Clerk of the Court must, by telephone, notify the
Ombudsman as soon as practicable of brief details of the
complaint.

20 (2) The Clerk of the Court must, as soon as practicable,
forward the complaint to the Ombudsman, unless otherwise
directed by the Ombudsman.

(3) If the Clerk of the Court is directed to do so by the
Ombudsman, the Clerk must:

- 25 (a) forward the complaint to a police officer specified by
the Ombudsman; and
(b) obtain a receipt for the complaint from that police
officer; and
(c) retain such records of the complaint as the
Ombudsman directs; and
30 (d) send a copy of the complaint to the Ombudsman
together with the receipt and a report of the action
taken by the Clerk.

35 (4) The Ombudsman may give such a direction to the
Clerk of the Court only if the Ombudsman is requested to do
so by a police officer responsible for investigating any aspect
of the complaint that may relate to a possible criminal
offence.

40 (5) The Clerk of a Local Court is taken to be an officer of
the Ombudsman in connection with any action of the Clerk
under this section.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

Provisions relating to complaints referred by Minister or ICAC or made by M.P.

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129. (1) If the Minister refers a complaint to the Ombudsman or a member of Parliament acts for a complainant, neither the Minister nor the member becomes the complainant, except for the purposes of any provision of this Act under which the complainant is informed or notified of any matter or given or sent any matter.

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(2) If:

(a) the Minister publishes to a person whose complaint has been referred by the Minister any matter with respect to the complaint published to the Minister by a police officer or by the Ombudsman; or

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(b) a member of Parliament publishes to a person for whom the member acts any such matter published to the member,

the publication to that person has, for all purposes, the same effect as it would have if it had been published to that person by the police officer, or the Ombudsman, as the case may be.

20

(3) If the Independent Commission Against Corruption refers a complaint to the Ombudsman, that Commission does not become the complainant. A complaint about the conduct of a police officer in a report, transcripts of proceedings or other record of that Commission does not constitute a complaint unless it is referred by that Commission or it is the subject of a separate complaint under this Division.

25

Mixed and linked complaints

30

130. (1) This section applies to:

(a) a **mixed complaint**, that is, a complaint relating partly to conduct of a police officer that is conduct within the meaning of this Part and partly to conduct of that or another police officer that is conduct that may be made the subject of a complaint under section 12 of the Ombudsman Act 1974; or

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

5 (b) a **linked complaint**, that is, a complaint made in
respect of conduct of a police officer that is conduct
within the meaning of this Part and, in the opinion of
the Ombudsman, that conduct is directly linked to
conduct of that or another police officer that may be
made the subject of a complaint under section 12 of the
10 Ombudsman Act 1974.

(2) Mixed or linked complaints are to be dealt with in
accordance with the directions of the Ombudsman.

15 (3) For that purpose, the Ombudsman may direct that the
complaints be dealt with wholly under this Part or wholly
under the Ombudsman Act 1974, or partly under this Part
and partly under that Act, despite anything to the contrary in
this Part or that Act.

(4) If it appears to the Ombudsman:

20 (a) that the Ombudsman is dealing under the Ombudsman
Act 1974 with a complaint that relates to conduct of a
police officer that is conduct within the meaning of this
Part; or

25 (b) that the Ombudsman is dealing under this Part with a
complaint relating to conduct of a police officer that is
not conduct within the meaning of this Part,

the Ombudsman is not to discontinue action on the complaint
but (subject to this section) must continue action on the
complaint in accordance with the provisions of the
appropriate Act.

30 **Division 3—Conciliation**

Nature of conciliation

35 131. For the purposes of this Part, **conciliation** of a
complaint about the conduct of a police officer means dealing
with the complaint under this Division in a manner
acceptable to the complainant.

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**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Complaints where conciliation must be attempted

132. (1) An attempt must be made to deal with a complaint about the conduct of a police officer by conciliation if the conduct is of a class or kind that the Ombudsman and the Commissioner have agreed should be dealt with by conciliation. 5

(2) This section does not apply to a complaint excluded from conciliation by section 134. 10

Other complaints where conciliation may be attempted

133. (1) An attempt may be made to deal with any other complaint about the conduct of a police officer by conciliation if the officer dealing with the complaint is satisfied that conciliation may be successful. 15

(2) This section does not apply to a complaint excluded by section 134.

Complaints that may not be dealt with by conciliation

134. A complaint about the conduct of a police officer may not be dealt with by conciliation if: 20

- (a) the conduct appears to have involved the commission of an indictable offence; or
- (b) the Commissioner has decided, or the Ombudsman has directed, that the complaint be investigated under Division 4; or 25
- (c) the complainant is not identified.

Who attempts conciliation

135. (1) A police officer is to make an attempt to deal with a complaint by conciliation if the complaint was received by a police officer or if it was referred by the Ombudsman to the Commissioner for conciliation. 30

(2) If the complaint was received by the Ombudsman and not referred to the Commissioner, the attempt to conciliate is to be made by the Ombudsman or an officer of the Ombudsman. 35

(3) The person who is attempting to deal with a complaint by conciliation may, with the agreement of the complainant, arrange for a mediator to assist in the conciliation.

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

Notification of outcome of conciliation

5 136. (1) A police officer who attempts to deal with a complaint by conciliation must inform the Ombudsman of the outcome.

10 (2) If the Ombudsman or an officer of the Ombudsman attempts to deal with a complaint by conciliation, the Ombudsman must inform the Commissioner of the outcome.

Statements by police officer during conciliation not admissible in disciplinary proceedings

15 137. (1) If a complaint about the conduct of a police officer is being dealt with by conciliation under this Division, any statement made by that police officer in good faith for the purposes of the conciliation is not admissible in any disciplinary proceedings against the police officer.

20 (2) The statement is inadmissible only if the disciplinary proceedings relate to the conduct that is the subject of the complaint.

Audit by Ombudsman of conciliation by police officers

25 138. (1) The Ombudsman is to conduct random audits of complaints that police officers have dealt with by conciliation under this Division.

(2) For the purposes of any such audit, the Ombudsman may:

- 30 (a) inspect the records made by police officers of a conciliation; and
- (b) interview any of the parties to the conciliation about the conduct of the conciliation; and
- (c) interview any other person about matters related to the conciliation.

35 (3) The Ombudsman may make recommendations to the Commissioner about the conciliation of complaints under this Division.

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
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Procedure where conciliation fails

139. If an attempt made under this Division to deal with a complaint by conciliation is unsuccessful, the complaint continues thereafter to be subject to the other provisions of this Part. 5

Division 4—Investigations

Investigations of complaints by Commissioner at his or her discretion 10

140. (1) The Commissioner may cause a complaint to be investigated under this Division.

(2) The Commissioner must, as soon as practicable after causing a complaint to be investigated, notify the Ombudsman of that fact. 15

Investigations of complaints by Commissioner when directed by Ombudsman

141. (1) The Commissioner must cause a complaint to be investigated under this Division if the Ombudsman determines that the complaint should be investigated and duly notifies the Commissioner accordingly. 20

(2) In determining whether a complaint should be investigated, the Ombudsman may have regard to such matters as the Ombudsman thinks fit, including whether, in his or her opinion: 25

- (a) the complaint is frivolous, vexatious or not made in good faith; or
- (b) the subject-matter of the complaint is trivial; or
- (c) the conduct complained of occurred at too remote a time to justify investigation; or 30
- (d) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress; or
- (e) the complainant does not or, where the complainant is not identified, the complainant could not have an interest, or a sufficient interest, in the conduct complained of. 35

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

- 5 (3) Without affecting the generality of subsection (2), the
Ombudsman is not to determine that a complaint, in which
the complainant is not identified, should be investigated,
unless the Ombudsman is of the opinion:
- 10 (a) that the complaint appears to contain sufficient
information to enable an investigation to be carried out;
and
- (b) that the conduct the subject of the complaint would:
- 15 (i) if the conduct had occurred, provide reasonable
grounds to believe that a criminal offence had
been committed by a police officer; or
- (ii) if a departmental charge were proved against a
police officer in relation to the conduct, warrant
the imposition of a substantial punishment on the
police officer.
- 20 (4) The notification to the Commissioner of a
determination of the Ombudsman that a complaint be
investigated:
- (a) is to be in writing; and
- (b) as far as practicable, is to identify the police officer
whose conduct is the subject of the complaint; and
- 25 (c) is to be accompanied by a copy of the complaint.
- (5) If the Ombudsman determines that a complaint should
be investigated by the Commissioner, the Ombudsman:
- (a) must notify the complainant of that fact, if the
complainant is identified; and
- 30 (b) may also notify the police officer whose conduct is the
subject of the complaint.
- (6) If the Ombudsman determines that a complaint should
not be investigated by the Commissioner, the Ombudsman
must:
- 35 (a) notify the complainant of that fact and of the
Ombudsman's reasons for the determination, if the
complainant is identified; and
- (b) send to the Commissioner a copy of the notification
and of the complaint to which it relates.

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Conduct of investigation by Commissioner

142. (1) An investigation under this Division by the Commissioner is to be conducted by such police investigative staff as are selected by the Commissioner or in accordance with arrangements approved by the Commissioner. 5

(2) While investigating a complaint, a police officer must not, without the consent of the Commissioner or another police officer nominated by the Commissioner, disclose to any person (other than the Commissioner or a police officer so nominated) the identity of the complainant. This subsection does not apply to a disclosure in a report to the Commissioner under this Division of the progress or result of the investigation. 10 15

(3) Consent to the disclosure of the identity of the complainant is not to be granted unless it is necessary for the effective conduct of the investigation of the complaint.

Deferral or discontinuance of investigation 20

143. (1) The Commissioner may apply to the Ombudsman for consent:

- (a) to defer the commencement or continuation of the investigation of a complaint; or
- (b) to discontinue the investigation of a complaint. 25

(2) The Ombudsman may:

- (a) consent to the deferral of the commencement or continuation of the investigation of a complaint pending the conclusion of any relevant criminal proceedings or for any other good cause; or 30
- (b) consent to the discontinuance of the investigation of a complaint if continuation of the investigation would be, in the circumstances of the case, unreasonable or impracticable.

(3) If the Ombudsman grants a consent and the complainant is identified, the Ombudsman is to notify the complainant in writing of that fact and of the reasons for granting the consent and is to send to the Commissioner a copy of the notification. 35

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5 (4) If the Ombudsman does not, within 28 days, grant a consent applied for under this section, the Commissioner may, within 14 days thereafter, apply to the President of the Police Tribunal for that consent.

(5) The President of the Police Tribunal may:

10 (a) grant the consent applied for subject to such conditions (if any) as are specified by the President; or

(b) refuse to grant the consent,

and must notify the decision to the Commissioner, the Ombudsman and, if the complainant is identified, the complainant.

15 (6) The President of the Police Tribunal may authorise another member of the Police Tribunal to deal with an application to the President under this section.

20 (7) The Ombudsman may, if satisfied that it is in the public interest and without any application by the Commissioner for consent, direct the Commissioner that the investigation of a complaint under this Division be discontinued.

25 (8) The commencement or continuation of the investigation of a complaint may not be deferred, and the investigation of a complaint may not be discontinued, except in accordance with a consent granted or direction given under this section.

Monitoring of investigation by Ombudsman

30 144. (1) The Ombudsman may monitor the progress of the investigation of a complaint if the Ombudsman considers it is in the public interest to do so.

35 (2) The Ombudsman or an officer of the Ombudsman may be present as an observer during interviews conducted by police officers for the purpose of an investigation and confer with those police officers about the conduct and progress of the investigation. The powers of the Ombudsman or an officer of the Ombudsman under this subsection may be exercised only in accordance with arrangements agreed to between the Ombudsman and the Commissioner as to the manner in which the powers are to be exercised.

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(3) The Commissioner is to provide the Ombudsman with such documentary and other information (including records of interviews) as the Ombudsman may from time to time request with respect to an investigation. 5

Proceedings to be instituted if warranted

145. (1) If it appears to a police officer conducting an investigation that sufficient evidence exists to warrant the prosecution of any person for an offence, the police officer is, subject to this Act, to cause appropriate proceedings to be instituted against that person. 10

(2) The Commissioner must inform the Ombudsman of the institution of any such proceedings and of the particulars of the proceedings. 15

(3) A police officer is not to institute proceedings against another police officer for an offence without the approval of the Commissioner.

Result of investigation to be reported 20

146. A police officer conducting an investigation must:

- (a) at such times as the Commissioner may direct while the investigation is proceeding; and
- (b) at the conclusion of the investigation,

report to the Commissioner the progress or result of the investigation and provide the Commissioner with copies of all statements taken by the police officer in the course of the investigation and of all other documents on which the report is based. 25

Report etc. to be sent to Ombudsman 30

147. (1) The Commissioner must, as soon as practicable after being satisfied that an investigation has been concluded:

- (a) send to the Ombudsman a copy of the report provided under section 146 at the conclusion of the investigation and copies of all statements taken in the course of the investigation and of all other documents on which the report is based; and 35

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5 (b) provide the Ombudsman with such comments on the
report and statements as the Commissioner thinks fit;
and

(c) specify what action should, in the opinion of the
Commissioner, be taken with respect to the complaint
to which the investigation related.

10 (2) After receiving that material and information, the
Ombudsman may require the Commissioner and any police
officer who investigated the complaint to provide such
additional information as the Ombudsman considers is
15 necessary to enable the Ombudsman to determine whether
the complaint was properly investigated.

**Investigation under the Ombudsman Act 1974 where
complaint not dealt with in time**

20 148. (1) If the Ombudsman has not, in relation to a
complaint, received from the Commissioner the material and
information referred to in section 147 (1) within the relevant
period referred to in this section, the Ombudsman may make
the conduct to which the complaint relates the subject of an
investigation under the Ombudsman Act 1974.

25 (2) The Ombudsman must notify the Commissioner in
writing when the Ombudsman commences such an
investigation.

(3) The **relevant period** is the period of 180 days after:
30 (a) the Commissioner notifies the Ombudsman pursuant to
section 140 that the complaint is being investigated; or
(b) the Ombudsman notifies the Commissioner pursuant to
section 141 of the Ombudsman's determination that the
complaint should be investigated,

or that period as extended under section 149 or 150.

35 (4) However, the period of 180 days referred to in
subsection (3) is to be a period of 90 days in the case of a
complaint of a class or kind that the Ombudsman and the
Commissioner have agreed should be subject to that shorter
period.

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Extension of time where complaint not dealt with

149. (1) The Commissioner may apply to the Ombudsman 5
for an extension of the relevant period referred to in section
148, and the Ombudsman may grant the extension.

(2) More than one such application may be made, but no 10
such application may be made after the relevant period has
expired.

(3) If the Ombudsman grants the extension, the 15
Ombudsman must, if the complainant is identified, notify the
complainant in writing, giving the reasons for granting the
extension, and must send to the Commissioner a copy of the
notification.

(4) If the Ombudsman does not, within 28 days, grant the
extension applied for under this section, the Commissioner
may, within 14 days thereafter, apply to the President of the
Police Tribunal for that extension.

(5) The President of the Police Tribunal may: 20

(a) grant the extension applied for subject to such
conditions, if any, as are specified by the President; or

(b) refuse to grant the extension,

and must notify the decision to the Commissioner, the 25
Ombudsman and, if the complainant is identified, the
complainant.

(6) The President of the Police Tribunal may authorise
another member of the Police Tribunal to deal with an
application to the President under this section.

(7) If an application for an extension is made to the 30
Ombudsman in accordance with this section, the relevant
period is extended until:

(a) the application is granted by the Ombudsman; or

(b) the application is withdrawn; or

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(c) if the application is not granted by the Ombudsman:

- 5 (i) the time for the making of an application to the President of the Police Tribunal for that extension expires; or
- (ii) if an application is made within that time to the President—the application is dealt with by the President or withdrawn.

(8) If an extension is granted by the Ombudsman or the President of the Police Tribunal, the relevant period is extended by the period specified by the Ombudsman or President when granting the extension.

15 **Extension of time where application for deferral of investigation etc.**

150. (1) If an application for the Ombudsman's consent is made under section 143, the relevant period referred to in section 148 is extended until:

- 20 (a) the application is granted by the Ombudsman; or
- (b) the application is withdrawn; or
- (c) if the application is not granted by the Ombudsman:
 - 25 (i) the time for the making of an application to the President of the Police Tribunal for that consent expires; or
 - (ii) if an application is made within that time to the President—the application is dealt with by the President or withdrawn.

30 (2) If an application for consent under section 143 to the deferral of the commencement or continuation of an investigation is granted by the Ombudsman or the President of the Police Tribunal, the relevant period is taken:

- (a) to have ceased to run on the day the application was made; and
- 35 (b) to recommence to run from the day to which the commencement or continuation is deferred.

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Further investigation if Ombudsman not satisfied about investigation 5

151. (1) If, after receiving the information referred to in section 147, the Ombudsman is not satisfied that the complaint to which the information relates was properly investigated under this Division, the Ombudsman must report to the Commissioner accordingly, specifying what are, in his or her opinion, the deficiencies in the investigation. 10

(2) On receipt of the report, the Commissioner is to cause a further investigation to be conducted in order to remedy the deficiencies referred to in the report.

(3) This Division (including this section) applies to and in respect of a further investigation under this section in the same way as it applies to an initial investigation. 15

Investigation under the Ombudsman Act 1974 after completion of police investigation

152. (1) If, after considering all the material and information provided for the Ombudsman under this Division, the Ombudsman is neither satisfied that a complaint has not been sustained nor satisfied that the complaint has been sustained, the Ombudsman may: 20

(a) make the conduct to which the complaint relates the subject of an investigation under the Ombudsman Act 1974; or 25

(b) having regard to the public interest, determine that no further investigation of the complaint should be carried out. 30

(2) If the Ombudsman determines under subsection (1) (b) that no further investigation of a complaint should be carried out:

(a) the Ombudsman must, if the complainant is identified, notify the complainant accordingly, giving the reasons for the determination, and must send a copy of the notification to: 35

(i) the Commissioner; and

(ii) the police officer whose conduct was the subject of the complaint; and 40

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- 5 (b) the complaint is, for the purposes of this Act, deemed
not to have been sustained.

**Investigation under the Ombudsman Act 1974 before
completion of police investigation**

- 10 153. (1) The Ombudsman may, if satisfied that it is in the
public interest to do so, make the conduct to which a
complaint relates the subject of an investigation under the
Ombudsman Act 1974.

- 15 (2) The Ombudsman may act under this section before the
commencement of an investigation under this Division,
during the progress of any such investigation or before the
results of any such investigation have been considered by the
Ombudsman.

- (3) The Ombudsman must notify the Commissioner of any
action under this section.

- 20 (4) On being so notified, the Commissioner is to
discontinue any investigation under this Division.

- (5) This section has effect despite anything to the contrary
in this Part.

Other police investigations not affected

- 25 154. The Commissioner or any other police officer is not
prevented from investigating, otherwise than under this
Division, a matter relating to a complaint even though an
investigation under this Division is not made, is deferred or
discontinued, is completed or is made the subject of an
investigation under the Ombudsman Act 1974.

30 **Division 5—Reports**

Unjustified complaints

- 35 155. (1) If, after considering all the material and
information provided under Division 4 about a complaint or
after an investigation under the Ombudsman Act 1974 of a
complaint, the Ombudsman is satisfied that the complaint has
not been sustained, the Ombudsman is to report that fact to:

- (a) the complainant, if the complainant is identified; and
(b) the Commissioner; and

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- (c) the police officer whose conduct was the subject of the complaint. 5
- (2) If, after an investigation under the Ombudsman Act 1974 of a complaint, the Ombudsman is neither satisfied that a complaint has not been sustained nor satisfied that the complaint has been sustained, the Ombudsman is to report that fact to: 10
- (a) the complainant, if the complainant is identified; and
- (b) the Commissioner; and
- (c) the police officer whose conduct was the subject of the complaint,
- and the complaint is, for the purposes of this Part, deemed not to have been sustained. 15
- Justified complaints**
156. (1) If, after considering all the material and information provided under Division 4 about a complaint or after an investigation under the Ombudsman Act 1974 of a complaint, the Ombudsman is satisfied that the conduct to which the complaint relates: 20
- (a) was contrary to law; or
- (b) was unreasonable, unjust, oppressive or improperly discriminatory; or 25
- (c) was in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory; or
- (d) was based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or 30
- (e) was based wholly or partly on a mistake of law or fact; or
- (f) was conduct for which reasons should have been given but were not given,
- or that the complaint has been otherwise sustained, the Ombudsman must compile a report relating to the complaint and the conduct to which it relates, giving reasons for his or her conclusions. 35

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- (2) In such a report, the Ombudsman may recommend:
- 5 (a) that the conduct to which it relates be considered or reconsidered by the police officer whose conduct it was, or by any person in a position to supervise or direct that police officer in relation to the conduct or to review, rectify, mitigate or change the conduct or its consequences; or
- 10 (b) that action be taken to rectify, mitigate or change the conduct or its consequences; or
- (c) that reasons be given for the conduct; or
- 15 (d) that any law or practice relating to the conduct be changed; or
- (e) that any other action be taken.

- (3) However, the Ombudsman need not compile a report on a complaint that has been sustained if the Ombudsman is satisfied with the action that has been taken by the Commissioner as a result of the complaint being sustained.
- 20

Distribution of report about justified complaints

157. (1) When the Ombudsman has compiled a report under section 156 the Ombudsman must, before acting under subsection (2) or (3):
- 25 (a) inform the Minister of the compilation of the report; and
- (b) consult the Minister if the Minister so requests.
- (2) The Ombudsman must give a copy of the report to the Minister and to the Commissioner and, as soon as practicable after receiving the report, the Commissioner must give a copy of the report to the police officer whose conduct is the subject of the report.
- 30
- (3) The Ombudsman may give a copy of the report to the complainant, if the complainant is identified, except any part of the report that does not relate to his or her complaint.
- 35

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Notification of proposed action on report about justified complaints 5

158. (1) The Commissioner must, as soon as is practicable after receiving a report under section 156, notify the Ombudsman of the nature of the action (if any) proposed to be taken by the Commissioner as a result of the report.

(2) The nature of the action that the Commissioner may propose in the notification includes: 10

- (a) that the police officer be admonished; or
- (b) that a departmental charge be preferred against the police officer; or
- (c) that consideration be given to the police officer being charged with a criminal offence. 15

The notification is not, however, to contain particulars of any penalty proposed to be imposed.

(3) Where the Ombudsman has given a copy of a report under section 156 to the Commissioner and the Ombudsman is of the opinion: 20

- (a) that the Commissioner has unreasonably delayed notifying the Ombudsman under this section with respect to the report; or
- (b) that the nature of the proposed action notified under this section by the Commissioner is, in the circumstances of the case, unreasonable or inadequate; or 25
- (c) that the Commissioner has unreasonably delayed taking action as a result of the report, 30

the Ombudsman is to advise the Commissioner accordingly by notice in writing served on the Commissioner.

(4) If the Ombudsman and the Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (3), either or both of them may refer the issue to the President of the Police Tribunal. 35

(5) The President of the Police Tribunal may:

- (a) determine the issue; or
- (b) decline to do so,

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5 and must notify the decision to the Commissioner and the
Ombudsman.

(6) The President of the Police Tribunal may determine the
issue:

- 10 (a) by directing the Commissioner to give the Ombudsman
the notification under subsection (1) forthwith or
within a period specified in the direction; or
- (b) by directing the Commissioner to consider taking
action of the nature specified in the direction; or
- 15 (c) by directing the Commissioner to take action of the
nature proposed by the Commissioner forthwith or
within a period specified in the direction.

(7) Any direction given by the President of the Police
Tribunal under this section is to be carried into effect by the
Commissioner.

20 (8) The President of the Police Tribunal may authorise
another member of the Police Tribunal to deal with an issue
referred to the President under this section.

(9) Nothing in this section:

- 25 (a) permits the President of the Police Tribunal to review a
determination made by the Ombudsman that a
complaint has been sustained; or
- (b) affects the exercise by the Police Tribunal of its
jurisdiction under any other provision of this Act.

Notification of action taken on report

30 159. (1) The Commissioner must, as soon as practicable
after taking action as the result of a report under section 156
(being action with respect to a police officer whose conduct
is the subject of a complaint), notify the Ombudsman of the
nature of the action so taken.

35 (2) The notification must, if the action taken consists of or
includes the imposition of a penalty, contain particulars of the
nature and quantum of the penalty imposed.

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(3) The Ombudsman is to determine whether, in the circumstances of the case, action so notified was, in the opinion of the Ombudsman: 5

- (a) appropriate; and
- (b) taken within a reasonable time.

Report to complainant

160. The Ombudsman: 10

- (a) may from time to time report to the complainant (if identified) on the progress of an investigation under Division 4 into the complaint; and
- (b) must report to the complainant (if identified) on the results of the investigation; and 15
- (c) may make to the complainant such comments on the investigation and its consequences as the Ombudsman thinks fit.

Special report to Parliament

161. (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the exercise of his or her functions under this Part. 20

(2) The Ombudsman may include in such a report a recommendation that the report be made public as soon as practicable. 25

(3) If the report contains that recommendation, the Minister may make it public before it is presented to Parliament.

Special report about serious misconduct 30

162. If the Ombudsman is of the opinion that a police officer is guilty of such serious misconduct as may warrant dismissal or punishment, the Ombudsman may report his or her opinion and the reasons for that opinion to the Minister and Commissioner. 35

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Division 6—Miscellaneous

5 **Ombudsman may require further information from complainant**

10 163. (1) For the purposes of the conciliation of a complaint under Division 3 or for the purpose of determining whether a complaint should be investigated under Division 4, the Ombudsman may, if the complainant is identified, do any one or more of the following:

- 15 (a) request a complainant to attend before the Ombudsman for the purpose of providing further information concerning the complaint;
- (b) request the complainant to provide further written particulars concerning the complaint;
- 20 (c) request the complainant to verify by statutory declaration his or her complaint, or any particulars given by the complainant concerning his or her complaint.

(2) The Ombudsman may withdraw the request if the complainant objects and the Ombudsman is satisfied that the grounds of the objection are well-founded.

25 (3) If the Ombudsman makes a request (and it is not withdrawn), the Ombudsman is to take no further action in connection with the complaint concerned until the request is complied with or a reasonable time for compliance with the request has elapsed.

30 (4) If the request is not complied with within a reasonable time, the Ombudsman may treat the complaint concerned as having been dealt with under Division 3 in a manner acceptable to the complainant. If the Ombudsman does so, the Ombudsman is to inform the Commissioner and the complainant accordingly.

35 **Ombudsman may request further information from other persons**

40 164. (1) For the purpose of determining whether a complaint should be investigated under Division 4, the Ombudsman may also request information from persons other than the complainant.

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(2) However, this section does not authorise the
Ombudsman: 5

(a) to investigate the complaint or to collect information
for the purposes of the investigation of the complaint
or of a report under this Part; or

(b) to interview the police officer the subject of the
complaint; or 10

(c) to require persons to provide information.

**Ombudsman may require Commissioner to provide
information etc.**

165. (1) For the purposes of a conciliation of a complaint
or for the purpose of determining whether a complaint should 15
be investigated under Division 4, the Commissioner must, at
the request of the Ombudsman, provide the Ombudsman:

(a) with an explanation of the policies, procedures and
practices of the Police Service relevant to the conduct
complained of; and 20

(b) with such documentary and other information
(including records of interviews) as the Ombudsman
requests with respect to any inquiries made by the
Commissioner or other police officers into the
complaint; and 25

(c) to the extent to which the Commissioner is able to do
so, with any explanation, comment or information
sought by the Ombudsman in connection with the
complaint.

(2) The Ombudsman may withdraw any such request if the
Commissioner objects and the Ombudsman is satisfied that 30
the grounds of the objection are well-founded.

(3) The Ombudsman may, instead of making any such
request, seek the information concerned from other police
officers in accordance with arrangements agreed to by the 35
Commissioner and the Ombudsman.

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Certain information to be confidential

- 5 166. (1) If the Commissioner is of the opinion that
publication of any material or information:
- (a) which, under this Part, the Commissioner or any other
 police officer is required to provide for the
 Ombudsman; or
- 10 (b) which, under the Ombudsman Act 1974, the
 Commissioner or any other police officer is required,
 in the course of an investigation under that Act of the
 conduct to which a complaint relates, to provide for the
 Ombudsman,
- 15 might prejudice the investigation or prevention of crime, or
 otherwise be contrary to the public interest, the
 Commissioner is to inform the Ombudsman accordingly,
 giving the reasons for his or her opinion.
- (2) If the Ombudsman, pursuant to a requirement made
20 under the Ombudsman Act 1974 in the course of an
 investigation under that Act of the conduct to which a
 complaint relates, receives material or information from a
 police officer, the Ombudsman may not, except as provided
 in subsection (3) (b) or with the consent of the
25 Commissioner, publish that material or information,
 otherwise than to the Commissioner, until the expiration of
 21 days after that receipt.
- (3) If the Ombudsman is provided with material or
 information in respect of which the Commissioner has given
30 the opinion referred to in subsection (1), the Ombudsman:
- (a) may not, except as provided in paragraph (b), publish
 that material or information; and
- (b) may, if in his or her opinion the circumstances so
 warrant, make in relation to that material or
35 information a report to the Minister for presentation to
 Parliament.

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Certain provisions of Ombudsman Act 1974 to apply

167. Sections 17, 18 and 23 of the Ombudsman Act 1974 5
apply to and in respect of the exercise by the Ombudsman of
the functions conferred and imposed by this Part in the same
way as they apply to and in respect of an investigation by the
Ombudsman under the Ombudsman Act 1974.

Information to be confidential 10

168. Without limiting the operation of section 34 (1) (a) of
the Ombudsman Act 1974, in the application of section 34
(1) of that Act to and in respect of information received in
the course of the administration or execution of this Part, the
reference in that subsection: 15

- (a) to a public authority—is to be construed as a reference
to a police officer; and
- (b) to the head of that authority—is to be construed as a
reference to the Commissioner; and
- (c) to the responsible Minister—is to be construed as a 20
reference to the Minister administering the Police
Service Act 1990.

Ombudsman or officer as witness

169. (1) Neither the Ombudsman, nor an officer or special
officer of the Ombudsman who is not a police officer, is 25
competent or compellable, in any legal proceedings or in any
proceedings before the Police Tribunal, to give evidence or
produce documents in respect of any matter in which he or
she is or was involved in the course of the administration or
execution of this Part. 30

(2) Subsection (1) does not apply to or in respect of any
proceedings under section 37 of the Ombudsman Act 1974 or
under Part 3 of the Royal Commissions Act 1923.

(3) Subsections (1) and (2) do not prejudice or affect the
operation of section 35 of the Ombudsman Act 1974 in 35
relation to the administration and execution of this Act.

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Limitation on delegation of functions by Ombudsman

5 170. (1) The functions of the Ombudsman that may, under section 10 of the Ombudsman Act 1974, be delegated to a special officer of the Ombudsman (other than an Assistant Ombudsman) do not include:

- 10 (a) any power or duty to make a report under this Act; or
(b) the power to require additional information referred to in section 147 (2) of this Act.

15 (2) The functions of the Ombudsman that may, under section 10 of the Ombudsman Act 1974, be delegated to an Assistant Ombudsman do not include any power or duty to make a report under this Act (other than a report under section 155, 156 or 160).

Liability to do duty continues

20 171. This Part does not operate to absolve a police officer who receives a complaint from liability to perform any duty imposed on the police officer otherwise than by this Part.

Publicity

25 172. (1) The Ombudsman is to cause to be prepared pamphlets briefly explaining the rights and duties of police officers and the public under this Part.

(2) The pamphlets are to be written in the English language and in such other languages as the Ombudsman considers necessary.

(3) The Ombudsman must:

- 30 (a) supply the Commissioner with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at each police station in the State, and the Commissioner is to distribute the pamphlets accordingly; and
- 35 (b) supply the Director-General of the Department of Courts Administration with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at the office of each Local Court in the State, and the Director-General is to distribute the pamphlets accordingly; and

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OF POLICE SERVICE—*continued***

- (c) make such arrangements as the Ombudsman thinks fit with any Government department or instrumentality or with any other body or organisation for making the pamphlets available, or distributing them, to any interested person; and 5
- (d) take such further or other action as the Ombudsman considers necessary to bring the provisions of this Part to the attention of interested persons. 10

(3) Part 9:

Omit Part 9, insert instead:

**PART 9—DISCIPLINE OF MEMBERS OF THE
POLICE SERVICE** 15

Division 1—Discipline of police officers

Instigation of disciplinary action by Commissioner

173. (1) If the Commissioner considers that action should be taken against a police officer, the Commissioner may direct the preferment of a departmental charge against the officer or the institution of court proceedings, whichever the Commissioner considers appropriate. 20

(2) If the Commissioner is satisfied that any conduct of a police officer was not satisfactory but does not justify the preferment of a departmental charge, the Commissioner may admonish the officer for that conduct. 25

(3) A departmental charge must set out whether the charge relates to conduct the subject of a complaint investigated under Division 4 of Part 8A.

**Departmental charges to be heard and determined by
Police Tribunal exercising original jurisdiction** 30

174. (1) The Police Tribunal has exclusive jurisdiction to hear a departmental charge that is denied by the police officer and to determine whether it has been proved if:

- (a) the charge relates to conduct the subject of a complaint investigated under Division 4 of Part 8A; or 35

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
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5 (b) the charge does not relate to such conduct but the
police officer elects to have the charge heard by the
Police Tribunal.

(2) In exercising the original jurisdiction conferred by this
section, the Police Tribunal is to be constituted by a member
sitting alone.

10 **Recommendations by Police Tribunal exercising original
jurisdiction as to penalty**

175. (1) If:

15 (a) the Police Tribunal, exercising its original jurisdiction,
determines that a departmental charge preferred against
a police officer has been proved; or

(b) the police officer admits the charge after the Police
Tribunal commences to hear the charge,

20 the Police Tribunal is to make an assessment of the penalty, if
any, that the Police Tribunal considers would be appropriate
to be imposed on the police officer.

(2) The Police Tribunal is to advise the Minister or the
Commissioner, as the case requires, of its recommendation
with respect to that penalty.

(3) Before:

25 (a) the Minister makes a recommendation (if any) to the
Governor with respect to the penalty that might be
imposed on the police officer against whom the
departmental charge was preferred; or

30 (b) the Commissioner imposes a penalty (if any) on any
such police officer,

the Minister or the Commissioner is to take into
consideration the recommendation made by the Police
Tribunal with respect to that penalty.

35 **Appeal to Review Division of Police Tribunal against
decision of Tribunal exercising original jurisdiction**

176. (1) If the Police Tribunal exercising its original
jurisdiction determines that a departmental charge preferred
against a police officer has been proved, the police officer

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
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may, within 30 days after the date of the determination,
appeal against the determination to the Review Division of
the Police Tribunal. 5

(2) The appeal may be made on any one or more of the
following grounds:

- (a) that the officer is not guilty of the charge;
- (b) that the evidence disclosed no offence; 10
- (c) that the determination is bad and contrary to law;
- (d) that the determination is against the evidence and the
weight of evidence.

(3) An appeal is to be in the nature of a review of the
matter on the evidence given in the relevant proceedings in
the Police Tribunal's original jurisdiction. 15

(4) New evidence may nevertheless be given and
considered in the appeal if the Review Division of the Police
Tribunal is satisfied that it was not reasonably available at the
time the original proceedings were heard. 20

Proceedings relating to departmental charges

177. (1) At any proceedings before the Police Tribunal
relating to a departmental charge, whether in its original
jurisdiction or by way of appeal to the Review Division:

- (a) the Commissioner and the police officer charged are
each entitled to be represented by counsel, solicitor or
agent; and 25
- (b) if the charge relates to conduct the subject of a
complaint investigated under Division 4 of Part 8A—
the complainant is not a party; and 30
- (c) the public is not to be excluded unless the Police
Tribunal otherwise orders; and
- (d) the function of the Police Tribunal is to determine, on
the true merits and justice of the case and without
being bound by strict legal precedent, whether or not 35
the charge has been proved.

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

- 5 (2) The Police Tribunal is to cause a copy of its
determination at those proceedings to be sent to:
- (a) the Commissioner; and
 - (b) the police officer charged; and
 - (c) the Ombudsman; and
 - 10 (d) if the charge relates to conduct the subject of a
complaint investigated under Division 4 of Part 8A—
the complainant, if the complainant is identified.

When charges duly proved

- 15 178. (1) A departmental charge against a police officer is
duly proved if:
- (a) in the case of a charge heard by the Police Tribunal—
the Police Tribunal determines that the charge has been
proved; or
 - (b) in any other case—the Commissioner determines that
the charge has been proved,
 - 20 or the charge is admitted by the police officer in accordance
with the regulations.
- (2) A departmental charge that the Police Tribunal
exercising its original jurisdiction determines to be proved is
not duly proved:
- 25 (a) until the expiry of 30 days after the date of the
determination; or
 - (b) if an appeal to the Review Division of the Police
Tribunal is made within that time, until that Review
Division determines that the charge is proved or the
30 appeal is duly withdrawn.
- (3) A criminal charge against a police officer is duly
proved if a court convicts the officer of the offence or finds
that the charge has been proved without proceeding to a
conviction.

35 **Disciplinary action by Commissioner**

179. (1) If a departmental charge or criminal charge
against a police officer is duly proved, the Commissioner
may take such action against the police officer as the
Commissioner considers appropriate.

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**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
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- (2) In particular, the Commissioner may do any one or more of the following: 5
- (a) require the police officer to undergo counselling;
 - (b) reprimand the police officer;
 - (c) fine the police officer;
 - (d) direct that the police officer (if a constable) lose seniority; 10
 - (e) reduce the salary of the police officer (if a non-commissioned officer);
 - (f) demote the police officer (if a non-commissioned officer) to a lower rank or grade, or recommend to the Minister that the police officer (if a commissioned officer) be so demoted; 15
 - (g) dismiss the police officer (if a non-commissioned officer) or recommend to the Minister that the police officer (if a commissioned officer) be dismissed.
- (3) Any fine imposed by the Commissioner under this section may be recovered in a court of competent jurisdiction as a debt due to the Crown or deducted from the pay of the police officer in accordance with the regulations. 20
- Disciplinary action by Governor**
180. (1) The Governor may, with respect to the discipline of commissioned police officers, impose either or both of the following penalties: 25
- (a) demote the police officer to a lower rank or grade;
 - (b) dismiss the police officer.
- (2) This section does not limit any other power of the Governor with respect to commissioned police officers. 30
- Regulations relating to discipline**
181. (1) The regulations may make provision for or with respect to the discipline of police officers.
- (2) In particular, the regulations may make provision for or with respect to: 35
- (a) the reporting by police officers of misconduct of other police officers; and

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

- 5 (b) the preferment of departmental charges against police officers; and
- (c) the denial or admission of departmental charges; and
- (d) elections for the hearing and determination by the Police Tribunal of departmental charges not relating to conduct the subject of a complaint investigated under Division 4 of Part 8A; and
- 10 (e) proceedings with respect to departmental charges; and
- (f) the suspension of police officers from office (with or without pay) pending further investigation and disciplinary action; and
- 15 (g) disciplinary action against police officers.

**Division 2—Disciplinary appeals by police officers
to GREAT**

Appeal to GREAT against disciplinary decision of Commissioner

- 20 182. (1) A police officer (other than a member of the Police Service Senior Executive Service) may appeal to GREAT against a decision of the Commissioner to punish the police officer:
- 25 (a) by the imposition of a fine; or
- (b) by a reduction in salary; or
- (c) by a demotion to a lower rank or grade; or
- (d) by suspension, dismissal, discharge or transfer.
- (2) If the decision appealed against was in respect of a charge heard and determined by the Police Tribunal:
- 30 (a) the appeal is limited to an appeal against the severity of the punishment imposed; and
- (b) GREAT, the Commissioner and the appellant are bound by the findings of the Police Tribunal on the determination of the charge or on appeal to the Review Division of the Police Tribunal.
- 35

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Application of GREAT Act

183. (1) The Government and Related Employees Appeal Tribunal Act 1980 applies to and in respect of an appeal under this Division in the same way as it applies to an appeal under Division 2 of Part 3 of that Act. 5

(2) In order to determine the membership of and to constitute GREAT for the purpose of hearing and determining an appeal under this Division, a police officer is taken to be an employee and the Commissioner the employer, within the meaning of the Government and Related Employees Appeal Tribunal Act 1980. 10

Division 3—Miscellaneous provisions 15

Discipline of administrative officers

184. (1) The provisions of Part 5 of the Public Sector Management Act 1988 and the regulations made under that Part (Discipline and conduct of officers of the Public Service) apply to administrative officers in the same way as they apply to officers of the Public Service. 20

(2) For that purpose:

- (a) a reference to the appropriate Department Head is to be read as a reference to the Commissioner; and
- (b) a reference to the Public Service is to be read as a reference to the Police Service. 25

Disciplinary appeals to GREAT by non-executive administrative officers

185. The provisions of the Government and Related Employees Appeal Tribunal Act 1980 relating to disciplinary appeals apply to administrative officers (not being members of the Police Service Senior Executive Service) as if those officers were employees, and the Commissioner were their employer, within the meaning of that Act. 30

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Appeal to GREAT relating to leave when hurt on duty

5 186. (1) A police officer may appeal to GREAT against a
decision of the Commissioner to grant or refuse leave of
absence on full pay to the police officer during any period of
absence caused by that officer being hurt on duty within the
10 meaning of section 1 (2) of the Police Regulation
(Superannuation) Act 1906.

(2) The Government and Related Employees Appeal
Tribunal Act 1980 applies to and in respect of an appeal
under this section in the same way as it applies to an appeal
under Division 2 of Part 3 of that Act.

15 (3) In order to determine the membership of and to
constitute GREAT for the purpose of hearing and
determining an appeal under this section, a police officer is
taken to be an employee and the Commissioner the employer,
within the meaning of the Government and Related
20 Employees Appeal Tribunal Act 1980.

Transitional

187. (1) The provisions of this Act and the regulations
relating to disciplinary proceedings against members of the
Police Service apply to conduct before as well as to conduct
25 after the commencement of this Act.

(2) This section is subject to Parts 1 and 6 of Schedule 4.

(4) Part 9A:

Before Part 10, insert:

**PART 9A—THE POLICE TRIBUNAL OF NEW
SOUTH WALES**

Establishment of Police Tribunal

188. (1) There is established the Police Tribunal of New
South Wales.

35 (2) The Police Tribunal is to consist of a President, a
Deputy President and other members as provided by this
Part.

(3) The Police Tribunal is a court of record and its seal is
to be judicially noticed.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

President of Police Tribunal and Deputy President

189. (1) The President of the Police Tribunal is to be appointed by the Governor. 5
- (2) The Governor may appoint a Deputy President of the Police Tribunal.
- (3) The Deputy President is to act in the place of the President during the illness or absence of the President and on other occasions as and when required by the President to do so. While so acting, the Deputy President is taken, for all purposes, to be the President. 10
- (4) The President and Deputy President are each to be:
- (a) a Judge of the Supreme Court nominated by the Chief Justice of that Court; or 15
 - (b) a Judge of the Industrial Court nominated by the Chief Judge of that Court; or
 - (c) a Judge of the District Court nominated by the Chief Judge of that Court; or 20
 - (d) the Senior Chairperson of GREAT.
- (5) The President and Deputy President each hold office for such term (not exceeding 5 years) as is specified in their instruments of appointment, but are eligible for re-appointment. However, a person vacates office as President or Deputy President if the person ceases to hold the office which qualified the person for appointment as President or Deputy President. 25
- (6) The rank, title, status, precedence, remuneration, functions, rights and privileges of a Judge and the continuity of his or her service as a Judge are not affected by the exercise of the functions conferred or imposed on the Judge by or under this Act. 30
- (7) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of the President or Deputy President. 35
- (8) Nothing in this Part prevents the Chief Justice of the Supreme Court, the Chief Judge of the Industrial Court or the Chief Judge of the District Court from being nominated and appointed as President. 40

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

Other members of Police Tribunal

5 190. Each Judge of the District Court is a member of the Police Tribunal.

Review Division of Police Tribunal

10 191. (1) The Review Division of the Police Tribunal is to be constituted by the President of the Police Tribunal and 2 members of the Police Tribunal sitting together.

(2) At a sitting of the Review Division of the Police Tribunal:

(a) a decision of the President of the Police Tribunal as to:

- 15 (i) the jurisdiction of the Police Tribunal; or
(ii) the admissibility of evidence; or
(iii) procedure,

is the decision of the Police Tribunal; and

20 (b) subject to paragraph (a), the President of the Police Tribunal has one vote and each of the members present has one vote and a decision supported by a majority in number of those votes is a decision of the Police Tribunal.

Powers of royal commission

25 192. (1) In the exercise of its jurisdiction or the conduct of an inquiry, the Police Tribunal (or, in the case of the Review Division, the President) has the powers, authorities, protections and immunities of a commissioner appointed under Division 1 of Part 2 of the Royal Commissions Act 1923.

30 (2) That Act (except section 13 and Division 2 of Part 2) applies to proceedings before the Police Tribunal in the same way as it applies to proceedings before a royal commission, and so applies as if section 17 (4) of that Act had been repealed.

35 **Subpoenas**

193. (1) In accordance with a request by a party to any proceedings before the Police Tribunal, the Registrar of the Police Tribunal is required to issue:

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
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- (a) a subpoena to give evidence, requiring the person to whom it is directed to attend and give evidence at the proceedings; or 5
- (b) a subpoena for production, requiring the person to whom it is directed to attend and produce, for the purpose of evidence at the proceedings, any document or thing that is in his or her possession or control and specified in the subpoena. 10

(2) A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing to the Registrar of the Police Tribunal.

(3) A person is not required to comply with a subpoena unless, not later than a reasonable time before the day on which the person's attendance is required, an amount sufficient to meet the reasonable expenses of the person carrying out the requirements of the subpoena is paid or tendered to the person. 15 20

(4) A person is not bound by a subpoena to produce any document or thing which is not specified or otherwise sufficiently described in the subpoena or which the person would not be bound to produce on a subpoena for production in the Supreme Court. 25

Attendance

194. (1) If the attendance of a person before the Police Tribunal is required by a subpoena issued under this Part and the person defaults in attending as required by the subpoena, the Tribunal may, on the application of a party or of its own motion: 30

- (a) issue a warrant to a police officer, or to such other person as the Police Tribunal may appoint, directing that the defaulting person be arrested and brought before the Police Tribunal and, if appropriate, be kept in custody as provided by subsection (3); or 35
- (b) order the defaulting person to appear before the Police Tribunal to show cause as to why such a warrant should not be issued against that person.

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5 In either case, the Police Tribunal may order the defaulting person to pay any costs attributable to the default.

(2) A person arrested pursuant to a warrant issued by the Police Tribunal must be brought before the Police Tribunal as soon as practicable.

10 (3) The person is to be kept in custody as directed by the warrant until:

(a) the person is brought before the Police Tribunal or the person's earlier release is ordered by the Police Tribunal or the Supreme Court; or

15 (b) the person duly gives an undertaking to comply with the requirements of the subpoena.

(4) A direction in a warrant for the keeping of a person in custody is sufficient authority for the person's being kept in custody in accordance with the direction.

20 (5) This section applies in relation to a subpoena issued under this Part to the exclusion of sections 13 and 14 of the Evidence Act 1898.

Orders prohibiting publication

25 195. In any proceedings before the Police Tribunal, the Police Tribunal may by order prohibit or restrict the publication of the name and address:

(a) of any witness or complainant concerned in the proceedings; or

30 (b) if the proceedings are by way of appeal—of any witness or complainant concerned in the appeal or any previous proceedings.

Contempt of the Police Tribunal

35 196. (1) A person who publishes any matter, or causes any publication to be made, in contravention of an order under section 195 is guilty of contempt of the Police Tribunal.

(2) If a person is brought before the Police Tribunal pursuant to a warrant for a failure to produce a document or thing as required by a subpoena, the person is guilty of

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
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contempt of the Police Tribunal committed in the face of the Police Tribunal unless the person produces the document or thing, or duly gives an undertaking to produce it. 5

(3) Failure to comply with an undertaking referred to in this section or in section 194 is taken to constitute a contempt of the Police Tribunal committed in the face of the Police Tribunal. 10

(4) A contempt of the Police Tribunal referred to in this section or arising from the application, in accordance with this Division, of any provision of the Royal Commissions Act 1923 is punishable by the Supreme Court in the same way as a similar contempt of a royal commission is punishable by that Court. 15

Inquiries commissioned by Minister

197. (1) At the request of the Minister, the Police Tribunal is to inquire into and report to the Minister on such of the following matters as may be specified in the request: 20

- (a) any matter relating to the discipline of police officers;
- (b) any matter relating to the exercise by police officers, in a particular case or cases, of their functions;
- (c) any matter which, in the opinion of the Minister, is relevant to or arises out of such a matter. 25

(2) For the purposes of this section, the Police Tribunal is to be constituted by the President of the Police Tribunal sitting alone.

(3) At any proceedings before the Police Tribunal under this section, the public is not to be excluded unless the Police Tribunal so orders. 30

(4) A report to the Minister under this section:

- (a) is to be presented to Parliament; and
- (b) may contain a recommendation that the report be made public as soon as practicable. 35

(5) The Minister may make a report to the Minister under this section public before it is presented to Parliament.

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

- 5 (6) If a departmental charge recommended in a report under this section has been preferred against a police officer and, otherwise than after the Police Tribunal has commenced to hear the charge in its original jurisdiction, the charge is admitted by the police officer:
- 10 (a) the Minister, before making a recommendation (if any) to the Governor with respect to the penalty which might be imposed by the Governor on the police officer; or
- (b) the Commissioner, before imposing a penalty (if any) on the police officer,
- 15 as the case may require, must:
- (c) refer, for the consideration of the Police Tribunal as constituted for the purposes of this section, the matter of an assessment of an appropriate penalty; and
- 20 (d) take into consideration the recommendations made under subsection (7) by the Police Tribunal with respect to the penalty.
- (7) If, under subsection (6) (c), the Minister or the Commissioner refers to the Police Tribunal, as constituted for the purposes of this section, the matter of an assessment of an appropriate penalty which might be imposed on a police officer in respect of a departmental charge preferred against the police officer, the Police Tribunal, as so constituted, is to make an assessment of the penalty (if any) which the Police Tribunal considers would be appropriate to be imposed on the police officer and advise the Minister or the Commissioner of its recommendations with respect to that penalty.
- 25 30
- (8) At any proceedings before the Police Tribunal under subsection (7):
- 35 (a) the Commissioner and the police officer with respect to whom a recommendation under this section is required to be made are each entitled to be represented by counsel, solicitor or agent; and

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

- (b) the public is not to be excluded unless the Police Tribunal exercising jurisdiction at those proceedings otherwise orders. 5

Sittings etc. of Police Tribunal

198. (1) The President of the Police Tribunal is to arrange for sittings of the Police Tribunal and the allocation of its work. 10

(2) If the President of the Police Tribunal is not the Chief Judge of the District Court, the President is to arrange for sittings and allocate work subject to consultation with the Chief Judge.

- (3) There may be contemporaneous sittings of the Police Tribunal constituted by different members and those sittings may be in different places. 15

Proceedings of Police Tribunal

199. (1) Subject to this Act and the regulations, the Police Tribunal has control of its proceedings. 20

(2) The regulations may make provision for or with respect to the institution and conduct of proceedings before the Police Tribunal.

- (3) Until the regulations otherwise provide, a registrar of the District Court nominated by the President of the Police Tribunal is the registrar of the Police Tribunal. 25

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL
APPEALS BY POLICE OFFICERS**

(Sec. 3) 30

- (1) Section 66 (Temporary appointments to non-executive positions), section 67 (Transfer of non-executive officers):

Omit "Divisions 3–5" wherever occurring, insert instead "Divisions 3–5B".

- (2) Sections 72 (1) (b), 74, 78 (1) (b): 35

Omit "the Police Regulation (Appeals) Act 1923" wherever occurring, insert instead "Division 5A".

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL APPEALS
BY POLICE OFFICERS—*continued*

(3) Part 6, Divisions 5A and 5B:

5 After Division 5 of Part 6, insert:

**Division 5A—Promotion appeals to GREAT by certain
police officers**

**Appeals to GREAT against promotions of constables to
higher grade within that rank**

10 81A. (1) A police officer of the rank of constable may
appeal to GREAT against a decision of the Commissioner to
promote another police officer of the rank of constable to a
higher grade in that rank if:

15 (a) the police officer who appeals is more entitled to be
promoted than the other police officer, having regard
only to the regulations governing the promotion of
police officers; and

(b) the police officer who appeals is qualified for
promotion to that higher grade.

20 (2) The Commissioner must, as soon as practicable after
making a decision in respect of which an appeal may be
made under this section, cause a notification of the decision
to be given to all police officers who are entitled to appeal
against that decision.

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

30 (4) A decision in respect of which an appeal may be made
under this section may be carried into effect even though:

(a) the period within which appeals against that decision
may be made has not expired; or

35 (b) if an appeal has been made within that period and has
not been withdrawn, the appeal has not yet been
determined by GREAT.

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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL APPEALS
BY POLICE OFFICERS—*continued*

(5) If a decision to promote a police officer is carried into effect in those circumstances, the promotion of the police officer is not, except as provided by the regulations, affected by the fact that the appeal under this section of any appellant against that decision is successful. 5

(6) GREAT may, if it thinks fit, hear 2 or more appeals made under this section in respect of the same decision and make a single composite decision with respect to all or any of those appeals. 10

Appeals to GREAT against promotions to sergeant or to higher grade of sergeant

81B. (1) A police officer of the highest grade of the rank of constable may appeal to GREAT against a decision of the Commissioner to appoint another police officer of that grade and rank to a vacant position in the rank of sergeant if the police officer who appeals was an applicant for the vacant position and is eligible for appointment to the vacant position. 15
20

(2) A police officer of the rank of sergeant (but not of the highest grade in that rank) may appeal to GREAT against a decision of the Commissioner to appoint another police officer of the rank of constable or of the rank of sergeant (but not of the highest grade in the rank of sergeant) to a vacant position in the highest grade of the rank of sergeant if the police officer who appeals was an applicant for the vacant position and is eligible for appointment to the vacant position. 25
30

(3) The only ground on which an appeal may be made under this section is that the merit of the appellant is greater than that of the other police officer.

Appeal to GREAT against promotion to inspector

81C. (1) A police officer may appeal to GREAT against a recommendation of the Police Board under section 71 for the appointment of another police officer to a vacant position in any rank of inspector if the police officer who appeals was an applicant for the vacant position and is eligible for appointment to the vacant position. 35
40

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL APPEALS
BY POLICE OFFICERS—*continued***

- 5 (2) The only ground on which an appeal may be made
under this section is that the merit of the appellant is greater
than that of the other police officer.

Procedure for appeals

- 10 81D. The provisions of the Government and Related
Employees Appeal Tribunal Act 1980 relating to promotion
appeals apply to appeals under this Division, subject to the
following:

- (a) the sittings of GREAT for the hearing of appeals are to
be informal;
(b) any other modifications prescribed by the regulations.

15 **Membership etc. of GREAT**

- 81E. In order to determine the membership of and to
constitute GREAT for the purpose of hearing and
determining an appeal under this Division, a police officer is
taken to be an employee (within the meaning of the
20 Government and Related Employees Appeal Tribunal Act
1980) and:

- (a) in the case of an appeal under section 81A or 81B—the
Commissioner; or
(b) in the case of an appeal under section 81C— the Police
25 Board,

is taken to be the employer (within the meaning of that Act)
of the police officer.

**Division 5B—Promotion appeals by non-executive
administrative officers to GREAT**

30 **Appeal to GREAT against promotions of administrative
officers**

- 81F. The provisions of the Government and Related
Employees Appeal Tribunal Act 1980 relating to promotion
appeals apply to non-executive officers (being administrative
officers) as if those officers were employees, and the
35 Commissioner were their employer, within the meaning of
that Act.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990**

(Sec. 3)

- (1) Section 3 (**Definitions**):
Omit section 3 (3). 5
- (2) Section 24 (**Appointment of Commissioner**), section 39 (**Appointment to be made on merit**), section 71 (**Appointment to be made on merit**):
From sections 24 (3) (c), 39 (3) and 71 (2), omit “an official report (referred to in section 3 (3)) on the previous employment and conduct of” wherever occurring, insert instead “a report under section 94A on”. 10
- (3) Section 44 (**Industrial arbitration or legal proceedings excluded**):
From section 44 (2), omit “Industrial Arbitration Act 1940”, insert instead “Industrial Relations Act 1991”. 15
- (4) Section 77 (**Appointment of sergeants to be made on merit**):
From section 77 (2), omit “an official report on the previous employment and conduct of”, insert instead “a report under section 94A on”. 20
- (5) Sections 87, 89, 117:
From sections 87 (2), 89 (1) and 117, omit “Industrial Arbitration Act 1940” wherever occurring, insert instead “Industrial Relations Act 1991”. 25
- (6) Section 91F (as inserted by Act No. 54, 1992):
Omit the section, insert instead:
Complaints against police volunteers
91F. A complaint by any person against a police volunteer may be dealt with under Part 8A in the same way as a complaint against a police officer, and the provisions of that Part apply, with any necessary modifications, to any such complaint. 30

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—*continued*

(7) Section 91FA:

After section 91F, insert:

5 **Discipline of police volunteers**

91FA. (1) The regulations may make provision for or with
respect to the discipline of the volunteer police, including the
definition of conduct constituting a breach of discipline and
the imposition by the Commissioner of any one or more of
10 the following measures on any police volunteer guilty of a
breach of discipline:

- (a) giving a caution or reprimand;
- (b) requiring the volunteer to undergo counselling;
- (c) suspending the volunteer from service;
- 15 (d) revoking the volunteer's appointment as a police
volunteer.

(2) The functions of the Commissioner under this section
are exercisable by a delegate only to the extent provided by
the regulations.

20 (3) The decision, given in accordance with this section and
the regulations, of the Commissioner or a delegate of the
Commissioner in a matter of discipline of a police volunteer
is final and is not subject to appeal or to review by any court
or tribunal, except where the regulations otherwise provide.

25 (4) Regulations made for the purposes of this section may
provide for the adoption, with specified modifications, of the
provisions of Part 9 and the regulations made for the
purposes of that Part.

30 (5) Nothing in this section affects the powers of the
Commissioner under section 91B.

(8) Section 94A:

After section 94, insert:

**Reports by police internal affairs for proposed police
appointments**

35 94A. (1) In this section, "the internal affairs officer"
means a police officer responsible for police internal affairs,
designated by the Commissioner as the internal affairs officer
for the purposes of this section.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—*continued***

- (2) The internal affairs officer must, as soon as practicable after being requested to do so, submit a report to the Minister, Police Board or Commissioner on a person who is being considered for an appointment in the Police Service, being an appointment for which the Minister, Police Board or Commissioner is required by this Act to obtain a report under this section. 5
- (3) The details required to be inserted in a report on a person under this section are as follows: 10
- (a) particulars of any criminal proceedings commenced against the person in New South Wales and, in so far as the internal affairs officer can reasonably ascertain, elsewhere, and the results of those proceedings; 15
- (b) particulars of any complaint:
- (i) which has been made against the person in accordance with Division 2 of Part 8A; and
- (ii) which the Ombudsman has duly reported under that Part to have been sustained or which has not been finally dealt with under that Part; 20
- (c) if the person has been referred to:
- (i) in an investigation commenced under Division 4 of Part 8A; or
- (ii) in any proceedings commenced before the Police Tribunal; or 25
- (iii) at an inquiry or commission held under any other Act (including an Act of the Commonwealth or of another State or a Territory); or
- (iv) at an inquiry authorised by any Minister, 30
- particulars of that investigation or of those proceedings, or of the findings of that inquiry or commission, in so far as they relate to the person;
- (d) particulars relating to such matters (if any) as:
- (i) the Commissioner requires to be included in the report; or 35
- (ii) the internal affairs officer considers appropriate to include in the report;

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—*continued*

- (e) particulars relating to such other matters as are prescribed by the regulations.

5 (9) Sections 95, 95A:

Omit section 95, insert instead:

Arrangements for use by Police Service of staff of other agencies

10 95. The Commissioner may arrange for the use of the services of any staff (by way of secondment or otherwise) of a government agency (whether or not of New South Wales).

Arrangements for use by other agencies of members of Police Service

15 95A. (1) The Commissioner may enter into arrangements with a government agency (whether or not of New South Wales) for the use, by such an agency, of the services of members of the Police Service (by way of secondment or otherwise).

20 (2) While performing services for any such agency, a police officer retains rank, seniority and remuneration as a police officer and may continue to act as a constable. However, this subsection does not prevent the payment of additional remuneration to police officers in accordance with arrangements under this section.

25 (10) Sections 99–120 (**Renumbering**):

Renumber sections 99 to 120 as sections 200 to 221.

(11) Section 102, renumbered as section 203 (**Wearing or possession of police uniform by others**):

(a) Section 102 (1):

30 Omit “who wears the uniform, or a reasonable imitation of the uniform, of a police officer”, insert instead “who wears, or has in possession, a police uniform”.

(b) Section 102 (2):

Omit the subsection, insert instead:

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

- (a) the person had the permission of the Commissioner to wear or possess the police uniform; or

*Police Service (Complaints, Discipline and Appeals) Amendment 1993***SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—continued**

- (b) the person wore or was in possession of the police uniform for the purposes of a public entertainment; or
 - (c) the person had a reasonable excuse for wearing or being in possession of the police uniform. 5
- (c) After section 102 (2), insert:
 - (3) In this section, “**police uniform**” means the uniform of a police officer, and includes:
 - (a) any parts of such a uniform (or any accoutrements of a police officer) that are generally recognised as parts of the uniform or accoutrements of a police officer; or 10
 - (b) a reasonable imitation of such a uniform, parts of a uniform or accoutrements.
- (12) Section 105, renumbered as section 206 (**Disclosure of information relating to Police Board functions**): 15

From section 105 (1) (d), omit “or the Police Regulation (Allegations of Misconduct) Act 1978”.
- (13) Schedule 4 (**Savings, transitional and other provisions**):
 - (a) At the end of clause 2 (1) of Part 1, insert: 20

the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993.
 - (b) At the end of the Schedule, insert:

**PART 6—PROVISIONS CONSEQUENT ON
ENACTMENT OF POLICE SERVICE
(COMPLAINTS, DISCIPLINE AND APPEALS)
AMENDMENT ACT 1993**

Definitions

24. (1) In this Part:

 - “**amending Act**” means the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993; 30
 - “**former appeals Act**” means the Police Regulation (Appeals) Act 1923;
 - “**former complaints Act**” means the Police Regulation (Allegations of Misconduct) Act 1978. 35

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—*continued*

5 (2) In this Part, a reference to the repeal of the former
appeals Act or the former complaints Act is (if different days
are appointed for the repeal of different provisions) a
reference to the repeal of the relevant provisions.

Application of provisions relating to complaints

10 25. (1) Part 8A does not apply to conduct that occurred
before the commencement of the former complaints Act.

(2) Part 8A extends to conduct that occurred after the
commencement of the former complaints Act and before the
commencement of Part 8A.

15 (3) Anything duly done before the commencement of that
Part under a provision of the former complaints Act is
(subject to the regulations under this Schedule) taken to have
been duly done under the corresponding provision of that
Part.

Application of provisions relating to discipline

20 26. (1) Part 9 applies to conduct occurring before or after
the substitution of that Part by the amending Act (including
conduct that occurred before the commencement of that Part
on 1 July 1990).

25 (2) Anything duly done in respect of any disciplinary
matter before that substitution of Part 9 under a provision of
the former Act, the former complaints Act, the former
appeals Act or the regulations under those Acts or this Act is
(subject to the regulations under this Schedule) taken to have
been duly done under the corresponding provision of that
substituted Part 9.

30 **Application of provisions relating to promotion appeals**

27. (1) Divisions 5A and 5B of Part 6 extend to decisions
made before the commencement of those Divisions.

35 (2) Anything duly done before the commencement of those
Divisions under a provision of the former appeals Act is
(subject to the regulations under this Schedule) taken to have
been duly done under the corresponding provision of those
Divisions.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—*continued***

Police Tribunal

28. (1) The Police Tribunal of New South Wales established under the former complaints Act is the same court as the Police Tribunal of New South Wales established under Part 9A of this Act. 5

(2) A person who, immediately before the repeal of the former complaints Act, held office as President or Deputy President of the Police Tribunal is taken to have been appointed to that office under Part 9A of this Act for the balance of the person's term of office. 10

(3) The repeal of the former complaints Act does not affect any proceedings pending before the Police Tribunal immediately before the repeal of that Act and those proceedings may (subject to this Act) be continued despite that repeal. 15

**SCHEDULE 4—CONSEQUENTIAL AMENDMENTS TO
OTHER ACTS**

(Sec. 4) 20

Ombudsman Act 1974 No. 68:

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

(a) Omit the definition of "prescribed conduct", insert instead:
"police conduct" means any action or inaction, or alleged action or inaction, of a police officer when acting as a constable; 25

(b) Omit section 5 (1A), insert instead:

(1A) In this Act, a reference to an investigation under this Act includes a reference to an investigation of police conduct under this Act pursuant to Part 8A of the Police Service Act 1990. 30

(2) Section 7 (**Acting Ombudsman**):

Omit section 7 (4), insert instead:

(4) An acting Ombudsman when acting as Ombudsman is taken to be the Ombudsman. 35

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 4—CONSEQUENTIAL AMENDMENTS TO OTHER
ACTS—*continued*

- (3) Sections 13 (4A), 15 (2), 16, 24 (1), 25, 25A, 29, 32 (4) (b), 34 (3):

5 Omit “prescribed conduct” wherever occurring, insert instead “police conduct”.

- (4) Section 34 (1) (b) (ii):

10 Omit “section 45 of the Police Regulation (Allegations of Misconduct) Act 1978”, insert instead “section 197 of the Police Service Act 1990”.

Police Department (Transit Police) Act 1989 No. 58

- (1) Section 25:

Omit the section, insert instead:

Complaints against members

15 25. A complaint by any person against a member of the transit police service may be dealt with under Part 8A of the Police Service Act 1990 in the same way as a complaint against a police officer, and the provisions of that Part apply, with any necessary modifications, to any such complaint.

- 20 (2) Section 27 (**Procedure for dealing with breaches of discipline**):

- (a) After section 27 (1), insert:

25 (1A) The provisions of Division 1 of Part 9 of the Police Service Act 1990 relating to the jurisdiction of the Police Tribunal to deal with departmental charges against police officers apply, with any necessary modifications, to departmental charges against members of the transit police service.

- 30 (b) From section 27 (2), omit “under section 41 (Hearing of disciplinary charges) of the Police Regulation (Allegations of Misconduct) Act 1978”.

Police Service (Volunteer Police) Amendment Act 1992 No. 54

Schedule 1 (Amendment of Police Service Act 1990):

Omit Schedule 1 (11).

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 5—REPEALS

(Sec. 5)

PART 1—ACTS

Police Regulation (Appeals) Act 1923 No. 33	
Police Regulation (Allegations of Misconduct) Act 1978 No. 84	5
Police Regulation (Allegations of Misconduct) Amendment Act 1983 No. 191	
Police Regulation (Allegations of Misconduct) Amendment Act 1987 No. 135	
Police Regulation (Allegations of Misconduct) Amendment Act 1990 No. 109	10

PART 2—REGULATIONS

All regulations made under the Acts repealed by this Schedule, including:

Police Tribunal Regulation 1979	
Police Internal Affairs Branch Regulation 1984	15

SECOND PRINT

**POLICE SERVICE (COMPLAINTS, DISCIPLINE AND
APPEALS) AMENDMENT BILL 1993**

NEW SOUTH WALES



TABLE OF PROVISIONS

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2. Commencement
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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990 RELATING TO
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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE SERVICE ACT
1990 RELATING TO PROMOTIONAL APPEALS BY POLICE OFFICERS

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS
TO POLICE SERVICE ACT 1990

SCHEDULE 4—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

SCHEDULE 5—REPEALS

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1993

An Act to amend the Police Service Act 1990 with respect to police complaints, discipline and appeals, and in other respects; to repeal the Police Regulation (Allegations of Misconduct) Act 1978 and the Police Regulation (Appeals) Act 1923; and to amend certain other Acts.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993.

5 Commencement

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

Amendment of Police Service Act 1990 No. 47

10 3. The Police Service Act 1990 is amended as set out in Schedules 1-3.

Consequential amendments to other Acts

4. The Acts specified in Schedule 4 are amended as set out in that Schedule.

Repeals

15 5. (1) The Acts specified in Part 1 of Schedule 5 are repealed.

(2) The regulations specified in Part 2 of Schedule 5 are repealed.

(3) Different days may be appointed for the commencement of this section and Schedule 5 for the purpose of repealing different Acts or regulations, or different provisions of an Act or regulation, on different days.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT
1990 RELATING TO COMPLAINTS AND DISCIPLINE OF
MEMBERS OF POLICE SERVICE**

(Sec. 3)

25 (1) Section 3 (**Definitions**):

Insert in alphabetical order:

30 "GREAT" means the Government and Related Employees Appeal Tribunal established under the Government and Related Employees Appeal Tribunal Act 1980;

"Police Tribunal" means the Police Tribunal of New South Wales established under Part 9A;

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

(2) Part 8A:

After Part 8, insert:

5

**PART 8A—COMPLAINTS ABOUT CONDUCT OF
POLICE OFFICERS**

Division 1—Definitions

Definition of “conduct” of police officer

121. (1) In this Part, “conduct” of a police officer means any action or inaction, or alleged action or inaction, of a police officer when acting as a constable. 10

(2) Such conduct does not include conduct relating to a matter of administration that may be made the subject of a complaint under section 12 of the Ombudsman Act 1974. 15

Other definitions

122. In this Part:

“complaint” means a complaint made in accordance with Division 2;

“conciliation” means conciliation under Division 3; 20

“investigation” means investigation under Division 4;

“telephone” includes facsimile transmission or other means of electronic transmission.

Division 2—Complaints against police officers

Right to make complaint

25

123. (1) Any person may make a complaint about the conduct of a police officer.

(2) If the complaint is made in accordance with this Division, it is to be dealt with under this Part.

(3) However, the complaint is not to be so dealt with if it is excluded by this Division. 30

(4) This section does not affect any other right of a person to complain about the conduct of a police officer.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

Excluded complaints

5 124. (1) **Internal management.** A complaint by a person
about the conduct of a police officer is not to be dealt with
under this Part if the conduct is of a class or kind that the
Ombudsman and the Commissioner have agreed concerns the
10 internal management of the Police Service and should not be
subject to this Part.

(2) **Previous complaints.** A complaint by a person about
the conduct of a police officer is not to be dealt with under
this Part if:

15 (a) the person has already made another complaint in
accordance with this Division about the same conduct
of the police officer and that other complaint is being
dealt with, or has been dealt with, under this Part; or

20 (b) the person has already made another complaint (not
being a complaint in accordance with this Division)
about the same conduct of the police officer and that
other complaint:

(i) is being officially investigated; or

25 (ii) has been dealt with after such an investigation,
including, for example, an official investigation by a
Royal Commission or by a Parliamentary Committee,
but not including an investigation by the
Commissioner, the Independent Commission Against
Corruption or the New South Wales Crime
Commission; or

30 (c) the person is not identified in the complaint and
another complaint in which the complainant is
identified has already been made in accordance with
this Division about the same conduct of the police
officer.

35 **Making of complaints**

125. (1) **In writing.** A complaint must be in writing.

(2) **Anonymous complaints.** It is not necessary for the
complainant to be identified in a complaint.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

(3) **How made.** A complaint is duly made if:

- (a) it is delivered to a police officer personally or received by a police officer by post or by facsimile transmission; or 5
- (b) it is lodged at the office of the Ombudsman while that office is open for business or it is received in that office by post or by facsimile transmission; or 10
- (c) it is addressed to the Ombudsman and lodged at a Local Court while that Court is open for business; or
- (d) it is referred to the Ombudsman by the Minister or by the Independent Commission Against Corruption.

(4) **M.P. may act for complainant.** A complaint may, with the written consent of the complainant, be made on his or her behalf by a member of Parliament. 15

(5) **Complaints by prisoners.** If a prisoner informs a prison officer that the prisoner wishes to make a complaint to a police officer, or to the Ombudsman, the prison officer must: 20

- (a) take all steps necessary to facilitate the making of the complaint; and
- (b) send immediately to the addressee, unopened, any written matter addressed to a police officer (whether by name or by reference to an office held by the officer) or to the Ombudsman. 25

In this subsection, **prisoner** means any person in lawful detention or custody and **prison officer** means any person by whom the prisoner is detained, or in whose custody the prisoner is or who is in charge of the prisoner. 30

Complaints received by police to be forwarded to Commissioner

126. (1) A police officer who receives a complaint must, as soon as practicable, forward the complaint to the Commissioner or a police officer nominated by the Commissioner. 35

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

5 (2) This section does not apply if the complaint has
previously been forwarded to the Commissioner or
nominated officer.

**Ombudsman to be sent copies of complaints received by
police**

10 127. If the Commissioner or nominated police officer
receives a complaint, either directly or forwarded by another
police officer, the Commissioner or nominated officer must,
as soon as practicable, cause a copy of the complaint to be
sent to the Ombudsman.

Provisions relating to complaints lodged at Local Courts

15 128. (1) If a complaint is lodged at a Local Court, the
Clerk of the Court must, by telephone, notify the
Ombudsman as soon as practicable of brief details of the
complaint.

20 (2) The Clerk of the Court must, as soon as practicable,
forward the complaint to the Ombudsman, unless otherwise
directed by the Ombudsman.

(3) If the Clerk of the Court is directed to do so by the
Ombudsman, the Clerk must:

25 (a) forward the complaint to a police officer specified by
the Ombudsman; and

(b) obtain a receipt for the complaint from that police
officer; and

(c) retain such records of the complaint as the
Ombudsman directs; and

30 (d) send a copy of the complaint to the Ombudsman
together with the receipt and a report of the action
taken by the Clerk.

35 (4) The Ombudsman may give such a direction to the
Clerk of the Court only if the Ombudsman is requested to do
so by a police officer responsible for investigating any aspect
of the complaint that may relate to a possible criminal
offence.

40 (5) The Clerk of a Local Court is taken to be an officer of
the Ombudsman in connection with any action of the Clerk
under this section.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

**Provisions relating to complaints referred by Minister or
ICAC or made by M.P.** 5

129. (1) If the Minister refers a complaint to the Ombudsman or a member of Parliament acts for a complainant, neither the Minister nor the member becomes the complainant, except for the purposes of any provision of this Act under which the complainant is informed or notified of any matter or given or sent any matter. 10

(2) If:

(a) the Minister publishes to a person whose complaint has been referred by the Minister any matter with respect to the complaint published to the Minister by a police officer or by the Ombudsman; or 15

(b) a member of Parliament publishes to a person for whom the member acts any such matter published to the member,

the publication to that person has, for all purposes, the same effect as it would have if it had been published to that person by the police officer, or the Ombudsman, as the case may be. 20

(3) If the Independent Commission Against Corruption refers a complaint to the Ombudsman, that Commission does not become the complainant. A complaint about the conduct of a police officer in a report, transcripts of proceedings or other record of that Commission does not constitute a complaint unless it is referred by that Commission or it is the subject of a separate complaint under this Division. 25

Mixed and linked complaints 30

130. (1) This section applies to:

(a) a **mixed complaint**, that is, a complaint relating partly to conduct of a police officer that is conduct within the meaning of this Part and partly to conduct of that or another police officer that is conduct that may be made the subject of a complaint under section 12 of the Ombudsman Act 1974; or 35

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

5 (b) a **linked complaint**, that is, a complaint made in
respect of conduct of a police officer that is conduct
within the meaning of this Part and, in the opinion of
the Ombudsman, that conduct is directly linked to
conduct of that or another police officer that may be
made the subject of a complaint under section 12 of the
10 Ombudsman Act 1974.

(2) Mixed or linked complaints are to be dealt with in
accordance with the directions of the Ombudsman.

15 (3) For that purpose, the Ombudsman may direct that the
complaints be dealt with wholly under this Part or wholly
under the Ombudsman Act 1974, or partly under this Part
and partly under that Act, despite anything to the contrary in
this Part or that Act.

(4) If it appears to the Ombudsman:

20 (a) that the Ombudsman is dealing under the Ombudsman
Act 1974 with a complaint that relates to conduct of a
police officer that is conduct within the meaning of this
Part; or

25 (b) that the Ombudsman is dealing under this Part with a
complaint relating to conduct of a police officer that is
not conduct within the meaning of this Part,

the Ombudsman is not to discontinue action on the complaint
but (subject to this section) must continue action on the
complaint in accordance with the provisions of the
appropriate Act.

30 **Division 3—Conciliation**

Nature of conciliation

131. For the purposes of this Part, **conciliation** of a
complaint about the conduct of a police officer means dealing
with the complaint under this Division in a manner
35 acceptable to the complainant.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Complaints where conciliation must be attempted

132. (1) An attempt must be made to deal with a complaint about the conduct of a police officer by conciliation if the conduct is of a class or kind that the Ombudsman and the Commissioner have agreed should be dealt with by conciliation. 5

(2) This section does not apply to a complaint excluded from conciliation by section 134. 10

Other complaints where conciliation may be attempted

133. (1) An attempt may be made to deal with any other complaint about the conduct of a police officer by conciliation if the officer dealing with the complaint is satisfied that conciliation may be successful. 15

(2) This section does not apply to a complaint excluded by section 134.

Complaints that may not be dealt with by conciliation

134. A complaint about the conduct of a police officer may not be dealt with by conciliation if: 20

- (a) the conduct appears to have involved the commission of an indictable offence; or
- (b) the Commissioner has decided, or the Ombudsman has directed, that the complaint be investigated under Division 4; or 25
- (c) the complainant is not identified.

Who attempts conciliation

135. (1) A police officer is to make an attempt to deal with a complaint by conciliation if the complaint was received by a police officer or if it was referred by the Ombudsman to the Commissioner for conciliation. 30

(2) If the complaint was received by the Ombudsman and not referred to the Commissioner, the attempt to conciliate is to be made by the Ombudsman or an officer of the Ombudsman. 35

(3) The person who is attempting to deal with a complaint by conciliation may, with the agreement of the complainant, arrange for a mediator to assist in the conciliation.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Notification of outcome of conciliation

5 136. (1) A police officer who attempts to deal with a complaint by conciliation must inform the Ombudsman of the outcome.

10 (2) If the Ombudsman or an officer of the Ombudsman attempts to deal with a complaint by conciliation, the Ombudsman must inform the Commissioner of the outcome.

Statements by police officer during conciliation not admissible in disciplinary proceedings

15 137. (1) If a complaint about the conduct of a police officer is being dealt with by conciliation under this Division, any statement made by that police officer in good faith for the purposes of the conciliation is not admissible in any disciplinary proceedings against the police officer.

20 (2) The statement is inadmissible only if the disciplinary proceedings relate to the conduct that is the subject of the complaint.

Audit by Ombudsman of conciliation by police officers

25 138. (1) The Ombudsman is to conduct random audits of complaints that police officers have dealt with by conciliation under this Division.

 (2) For the purposes of any such audit, the Ombudsman may:

- 30 (a) inspect the records made by police officers of a conciliation; and
- (b) interview any of the parties to the conciliation about the conduct of the conciliation; and
- (c) interview any other person about matters related to the conciliation.

35 (3) The Ombudsman may make recommendations to the Commissioner about the conciliation of complaints under this Division.

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**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
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Procedure where conciliation fails

139. If an attempt made under this Division to deal with a complaint by conciliation is unsuccessful, the complaint continues thereafter to be subject to the other provisions of this Part. 5

Division 4—Investigations

Investigations of complaints by Commissioner at his or her discretion 10

140. (1) The Commissioner may cause a complaint to be investigated under this Division.

(2) The Commissioner must, as soon as practicable after causing a complaint to be investigated, notify the Ombudsman of that fact. 15

Investigations of complaints by Commissioner when directed by Ombudsman

141. (1) The Commissioner must cause a complaint to be investigated under this Division if the Ombudsman determines that the complaint should be investigated and duly notifies the Commissioner accordingly. 20

(2) In determining whether a complaint should be investigated, the Ombudsman may have regard to such matters as the Ombudsman thinks fit, including whether, in his or her opinion: 25

(a) the complaint is frivolous, vexatious or not made in good faith; or

(b) the subject-matter of the complaint is trivial; or

(c) the conduct complained of occurred at too remote a time to justify investigation; or 30

(d) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress; or

(e) the complainant does not or, where the complainant is not identified, the complainant could not have an interest, or a sufficient interest, in the conduct complained of. 35

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- 5 (3) Without affecting the generality of subsection (2), the
Ombudsman is not to determine that a complaint, in which
the complainant is not identified, should be investigated,
unless the Ombudsman is of the opinion:
- 10 (a) that the complaint appears to contain sufficient
information to enable an investigation to be carried out;
and
- (b) that the conduct the subject of the complaint would:
- 15 (i) if the conduct had occurred, provide reasonable
grounds to believe that a criminal offence had
been committed by a police officer; or
- (ii) if a departmental charge were proved against a
police officer in relation to the conduct, warrant
the imposition of a substantial punishment on the
police officer.
- 20 (4) The notification to the Commissioner of a
determination of the Ombudsman that a complaint be
investigated:
- (a) is to be in writing; and
- (b) as far as practicable, is to identify the police officer
whose conduct is the subject of the complaint; and
- 25 (c) is to be accompanied by a copy of the complaint.
- (5) If the Ombudsman determines that a complaint should
be investigated by the Commissioner, the Ombudsman:
- (a) must notify the complainant of that fact, if the
complainant is identified; and
- 30 (b) may also notify the police officer whose conduct is the
subject of the complaint.
- (6) If the Ombudsman determines that a complaint should
not be investigated by the Commissioner, the Ombudsman
must:
- 35 (a) notify the complainant of that fact and of the
Ombudsman's reasons for the determination, if the
complainant is identified; and
- (b) send to the Commissioner a copy of the notification
and of the complaint to which it relates.

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Conduct of investigation by Commissioner

142. (1) An investigation under this Division by the Commissioner is to be conducted by such police investigative staff as are selected by the Commissioner or in accordance with arrangements approved by the Commissioner. 5

(2) While investigating a complaint, a police officer must not, without the consent of the Commissioner or another police officer nominated by the Commissioner, disclose to any person (other than the Commissioner or a police officer so nominated) the identity of the complainant. This subsection does not apply to a disclosure in a report to the Commissioner under this Division of the progress or result of the investigation. 10 15

(3) Consent to the disclosure of the identity of the complainant is not to be granted unless it is necessary for the effective conduct of the investigation of the complaint.

Deferral or discontinuance of investigation 20

143. (1) The Commissioner may apply to the Ombudsman for consent:

- (a) to defer the commencement or continuation of the investigation of a complaint; or
- (b) to discontinue the investigation of a complaint. 25

(2) The Ombudsman may:

- (a) consent to the deferral of the commencement or continuation of the investigation of a complaint pending the conclusion of any relevant criminal proceedings or for any other good cause; or
- (b) consent to the discontinuance of the investigation of a complaint if continuation of the investigation would be, in the circumstances of the case, unreasonable or impracticable. 30

(3) If the Ombudsman grants a consent and the complainant is identified, the Ombudsman is to notify the complainant in writing of that fact and of the reasons for granting the consent and is to send to the Commissioner a copy of the notification. 35

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5 (4) If the Ombudsman does not, within 28 days, grant a consent applied for under this section, the Commissioner may, within 14 days thereafter, apply to the President of the Police Tribunal for that consent.

(5) The President of the Police Tribunal may:
10 (a) grant the consent applied for subject to such conditions (if any) as are specified by the President; or
(b) refuse to grant the consent,

and must notify the decision to the Commissioner, the Ombudsman and, if the complainant is identified, the complainant.

15 (6) The President of the Police Tribunal may authorise another member of the Police Tribunal to deal with an application to the President under this section.

(7) The Ombudsman may, if satisfied that it is in the public interest and without any application by the Commissioner for consent, direct the Commissioner that the investigation of a complaint under this Division be discontinued.

20 (8) The commencement or continuation of the investigation of a complaint may not be deferred, and the investigation of a complaint may not be discontinued, except
25 in accordance with a consent granted or direction given under this section.

Monitoring of investigation by Ombudsman

30 144. (1) The Ombudsman may monitor the progress of the investigation of a complaint if the Ombudsman considers it is in the public interest to do so.

(2) The Ombudsman or an officer of the Ombudsman may be present as an observer during interviews conducted by police officers for the purpose of an investigation and confer with those police officers about the conduct and progress of the investigation. The powers of the Ombudsman or an officer of the Ombudsman under this subsection may be exercised only in accordance with arrangements agreed to between the Ombudsman and the Commissioner as to the manner in which the powers are to be exercised.

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(3) The Commissioner is to provide the Ombudsman with such documentary and other information (including records of interviews) as the Ombudsman may from time to time request with respect to an investigation. 5

Proceedings to be instituted if warranted

145. (1) If it appears to a police officer conducting an investigation that sufficient evidence exists to warrant the prosecution of any person for an offence, the police officer is, subject to this Act, to cause appropriate proceedings to be instituted against that person. 10

(2) The Commissioner must inform the Ombudsman of the institution of any such proceedings and of the particulars of the proceedings. 15

(3) A police officer is not to institute proceedings against another police officer for an offence without the approval of the Commissioner.

Result of investigation to be reported 20

146. A police officer conducting an investigation must:

- (a) at such times as the Commissioner may direct while the investigation is proceeding; and
- (b) at the conclusion of the investigation,

report to the Commissioner the progress or result of the investigation and provide the Commissioner with copies of all statements taken by the police officer in the course of the investigation and of all other documents on which the report is based. 25

Report etc. to be sent to Ombudsman 30

147. (1) The Commissioner must, as soon as practicable after being satisfied that an investigation has been concluded:

- (a) send to the Ombudsman a copy of the report provided under section 146 at the conclusion of the investigation and copies of all statements taken in the course of the investigation and of all other documents on which the report is based; and 35

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5 (b) provide the Ombudsman with such comments on the
report and statements as the Commissioner thinks fit;
and

(c) specify what action should, in the opinion of the
Commissioner, be taken with respect to the complaint
to which the investigation related.

10 (2) After receiving that material and information, the
Ombudsman may require the Commissioner and any police
officer who investigated the complaint to provide such
additional information as the Ombudsman considers is
15 necessary to enable the Ombudsman to determine whether
the complaint was properly investigated.

**Investigation under the Ombudsman Act 1974 where
complaint not dealt with in time**

20 148. (1) If the Ombudsman has not, in relation to a
complaint, received from the Commissioner the material and
information referred to in section 147 (1) within the relevant
period referred to in this section, the Ombudsman may make
the conduct to which the complaint relates the subject of an
investigation under the Ombudsman Act 1974.

25 (2) The Ombudsman must notify the Commissioner in
writing when the Ombudsman commences such an
investigation.

(3) The **relevant period** is the period of 180 days after:

(a) the Commissioner notifies the Ombudsman pursuant to
section 140 that the complaint is being investigated; or

30 (b) the Ombudsman notifies the Commissioner pursuant to
section 141 of the Ombudsman's determination that the
complaint should be investigated,

or that period as extended under section 149 or 150.

35 (4) However, the period of 180 days referred to in
subsection (3) is to be a period of 90 days in the case of a
complaint of a class or kind that the Ombudsman and the
Commissioner have agreed should be subject to that shorter
period.

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Extension of time where complaint not dealt with

149. (1) The Commissioner may apply to the Ombudsman for an extension of the relevant period referred to in section 148, and the Ombudsman may grant the extension.

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(2) More than one such application may be made, but no such application may be made after the relevant period has expired.

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(3) If the Ombudsman grants the extension, the Ombudsman must, if the complainant is identified, notify the complainant in writing, giving the reasons for granting the extension, and must send to the Commissioner a copy of the notification.

15

(4) If the Ombudsman does not, within 28 days, grant the extension applied for under this section, the Commissioner may, within 14 days thereafter, apply to the President of the Police Tribunal for that extension.

(5) The President of the Police Tribunal may:

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(a) grant the extension applied for subject to such conditions, if any, as are specified by the President; or

(b) refuse to grant the extension,

and must notify the decision to the Commissioner, the Ombudsman and, if the complainant is identified, the complainant.

25

(6) The President of the Police Tribunal may authorise another member of the Police Tribunal to deal with an application to the President under this section.

(7) If an application for an extension is made to the Ombudsman in accordance with this section, the relevant period is extended until:

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(a) the application is granted by the Ombudsman; or

(b) the application is withdrawn; or

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- 5 (c) if the application is not granted by the Ombudsman:
- (i) the time for the making of an application to the President of the Police Tribunal for that extension expires; or
- 10 (ii) if an application is made within that time to the President—the application is dealt with by the President or withdrawn.

(8) If an extension is granted by the Ombudsman or the President of the Police Tribunal, the relevant period is extended by the period specified by the Ombudsman or President when granting the extension.

15 **Extension of time where application for deferral of investigation etc.**

150. (1) If an application for the Ombudsman's consent is made under section 143, the relevant period referred to in section 148 is extended until:

- 20 (a) the application is granted by the Ombudsman; or
- (b) the application is withdrawn; or
- (c) if the application is not granted by the Ombudsman:
- 25 (i) the time for the making of an application to the President of the Police Tribunal for that consent expires; or
- (ii) if an application is made within that time to the President—the application is dealt with by the President or withdrawn.

30 (2) If an application for consent under section 143 to the deferral of the commencement or continuation of an investigation is granted by the Ombudsman or the President of the Police Tribunal, the relevant period is taken:

- (a) to have ceased to run on the day the application was made; and
- 35 (b) to recommence to run from the day to which the commencement or continuation is deferred.

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Further investigation if Ombudsman not satisfied about investigation 5

151. (1) If, after receiving the information referred to in section 147, the Ombudsman is not satisfied that the complaint to which the information relates was properly investigated under this Division, the Ombudsman must report to the Commissioner accordingly, specifying what are, in his or her opinion, the deficiencies in the investigation. 10

(2) On receipt of the report, the Commissioner is to cause a further investigation to be conducted in order to remedy the deficiencies referred to in the report.

(3) This Division (including this section) applies to and in respect of a further investigation under this section in the same way as it applies to an initial investigation. 15

Investigation under the Ombudsman Act 1974 after completion of police investigation

152. (1) If, after considering all the material and information provided for the Ombudsman under this Division, the Ombudsman is neither satisfied that a complaint has not been sustained nor satisfied that the complaint has been sustained, the Ombudsman may: 20

(a) make the conduct to which the complaint relates the subject of an investigation under the Ombudsman Act 1974; or 25

(b) having regard to the public interest, determine that no further investigation of the complaint should be carried out. 30

(2) If the Ombudsman determines under subsection (1) (b) that no further investigation of a complaint should be carried out:

(a) the Ombudsman must, if the complainant is identified, notify the complainant accordingly, giving the reasons for the determination, and must send a copy of the notification to: 35

(i) the Commissioner; and

(ii) the police officer whose conduct was the subject of the complaint; and 40

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- 5 (b) the complaint is, for the purposes of this Act, deemed
not to have been sustained.

**Investigation under the Ombudsman Act 1974 before
completion of police investigation**

- 10 153. (1) The Ombudsman may, if satisfied that it is in the
public interest to do so, make the conduct to which a
complaint relates the subject of an investigation under the
Ombudsman Act 1974.

- 15 (2) The Ombudsman may act under this section before the
commencement of an investigation under this Division,
during the progress of any such investigation or before the
results of any such investigation have been considered by the
Ombudsman.

- (3) The Ombudsman must notify the Commissioner of any
action under this section.

- 20 (4) On being so notified, the Commissioner is to
discontinue any investigation under this Division.

- (5) This section has effect despite anything to the contrary
in this Part.

Other police investigations not affected

- 25 154. The Commissioner or any other police officer is not
prevented from investigating, otherwise than under this
Division, a matter relating to a complaint even though an
investigation under this Division is not made, is deferred or
discontinued, is completed or is made the subject of an
investigation under the Ombudsman Act 1974.

30 **Division 5—Reports**

Unjustified complaints

- 35 155. (1) If, after considering all the material and
information provided under Division 4 about a complaint or
after an investigation under the Ombudsman Act 1974 of a
complaint, the Ombudsman is satisfied that the complaint has
not been sustained, the Ombudsman is to report that fact to:

- (a) the complainant, if the complainant is identified; and
(b) the Commissioner; and

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- (c) the police officer whose conduct was the subject of the complaint. 5

(2) If, after an investigation under the Ombudsman Act 1974 of a complaint, the Ombudsman is neither satisfied that a complaint has not been sustained nor satisfied that the complaint has been sustained, the Ombudsman is to report that fact to: 10

- (a) the complainant, if the complainant is identified; and
(b) the Commissioner; and
(c) the police officer whose conduct was the subject of the complaint, 15

and the complaint is, for the purposes of this Part, deemed not to have been sustained. 15

Justified complaints

156. (1) If, after considering all the material and information provided under Division 4 about a complaint or after an investigation under the Ombudsman Act 1974 of a complaint, the Ombudsman is satisfied that the conduct to which the complaint relates: 20

- (a) was contrary to law; or
(b) was unreasonable, unjust, oppressive or improperly discriminatory; or 25
(c) was in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory; or
(d) was based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or 30
(e) was based wholly or partly on a mistake of law or fact; or
(f) was conduct for which reasons should have been given but were not given, 35

or that the complaint has been otherwise sustained, the Ombudsman must compile a report relating to the complaint and the conduct to which it relates, giving reasons for his or her conclusions. 35

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(2) In such a report, the Ombudsman may recommend:

- (a) that the conduct to which it relates be considered or reconsidered by the police officer whose conduct it was, or by any person in a position to supervise or direct that police officer in relation to the conduct or to review, rectify, mitigate or change the conduct or its consequences; or
- (b) that action be taken to rectify, mitigate or change the conduct or its consequences; or
- (c) that reasons be given for the conduct; or
- (d) that any law or practice relating to the conduct be changed; or
- (e) that any other action be taken.

(3) However, the Ombudsman need not compile a report on a complaint that has been sustained if the Ombudsman is satisfied with the action that has been taken by the Commissioner as a result of the complaint being sustained.

Distribution of report about justified complaints

157. (1) When the Ombudsman has compiled a report under section 156 the Ombudsman must, before acting under subsection (2) or (3):

- (a) inform the Minister of the compilation of the report; and
- (b) consult the Minister if the Minister so requests.

(2) The Ombudsman must give a copy of the report to the Minister and to the Commissioner and, as soon as practicable after receiving the report, the Commissioner must give a copy of the report to the police officer whose conduct is the subject of the report.

(3) The Ombudsman may give a copy of the report to the complainant, if the complainant is identified, except any part of the report that does not relate to his or her complaint.

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Notification of proposed action on report about justified complaints

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158. (1) The Commissioner must, as soon as is practicable after receiving a report under section 156, notify the Ombudsman of the nature of the action (if any) proposed to be taken by the Commissioner as a result of the report.

(2) The nature of the action that the Commissioner may propose in the notification includes:

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- (a) that the police officer be admonished; or
- (b) that a departmental charge be preferred against the police officer; or
- (c) that consideration be given to the police officer being charged with a criminal offence.

15

The notification is not, however, to contain particulars of any penalty proposed to be imposed.

(3) Where the Ombudsman has given a copy of a report under section 156 to the Commissioner and the Ombudsman is of the opinion:

20

- (a) that the Commissioner has unreasonably delayed notifying the Ombudsman under this section with respect to the report; or
- (b) that the nature of the proposed action notified under this section by the Commissioner is, in the circumstances of the case, unreasonable or inadequate; or
- (c) that the Commissioner has unreasonably delayed taking action as a result of the report,

25

30

the Ombudsman is to advise the Commissioner accordingly by notice in writing served on the Commissioner.

(4) If the Ombudsman and the Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (3), either or both of them may refer the issue to the President of the Police Tribunal.

35

(5) The President of the Police Tribunal may:

- (a) determine the issue; or
- (b) decline to do so,

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5 and must notify the decision to the Commissioner and the
Ombudsman.

(6) The President of the Police Tribunal may determine the
issue:

- 10 (a) by directing the Commissioner to give the Ombudsman
the notification under subsection (1) forthwith or
within a period specified in the direction; or
- (b) by directing the Commissioner to consider taking
action of the nature specified in the direction; or
- 15 (c) by directing the Commissioner to take action of the
nature proposed by the Commissioner forthwith or
within a period specified in the direction.

(7) Any direction given by the President of the Police
Tribunal under this section is to be carried into effect by the
Commissioner.

20 (8) The President of the Police Tribunal may authorise
another member of the Police Tribunal to deal with an issue
referred to the President under this section.

(9) Nothing in this section:

- 25 (a) permits the President of the Police Tribunal to review a
determination made by the Ombudsman that a
complaint has been sustained; or
- (b) affects the exercise by the Police Tribunal of its
jurisdiction under any other provision of this Act.

Notification of action taken on report

30 159. (1) The Commissioner must, as soon as practicable
after taking action as the result of a report under section 156
(being action with respect to a police officer whose conduct
is the subject of a complaint), notify the Ombudsman of the
nature of the action so taken.

35 (2) The notification must, if the action taken consists of or
includes the imposition of a penalty, contain particulars of the
nature and quantum of the penalty imposed.

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(3) The Ombudsman is to determine whether, in the circumstances of the case, action so notified was, in the opinion of the Ombudsman: 5

- (a) appropriate; and
- (b) taken within a reasonable time.

Report to complainant

160. The Ombudsman: 10

- (a) may from time to time report to the complainant (if identified) on the progress of an investigation under Division 4 into the complaint; and
- (b) must report to the complainant (if identified) on the results of the investigation; and 15
- (c) may make to the complainant such comments on the investigation and its consequences as the Ombudsman thinks fit.

Special report to Parliament

161. (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the exercise of his or her functions under this Part. 20

(2) The Ombudsman may include in such a report a recommendation that the report be made public as soon as practicable. 25

(3) If the report contains that recommendation, the Minister may make it public before it is presented to Parliament.

Special report about serious misconduct 30

162. If the Ombudsman is of the opinion that a police officer is guilty of such serious misconduct as may warrant dismissal or punishment, the Ombudsman may report his or her opinion and the reasons for that opinion to the Minister and Commissioner. 35

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Division 6—Miscellaneous

5 Ombudsman may require further information from complainant

163. (1) For the purposes of the conciliation of a complaint under Division 3 or for the purpose of determining whether a complaint should be investigated under Division 4, the
10 Ombudsman may, if the complainant is identified, do any one or more of the following:

- (a) request a complainant to attend before the Ombudsman for the purpose of providing further information concerning the complaint;
- 15 (b) request the complainant to provide further written particulars concerning the complaint;
- (c) request the complainant to verify by statutory declaration his or her complaint, or any particulars given by the complainant concerning his or her
20 complaint.

(2) The Ombudsman may withdraw the request if the complainant objects and the Ombudsman is satisfied that the grounds of the objection are well-founded.

(3) If the Ombudsman makes a request (and it is not
25 withdrawn), the Ombudsman is to take no further action in connection with the complaint concerned until the request is complied with or a reasonable time for compliance with the request has elapsed.

(4) If the request is not complied with within a reasonable
30 time, the Ombudsman may treat the complaint concerned as having been dealt with under Division 3 in a manner acceptable to the complainant. If the Ombudsman does so, the Ombudsman is to inform the Commissioner and the complainant accordingly.

35 Ombudsman may request further information from other persons

164. (1) For the purpose of determining whether a complaint should be investigated under Division 4, the
40 Ombudsman may also request information from persons other than the complainant.

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(2) However, this section does not authorise the Ombudsman: 5

(a) to investigate the complaint or to collect information for the purposes of the investigation of the complaint or of a report under this Part; or

(b) to interview the police officer the subject of the complaint; or 10

(c) to require persons to provide information.

Ombudsman may require Commissioner to provide information etc.

165. (1) For the purposes of a conciliation of a complaint or for the purpose of determining whether a complaint should be investigated under Division 4, the Commissioner must, at the request of the Ombudsman, provide the Ombudsman: 15

(a) with an explanation of the policies, procedures and practices of the Police Service relevant to the conduct complained of; and 20

(b) with such documentary and other information (including records of interviews) as the Ombudsman requests with respect to any inquiries made by the Commissioner or other police officers into the complaint; and 25

(c) to the extent to which the Commissioner is able to do so, with any explanation, comment or information sought by the Ombudsman in connection with the complaint.

(2) The Ombudsman may withdraw any such request if the Commissioner objects and the Ombudsman is satisfied that the grounds of the objection are well-founded. 30

(3) The Ombudsman may, instead of making any such request, seek the information concerned from other police officers in accordance with arrangements agreed to by the Commissioner and the Ombudsman. 35

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Certain information to be confidential

- 5 166. (1) If the Commissioner is of the opinion that
publication of any material or information:
- (a) which, under this Part, the Commissioner or any other
 police officer is required to provide for the
 Ombudsman; or
- 10 (b) which, under the Ombudsman Act 1974, the
 Commissioner or any other police officer is required,
 in the course of an investigation under that Act of the
 conduct to which a complaint relates, to provide for the
 Ombudsman,
- 15 might prejudice the investigation or prevention of crime, or
 otherwise be contrary to the public interest, the
 Commissioner is to inform the Ombudsman accordingly,
 giving the reasons for his or her opinion.
- (2) If the Ombudsman, pursuant to a requirement made
20 under the Ombudsman Act 1974 in the course of an
 investigation under that Act of the conduct to which a
 complaint relates, receives material or information from a
 police officer, the Ombudsman may not, except as provided
 in subsection (3) (b) or with the consent of the
25 Commissioner, publish that material or information,
 otherwise than to the Commissioner, until the expiration of
 21 days after that receipt.
- (3) If the Ombudsman is provided with material or
 information in respect of which the Commissioner has given
30 the opinion referred to in subsection (1), the Ombudsman:
- (a) may not, except as provided in paragraph (b), publish
 that material or information; and
- (b) may, if in his or her opinion the circumstances so
 warrant, make in relation to that material or
35 information a report to the Minister for presentation to
 Parliament.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Certain provisions of Ombudsman Act 1974 to apply

167. Sections 17, 18 and 23 of the Ombudsman Act 1974 apply to and in respect of the exercise by the Ombudsman of the functions conferred and imposed by this Part in the same way as they apply to and in respect of an investigation by the Ombudsman under the Ombudsman Act 1974. 5

Information to be confidential 10

168. Without limiting the operation of section 34 (1) (a) of the Ombudsman Act 1974, in the application of section 34 (1) of that Act to and in respect of information received in the course of the administration or execution of this Part, the reference in that subsection: 15

- (a) to a public authority—is to be construed as a reference to a police officer; and
- (b) to the head of that authority—is to be construed as a reference to the Commissioner; and
- (c) to the responsible Minister—is to be construed as a reference to the Minister administering the Police Service Act 1990. 20

Ombudsman or officer as witness

169. (1) Neither the Ombudsman, nor an officer or special officer of the Ombudsman who is not a police officer, is competent or compellable, in any legal proceedings or in any proceedings before the Police Tribunal, to give evidence or produce documents in respect of any matter in which he or she is or was involved in the course of the administration or execution of this Part. 25 30

(2) Subsection (1) does not apply to or in respect of any proceedings under section 37 of the Ombudsman Act 1974 or under Part 3 of the Royal Commissions Act 1923.

(3) Subsections (1) and (2) do not prejudice or affect the operation of section 35 of the Ombudsman Act 1974 in relation to the administration and execution of this Act. 35

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Limitation on delegation of functions by Ombudsman

5 170. (1) The functions of the Ombudsman that may, under section 10 of the Ombudsman Act 1974, be delegated to a special officer of the Ombudsman (other than an Assistant Ombudsman) do not include:

- 10 (a) any power or duty to make a report under this Act; or
(b) the power to require additional information referred to in section 147 (2) of this Act.

15 (2) The functions of the Ombudsman that may, under section 10 of the Ombudsman Act 1974, be delegated to an Assistant Ombudsman do not include any power or duty to make a report under this Act (other than a report under section 155, 156 or 160).

Liability to do duty continues

20 171. This Part does not operate to absolve a police officer who receives a complaint from liability to perform any duty imposed on the police officer otherwise than by this Part.

Publicity

25 172. (1) The Ombudsman is to cause to be prepared pamphlets briefly explaining the rights and duties of police officers and the public under this Part.

(2) The pamphlets are to be written in the English language and in such other languages as the Ombudsman considers necessary.

(3) The Ombudsman must:

- 30 (a) supply the Commissioner with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at each police station in the State, and the Commissioner is to distribute the pamphlets accordingly; and
- 35 (b) supply the Director-General of the Department of Courts Administration with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at the office of each Local Court in the State, and the Director-General is to distribute the pamphlets accordingly; and

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

- (c) make such arrangements as the Ombudsman thinks fit with any Government department or instrumentality or with any other body or organisation for making the pamphlets available, or distributing them, to any interested person; and 5
- (d) take such further or other action as the Ombudsman considers necessary to bring the provisions of this Part to the attention of interested persons. 10

Certain documents privileged

172A. (1) A document brought into existence for the purposes of this Part is not admissible in evidence in any proceedings other than an inquiry under section 197 or proceedings which concern the discipline of police officers and which are dealt with by: 15

- (a) the Commissioner; or
- (b) the Police Tribunal; or
- (c) GREAT. 20

(2) Subsection (1) does not apply to or in respect of:

- (a) a document comprising a complaint; or
- (b) a document published by order of, or under the authority of, either House, or both Houses, of Parliament; or 25
- (c) a document published under section 161 (3) or 197 (5); or
- (d) a document that a witness is willing to produce.

(3) Subsections (1) and (2) do not operate to render admissible in evidence in any proceedings any document that would not have been so admissible if this section had not been enacted. 30

Police Service (Complaints, Discipline and Appeals) Amendment 1993

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

(3) Part 9:

5 Omit Part 9, insert instead:

**PART 9—DISCIPLINE OF MEMBERS OF THE
POLICE SERVICE**

Division 1—Discipline of police officers

Instigation of disciplinary action by Commissioner

10 173. (1) If the Commissioner considers that action should be taken against a police officer, the Commissioner may direct the preferment of a departmental charge against the officer or the institution of court proceedings, whichever the Commissioner considers appropriate.

15 (2) If the Commissioner is satisfied that any conduct of a police officer was not satisfactory but does not justify the preferment of a departmental charge, the Commissioner may admonish the officer for that conduct.

20 (3) A departmental charge must set out whether the charge relates to conduct the subject of a complaint investigated under Division 4 of Part 8A.

**Departmental charges to be heard and determined by
Police Tribunal exercising original jurisdiction**

25 174. (1) The Police Tribunal has exclusive jurisdiction to hear a departmental charge that is denied by the police officer and to determine whether it has been proved if:

- (a) the charge relates to conduct the subject of a complaint investigated under Division 4 of Part 8A; or
- (b) the charge does not relate to such conduct but the police officer elects to have the charge heard by the Police Tribunal.

30 (2) In exercising the original jurisdiction conferred by this section, the Police Tribunal is to be constituted by a member sitting alone.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Recommendations by Police Tribunal exercising original jurisdiction as to penalty 5

175. (1) If:

- (a) the Police Tribunal, exercising its original jurisdiction, determines that a departmental charge preferred against a police officer has been proved; or
- (b) the police officer admits the charge after the Police Tribunal commences to hear the charge, 10

the Police Tribunal is to make an assessment of the penalty, if any, that the Police Tribunal considers would be appropriate to be imposed on the police officer.

(2) The Police Tribunal is to advise the Minister or the Commissioner, as the case requires, of its recommendation with respect to that penalty. 15

(3) Before:

- (a) the Minister makes a recommendation (if any) to the Governor with respect to the penalty that might be imposed on the police officer against whom the departmental charge was preferred; or 20
- (b) the Commissioner imposes a penalty (if any) on any such police officer,

the Minister or the Commissioner is to take into consideration the recommendation made by the Police Tribunal with respect to that penalty. 25

Appeal to Review Division of Police Tribunal against decision of Tribunal exercising original jurisdiction

176. (1) If the Police Tribunal exercising its original jurisdiction determines that a departmental charge preferred against a police officer has been proved, the police officer may, within 30 days after the date of the determination, appeal against the determination to the Review Division of the Police Tribunal. 30

(2) The appeal may be made on any one or more of the following grounds: 35

- (a) that the officer is not guilty of the charge;
- (b) that the evidence disclosed no offence;

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

- 5 (c) that the determination is bad and contrary to law;
(d) that the determination is against the evidence and the weight of evidence.

(3) An appeal is to be in the nature of a review of the matter on the evidence given in the relevant proceedings in the Police Tribunal's original jurisdiction.

10 (4) New evidence may nevertheless be given and considered in the appeal if the Review Division of the Police Tribunal is satisfied that it was not reasonably available at the time the original proceedings were heard.

Proceedings relating to departmental charges

15 177. (1) At any proceedings before the Police Tribunal relating to a departmental charge, whether in its original jurisdiction or by way of appeal to the Review Division:

- 20 (a) the Commissioner and the police officer charged are each entitled to be represented by counsel, solicitor or agent; and
(b) if the charge relates to conduct the subject of a complaint investigated under Division 4 of Part 8A—the complainant is not a party; and
25 (c) the public is not to be excluded unless the Police Tribunal otherwise orders; and
(d) the function of the Police Tribunal is to determine, on the true merits and justice of the case and without being bound by strict legal precedent, whether or not the charge has been proved.

30 (2) The Police Tribunal is to cause a copy of its determination at those proceedings to be sent to:

- (a) the Commissioner; and
(b) the police officer charged; and
(c) the Ombudsman; and
35 (d) if the charge relates to conduct the subject of a complaint investigated under Division 4 of Part 8A—the complainant, if the complainant is identified.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

When charges duly proved

178. (1) A departmental charge against a police officer is duly proved if: 5

(a) in the case of a charge heard by the Police Tribunal—the Police Tribunal determines that the charge has been proved; or

(b) in any other case—the Commissioner determines that the charge has been proved, 10

or the charge is admitted by the police officer in accordance with the regulations.

(2) A departmental charge that the Police Tribunal exercising its original jurisdiction determines to be proved is not duly proved: 15

(a) until the expiry of 30 days after the date of the determination; or

(b) if an appeal to the Review Division of the Police Tribunal is made within that time, until that Review Division determines that the charge is proved or the appeal is duly withdrawn. 20

(3) A criminal charge against a police officer is duly proved if a court convicts the officer of the offence or finds that the charge has been proved without proceeding to a conviction. 25

Disciplinary action by Commissioner

179. (1) If a departmental charge or criminal charge against a police officer is duly proved, the Commissioner may take such action against the police officer as the Commissioner considers appropriate. 30

(2) In particular, the Commissioner may do any one or more of the following:

(a) require the police officer to undergo counselling;

(b) reprimand the police officer; 35

(c) fine the police officer;

(d) direct that the police officer (if a constable) lose seniority;

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

- 5 (e) reduce the salary of the police officer (if a non-commissioned officer);
- (f) demote the police officer (if a non-commissioned officer) to a lower rank or grade, or recommend to the Minister that the police officer (if a commissioned officer) be so demoted;
- 10 (g) dismiss the police officer (if a non-commissioned officer) or recommend to the Minister that the police officer (if a commissioned officer) be dismissed.

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

Disciplinary action by Governor

20 180. (1) The Governor may, with respect to the discipline of commissioned police officers, impose either or both of the following penalties:

- (a) demote the police officer to a lower rank or grade;
- (b) dismiss the police officer.

25 (2) This section does not limit any other power of the Governor with respect to commissioned police officers.

(3) Before making a recommendation to the Governor with respect to the penalty to be imposed on a commissioned police officer under this section, the Minister must:

- 30 (a) invite the police officer to make a written submission to the Minister (within a reasonable time specified by the Minister) with respect to the penalty which might be imposed by the Governor; and
- (b) take into consideration any such submission made by the police officer.

35 (4) Subsection (3) does not affect any obligation of the Minister under this Act to obtain or take into consideration the recommendation of the Police Tribunal with respect to the penalty.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Regulations relating to discipline

181. (1) The regulations may make provision for or with respect to the discipline of police officers. 5

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

(a) the reporting by police officers of misconduct of other police officers; and 10

(b) the preferment of departmental charges against police officers; and

(c) the denial or admission of departmental charges; and

(d) elections for the hearing and determination by the Police Tribunal of departmental charges not relating to conduct the subject of a complaint investigated under Division 4 of Part 8A; and 15

(e) proceedings with respect to departmental charges; and

(f) the suspension of police officers from office (with or without pay) pending further investigation and disciplinary action; and 20

(g) disciplinary action against police officers.

**Division 2—Disciplinary appeals by police officers
to GREAT**

Appeal to GREAT against disciplinary decision of Commissioner 25

182. (1) A police officer (other than a member of the Police Service Senior Executive Service) may appeal to GREAT against a decision of the Commissioner to punish the police officer: 30

(a) by the imposition of a fine; or

(b) by a reduction in salary; or

(c) by a demotion to a lower rank or grade; or

(d) by suspension, dismissal, discharge or transfer.

(2) If the decision appealed against was in respect of a charge heard and determined by the Police Tribunal: 35

(a) the appeal is limited to an appeal against the severity of the punishment imposed; and

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

- 5 (b) GREAT, the Commissioner and the appellant are bound
by the findings of the Police Tribunal on the
determination of the charge or on appeal to the Review
Division of the Police Tribunal.

Application of GREAT Act

- 10 183. (1) The Government and Related Employees Appeal
Tribunal Act 1980 applies to and in respect of an appeal
under this Division in the same way as it applies to an appeal
under Division 2 of Part 3 of that Act.

- 15 (2) In order to determine the membership of and to
constitute GREAT for the purpose of hearing and
determining an appeal under this Division, a police officer is
taken to be an employee and the Commissioner the employer,
within the meaning of the Government and Related
Employees Appeal Tribunal Act 1980.

Division 3—Miscellaneous provisions

20 **Discipline of administrative officers**

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

(2) For that purpose:

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

**Disciplinary appeals to GREAT by non-executive
administrative officers**

- 35 185. The provisions of the Government and Related
Employees Appeal Tribunal Act 1980 relating to disciplinary
appeals apply to administrative officers (not being members
of the Police Service Senior Executive Service) as if those
officers were employees, and the Commissioner were their
employer, within the meaning of that Act.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Appeal to GREAT relating to leave when hurt on duty

186. (1) A police officer may appeal to GREAT against a decision of the Commissioner to grant or refuse leave of absence on full pay to the police officer during any period of absence caused by that officer being hurt on duty within the meaning of section 1 (2) of the Police Regulation (Superannuation) Act 1906.

(2) The Government and Related Employees Appeal Tribunal Act 1980 applies to and in respect of an appeal under this section in the same way as it applies to an appeal under Division 2 of Part 3 of that Act.

(3) In order to determine the membership of and to constitute GREAT for the purpose of hearing and determining an appeal under this section, a police officer is taken to be an employee and the Commissioner the employer, within the meaning of the Government and Related Employees Appeal Tribunal Act 1980.

Transitional

187. (1) The provisions of this Act and the regulations relating to disciplinary proceedings against members of the Police Service apply to conduct before as well as to conduct after the commencement of this Act.

(2) This section is subject to Parts 1 and 6 of Schedule 4.

(4) Part 9A:

Before Part 10, insert:

**PART 9A—THE POLICE TRIBUNAL OF NEW
SOUTH WALES**

Establishment of Police Tribunal

188. (1) There is established the Police Tribunal of New South Wales.

(2) The Police Tribunal is to consist of a President, a Deputy President and other members as provided by this Part.

(3) The Police Tribunal is a court of record and its seal is to be judicially noticed.

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**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

President of Police Tribunal and Deputy President

5 189. (1) The President of the Police Tribunal is to be appointed by the Governor.

(2) The Governor may appoint a Deputy President of the Police Tribunal.

10 (3) The Deputy President is to act in the place of the President during the illness or absence of the President and on other occasions as and when required by the President to do so. While so acting, the Deputy President is taken, for all purposes, to be the President.

(4) The President and Deputy President are each to be:

15 (a) a Judge of the Supreme Court nominated by the Chief Justice of that Court; or

(b) a Judge of the Industrial Court nominated by the Chief Judge of that Court; or

20 (c) a Judge of the District Court nominated by the Chief Judge of that Court; or

(d) the Senior Chairperson of GREAT.

25 (5) The President and Deputy President each hold office for such term (not exceeding 5 years) as is specified in their instruments of appointment, but are eligible for re-appointment. However, a person vacates office as President or Deputy President if the person ceases to hold the office which qualified the person for appointment as President or Deputy President.

30 (6) The rank, title, status, precedence, remuneration, functions, rights and privileges of a Judge and the continuity of his or her service as a Judge are not affected by the exercise of the functions conferred or imposed on the Judge by or under this Act.

35 (7) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of the President or Deputy President.

40 (8) Nothing in this Part prevents the Chief Justice of the Supreme Court, the Chief Judge of the Industrial Court or the Chief Judge of the District Court from being nominated and appointed as President.

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**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Other members of Police Tribunal

190. Each Judge of the District Court is a member of the Police Tribunal. 5

Review Division of Police Tribunal

191. (1) The Review Division of the Police Tribunal is to be constituted by the President of the Police Tribunal and 2 members of the Police Tribunal sitting together. 10

(2) At a sitting of the Review Division of the Police Tribunal:

(a) a decision of the President of the Police Tribunal as to:

(i) the jurisdiction of the Police Tribunal; or

(ii) the admissibility of evidence; or 15

(iii) procedure,

is the decision of the Police Tribunal; and

(b) subject to paragraph (a), the President of the Police Tribunal has one vote and each of the members present has one vote and a decision supported by a majority in number of those votes is a decision of the Police Tribunal. 20

Powers of royal commission

192. (1) In the exercise of its jurisdiction or the conduct of an inquiry, the Police Tribunal (or, in the case of the Review Division, the President) has the powers, authorities, protections and immunities of a commissioner appointed under Division 1 of Part 2 of the Royal Commissions Act 1923. 25

(2) That Act (except section 13 and Division 2 of Part 2) applies to proceedings before the Police Tribunal in the same way as it applies to proceedings before a royal commission, and so applies as if section 17 (4) of that Act had been repealed. 30

Subpoenas

193. (1) In accordance with a request by a party to any proceedings before the Police Tribunal, the Registrar of the Police Tribunal is required to issue: 35

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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

- 5 (a) a subpoena to give evidence, requiring the person to
whom it is directed to attend and give evidence at the
proceedings; or
- (b) a subpoena for production, requiring the person to
whom it is directed to attend and produce, for the
purpose of evidence at the proceedings, any document
10 or thing that is in his or her possession or control and
specified in the subpoena.

(2) A subpoena for production of a document or thing may
authorise compliance with the subpoena by the production of
the document or thing to the Registrar of the Police Tribunal.

15 (3) A person is not required to comply with a subpoena
unless, not later than a reasonable time before the day on
which the person's attendance is required, an amount
sufficient to meet the reasonable expenses of the person
carrying out the requirements of the subpoena is paid or
20 tendered to the person.

(4) A person is not bound by a subpoena to produce any
document or thing which is not specified or otherwise
sufficiently described in the subpoena or which the person
would not be bound to produce on a subpoena for production
25 in the Supreme Court.

Attendance

194. (1) If the attendance of a person before the Police
Tribunal is required by a subpoena issued under this Part and
the person defaults in attending as required by the subpoena,
30 the Tribunal may, on the application of a party or of its own
motion:

- 35 (a) issue a warrant to a police officer, or to such other
person as the Police Tribunal may appoint, directing
that the defaulting person be arrested and brought
before the Police Tribunal and, if appropriate, be kept
in custody as provided by subsection (3); or
- (b) order the defaulting person to appear before the Police
Tribunal to show cause as to why such a warrant
should not be issued against that person.

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OF POLICE SERVICE—*continued***

In either case, the Police Tribunal may order the defaulting person to pay any costs attributable to the default. 5

(2) A person arrested pursuant to a warrant issued by the Police Tribunal must be brought before the Police Tribunal as soon as practicable.

(3) The person is to be kept in custody as directed by the warrant until: 10

(a) the person is brought before the Police Tribunal or the person's earlier release is ordered by the Police Tribunal or the Supreme Court; or

(b) the person duly gives an undertaking to comply with the requirements of the subpoena. 15

(4) A direction in a warrant for the keeping of a person in custody is sufficient authority for the person's being kept in custody in accordance with the direction.

(5) This section applies in relation to a subpoena issued under this Part to the exclusion of sections 13 and 14 of the Evidence Act 1898. 20

Orders prohibiting publication

195. In any proceedings before the Police Tribunal, the Police Tribunal may by order prohibit or restrict the publication of the name and address: 25

(a) of any witness or complainant concerned in the proceedings; or

(b) if the proceedings are by way of appeal—of any witness or complainant concerned in the appeal or any previous proceedings. 30

Contempt of the Police Tribunal

196. (1) A person who publishes any matter, or causes any publication to be made, in contravention of an order under section 195 is guilty of contempt of the Police Tribunal.

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**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
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5 (2) If a person is brought before the Police Tribunal pursuant to a warrant for a failure to produce a document or thing as required by a subpoena, the person is guilty of contempt of the Police Tribunal committed in the face of the Police Tribunal unless the person produces the document or thing, or duly gives an undertaking to produce it.

10 (3) Failure to comply with an undertaking referred to in this section or in section 194 is taken to constitute a contempt of the Police Tribunal committed in the face of the Police Tribunal.

15 (4) A contempt of the Police Tribunal referred to in this section or arising from the application, in accordance with this Division, of any provision of the Royal Commissions Act 1923 is punishable by the Supreme Court in the same way as a similar contempt of a royal commission is punishable by that Court.

20 **Inquiries commissioned by Minister**

197. (1) At the request of the Minister, the Police Tribunal is to inquire into and report to the Minister on such of the following matters as may be specified in the request:

- 25 (a) any matter relating to the discipline of police officers;
 (b) any matter relating to the exercise by police officers, in a particular case or cases, of their functions;
 (c) any matter which, in the opinion of the Minister, is relevant to or arises out of such a matter.

30 (2) For the purposes of this section, the Police Tribunal is to be constituted by the President of the Police Tribunal sitting alone.

 (3) At any proceedings before the Police Tribunal under this section, the public is not to be excluded unless the Police Tribunal so orders.

35 (4) A report to the Minister under this section:

- (a) is to be presented to Parliament; and
 (b) may contain a recommendation that the report be made public as soon as practicable.

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

- (5) The Minister may make a report to the Minister under this section public before it is presented to Parliament. 5
- (6) If a departmental charge recommended in a report under this section has been preferred against a police officer and, otherwise than after the Police Tribunal has commenced to hear the charge in its original jurisdiction, the charge is admitted by the police officer: 10
- (a) the Minister, before making a recommendation (if any) to the Governor with respect to the penalty which might be imposed by the Governor on the police officer; or
- (b) the Commissioner, before imposing a penalty (if any) on the police officer, 15
- as the case may require, must:
- (c) refer, for the consideration of the Police Tribunal as constituted for the purposes of this section, the matter of an assessment of an appropriate penalty; and 20
- (d) take into consideration the recommendations made under subsection (7) by the Police Tribunal with respect to the penalty.
- (7) If, under subsection (6) (c), the Minister or the Commissioner refers to the Police Tribunal, as constituted for the purposes of this section, the matter of an assessment of an appropriate penalty which might be imposed on a police officer in respect of a departmental charge preferred against the police officer, the Police Tribunal, as so constituted, is to make an assessment of the penalty (if any) which the Police Tribunal considers would be appropriate to be imposed on the police officer and advise the Minister or the Commissioner of its recommendations with respect to that penalty. 25 30
- (8) At any proceedings before the Police Tribunal under subsection (7): 35
- (a) the Commissioner and the police officer with respect to whom a recommendation under this section is required to be made are each entitled to be represented by counsel, solicitor or agent; and 40

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

- 5 (b) the public is not to be excluded unless the Police
Tribunal exercising jurisdiction at those proceedings
otherwise orders.

Sittings etc. of Police Tribunal

- 10 198. (1) The President of the Police Tribunal is to arrange
for sittings of the Police Tribunal and the allocation of its
work.

(2) If the President of the Police Tribunal is not the Chief
Judge of the District Court, the President is to arrange for
sittings and allocate work subject to consultation with the
Chief Judge.

- 15 (3) There may be contemporaneous sittings of the Police
Tribunal constituted by different members and those sittings
may be in different places.

Proceedings of Police Tribunal

- 20 199. (1) Subject to this Act and the regulations, the Police
Tribunal has control of its proceedings.

(2) The regulations may make provision for or with respect
to the institution and conduct of proceedings before the
Police Tribunal.

- 25 (3) Until the regulations otherwise provide, a registrar of
the District Court nominated by the President of the Police
Tribunal is the registrar of the Police Tribunal.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL
APPEALS BY POLICE OFFICERS**

- 30 (Sec. 3)

- (1) Section 66 (Temporary appointments to non-executive
positions), section 67 (Transfer of non-executive officers):

Omit "Divisions 3–5" wherever occurring, insert instead
"Divisions 3–5B".

- 35 (2) Sections 72 (1) (b), 74, 78 (1) (b):

Omit "the Police Regulation (Appeals) Act 1923" wherever
occurring, insert instead "Division 5A".

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL APPEALS
BY POLICE OFFICERS—*continued***

(3) Part 6, Divisions 5A and 5B:

After Division 5 of Part 6, insert:

5

**Division 5A—Promotion appeals to GREAT by certain
police officers**

**Appeals to GREAT against promotions of constables to
higher grade within that rank**

81A. (1) A police officer of the rank of constable may appeal to GREAT against a decision of the Commissioner to promote another police officer of the rank of constable to a higher grade in that rank if:

10

(a) the police officer who appeals is more entitled to be promoted than the other police officer, having regard only to the regulations governing the promotion of police officers; and

15

(b) the police officer who appeals is qualified for promotion to that higher grade.

(2) The Commissioner must, as soon as practicable after making a decision in respect of which an appeal may be made under this section, cause a notification of the decision to be given to all police officers who are entitled to appeal against that decision.

20

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

25

(4) A decision in respect of which an appeal may be made under this section may be carried into effect even though:

30

(a) the period within which appeals against that decision may be made has not expired; or

(b) if an appeal has been made within that period and has not been withdrawn, the appeal has not yet been determined by GREAT.

35

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL APPEALS
BY POLICE OFFICERS—*continued***

5 (5) If a decision to promote a police officer is carried into
effect in those circumstances, the promotion of the police
officer is not, except as provided by the regulations, affected
by the fact that the appeal under this section of any appellant
against that decision is successful.

10 (6) GREAT may, if it thinks fit, hear 2 or more appeals
made under this section in respect of the same decision and
make a single composite decision with respect to all or any
of those appeals.

**Appeals to GREAT against promotions to sergeant or to
higher grade of sergeant**

15 81B. (1) A police officer of the highest grade of the rank
of constable may appeal to GREAT against a decision of the
Commissioner to appoint another police officer of that grade
and rank to a vacant position in the rank of sergeant if the
20 police officer who appeals was an applicant for the vacant
position and is eligible for appointment to the vacant
position.

(2) A police officer of the rank of sergeant (but not of the
highest grade in that rank) may appeal to GREAT against a
25 decision of the Commissioner to appoint another police
officer of the rank of constable or of the rank of sergeant (but
not of the highest grade in the rank of sergeant) to a vacant
position in the highest grade of the rank of sergeant if the
police officer who appeals was an applicant for the vacant
30 position and is eligible for appointment to the vacant
position.

(3) The only ground on which an appeal may be made
under this section is that the merit of the appellant is greater
than that of the other police officer.

Appeal to GREAT against promotion to inspector

35 81C. (1) A police officer may appeal to GREAT against a
recommendation of the Police Board under section 71 for the
appointment of another police officer to a vacant position in
any rank of inspector if the police officer who appeals was an
applicant for the vacant position and is eligible for
40 appointment to the vacant position.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL APPEALS
BY POLICE OFFICERS—*continued***

(2) The only ground on which an appeal may be made under this section is that the merit of the appellant is greater than that of the other police officer. 5

Procedure for appeals

81D. The provisions of the Government and Related Employees Appeal Tribunal Act 1980 relating to promotion appeals apply to appeals under this Division, subject to the following: 10

(a) the sittings of GREAT for the hearing of appeals are to be informal;

(b) any other modifications prescribed by the regulations.

Membership etc. of GREAT 15

81E. In order to determine the membership of and to constitute GREAT for the purpose of hearing and determining an appeal under this Division, a police officer is taken to be an employee (within the meaning of the Government and Related Employees Appeal Tribunal Act 1980) and: 20

(a) in the case of an appeal under section 81A or 81B—the Commissioner; or

(b) in the case of an appeal under section 81C—the Police Board, 25

is taken to be the employer (within the meaning of that Act) of the police officer.

**Division 5B—Promotion appeals by non-executive
administrative officers to GREAT**

**Appeal to GREAT against promotions of administrative
officers 30**

81F. The provisions of the Government and Related Employees Appeal Tribunal Act 1980 relating to promotion appeals apply to non-executive officers (being administrative officers) as if those officers were employees, and the Commissioner were their employer, within the meaning of that Act. 35

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990**

(Sec. 3)

- (1) Section 3 (**Definitions**):

5 Omit section 3 (3).
- (2) Section 24 (**Appointment of Commissioner**), section 39 (**Appointment to be made on merit**), section 71 (**Appointment to be made on merit**):

10 From sections 24 (3) (c), 39 (3) and 71 (2), omit “an official report (referred to in section 3 (3)) on the previous employment and conduct of” wherever occurring, insert instead “a report under section 94A on”.
- (3) Section 44 (**Industrial arbitration or legal proceedings excluded**):

15 From section 44 (2), omit “Industrial Arbitration Act 1940”, insert instead “Industrial Relations Act 1991”.
- (4) Section 77 (**Appointment of sergeants to be made on merit**):

20 From section 77 (2), omit “an official report on the previous employment and conduct of”, insert instead “a report under section 94A on”.
- (5) Sections 87, 89, 117:

 From sections 87 (2), 89 (1) and 117, omit “Industrial Arbitration Act 1940” wherever occurring, insert instead “Industrial Relations Act 1991”.
- 25 (6) Section 91F (as inserted by Act No. 54, 1992):

 Omit the section, insert instead:

Complaints against police volunteers

30 91F. A complaint by any person against a police volunteer may be dealt with under Part 8A in the same way as a complaint against a police officer, and the provisions of that Part apply, with any necessary modifications, to any such complaint.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—continued**

(7) Section 91FA:

After section 91F, insert:

Discipline of police volunteers

5

91FA. (1) The regulations may make provision for or with respect to the discipline of the volunteer police, including the definition of conduct constituting a breach of discipline and the imposition by the Commissioner of any one or more of the following measures on any police volunteer guilty of a breach of discipline:

10

- (a) giving a caution or reprimand;
- (b) requiring the volunteer to undergo counselling;
- (c) suspending the volunteer from service;
- (d) revoking the volunteer's appointment as a police volunteer.

15

(2) The functions of the Commissioner under this section are exercisable by a delegate only to the extent provided by the regulations.

(3) The decision, given in accordance with this section and the regulations, of the Commissioner or a delegate of the Commissioner in a matter of discipline of a police volunteer is final and is not subject to appeal or to review by any court or tribunal, except where the regulations otherwise provide.

20

(4) Regulations made for the purposes of this section may provide for the adoption, with specified modifications, of the provisions of Part 9 and the regulations made for the purposes of that Part.

25

(5) Nothing in this section affects the powers of the Commissioner under section 91B.

30

(8) Section 94A:

After section 94, insert:

Reports by police internal affairs for proposed police appointments

94A. (1) In this section, "the internal affairs officer" means a police officer responsible for police internal affairs, designated by the Commissioner as the internal affairs officer for the purposes of this section.

35

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—*continued***

- 5 (2) The internal affairs officer must, as soon as practicable after being requested to do so, submit a report to the Minister, Police Board or Commissioner on a person who is being considered for an appointment in the Police Service, being an appointment for which the Minister, Police Board or Commissioner is required by this Act to obtain a report under this section.
- 10 (3) The details required to be inserted in a report on a person under this section are as follows:
- 15 (a) particulars of any criminal proceedings commenced against the person in New South Wales and, in so far as the internal affairs officer can reasonably ascertain, elsewhere, and the results of those proceedings;
- (b) particulars of any complaint:
- 20 (i) which has been made against the person in accordance with Division 2 of Part 8A; and
- (ii) which the Ombudsman has duly reported under that Part to have been sustained or which has not been finally dealt with under that Part;
- (c) if the person has been referred to:
- 25 (i) in an investigation commenced under Division 4 of Part 8A; or
- (ii) in any proceedings commenced before the Police Tribunal; or
- (iii) at an inquiry or commission held under any other Act (including an Act of the Commonwealth or of another State or a Territory); or
- 30 (iv) at an inquiry authorised by any Minister, particulars of that investigation or of those proceedings, or of the findings of that inquiry or commission, in so far as they relate to the person;
- (d) particulars relating to such matters (if any) as:
- 35 (i) the Commissioner requires to be included in the report; or
- (ii) the internal affairs officer considers appropriate to include in the report;

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—*continued***

(e) particulars relating to such other matters as are prescribed by the regulations.

- (9) Sections 95, 95A: 5
- Omit section 95, insert instead:
- Arrangements for use by Police Service of staff of other agencies**
95. The Commissioner may arrange for the use of the services of any staff (by way of secondment or otherwise) of a government agency (whether or not of New South Wales). 10
- Arrangements for use by other agencies of members of Police Service**
- 95A. (1) The Commissioner may enter into arrangements with a government agency (whether or not of New South Wales) for the use, by such an agency, of the services of members of the Police Service (by way of secondment or otherwise). 15
- (2) While performing services for any such agency, a police officer retains rank, seniority and remuneration as a police officer and may continue to act as a constable. However, this subsection does not prevent the payment of additional remuneration to police officers in accordance with arrangements under this section. 20
- (10) Sections 99–120 (**Renumbering**): 25
- Renumber sections 99 to 120 as sections 200 to 221.
- (11) Section 102, renumbered as section 203 (**Wearing or possession of police uniform by others**):
- (a) Section 102 (1):
- Omit “who wears the uniform, or a reasonable imitation of the uniform, of a police officer”, insert instead “who wears, or has in possession, a police uniform”. 30
- (b) Section 102 (2):
- Omit the subsection, insert instead:
- (2) A person is not guilty of an offence against this section if the person establishes that: 35
- (a) the person had the permission of the Commissioner to wear or possess the police uniform; or

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—continued**

- (b) the person wore or was in possession of the police uniform for the purposes of a public entertainment; or
- 5 (c) the person had a reasonable excuse for wearing or being in possession of the police uniform.
- (c) After section 102 (2), insert:
- (3) In this section, “**police uniform**” means the uniform of a police officer, and includes:
- 10 (a) any parts of such a uniform (or any accoutrements of a police officer) that are generally recognised as parts of the uniform or accoutrements of a police officer; or
- (b) a reasonable imitation of such a uniform, parts of a uniform or accoutrements.
- 15 (12) Section 105, renumbered as section 206 (**Disclosure of information relating to Police Board functions**):
- From section 105 (1) (d), omit “or the Police Regulation (Allegations of Misconduct) Act 1978”.
- (13) Schedule 4 (**Savings, transitional and other provisions**):
- 20 (a) At the end of clause 2 (1) of Part 1, insert:
- the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993.
- (b) At the end of the Schedule, insert:
- 25 **PART 6—PROVISIONS CONSEQUENT ON
ENACTMENT OF POLICE SERVICE
(COMPLAINTS, DISCIPLINE AND APPEALS)
AMENDMENT ACT 1993**
- Definitions**
24. (1) In this Part:
- 30 “**amending Act**” means the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993;
- “**former appeals Act**” means the Police Regulation (Appeals) Act 1923;
- 35 “**former complaints Act**” means the Police Regulation (Allegations of Misconduct) Act 1978.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—*continued***

(2) In this Part, a reference to the repeal of the former appeals Act or the former complaints Act is (if different days are appointed for the repeal of different provisions) a reference to the repeal of the relevant provisions. 5

Application of provisions relating to complaints

25. (1) Part 8A does not apply to conduct that occurred before the commencement of the former complaints Act.

(2) Part 8A extends to conduct that occurred after the commencement of the former complaints Act and before the commencement of Part 8A. 10

(3) Anything duly done before the commencement of that Part under a provision of the former complaints Act is (subject to the regulations under this Schedule) taken to have been duly done under the corresponding provision of that Part. 15

Application of provisions relating to discipline

26. (1) Part 9 applies to conduct occurring before or after the substitution of that Part by the amending Act (including conduct that occurred before the commencement of that Part on 1 July 1990). 20

(2) Anything duly done in respect of any disciplinary matter before that substitution of Part 9 under a provision of the former Act, the former complaints Act, the former appeals Act or the regulations under those Acts or this Act is (subject to the regulations under this Schedule) taken to have been duly done under the corresponding provision of that substituted Part 9. 25

Application of provisions relating to promotion appeals 30

27. (1) Divisions 5A and 5B of Part 6 extend to decisions made before the commencement of those Divisions.

(2) Anything duly done before the commencement of those Divisions under a provision of the former appeals Act is (subject to the regulations under this Schedule) taken to have been duly done under the corresponding provision of those Divisions. 35

*Police Service (Complaints, Discipline and Appeals) Amendment 1993***SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—continued****Police Tribunal**

5 28. (1) The Police Tribunal of New South Wales established under the former complaints Act is the same court as the Police Tribunal of New South Wales established under Part 9A of this Act.

10 (2) A person who, immediately before the repeal of the former complaints Act, held office as President or Deputy President of the Police Tribunal is taken to have been appointed to that office under Part 9A of this Act for the balance of the person's term of office.

15 (3) The repeal of the former complaints Act does not affect any proceedings pending before the Police Tribunal immediately before the repeal of that Act and those proceedings may (subject to this Act) be continued despite that repeal.

**SCHEDULE 4—CONSEQUENTIAL AMENDMENTS TO
OTHER ACTS**

20 (Sec. 4)

Ombudsman Act 1974 No. 68:**(1) Section 5 (Definitions):**

25 (a) Omit the definition of "prescribed conduct", insert instead:
 "police conduct" means any action or inaction, or alleged action or inaction, of a police officer when acting as a constable;

(b) Omit section 5 (1A), insert instead:

30 (1A) In this Act, a reference to an investigation under this Act includes a reference to an investigation of police conduct under this Act pursuant to Part 8A of the Police Service Act 1990.

(2) Section 7 (Acting Ombudsman):

Omit section 7 (4), insert instead:

35 (4) An acting Ombudsman when acting as Ombudsman is taken to be the Ombudsman.

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 4—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—*continued*

- (3) Sections 13 (4A), 15 (2), 16, 24 (1), 25, 25A, 29, 32 (4) (b), 34 (3):

Omit “prescribed conduct” wherever occurring, insert instead “police conduct”. 5

- (4) Section 34 (1) (b) (ii):

Omit “section 45 of the Police Regulation (Allegations of Misconduct) Act 1978”, insert instead “section 197 of the Police Service Act 1990”. 10

Police Department (Transit Police) Act 1989 No. 58

- (1) Section 25:

Omit the section, insert instead:

Complaints against members

25. A complaint by any person against a member of the transit police service may be dealt with under Part 8A of the Police Service Act 1990 in the same way as a complaint against a police officer, and the provisions of that Part apply, with any necessary modifications, to any such complaint. 15

- (2) Section 27 (**Procedure for dealing with breaches of discipline**): 20

- (a) After section 27 (1), insert:

(1A) The provisions of Division 1 of Part 9 of the Police Service Act 1990 relating to the jurisdiction of the Police Tribunal to deal with departmental charges against police officers apply, with any necessary modifications, to departmental charges against members of the transit police service. 25

- (b) From section 27 (2), omit “under section 41 (Hearing of disciplinary charges) of the Police Regulation (Allegations of Misconduct) Act 1978”. 30

Police Service (Volunteer Police) Amendment Act 1992 No. 54

Schedule 1 (Amendment of Police Service Act 1990):

Omit Schedule 1 (11).

Police Service (Complaints, Discipline and Appeals) Amendment 1993

SCHEDULE 5—REPEALS

(Sec. 5)

PART 1—ACTS

- Police Regulation (Appeals) Act 1923 No. 33
- 5 Police Regulation (Allegations of Misconduct) Act 1978 No. 84
- Police Regulation (Allegations of Misconduct) Amendment Act 1983 No. 191
- Police Regulation (Allegations of Misconduct) Amendment Act 1987 No. 135
- 10 Police Regulation (Allegations of Misconduct) Amendment Act 1990 No. 109

PART 2—REGULATIONS

All regulations made under the Acts repealed by this Schedule, including:

- Police Tribunal Regulation 1979
 - 15 Police Internal Affairs Branch Regulation 1984
-

POLICE SERVICE (COMPLAINTS, DISCIPLINE AND APPEALS) AMENDMENT ACT 1993 No. 38

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Police Service Act 1990 No. 47
4. Consequential amendments to other Acts
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SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990 RELATING TO
COMPLAINTS AND DISCIPLINE OF MEMBERS OF POLICE SERVICE

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE SERVICE ACT
1990 RELATING TO PROMOTIONAL APPEALS BY POLICE OFFICERS

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS
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SCHEDULE 4—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

SCHEDULE 5—REPEALS

**POLICE SERVICE (COMPLAINTS, DISCIPLINE AND
APPEALS) AMENDMENT ACT 1993 No. 38**

NEW SOUTH WALES



Act No. 38, 1993

An Act to amend the Police Service Act 1990 with respect to police complaints, discipline and appeals, and in other respects; to repeal the Police Regulation (Allegations of Misconduct) Act 1978 and the Police Regulation (Appeals) Act 1923; and to amend certain other Acts.
[Assented to 8 June 1993]

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

1. This Act may be cited as the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993.

Commencement

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

Amendment of Police Service Act 1990 No. 47

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

Consequential amendments to other Acts

4. The Acts specified in Schedule 4 are amended as set out in that Schedule.

Repeals

5. (1) The Acts specified in Part 1 of Schedule 5 are repealed.
- (2) The regulations specified in Part 2 of Schedule 5 are repealed.
- (3) Different days may be appointed for the commencement of this section and Schedule 5 for the purpose of repealing different Acts or regulations, or different provisions of an Act or regulation, on different days.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT
1990 RELATING TO COMPLAINTS AND DISCIPLINE OF
MEMBERS OF POLICE SERVICE**

(Sec. 3)

(1) Section 3 (Definitions):

Insert in alphabetical order:

“GREAT” means the Government and Related Employees Appeal Tribunal established under the Government and Related Employees Appeal Tribunal Act 1980;

“Police Tribunal” means the Police Tribunal of New South Wales established under Part 9A;

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

(2) Part 8A:

After Part 8, insert:

**PART 8A—COMPLAINTS ABOUT CONDUCT OF
POLICE OFFICERS**

Division 1—Definitions

Definition of “conduct” of police officer

121. (1) In this Part, “**conduct**” of a police officer means any action or inaction, or alleged action or inaction, of a police officer when acting as a constable.

(2) Such conduct does not include conduct relating to a matter of administration that may be made the subject of a complaint under section 12 of the Ombudsman Act 1974.

Other definitions

122. In this Part:

“**complaint**” means a complaint made in accordance with Division 2;

“**conciliation**” means conciliation under Division 3;

“**investigation**” means investigation under Division 4;

“**telephone**” includes facsimile transmission or other means of electronic transmission.

Division 2—Complaints against police officers

Right to make complaint

123. (1) Any person may make a complaint about the conduct of a police officer.

(2) If the complaint is made in accordance with this Division, it is to be dealt with under this Part.

(3) However, the complaint is not to be so dealt with if it is excluded by this Division.

(4) This section does not affect any other right of a person to complain about the conduct of a police officer.

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

Excluded complaints

124. (1) **Internal management.** A complaint by a person about the conduct of a police officer is not to be dealt with under this Part if the conduct is of a class or kind that the Ombudsman and the Commissioner have agreed concerns the internal management of the Police Service and should not be subject to this Part.

(2) **Previous complaints.** A complaint by a person about the conduct of a police officer is not to be dealt with under this Part if:

- (a) the person has already made another complaint in accordance with this Division about the same conduct of the police officer and that other complaint is being dealt with, or has been dealt with, under this Part; or
- (b) the person has already made another complaint (not being a complaint in accordance with this Division) about the same conduct of the police officer and that other complaint:
 - (i) is being officially investigated; or
 - (ii) has been dealt with after such an investigation, including, for example, an official investigation by a Royal Commission or by a Parliamentary Committee, but not including an investigation by the Commissioner, the Independent Commission Against Corruption or the New South Wales Crime Commission; or
- (c) the person is not identified in the complaint and another complaint in which the complainant is identified has already been made in accordance with this Division about the same conduct of the police officer.

Making of complaints

125. (1) **In writing.** A complaint must be in writing.

(2) **Anonymous complaints.** It is not necessary for the complainant to be identified in a complaint.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

(3) **How made.** A complaint is duly made if:

- (a) it is delivered to a police officer personally or received by a police officer by post or by facsimile transmission; or
- (b) it is lodged at the office of the Ombudsman while that office is open for business or it is received in that office by post or by facsimile transmission; or
- (c) it is addressed to the Ombudsman and lodged at a Local Court while that Court is open for business; or
- (d) it is referred to the Ombudsman by the Minister or by the Independent Commission Against Corruption.

(4) **M.P. may act for complainant.** A complaint may, with the written consent of the complainant, be made on his or her behalf by a member of Parliament.

(5) **Complaints by prisoners.** If a prisoner informs a prison officer that the prisoner wishes to make a complaint to a police officer, or to the Ombudsman, the prison officer must:

- (a) take all steps necessary to facilitate the making of the complaint; and
- (b) send immediately to the addressee, unopened, any written matter addressed to a police officer (whether by name or by reference to an office held by the officer) or to the Ombudsman.

In this subsection, **prisoner** means any person in lawful detention or custody and **prison officer** means any person by whom the prisoner is detained, or in whose custody the prisoner is or who is in charge of the prisoner.

Complaints received by police to be forwarded to Commissioner

126. (1) A police officer who receives a complaint must, as soon as practicable, forward the complaint to the Commissioner or a police officer nominated by the Commissioner.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

(2) This section does not apply if the complaint has previously been forwarded to the Commissioner or nominated officer.

Ombudsman to be sent copies of complaints received by police

127. If the Commissioner or nominated police officer receives a complaint, either directly or forwarded by another police officer, the Commissioner or nominated officer must, as soon as practicable, cause a copy of the complaint to be sent to the Ombudsman.

Provisions relating to complaints lodged at Local Courts

128. (1) If a complaint is lodged at a Local Court, the Clerk of the Court must, by telephone, notify the Ombudsman as soon as practicable of brief details of the complaint.

(2) The Clerk of the Court must, as soon as practicable, forward the complaint to the Ombudsman, unless otherwise directed by the Ombudsman.

(3) If the Clerk of the Court is directed to do so by the Ombudsman, the Clerk must:

- (a) forward the complaint to a police officer specified by the Ombudsman; and
- (b) obtain a receipt for the complaint from that police officer; and
- (c) retain such records of the complaint as the Ombudsman directs; and
- (d) send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk.

(4) The Ombudsman may give such a direction to the Clerk of the Court only if the Ombudsman is requested to do so by a police officer responsible for investigating any aspect of the complaint that may relate to a possible criminal offence.

(5) The Clerk of a Local Court is taken to be an officer of the Ombudsman in connection with any action of the Clerk under this section.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Provisions relating to complaints referred by Minister or ICAC or made by M.P.

129. (1) If the Minister refers a complaint to the Ombudsman or a member of Parliament acts for a complainant, neither the Minister nor the member becomes the complainant, except for the purposes of any provision of this Act under which the complainant is informed or notified of any matter or given or sent any matter.

(2) If:

- (a) the Minister publishes to a person whose complaint has been referred by the Minister any matter with respect to the complaint published to the Minister by a police officer or by the Ombudsman; or
- (b) a member of Parliament publishes to a person for whom the member acts any such matter published to the member,

the publication to that person has, for all purposes, the same effect as it would have if it had been published to that person by the police officer, or the Ombudsman, as the case may be.

(3) If the Independent Commission Against Corruption refers a complaint to the Ombudsman, that Commission does not become the complainant. A complaint about the conduct of a police officer in a report, transcripts of proceedings or other record of that Commission does not constitute a complaint unless it is referred by that Commission or it is the subject of a separate complaint under this Division.

Mixed and linked complaints

130. (1) This section applies to:

- (a) a **mixed complaint**, that is, a complaint relating partly to conduct of a police officer that is conduct within the meaning of this Part and partly to conduct of that or another police officer that is conduct that may be made the subject of a complaint under section 12 of the Ombudsman Act 1974; or

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

(b) a **linked complaint**, that is, a complaint made in respect of conduct of a police officer that is conduct within the meaning of this Part and, in the opinion of the Ombudsman, that conduct is directly linked to conduct of that or another police officer that may be made the subject of a complaint under section 12 of the Ombudsman Act 1974.

(2) Mixed or linked complaints are to be dealt with in accordance with the directions of the Ombudsman.

(3) For that purpose, the Ombudsman may direct that the complaints be dealt with wholly under this Part or wholly under the Ombudsman Act 1974, or partly under this Part and partly under that Act, despite anything to the contrary in this Part or that Act.

(4) If it appears to the Ombudsman:

(a) that the Ombudsman is dealing under the Ombudsman Act 1974 with a complaint that relates to conduct of a police officer that is conduct within the meaning of this Part; or

(b) that the Ombudsman is dealing under this Part with a complaint relating to conduct of a police officer that is not conduct within the meaning of this Part,

the Ombudsman is not to discontinue action on the complaint but (subject to this section) must continue action on the complaint in accordance with the provisions of the appropriate Act.

Division 3—Conciliation

Nature of conciliation

131. For the purposes of this Part, **conciliation** of a complaint about the conduct of a police officer means dealing with the complaint under this Division in a manner acceptable to the complainant.

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Complaints where conciliation must be attempted

132. (1) An attempt must be made to deal with a complaint about the conduct of a police officer by conciliation if the conduct is of a class or kind that the Ombudsman and the Commissioner have agreed should be dealt with by conciliation.

(2) This section does not apply to a complaint excluded from conciliation by section 134.

Other complaints where conciliation may be attempted

133. (1) An attempt may be made to deal with any other complaint about the conduct of a police officer by conciliation if the officer dealing with the complaint is satisfied that conciliation may be successful.

(2) This section does not apply to a complaint excluded by section 134.

Complaints that may not be dealt with by conciliation

134. A complaint about the conduct of a police officer may not be dealt with by conciliation if:

- (a) the conduct appears to have involved the commission of an indictable offence; or
- (b) the Commissioner has decided, or the Ombudsman has directed, that the complaint be investigated under Division 4; or
- (c) the complainant is not identified.

Who attempts conciliation

135. (1) A police officer is to make an attempt to deal with a complaint by conciliation if the complaint was received by a police officer or if it was referred by the Ombudsman to the Commissioner for conciliation.

(2) If the complaint was received by the Ombudsman and not referred to the Commissioner, the attempt to conciliate is to be made by the Ombudsman or an officer of the Ombudsman.

(3) The person who is attempting to deal with a complaint by conciliation may, with the agreement of the complainant, arrange for a mediator to assist in the conciliation.

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Notification of outcome of conciliation

136. (1) A police officer who attempts to deal with a complaint by conciliation must inform the Ombudsman of the outcome.

(2) If the Ombudsman or an officer of the Ombudsman attempts to deal with a complaint by conciliation, the Ombudsman must inform the Commissioner of the outcome.

Statements by police officer during conciliation not admissible in disciplinary proceedings

137. (1) If a complaint about the conduct of a police officer is being dealt with by conciliation under this Division, any statement made by that police officer in good faith for the purposes of the conciliation is not admissible in any disciplinary proceedings against the police officer.

(2) The statement is inadmissible only if the disciplinary proceedings relate to the conduct that is the subject of the complaint.

Audit by Ombudsman of conciliation by police officers

138. (1) The Ombudsman is to conduct random audits of complaints that police officers have dealt with by conciliation under this Division.

(2) For the purposes of any such audit, the Ombudsman may:

- (a) inspect the records made by police officers of a conciliation; and
- (b) interview any of the parties to the conciliation about the conduct of the conciliation; and
- (c) interview any other person about matters related to the conciliation.

(3) The Ombudsman may make recommendations to the Commissioner about the conciliation of complaints under this Division.

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Procedure where conciliation fails

139. If an attempt made under this Division to deal with a complaint by conciliation is unsuccessful, the complaint continues thereafter to be subject to the other provisions of this Part.

Division 4—Investigations

Investigations of complaints by Commissioner at his or her discretion

140. (1) The Commissioner may cause a complaint to be investigated under this Division.

(2) The Commissioner must, as soon as practicable after causing a complaint to be investigated, notify the Ombudsman of that fact.

Investigations of complaints by Commissioner when directed by Ombudsman

141. (1) The Commissioner must cause a complaint to be investigated under this Division if the Ombudsman determines that the complaint should be investigated and duly notifies the Commissioner accordingly.

(2) In determining whether a complaint should be investigated, the Ombudsman may have regard to such matters as the Ombudsman thinks fit, including whether, in his or her opinion:

- (a) the complaint is frivolous, vexatious or not made in good faith; or
- (b) the subject-matter of the complaint is trivial; or
- (c) the conduct complained of occurred at too remote a time to justify investigation; or
- (d) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress; or
- (e) the complainant does not or, where the complainant is not identified, the complainant could not have an interest, or a sufficient interest, in the conduct complained of.

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(3) Without affecting the generality of subsection (2), the Ombudsman is not to determine that a complaint, in which the complainant is not identified, should be investigated, unless the Ombudsman is of the opinion:

- (a) that the complaint appears to contain sufficient information to enable an investigation to be carried out; and
- (b) that the conduct the subject of the complaint would:
 - (i) if the conduct had occurred, provide reasonable grounds to believe that a criminal offence had been committed by a police officer; or
 - (ii) if a departmental charge were proved against a police officer in relation to the conduct, warrant the imposition of a substantial punishment on the police officer.

(4) The notification to the Commissioner of a determination of the Ombudsman that a complaint be investigated:

- (a) is to be in writing; and
- (b) as far as practicable, is to identify the police officer whose conduct is the subject of the complaint; and
- (c) is to be accompanied by a copy of the complaint.

(5) If the Ombudsman determines that a complaint should be investigated by the Commissioner, the Ombudsman:

- (a) must notify the complainant of that fact, if the complainant is identified; and
- (b) may also notify the police officer whose conduct is the subject of the complaint.

(6) If the Ombudsman determines that a complaint should not be investigated by the Commissioner, the Ombudsman must:

- (a) notify the complainant of that fact and of the Ombudsman's reasons for the determination, if the complainant is identified; and
- (b) send to the Commissioner a copy of the notification and of the complaint to which it relates.

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OF POLICE SERVICE—*continued***

Conduct of investigation by Commissioner

142. (1) An investigation under this Division by the Commissioner is to be conducted by such police investigative staff as are selected by the Commissioner or in accordance with arrangements approved by the Commissioner.

(2) While investigating a complaint, a police officer must not, without the consent of the Commissioner or another police officer nominated by the Commissioner, disclose to any person (other than the Commissioner or a police officer so nominated) the identity of the complainant. This subsection does not apply to a disclosure in a report to the Commissioner under this Division of the progress or result of the investigation.

(3) Consent to the disclosure of the identity of the complainant is not to be granted unless it is necessary for the effective conduct of the investigation of the complaint.

Deferral or discontinuance of investigation

143. (1) The Commissioner may apply to the Ombudsman for consent:

- (a) to defer the commencement or continuation of the investigation of a complaint; or
- (b) to discontinue the investigation of a complaint.

(2) The Ombudsman may:

- (a) consent to the deferral of the commencement or continuation of the investigation of a complaint pending the conclusion of any relevant criminal proceedings or for any other good cause; or
- (b) consent to the discontinuance of the investigation of a complaint if continuation of the investigation would be, in the circumstances of the case, unreasonable or impracticable.

(3) If the Ombudsman grants a consent and the complainant is identified, the Ombudsman is to notify the complainant in writing of that fact and of the reasons for granting the consent and is to send to the Commissioner a copy of the notification.

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(4) If the Ombudsman does not, within 28 days, grant a consent applied for under this section, the Commissioner may, within 14 days thereafter, apply to the President of the Police Tribunal for that consent.

(5) The President of the Police Tribunal may:

(a) grant the consent applied for subject to such conditions (if any) as are specified by the President; or

(b) refuse to grant the consent,

and must notify the decision to the Commissioner, the Ombudsman and, if the complainant is identified, the complainant.

(6) The President of the Police Tribunal may authorise another member of the Police Tribunal to deal with an application to the President under this section.

(7) The Ombudsman may, if satisfied that it is in the public interest and without any application by the Commissioner for consent, direct the Commissioner that the investigation of a complaint under this Division be discontinued.

(8) The commencement or continuation of the investigation of a complaint may not be deferred, and the investigation of a complaint may not be discontinued, except in accordance with a consent granted or direction given under this section.

Monitoring of investigation by Ombudsman

144. (1) The Ombudsman may monitor the progress of the investigation of a complaint if the Ombudsman considers it is in the public interest to do so.

(2) The Ombudsman or an officer of the Ombudsman may be present as an observer during interviews conducted by police officers for the purpose of an investigation and confer with those police officers about the conduct and progress of the investigation. The powers of the Ombudsman or an officer of the Ombudsman under this subsection may be exercised only in accordance with arrangements agreed to between the Ombudsman and the Commissioner as to the manner in which the powers are to be exercised.

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(3) The Commissioner is to provide the Ombudsman with such documentary and other information (including records of interviews) as the Ombudsman may from time to time request with respect to an investigation.

Proceedings to be instituted if warranted

145. (1) If it appears to a police officer conducting an investigation that sufficient evidence exists to warrant the prosecution of any person for an offence, the police officer is, subject to this Act, to cause appropriate proceedings to be instituted against that person.

(2) The Commissioner must inform the Ombudsman of the institution of any such proceedings and of the particulars of the proceedings.

(3) A police officer is not to institute proceedings against another police officer for an offence without the approval of the Commissioner.

Result of investigation to be reported

146. A police officer conducting an investigation must:

- (a) at such times as the Commissioner may direct while the investigation is proceeding; and
- (b) at the conclusion of the investigation,

report to the Commissioner the progress or result of the investigation and provide the Commissioner with copies of all statements taken by the police officer in the course of the investigation and of all other documents on which the report is based.

Report etc. to be sent to Ombudsman

147. (1) The Commissioner must, as soon as practicable after being satisfied that an investigation has been concluded:

- (a) send to the Ombudsman a copy of the report provided under section 146 at the conclusion of the investigation and copies of all statements taken in the course of the investigation and of all other documents on which the report is based; and

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- (b) provide the Ombudsman with such comments on the report and statements as the Commissioner thinks fit; and
- (c) specify what action should, in the opinion of the Commissioner, be taken with respect to the complaint to which the investigation related.

(2) After receiving that material and information, the Ombudsman may require the Commissioner and any police officer who investigated the complaint to provide such additional information as the Ombudsman considers is necessary to enable the Ombudsman to determine whether the complaint was properly investigated.

Investigation under the Ombudsman Act 1974 where complaint not dealt with in time

148. (1) If the Ombudsman has not, in relation to a complaint, received from the Commissioner the material and information referred to in section 147 (1) within the relevant period referred to in this section, the Ombudsman may make the conduct to which the complaint relates the subject of an investigation under the Ombudsman Act 1974.

(2) The Ombudsman must notify the Commissioner in writing when the Ombudsman commences such an investigation.

(3) The **relevant period** is the period of 180 days after:

- (a) the Commissioner notifies the Ombudsman pursuant to section 140 that the complaint is being investigated; or
- (b) the Ombudsman notifies the Commissioner pursuant to section 141 of the Ombudsman's determination that the complaint should be investigated,

or that period as extended under section 149 or 150.

(4) However, the period of 180 days referred to in subsection (3) is to be a period of 90 days in the case of a complaint of a class or kind that the Ombudsman and the Commissioner have agreed should be subject to that shorter period.

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Extension of time where complaint not dealt with

149. (1) The Commissioner may apply to the Ombudsman for an extension of the relevant period referred to in section 148, and the Ombudsman may grant the extension.

(2) More than one such application may be made, but no such application may be made after the relevant period has expired.

(3) If the Ombudsman grants the extension, the Ombudsman must, if the complainant is identified, notify the complainant in writing, giving the reasons for granting the extension, and must send to the Commissioner a copy of the notification.

(4) If the Ombudsman does not, within 28 days, grant the extension applied for under this section, the Commissioner may, within 14 days thereafter, apply to the President of the Police Tribunal for that extension.

(5) The President of the Police Tribunal may:

- (a) grant the extension applied for subject to such conditions, if any, as are specified by the President; or
- (b) refuse to grant the extension,

and must notify the decision to the Commissioner, the Ombudsman and, if the complainant is identified, the complainant.

(6) The President of the Police Tribunal may authorise another member of the Police Tribunal to deal with an application to the President under this section.

(7) If an application for an extension is made to the Ombudsman in accordance with this section, the relevant period is extended until:

- (a) the application is granted by the Ombudsman; or
- (b) the application is withdrawn; or

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(c) if the application is not granted by the Ombudsman:

- (i) the time for the making of an application to the President of the Police Tribunal for that extension expires; or
- (ii) if an application is made within that time to the President—the application is dealt with by the President or withdrawn.

(8) If an extension is granted by the Ombudsman or the President of the Police Tribunal, the relevant period is extended by the period specified by the Ombudsman or President when granting the extension.

Extension of time where application for deferral of investigation etc.

150. (1) If an application for the Ombudsman's consent is made under section 143, the relevant period referred to in section 148 is extended until:

- (a) the application is granted by the Ombudsman; or
- (b) the application is withdrawn; or
- (c) if the application is not granted by the Ombudsman:
 - (i) the time for the making of an application to the President of the Police Tribunal for that consent expires; or
 - (ii) if an application is made within that time to the President—the application is dealt with by the President or withdrawn.

(2) If an application for consent under section 143 to the deferral of the commencement or continuation of an investigation is granted by the Ombudsman or the President of the Police Tribunal, the relevant period is taken:

- (a) to have ceased to run on the day the application was made; and
- (b) to recommence to run from the day to which the commencement or continuation is deferred.

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Further investigation if Ombudsman not satisfied about investigation

151. (1) If, after receiving the information referred to in section 147, the Ombudsman is not satisfied that the complaint to which the information relates was properly investigated under this Division, the Ombudsman must report to the Commissioner accordingly, specifying what are, in his or her opinion, the deficiencies in the investigation.

(2) On receipt of the report, the Commissioner is to cause a further investigation to be conducted in order to remedy the deficiencies referred to in the report.

(3) This Division (including this section) applies to and in respect of a further investigation under this section in the same way as it applies to an initial investigation.

Investigation under the Ombudsman Act 1974 after completion of police investigation

152. (1) If, after considering all the material and information provided for the Ombudsman under this Division, the Ombudsman is neither satisfied that a complaint has not been sustained nor satisfied that the complaint has been sustained, the Ombudsman may:

- (a) make the conduct to which the complaint relates the subject of an investigation under the Ombudsman Act 1974; or
- (b) having regard to the public interest, determine that no further investigation of the complaint should be carried out.

(2) If the Ombudsman determines under subsection (1) (b) that no further investigation of a complaint should be carried out:

- (a) the Ombudsman must, if the complainant is identified, notify the complainant accordingly, giving the reasons for the determination, and must send a copy of the notification to:
 - (i) the Commissioner; and
 - (ii) the police officer whose conduct was the subject of the complaint; and

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- (b) the complaint is, for the purposes of this Act, deemed not to have been sustained.

Investigation under the Ombudsman Act 1974 before completion of police investigation

153. (1) The Ombudsman may, if satisfied that it is in the public interest to do so, make the conduct to which a complaint relates the subject of an investigation under the Ombudsman Act 1974.

(2) The Ombudsman may act under this section before the commencement of an investigation under this Division, during the progress of any such investigation or before the results of any such investigation have been considered by the Ombudsman.

(3) The Ombudsman must notify the Commissioner of any action under this section.

(4) On being so notified, the Commissioner is to discontinue any investigation under this Division.

(5) This section has effect despite anything to the contrary in this Part.

Other police investigations not affected

154. The Commissioner or any other police officer is not prevented from investigating, otherwise than under this Division, a matter relating to a complaint even though an investigation under this Division is not made, is deferred or discontinued, is completed or is made the subject of an investigation under the Ombudsman Act 1974.

Division 5—Reports

Unjustified complaints

155. (1) If, after considering all the material and information provided under Division 4 about a complaint or after an investigation under the Ombudsman Act 1974 of a complaint, the Ombudsman is satisfied that the complaint has not been sustained, the Ombudsman is to report that fact to:

- (a) the complainant, if the complainant is identified; and
(b) the Commissioner; and

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(c) the police officer whose conduct was the subject of the complaint.

(2) If, after an investigation under the Ombudsman Act 1974 of a complaint, the Ombudsman is neither satisfied that a complaint has not been sustained nor satisfied that the complaint has been sustained, the Ombudsman is to report that fact to:

- (a) the complainant, if the complainant is identified; and
- (b) the Commissioner; and
- (c) the police officer whose conduct was the subject of the complaint,

and the complaint is, for the purposes of this Part, deemed not to have been sustained.

Justified complaints

156. (1) If, after considering all the material and information provided under Division 4 about a complaint or after an investigation under the Ombudsman Act 1974 of a complaint, the Ombudsman is satisfied that the conduct to which the complaint relates:

- (a) was contrary to law; or
- (b) was unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) was in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory; or
- (d) was based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or
- (e) was based wholly or partly on a mistake of law or fact; or
- (f) was conduct for which reasons should have been given but were not given,

or that the complaint has been otherwise sustained, the Ombudsman must compile a report relating to the complaint and the conduct to which it relates, giving reasons for his or her conclusions.

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(2) In such a report, the Ombudsman may recommend:

- (a) that the conduct to which it relates be considered or reconsidered by the police officer whose conduct it was, or by any person in a position to supervise or direct that police officer in relation to the conduct or to review, rectify, mitigate or change the conduct or its consequences; or
- (b) that action be taken to rectify, mitigate or change the conduct or its consequences; or
- (c) that reasons be given for the conduct; or
- (d) that any law or practice relating to the conduct be changed; or
- (e) that any other action be taken.

(3) However, the Ombudsman need not compile a report on a complaint that has been sustained if the Ombudsman is satisfied with the action that has been taken by the Commissioner as a result of the complaint being sustained.

Distribution of report about justified complaints

157. (1) When the Ombudsman has compiled a report under section 156 the Ombudsman must, before acting under subsection (2) or (3):

- (a) inform the Minister of the compilation of the report; and
- (b) consult the Minister if the Minister so requests.

(2) The Ombudsman must give a copy of the report to the Minister and to the Commissioner and, as soon as practicable after receiving the report, the Commissioner must give a copy of the report to the police officer whose conduct is the subject of the report.

(3) The Ombudsman may give a copy of the report to the complainant, if the complainant is identified, except any part of the report that does not relate to his or her complaint.

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Notification of proposed action on report about justified complaints

158. (1) The Commissioner must, as soon as is practicable after receiving a report under section 156, notify the Ombudsman of the nature of the action (if any) proposed to be taken by the Commissioner as a result of the report.

(2) The nature of the action that the Commissioner may propose in the notification includes:

- (a) that the police officer be admonished; or
- (b) that a departmental charge be preferred against the police officer; or
- (c) that consideration be given to the police officer being charged with a criminal offence.

The notification is not, however, to contain particulars of any penalty proposed to be imposed.

(3) Where the Ombudsman has given a copy of a report under section 156 to the Commissioner and the Ombudsman is of the opinion:

- (a) that the Commissioner has unreasonably delayed notifying the Ombudsman under this section with respect to the report; or
- (b) that the nature of the proposed action notified under this section by the Commissioner is, in the circumstances of the case, unreasonable or inadequate; or
- (c) that the Commissioner has unreasonably delayed taking action as a result of the report,

the Ombudsman is to advise the Commissioner accordingly by notice in writing served on the Commissioner.

(4) If the Ombudsman and the Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (3), either or both of them may refer the issue to the President of the Police Tribunal.

(5) The President of the Police Tribunal may:

- (a) determine the issue; or
- (b) decline to do so,

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and must notify the decision to the Commissioner and the Ombudsman.

(6) The President of the Police Tribunal may determine the issue:

- (a) by directing the Commissioner to give the Ombudsman the notification under subsection (1) forthwith or within a period specified in the direction; or
- (b) by directing the Commissioner to consider taking action of the nature specified in the direction; or
- (c) by directing the Commissioner to take action of the nature proposed by the Commissioner forthwith or within a period specified in the direction.

(7) Any direction given by the President of the Police Tribunal under this section is to be carried into effect by the Commissioner.

(8) The President of the Police Tribunal may authorise another member of the Police Tribunal to deal with an issue referred to the President under this section.

(9) Nothing in this section:

- (a) permits the President of the Police Tribunal to review a determination made by the Ombudsman that a complaint has been sustained; or
- (b) affects the exercise by the Police Tribunal of its jurisdiction under any other provision of this Act.

Notification of action taken on report

159. (1) The Commissioner must, as soon as practicable after taking action as the result of a report under section 156 (being action with respect to a police officer whose conduct is the subject of a complaint), notify the Ombudsman of the nature of the action so taken.

(2) The notification must, if the action taken consists of or includes the imposition of a penalty, contain particulars of the nature and quantum of the penalty imposed.

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(3) The Ombudsman is to determine whether, in the circumstances of the case, action so notified was, in the opinion of the Ombudsman:

- (a) appropriate; and
- (b) taken within a reasonable time.

Report to complainant

160. The Ombudsman:

- (a) may from time to time report to the complainant (if identified) on the progress of an investigation under Division 4 into the complaint; and
- (b) must report to the complainant (if identified) on the results of the investigation; and
- (c) may make to the complainant such comments on the investigation and its consequences as the Ombudsman thinks fit.

Special report to Parliament

161. (1) The Ombudsman may, at any time, make a special report to the Minister for presentation to Parliament on any matter arising in connection with the exercise of his or her functions under this Part.

(2) The Ombudsman may include in such a report a recommendation that the report be made public as soon as practicable.

(3) If the report contains that recommendation, the Minister may make it public before it is presented to Parliament.

Special report about serious misconduct

162. If the Ombudsman is of the opinion that a police officer is guilty of such serious misconduct as may warrant dismissal or punishment, the Ombudsman may report his or her opinion and the reasons for that opinion to the Minister and Commissioner.

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Division 6—Miscellaneous

Ombudsman may require further information from complainant

163. (1) For the purposes of the conciliation of a complaint under Division 3 or for the purpose of determining whether a complaint should be investigated under Division 4, the Ombudsman may, if the complainant is identified, do any one or more of the following:

- (a) request a complainant to attend before the Ombudsman for the purpose of providing further information concerning the complaint;
- (b) request the complainant to provide further written particulars concerning the complaint;
- (c) request the complainant to verify by statutory declaration his or her complaint, or any particulars given by the complainant concerning his or her complaint.

(2) The Ombudsman may withdraw the request if the complainant objects and the Ombudsman is satisfied that the grounds of the objection are well-founded.

(3) If the Ombudsman makes a request (and it is not withdrawn), the Ombudsman is to take no further action in connection with the complaint concerned until the request is complied with or a reasonable time for compliance with the request has elapsed.

(4) If the request is not complied with within a reasonable time, the Ombudsman may treat the complaint concerned as having been dealt with under Division 3 in a manner acceptable to the complainant. If the Ombudsman does so, the Ombudsman is to inform the Commissioner and the complainant accordingly.

Ombudsman may request further information from other persons

164. (1) For the purpose of determining whether a complaint should be investigated under Division 4, the Ombudsman may also request information from persons other than the complainant.

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(2) However, this section does not authorise the Ombudsman:

- (a) to investigate the complaint or to collect information for the purposes of the investigation of the complaint or of a report under this Part; or
- (b) to interview the police officer the subject of the complaint; or
- (c) to require persons to provide information.

Ombudsman may require Commissioner to provide information etc.

165. (1) For the purposes of a conciliation of a complaint or for the purpose of determining whether a complaint should be investigated under Division 4, the Commissioner must, at the request of the Ombudsman, provide the Ombudsman:

- (a) with an explanation of the policies, procedures and practices of the Police Service relevant to the conduct complained of; and
- (b) with such documentary and other information (including records of interviews) as the Ombudsman requests with respect to any inquiries made by the Commissioner or other police officers into the complaint; and
- (c) to the extent to which the Commissioner is able to do so, with any explanation, comment or information sought by the Ombudsman in connection with the complaint.

(2) The Ombudsman may withdraw any such request if the Commissioner objects and the Ombudsman is satisfied that the grounds of the objection are well-founded.

(3) The Ombudsman may, instead of making any such request, seek the information concerned from other police officers in accordance with arrangements agreed to by the Commissioner and the Ombudsman.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Certain information to be confidential

166. (1) If the Commissioner is of the opinion that publication of any material or information:

- (a) which, under this Part, the Commissioner or any other police officer is required to provide for the Ombudsman; or
- (b) which, under the Ombudsman Act 1974, the Commissioner or any other police officer is required, in the course of an investigation under that Act of the conduct to which a complaint relates, to provide for the Ombudsman,

might prejudice the investigation or prevention of crime, or otherwise be contrary to the public interest, the Commissioner is to inform the Ombudsman accordingly, giving the reasons for his or her opinion.

(2) If the Ombudsman, pursuant to a requirement made under the Ombudsman Act 1974 in the course of an investigation under that Act of the conduct to which a complaint relates, receives material or information from a police officer, the Ombudsman may not, except as provided in subsection (3) (b) or with the consent of the Commissioner, publish that material or information, otherwise than to the Commissioner, until the expiration of 21 days after that receipt.

(3) If the Ombudsman is provided with material or information in respect of which the Commissioner has given the opinion referred to in subsection (1), the Ombudsman:

- (a) may not, except as provided in paragraph (b), publish that material or information; and
- (b) may, if in his or her opinion the circumstances so warrant, make in relation to that material or information a report to the Minister for presentation to Parliament.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Certain provisions of Ombudsman Act 1974 to apply

167. Sections 17, 18 and 23 of the Ombudsman Act 1974 apply to and in respect of the exercise by the Ombudsman of the functions conferred and imposed by this Part in the same way as they apply to and in respect of an investigation by the Ombudsman under the Ombudsman Act 1974.

Information to be confidential

168. Without limiting the operation of section 34 (1) (a) of the Ombudsman Act 1974, in the application of section 34 (1) of that Act to and in respect of information received in the course of the administration or execution of this Part, the reference in that subsection:

- (a) to a public authority—is to be construed as a reference to a police officer; and
- (b) to the head of that authority—is to be construed as a reference to the Commissioner; and
- (c) to the responsible Minister—is to be construed as a reference to the Minister administering the Police Service Act 1990.

Ombudsman or officer as witness

169. (1) Neither the Ombudsman, nor an officer or special officer of the Ombudsman who is not a police officer, is competent or compellable, in any legal proceedings or in any proceedings before the Police Tribunal, to give evidence or produce documents in respect of any matter in which he or she is or was involved in the course of the administration or execution of this Part.

(2) Subsection (1) does not apply to or in respect of any proceedings under section 37 of the Ombudsman Act 1974 or under Part 3 of the Royal Commissions Act 1923.

(3) Subsections (1) and (2) do not prejudice or affect the operation of section 35 of the Ombudsman Act 1974 in relation to the administration and execution of this Act.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Limitation on delegation of functions by Ombudsman

170. (1) The functions of the Ombudsman that may, under section 10 of the Ombudsman Act 1974, be delegated to a special officer of the Ombudsman (other than an Assistant Ombudsman) do not include:

- (a) any power or duty to make a report under this Act; or
- (b) the power to require additional information referred to in section 147 (2) of this Act.

(2) The functions of the Ombudsman that may, under section 10 of the Ombudsman Act 1974, be delegated to an Assistant Ombudsman do not include any power or duty to make a report under this Act (other than a report under section 155, 156 or 160).

Liability to do duty continues

171. This Part does not operate to absolve a police officer who receives a complaint from liability to perform any duty imposed on the police officer otherwise than by this Part.

Publicity

172. (1) The Ombudsman is to cause to be prepared pamphlets briefly explaining the rights and duties of police officers and the public under this Part.

(2) The pamphlets are to be written in the English language and in such other languages as the Ombudsman considers necessary.

(3) The Ombudsman must:

- (a) supply the Commissioner with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at each police station in the State, and the Commissioner is to distribute the pamphlets accordingly; and
- (b) supply the Director-General of the Department of Courts Administration with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at the office of each Local Court in the State, and the Director-General is to distribute the pamphlets accordingly; and

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

- (c) make such arrangements as the Ombudsman thinks fit with any Government department or instrumentality or with any other body or organisation for making the pamphlets available, or distributing them, to any interested person; and
- (d) take such further or other action as the Ombudsman considers necessary to bring the provisions of this Part to the attention of interested persons.

Certain documents privileged

172A. (1) A document brought into existence for the purposes of this Part is not admissible in evidence in any proceedings other than an inquiry under section 197 or proceedings which concern the discipline of police officers and which are dealt with by:

- (a) the Commissioner; or
- (b) the Police Tribunal; or
- (c) GREAT.

(2) Subsection (1) does not apply to or in respect of:

- (a) a document comprising a complaint; or
- (b) a document published by order of, or under the authority of, either House, or both Houses, of Parliament; or
- (c) a document published under section 161 (3) or 197 (5); or
- (d) a document that a witness is willing to produce.

(3) Subsections (1) and (2) do not operate to render admissible in evidence in any proceedings any document that would not have been so admissible if this section had not been enacted.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

(3) Part 9:

Omit Part 9, insert instead:

**PART 9—DISCIPLINE OF MEMBERS OF THE
POLICE SERVICE**

Division 1—Discipline of police officers

Instigation of disciplinary action by Commissioner

173. (1) If the Commissioner considers that action should be taken against a police officer, the Commissioner may direct the preferment of a departmental charge against the officer or the institution of court proceedings, whichever the Commissioner considers appropriate.

(2) If the Commissioner is satisfied that any conduct of a police officer was not satisfactory but does not justify the preferment of a departmental charge, the Commissioner may admonish the officer for that conduct.

(3) A departmental charge must set out whether the charge relates to conduct the subject of a complaint investigated under Division 4 of Part 8A.

**Departmental charges to be heard and determined by
Police Tribunal exercising original jurisdiction**

174. (1) The Police Tribunal has exclusive jurisdiction to hear a departmental charge that is denied by the police officer and to determine whether it has been proved if:

- (a) the charge relates to conduct the subject of a complaint investigated under Division 4 of Part 8A; or
- (b) the charge does not relate to such conduct but the police officer elects to have the charge heard by the Police Tribunal.

(2) In exercising the original jurisdiction conferred by this section, the Police Tribunal is to be constituted by a member sitting alone.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Recommendations by Police Tribunal exercising original jurisdiction as to penalty

175. (1) If:

- (a) the Police Tribunal, exercising its original jurisdiction, determines that a departmental charge preferred against a police officer has been proved; or
- (b) the police officer admits the charge after the Police Tribunal commences to hear the charge,

the Police Tribunal is to make an assessment of the penalty, if any, that the Police Tribunal considers would be appropriate to be imposed on the police officer.

(2) The Police Tribunal is to advise the Minister or the Commissioner, as the case requires, of its recommendation with respect to that penalty.

(3) Before:

- (a) the Minister makes a recommendation (if any) to the Governor with respect to the penalty that might be imposed on the police officer against whom the departmental charge was preferred; or
- (b) the Commissioner imposes a penalty (if any) on any such police officer,

the Minister or the Commissioner is to take into consideration the recommendation made by the Police Tribunal with respect to that penalty.

Appeal to Review Division of Police Tribunal against decision of Tribunal exercising original jurisdiction

176. (1) If the Police Tribunal exercising its original jurisdiction determines that a departmental charge preferred against a police officer has been proved, the police officer may, within 30 days after the date of the determination, appeal against the determination to the Review Division of the Police Tribunal.

(2) The appeal may be made on any one or more of the following grounds:

- (a) that the officer is not guilty of the charge;
- (b) that the evidence disclosed no offence;

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

- (c) that the determination is bad and contrary to law;
- (d) that the determination is against the evidence and the weight of evidence.

(3) An appeal is to be in the nature of a review of the matter on the evidence given in the relevant proceedings in the Police Tribunal's original jurisdiction.

(4) New evidence may nevertheless be given and considered in the appeal if the Review Division of the Police Tribunal is satisfied that it was not reasonably available at the time the original proceedings were heard.

Proceedings relating to departmental charges

177. (1) At any proceedings before the Police Tribunal relating to a departmental charge, whether in its original jurisdiction or by way of appeal to the Review Division:

- (a) the Commissioner and the police officer charged are each entitled to be represented by counsel, solicitor or agent; and
- (b) if the charge relates to conduct the subject of a complaint investigated under Division 4 of Part 8A—the complainant is not a party; and
- (c) the public is not to be excluded unless the Police Tribunal otherwise orders; and
- (d) the function of the Police Tribunal is to determine, on the true merits and justice of the case and without being bound by strict legal precedent, whether or not the charge has been proved.

(2) The Police Tribunal is to cause a copy of its determination at those proceedings to be sent to:

- (a) the Commissioner; and
- (b) the police officer charged; and
- (c) the Ombudsman; and
- (d) if the charge relates to conduct the subject of a complaint investigated under Division 4 of Part 8A—the complainant, if the complainant is identified.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

When charges duly proved

178. (1) A departmental charge against a police officer is duly proved if:

- (a) in the case of a charge heard by the Police Tribunal—the Police Tribunal determines that the charge has been proved; or
- (b) in any other case—the Commissioner determines that the charge has been proved,

or the charge is admitted by the police officer in accordance with the regulations.

(2) A departmental charge that the Police Tribunal exercising its original jurisdiction determines to be proved is not duly proved:

- (a) until the expiry of 30 days after the date of the determination; or
- (b) if an appeal to the Review Division of the Police Tribunal is made within that time, until that Review Division determines that the charge is proved or the appeal is duly withdrawn.

(3) A criminal charge against a police officer is duly proved if a court convicts the officer of the offence or finds that the charge has been proved without proceeding to a conviction.

Disciplinary action by Commissioner

179. (1) If a departmental charge or criminal charge against a police officer is duly proved, the Commissioner may take such action against the police officer as the Commissioner considers appropriate.

(2) In particular, the Commissioner may do any one or more of the following:

- (a) require the police officer to undergo counselling;
- (b) reprimand the police officer;
- (c) fine the police officer;
- (d) direct that the police officer (if a constable) lose seniority;

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

- (e) reduce the salary of the police officer (if a non-commissioned officer);
- (f) demote the police officer (if a non-commissioned officer) to a lower rank or grade, or recommend to the Minister that the police officer (if a commissioned officer) be so demoted;
- (g) dismiss the police officer (if a non-commissioned officer) or recommend to the Minister that the police officer (if a commissioned officer) be dismissed.

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

Disciplinary action by Governor

180. (1) The Governor may, with respect to the discipline of commissioned police officers, impose either or both of the following penalties:

- (a) demote the police officer to a lower rank or grade;
- (b) dismiss the police officer.

(2) This section does not limit any other power of the Governor with respect to commissioned police officers.

(3) Before making a recommendation to the Governor with respect to the penalty to be imposed on a commissioned police officer under this section, the Minister must:

- (a) invite the police officer to make a written submission to the Minister (within a reasonable time specified by the Minister) with respect to the penalty which might be imposed by the Governor; and
- (b) take into consideration any such submission made by the police officer.

(4) Subsection (3) does not affect any obligation of the Minister under this Act to obtain or take into consideration the recommendation of the Police Tribunal with respect to the penalty.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Regulations relating to discipline

181. (1) The regulations may make provision for or with respect to the discipline of police officers.

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

- (a) the reporting by police officers of misconduct of other police officers; and
- (b) the preferment of departmental charges against police officers; and
- (c) the denial or admission of departmental charges; and
- (d) elections for the hearing and determination by the Police Tribunal of departmental charges not relating to conduct the subject of a complaint investigated under Division 4 of Part 8A; and
- (e) proceedings with respect to departmental charges; and
- (f) the suspension of police officers from office (with or without pay) pending further investigation and disciplinary action; and
- (g) disciplinary action against police officers.

**Division 2—Disciplinary appeals by police officers
to GREAT**

**Appeal to GREAT against disciplinary decision of
Commissioner**

182. (1) A police officer (other than a member of the Police Service Senior Executive Service) may appeal to GREAT against a decision of the Commissioner to punish the police officer:

- (a) by the imposition of a fine; or
- (b) by a reduction in salary; or
- (c) by a demotion to a lower rank or grade; or
- (d) by suspension, dismissal, discharge or transfer.

(2) If the decision appealed against was in respect of a charge heard and determined by the Police Tribunal:

- (a) the appeal is limited to an appeal against the severity of the punishment imposed; and

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

- (b) GREAT, the Commissioner and the appellant are bound by the findings of the Police Tribunal on the determination of the charge or on appeal to the Review Division of the Police Tribunal.

Application of GREAT Act

183. (1) The Government and Related Employees Appeal Tribunal Act 1980 applies to and in respect of an appeal under this Division in the same way as it applies to an appeal under Division 2 of Part 3 of that Act.

(2) In order to determine the membership of and to constitute GREAT for the purpose of hearing and determining an appeal under this Division, a police officer is taken to be an employee and the Commissioner the employer, within the meaning of the Government and Related Employees Appeal Tribunal Act 1980.

Division 3—Miscellaneous provisions

Discipline of administrative officers

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

(2) For that purpose:

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

Disciplinary appeals to GREAT by non-executive administrative officers

185. The provisions of the Government and Related Employees Appeal Tribunal Act 1980 relating to disciplinary appeals apply to administrative officers (not being members of the Police Service Senior Executive Service) as if those officers were employees, and the Commissioner were their employer, within the meaning of that Act.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Appeal to GREAT relating to leave when hurt on duty

186. (1) A police officer may appeal to GREAT against a decision of the Commissioner to grant or refuse leave of absence on full pay to the police officer during any period of absence caused by that officer being hurt on duty within the meaning of section 1 (2) of the Police Regulation (Superannuation) Act 1906.

(2) The Government and Related Employees Appeal Tribunal Act 1980 applies to and in respect of an appeal under this section in the same way as it applies to an appeal under Division 2 of Part 3 of that Act.

(3) In order to determine the membership of and to constitute GREAT for the purpose of hearing and determining an appeal under this section, a police officer is taken to be an employee and the Commissioner the employer, within the meaning of the Government and Related Employees Appeal Tribunal Act 1980.

Transitional

187. (1) The provisions of this Act and the regulations relating to disciplinary proceedings against members of the Police Service apply to conduct before as well as to conduct after the commencement of this Act.

(2) This section is subject to Parts 1 and 6 of Schedule 4.

(4) Part 9A:

Before Part 10, insert:

**PART 9A—THE POLICE TRIBUNAL OF NEW
SOUTH WALES**

Establishment of Police Tribunal

188. (1) There is established the Police Tribunal of New South Wales.

(2) The Police Tribunal is to consist of a President, a Deputy President and other members as provided by this Part.

(3) The Police Tribunal is a court of record and its seal is to be judicially noticed.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

President of Police Tribunal and Deputy President

189. (1) The President of the Police Tribunal is to be appointed by the Governor.

(2) The Governor may appoint a Deputy President of the Police Tribunal.

(3) The Deputy President is to act in the place of the President during the illness or absence of the President and on other occasions as and when required by the President to do so. While so acting, the Deputy President is taken, for all purposes, to be the President.

(4) The President and Deputy President are each to be:

- (a) a Judge of the Supreme Court nominated by the Chief Justice of that Court; or
- (b) a Judge of the Industrial Court nominated by the Chief Judge of that Court; or
- (c) a Judge of the District Court nominated by the Chief Judge of that Court; or
- (d) the Senior Chairperson of GREAT.

(5) The President and Deputy President each hold office for such term (not exceeding 5 years) as is specified in their instruments of appointment, but are eligible for re-appointment. However, a person vacates office as President or Deputy President if the person ceases to hold the office which qualified the person for appointment as President or Deputy President.

(6) The rank, title, status, precedence, remuneration, functions, rights and privileges of a Judge and the continuity of his or her service as a Judge are not affected by the exercise of the functions conferred or imposed on the Judge by or under this Act.

(7) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of the President or Deputy President.

(8) Nothing in this Part prevents the Chief Justice of the Supreme Court, the Chief Judge of the Industrial Court or the Chief Judge of the District Court from being nominated and appointed as President.

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

Other members of Police Tribunal

190. Each Judge of the District Court is a member of the Police Tribunal.

Review Division of Police Tribunal

191. (1) The Review Division of the Police Tribunal is to be constituted by the President of the Police Tribunal and 2 members of the Police Tribunal sitting together.

(2) At a sitting of the Review Division of the Police Tribunal:

(a) a decision of the President of the Police Tribunal as to:

- (i) the jurisdiction of the Police Tribunal; or
- (ii) the admissibility of evidence; or
- (iii) procedure,

is the decision of the Police Tribunal; and

(b) subject to paragraph (a), the President of the Police Tribunal has one vote and each of the members present has one vote and a decision supported by a majority in number of those votes is a decision of the Police Tribunal.

Powers of royal commission

192. (1) In the exercise of its jurisdiction or the conduct of an inquiry, the Police Tribunal (or, in the case of the Review Division, the President) has the powers, authorities, protections and immunities of a commissioner appointed under Division 1 of Part 2 of the Royal Commissions Act 1923.

(2) That Act (except section 13 and Division 2 of Part 2) applies to proceedings before the Police Tribunal in the same way as it applies to proceedings before a royal commission, and so applies as if section 17 (4) of that Act had been repealed.

Subpoenas

193. (1) In accordance with a request by a party to any proceedings before the Police Tribunal, the Registrar of the Police Tribunal is required to issue:

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

- (a) a subpoena to give evidence, requiring the person to whom it is directed to attend and give evidence at the proceedings; or
 - (b) a subpoena for production, requiring the person to whom it is directed to attend and produce, for the purpose of evidence at the proceedings, any document or thing that is in his or her possession or control and specified in the subpoena.
- (2) A subpoena for production of a document or thing may authorise compliance with the subpoena by the production of the document or thing to the Registrar of the Police Tribunal.
- (3) A person is not required to comply with a subpoena unless, not later than a reasonable time before the day on which the person's attendance is required, an amount sufficient to meet the reasonable expenses of the person carrying out the requirements of the subpoena is paid or tendered to the person.
- (4) A person is not bound by a subpoena to produce any document or thing which is not specified or otherwise sufficiently described in the subpoena or which the person would not be bound to produce on a subpoena for production in the Supreme Court.

Attendance

194. (1) If the attendance of a person before the Police Tribunal is required by a subpoena issued under this Part and the person defaults in attending as required by the subpoena, the Tribunal may, on the application of a party or of its own motion:

- (a) issue a warrant to a police officer, or to such other person as the Police Tribunal may appoint, directing that the defaulting person be arrested and brought before the Police Tribunal and, if appropriate, be kept in custody as provided by subsection (3); or
- (b) order the defaulting person to appear before the Police Tribunal to show cause as to why such a warrant should not be issued against that person.

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

In either case, the Police Tribunal may order the defaulting person to pay any costs attributable to the default.

(2) A person arrested pursuant to a warrant issued by the Police Tribunal must be brought before the Police Tribunal as soon as practicable.

(3) The person is to be kept in custody as directed by the warrant until:

(a) the person is brought before the Police Tribunal or the person's earlier release is ordered by the Police Tribunal or the Supreme Court; or

(b) the person duly gives an undertaking to comply with the requirements of the subpoena.

(4) A direction in a warrant for the keeping of a person in custody is sufficient authority for the person's being kept in custody in accordance with the direction.

(5) This section applies in relation to a subpoena issued under this Part to the exclusion of sections 13 and 14 of the Evidence Act 1898.

Orders prohibiting publication

195. In any proceedings before the Police Tribunal, the Police Tribunal may by order prohibit or restrict the publication of the name and address:

(a) of any witness or complainant concerned in the proceedings; or

(b) if the proceedings are by way of appeal—of any witness or complainant concerned in the appeal or any previous proceedings.

Contempt of the Police Tribunal

196. (1) A person who publishes any matter, or causes any publication to be made, in contravention of an order under section 195 is guilty of contempt of the Police Tribunal.

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

(2) If a person is brought before the Police Tribunal pursuant to a warrant for a failure to produce a document or thing as required by a subpoena, the person is guilty of contempt of the Police Tribunal committed in the face of the Police Tribunal unless the person produces the document or thing, or duly gives an undertaking to produce it.

(3) Failure to comply with an undertaking referred to in this section or in section 194 is taken to constitute a contempt of the Police Tribunal committed in the face of the Police Tribunal.

(4) A contempt of the Police Tribunal referred to in this section or arising from the application, in accordance with this Division, of any provision of the Royal Commissions Act 1923 is punishable by the Supreme Court in the same way as a similar contempt of a royal commission is punishable by that Court.

Inquiries commissioned by Minister

197. (1) At the request of the Minister, the Police Tribunal is to inquire into and report to the Minister on such of the following matters as may be specified in the request:

- (a) any matter relating to the discipline of police officers;
- (b) any matter relating to the exercise by police officers, in a particular case or cases, of their functions;
- (c) any matter which, in the opinion of the Minister, is relevant to or arises out of such a matter.

(2) For the purposes of this section, the Police Tribunal is to be constituted by the President of the Police Tribunal sitting alone.

(3) At any proceedings before the Police Tribunal under this section, the public is not to be excluded unless the Police Tribunal so orders.

(4) A report to the Minister under this section:

- (a) is to be presented to Parliament; and
- (b) may contain a recommendation that the report be made public as soon as practicable.

SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued*

(5) The Minister may make a report to the Minister under this section public before it is presented to Parliament.

(6) If a departmental charge recommended in a report under this section has been preferred against a police officer and, otherwise than after the Police Tribunal has commenced to hear the charge in its original jurisdiction, the charge is admitted by the police officer:

- (a) the Minister, before making a recommendation (if any) to the Governor with respect to the penalty which might be imposed by the Governor on the police officer; or
- (b) the Commissioner, before imposing a penalty (if any) on the police officer,

as the case may require, must:

- (c) refer, for the consideration of the Police Tribunal as constituted for the purposes of this section, the matter of an assessment of an appropriate penalty; and
- (d) take into consideration the recommendations made under subsection (7) by the Police Tribunal with respect to the penalty.

(7) If, under subsection (6) (c), the Minister or the Commissioner refers to the Police Tribunal, as constituted for the purposes of this section, the matter of an assessment of an appropriate penalty which might be imposed on a police officer in respect of a departmental charge preferred against the police officer, the Police Tribunal, as so constituted, is to make an assessment of the penalty (if any) which the Police Tribunal considers would be appropriate to be imposed on the police officer and advise the Minister or the Commissioner of its recommendations with respect to that penalty.

(8) At any proceedings before the Police Tribunal under subsection (7):

- (a) the Commissioner and the police officer with respect to whom a recommendation under this section is required to be made are each entitled to be represented by counsel, solicitor or agent; and

**SCHEDULE 1—AMENDMENT OF POLICE SERVICE ACT 1990
RELATING TO COMPLAINTS AND DISCIPLINE OF MEMBERS
OF POLICE SERVICE—*continued***

- (b) the public is not to be excluded unless the Police Tribunal exercising jurisdiction at those proceedings otherwise orders.

Sittings etc. of Police Tribunal

198. (1) The President of the Police Tribunal is to arrange for sittings of the Police Tribunal and the allocation of its work.

(2) If the President of the Police Tribunal is not the Chief Judge of the District Court, the President is to arrange for sittings and allocate work subject to consultation with the Chief Judge.

(3) There may be contemporaneous sittings of the Police Tribunal constituted by different members and those sittings may be in different places.

Proceedings of Police Tribunal

199. (1) Subject to this Act and the regulations, the Police Tribunal has control of its proceedings.

(2) The regulations may make provision for or with respect to the institution and conduct of proceedings before the Police Tribunal.

(3) Until the regulations otherwise provide, a registrar of the District Court nominated by the President of the Police Tribunal is the registrar of the Police Tribunal.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL
APPEALS BY POLICE OFFICERS**

(Sec. 3)

- (1) Section 66 (**Temporary appointments to non-executive positions**), section 67 (**Transfer of non-executive officers**):

Omit “Divisions 3–5” wherever occurring, insert instead “Divisions 3–5B”.

- (2) Sections 72 (1) (b), 74, 78 (1) (b):

Omit “the Police Regulation (Appeals) Act 1923” wherever occurring, insert instead “Division 5A”.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL APPEALS
BY POLICE OFFICERS—*continued*

(3) Part 6, Divisions 5A and 5B:

After Division 5 of Part 6, insert:

**Division 5A—Promotion appeals to GREAT by certain
police officers**

**Appeals to GREAT against promotions of constables to
higher grade within that rank**

81A. (1) A police officer of the rank of constable may appeal to GREAT against a decision of the Commissioner to promote another police officer of the rank of constable to a higher grade in that rank if:

- (a) the police officer who appeals is more entitled to be promoted than the other police officer, having regard only to the regulations governing the promotion of police officers; and
- (b) the police officer who appeals is qualified for promotion to that higher grade.

(2) The Commissioner must, as soon as practicable after making a decision in respect of which an appeal may be made under this section, cause a notification of the decision to be given to all police officers who are entitled to appeal against that decision.

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

(4) A decision in respect of which an appeal may be made under this section may be carried into effect even though:

- (a) the period within which appeals against that decision may be made has not expired; or
- (b) if an appeal has been made within that period and has not been withdrawn, the appeal has not yet been determined by GREAT.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL APPEALS
BY POLICE OFFICERS—*continued***

(5) If a decision to promote a police officer is carried into effect in those circumstances, the promotion of the police officer is not, except as provided by the regulations, affected by the fact that the appeal under this section of any appellant against that decision is successful.

(6) GREAT may, if it thinks fit, hear 2 or more appeals made under this section in respect of the same decision and make a single composite decision with respect to all or any of those appeals.

Appeals to GREAT against promotions to sergeant or to higher grade of sergeant

81B. (1) A police officer of the highest grade of the rank of constable may appeal to GREAT against a decision of the Commissioner to appoint another police officer of that grade and rank to a vacant position in the rank of sergeant if the police officer who appeals was an applicant for the vacant position and is eligible for appointment to the vacant position.

(2) A police officer of the rank of sergeant (but not of the highest grade in that rank) may appeal to GREAT against a decision of the Commissioner to appoint another police officer of the rank of constable or of the rank of sergeant (but not of the highest grade in the rank of sergeant) to a vacant position in the highest grade of the rank of sergeant if the police officer who appeals was an applicant for the vacant position and is eligible for appointment to the vacant position.

(3) The only ground on which an appeal may be made under this section is that the merit of the appellant is greater than that of the other police officer.

Appeal to GREAT against promotion to inspector

81C. (1) A police officer may appeal to GREAT against a recommendation of the Police Board under section 71 for the appointment of another police officer to a vacant position in any rank of inspector if the police officer who appeals was an applicant for the vacant position and is eligible for appointment to the vacant position.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990 RELATING TO PROMOTIONAL APPEALS
BY POLICE OFFICERS—*continued***

(2) The only ground on which an appeal may be made under this section is that the merit of the appellant is greater than that of the other police officer.

Procedure for appeals

81D. The provisions of the Government and Related Employees Appeal Tribunal Act 1980 relating to promotion appeals apply to appeals under this Division, subject to the following:

- (a) the sittings of GREAT for the hearing of appeals are to be informal;
- (b) any other modifications prescribed by the regulations.

Membership etc. of GREAT

81E. In order to determine the membership of and to constitute GREAT for the purpose of hearing and determining an appeal under this Division, a police officer is taken to be an employee (within the meaning of the Government and Related Employees Appeal Tribunal Act 1980) and:

- (a) in the case of an appeal under section 81A or 81B—the Commissioner; or
- (b) in the case of an appeal under section 81C—the Police Board,

is taken to be the employer (within the meaning of that Act) of the police officer.

**Division 5B—Promotion appeals by non-executive
administrative officers to GREAT**

Appeal to GREAT against promotions of administrative officers

81F. The provisions of the Government and Related Employees Appeal Tribunal Act 1980 relating to promotion appeals apply to non-executive officers (being administrative officers) as if those officers were employees, and the Commissioner were their employer, within the meaning of that Act.

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO POLICE SERVICE ACT 1990

(Sec. 3)

(1) Section 3 (**Definitions**):

Omit section 3 (3).

(2) Section 24 (**Appointment of Commissioner**), section 39 (**Appointment to be made on merit**), section 71 (**Appointment to be made on merit**):

From sections 24 (3) (c), 39 (3) and 71 (2), omit “an official report (referred to in section 3 (3)) on the previous employment and conduct of” wherever occurring, insert instead “a report under section 94A on”.

(3) Section 44 (**Industrial arbitration or legal proceedings excluded**):

From section 44 (2), omit “Industrial Arbitration Act 1940”, insert instead “Industrial Relations Act 1991”.

(4) Section 77 (**Appointment of sergeants to be made on merit**):

From section 77 (2), omit “an official report on the previous employment and conduct of”, insert instead “a report under section 94A on”.

(5) Sections 87, 89, 117:

From sections 87 (2), 89 (1) and 117, omit “Industrial Arbitration Act 1940” wherever occurring, insert instead “Industrial Relations Act 1991”.

(6) Section 91F (as inserted by Act No. 54, 1992):

Omit the section, insert instead:

Complaints against police volunteers

91F. A complaint by any person against a police volunteer may be dealt with under Part 8A in the same way as a complaint against a police officer, and the provisions of that Part apply, with any necessary modifications, to any such complaint.

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO POLICE SERVICE ACT 1990—*continued***(7) Section 91FA:**

After section 91F, insert:

Discipline of police volunteers

91FA. (1) The regulations may make provision for or with respect to the discipline of the volunteer police, including the definition of conduct constituting a breach of discipline and the imposition by the Commissioner of any one or more of the following measures on any police volunteer guilty of a breach of discipline:

- (a) giving a caution or reprimand;
- (b) requiring the volunteer to undergo counselling;
- (c) suspending the volunteer from service;
- (d) revoking the volunteer's appointment as a police volunteer.

(2) The functions of the Commissioner under this section are exercisable by a delegate only to the extent provided by the regulations.

(3) The decision, given in accordance with this section and the regulations, of the Commissioner or a delegate of the Commissioner in a matter of discipline of a police volunteer is final and is not subject to appeal or to review by any court or tribunal, except where the regulations otherwise provide.

(4) Regulations made for the purposes of this section may provide for the adoption, with specified modifications, of the provisions of Part 9 and the regulations made for the purposes of that Part.

(5) Nothing in this section affects the powers of the Commissioner under section 91B.

(8) Section 94A:

After section 94, insert:

Reports by police internal affairs for proposed police appointments

94A. (1) In this section, "the internal affairs officer" means a police officer responsible for police internal affairs, designated by the Commissioner as the internal affairs officer for the purposes of this section.

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—*continued***

(2) The internal affairs officer must, as soon as practicable after being requested to do so, submit a report to the Minister, Police Board or Commissioner on a person who is being considered for an appointment in the Police Service, being an appointment for which the Minister, Police Board or Commissioner is required by this Act to obtain a report under this section.

(3) The details required to be inserted in a report on a person under this section are as follows:

- (a) particulars of any criminal proceedings commenced against the person in New South Wales and, in so far as the internal affairs officer can reasonably ascertain, elsewhere, and the results of those proceedings;
- (b) particulars of any complaint:
 - (i) which has been made against the person in accordance with Division 2 of Part 8A; and
 - (ii) which the Ombudsman has duly reported under that Part to have been sustained or which has not been finally dealt with under that Part;
- (c) if the person has been referred to:
 - (i) in an investigation commenced under Division 4 of Part 8A; or
 - (ii) in any proceedings commenced before the Police Tribunal; or
 - (iii) at an inquiry or commission held under any other Act (including an Act of the Commonwealth or of another State or a Territory); or
 - (iv) at an inquiry authorised by any Minister,particulars of that investigation or of those proceedings, or of the findings of that inquiry or commission, in so far as they relate to the person;
- (d) particulars relating to such matters (if any) as:
 - (i) the Commissioner requires to be included in the report; or
 - (ii) the internal affairs officer considers appropriate to include in the report;

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO POLICE SERVICE ACT 1990—continued

- (e) particulars relating to such other matters as are prescribed by the regulations.

(9) Sections 95, 95A:

Omit section 95, insert instead:

Arrangements for use by Police Service of staff of other agencies

95. The Commissioner may arrange for the use of the services of any staff (by way of secondment or otherwise) of a government agency (whether or not of New South Wales).

Arrangements for use by other agencies of members of Police Service

95A. (1) The Commissioner may enter into arrangements with a government agency (whether or not of New South Wales) for the use, by such an agency, of the services of members of the Police Service (by way of secondment or otherwise).

(2) While performing services for any such agency, a police officer retains rank, seniority and remuneration as a police officer and may continue to act as a constable. However, this subsection does not prevent the payment of additional remuneration to police officers in accordance with arrangements under this section.

(10) Sections 99–120 (Renumbering):

Renumber sections 99 to 120 as sections 200 to 221.

(11) Section 102, renumbered as section 203 (Wearing or possession of police uniform by others):**(a) Section 102 (1):**

Omit “who wears the uniform, or a reasonable imitation of the uniform, of a police officer”, insert instead “who wears, or has in possession, a police uniform”.

(b) Section 102 (2):

Omit the subsection, insert instead:

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

- (a) the person had the permission of the Commissioner to wear or possess the police uniform; or

**SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL
AMENDMENTS TO POLICE SERVICE ACT 1990—*continued***

- (b) the person wore or was in possession of the police uniform for the purposes of a public entertainment; or
- (c) the person had a reasonable excuse for wearing or being in possession of the police uniform.
- (c) After section 102 (2), insert:
 - (3) In this section, “**police uniform**” means the uniform of a police officer, and includes:
 - (a) any parts of such a uniform (or any accoutrements of a police officer) that are generally recognised as parts of the uniform or accoutrements of a police officer; or
 - (b) a reasonable imitation of such a uniform, parts of a uniform or accoutrements.
- (12) Section 105, renumbered as section 206 (**Disclosure of information relating to Police Board functions**):

From section 105 (1) (d), omit “or the Police Regulation (Allegations of Misconduct) Act 1978”.
- (13) Schedule 4 (**Savings, transitional and other provisions**):
 - (a) At the end of clause 2 (1) of Part 1, insert:

the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993.
 - (b) At the end of the Schedule, insert:

**PART 6—PROVISIONS CONSEQUENT ON
ENACTMENT OF POLICE SERVICE
(COMPLAINTS, DISCIPLINE AND APPEALS)
AMENDMENT ACT 1993**

Definitions

24. (1) In this Part:

“**amending Act**” means the Police Service (Complaints, Discipline and Appeals) Amendment Act 1993;

“**former appeals Act**” means the Police Regulation (Appeals) Act 1923;

“**former complaints Act**” means the Police Regulation (Allegations of Misconduct) Act 1978.

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO POLICE SERVICE ACT 1990—*continued*

(2) In this Part, a reference to the repeal of the former appeals Act or the former complaints Act is (if different days are appointed for the repeal of different provisions) a reference to the repeal of the relevant provisions.

Application of provisions relating to complaints

25. (1) Part 8A does not apply to conduct that occurred before the commencement of the former complaints Act.

(2) Part 8A extends to conduct that occurred after the commencement of the former complaints Act and before the commencement of Part 8A.

(3) Anything duly done before the commencement of that Part under a provision of the former complaints Act is (subject to the regulations under this Schedule) taken to have been duly done under the corresponding provision of that Part.

Application of provisions relating to discipline

26. (1) Part 9 applies to conduct occurring before or after the substitution of that Part by the amending Act (including conduct that occurred before the commencement of that Part on 1 July 1990).

(2) Anything duly done in respect of any disciplinary matter before that substitution of Part 9 under a provision of the former Act, the former complaints Act, the former appeals Act or the regulations under those Acts or this Act is (subject to the regulations under this Schedule) taken to have been duly done under the corresponding provision of that substituted Part 9.

Application of provisions relating to promotion appeals

27. (1) Divisions 5A and 5B of Part 6 extend to decisions made before the commencement of those Divisions.

(2) Anything duly done before the commencement of those Divisions under a provision of the former appeals Act is (subject to the regulations under this Schedule) taken to have been duly done under the corresponding provision of those Divisions.

SCHEDULE 3—MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS TO POLICE SERVICE ACT 1990—*continued*

Police Tribunal

28. (1) The Police Tribunal of New South Wales established under the former complaints Act is the same court as the Police Tribunal of New South Wales established under Part 9A of this Act.

(2) A person who, immediately before the repeal of the former complaints Act, held office as President or Deputy President of the Police Tribunal is taken to have been appointed to that office under Part 9A of this Act for the balance of the person's term of office.

(3) The repeal of the former complaints Act does not affect any proceedings pending before the Police Tribunal immediately before the repeal of that Act and those proceedings may (subject to this Act) be continued despite that repeal.

SCHEDULE 4—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

(Sec. 4)

Ombudsman Act 1974 No. 68:

(1) Section 5 (Definitions):

(a) Omit the definition of "prescribed conduct", insert instead:

"police conduct" means any action or inaction, or alleged action or inaction, of a police officer when acting as a constable;

(b) Omit section 5 (1A), insert instead:

(1A) In this Act, a reference to an investigation under this Act includes a reference to an investigation of police conduct under this Act pursuant to Part 8A of the Police Service Act 1990.

(2) Section 7 (Acting Ombudsman):

Omit section 7 (4), insert instead:

(4) An acting Ombudsman when acting as Ombudsman is taken to be the Ombudsman.

SCHEDULE 4—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS—*continued*

- (3) Sections 13 (4A), 15 (2), 16, 24 (1), 25, 25A, 29, 32 (4) (b), 34 (3):

Omit “prescribed conduct” wherever occurring, insert instead “police conduct”.

- (4) Section 34 (1) (b) (ii):

Omit “section 45 of the Police Regulation (Allegations of Misconduct) Act 1978”, insert instead “section 197 of the Police Service Act 1990”.

Police Department (Transit Police) Act 1989 No. 58

- (1) Section 25:

Omit the section, insert instead:

Complaints against members

25. A complaint by any person against a member of the transit police service may be dealt with under Part 8A of the Police Service Act 1990 in the same way as a complaint against a police officer, and the provisions of that Part apply, with any necessary modifications, to any such complaint.

- (2) Section 27 (**Procedure for dealing with breaches of discipline**):

- (a) After section 27 (1), insert:

(1A) The provisions of Division 1 of Part 9 of the Police Service Act 1990 relating to the jurisdiction of the Police Tribunal to deal with departmental charges against police officers apply, with any necessary modifications, to departmental charges against members of the transit police service.

- (b) From section 27 (2), omit “under section 41 (Hearing of disciplinary charges) of the Police Regulation (Allegations of Misconduct) Act 1978”.

Police Service (Volunteer Police) Amendment Act 1992 No. 54

Schedule 1 (Amendment of Police Service Act 1990):

Omit Schedule 1 (11).

SCHEDULE 5—REPEALS

(Sec. 5)

PART 1—ACTS

Police Regulation (Appeals) Act 1923 No. 33

Police Regulation (Allegations of Misconduct) Act 1978 No. 84

Police Regulation (Allegations of Misconduct) Amendment Act 1983 No.
191

Police Regulation (Allegations of Misconduct) Amendment Act 1987 No.
135

Police Regulation (Allegations of Misconduct) Amendment Act 1990 No.
109

PART 2—REGULATIONS

All regulations made under the Acts repealed by this Schedule, including:

Police Tribunal Regulation 1979

Police Internal Affairs Branch Regulation 1984

*[Minister's second reading speech made in—
Legislative Assembly on 11 May 1993
Legislative Council on 21 May 1993]*