

**POLICE REGULATION (ALLEGATIONS OF MISCONDUCT)  
AMENDMENT ACT 1990 No. 109**

NEW SOUTH WALES



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**POLICE REGULATION (ALLEGATIONS OF MISCONDUCT)  
AMENDMENT ACT 1990 No. 109**

NEW SOUTH WALES



**Act No. 109, 1990**

An Act to amend the Police Regulation (Allegations of Misconduct) Act 1978 with respect to the constitution, jurisdiction and powers of the Police Tribunal established under that Act; and for other purposes.  
[Assented to 14 December 1990]

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

**Short title**

1. This Act may be cited as the Police Regulation (Allegations of Misconduct) Amendment Act 1990.

**Commencement**

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

**Amendment of Police Regulation (Allegations of Misconduct) Act 1978 No. 84**

3. The Police Regulation (Allegations of Misconduct) Act 1978 is amended as set out in Schedule 1.

**Savings and transitional provisions**

4. Schedule 2 has effect.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 4 (**Definitions**):

After the definition of "President", insert:

"**Registrar**" means a person appointed under section 40 and designated, in his or her instrument of appointment, as Registrar of the Tribunal;

(2) Section 34 (**Constitution of Internal Affairs Branch**):

(a) Omit section 34 (6), insert instead:

(6) A member of the investigative staff of the Internal Affairs Branch:

- (a) is to be appointed to the Branch for a term not exceeding 5 years; and
- (b) may not be appointed for terms of office totalling more than 10 years.

This subsection does not apply to a secondment under subsection (8).

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Section 34 (7) (b):  
Omit "5 years", insert instead "10 years".
- (3) Section 36 (**Constitution of Tribunal**):
  - (a) From section 36 (1), omit "a President and members", insert instead "a President, a Deputy President and other members prescribed by this Part".
  - (b) Omit section 36 (3).
- (4) Section 38 (**Deputy President of Tribunal**):  
Omit section 38 (3), insert instead:
  - (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.
  - (4) While acting as the President in accordance with subsection (3), the Deputy President is to be taken, for the purposes of section 43 or 45 and for all other purposes, to be the President.
- (5) Section 43 (**Appellate jurisdiction of Tribunal**):  
Omit section 43 (4), insert instead:
  - (4) An appeal is to be in the nature of a review of the matter on the evidence given in the relevant proceedings in the Tribunal's original Jurisdiction.
  - (5) New evidence may nevertheless be given and considered in the appeal if the Tribunal is satisfied that it was not reasonably available at the time the original proceedings were heard.
- (6) Section 43A:  
After section 43, insert:

**Orders prohibiting publication**

43A. In any proceedings before the Tribunal, the Tribunal may by order prohibit or restrict the publication of the name and address:

SCHEDULE 1 - AMENDMENTS - *continued*

- (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 antecedent proceedings,
- (7) Sections 44A - 44C:  
After section 44, insert:

**Subpoenas**

44A (1) In accordance with a request by a party to any proceedings before the Tribunal, the Registrar is required to issue:

- (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) The regulations may make provision for or with respect to authorising compliance with a subpoena for production issued in respect of a document or thing by the production of the document or thing to the Registrar.

(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, tender is made of an amount in respect of expenses of complying with the requirements of the subpoena, determined in accordance with the regulations.

(4) A person is not bound, pursuant to a subpoena issued under this section, 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 upon a subpoena for production in the Supreme Court.

SCHEDULE 1 — AMENDMENTS -*continued*

**Attendance**

44B. (1) If the attendance of a person before the Tribunal is required by a subpoena issued under section 44A for the purpose of giving evidence, or for the production of a document or thing, 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, or make an order for the issue of, a warrant to a member of the Police Force or to such other person as the Tribunal may appoint, directing that the defaulting person be arrested and brought before the Tribunal and, where appropriate, be kept in custody as provided by subsection (3); or
- (b) order the defaulting person to appear before the Tribunal to show cause as to why such a warrant should not be issued against that person,

and in either case may order the defaulting person to pay any costs attributable to the default.

(2) A person arrested pursuant to a warrant issued by or on the order of the Tribunal must be brought before the 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 Tribunal or the person's earlier release is ordered by the Tribunal or the Supreme Court; or
- (b) the person gives, in accordance with the regulations, 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) The regulations may make provision for or with respect to authorising compliance with an undertaking referred to in this section for production given in respect

SCHEDULE 1 - AMENDMENTS - *continued*

of a document or thing by the production of the document or thing to the Registrar.

(6) This section applies in relation to a subpoena issued under section 44A to the exclusion of sections 13 and 14 of the Evidence Act 1898.

**Contempt of the Tribunal**

44C. (1) A person who publishes any matter, or causes any publication to be made, in contravention of an order under section 43A is guilty of contempt of the Tribunal.

(2) If a person is brought before the 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 Tribunal committed in the face of the Tribunal unless the person produces the document or thing, or gives, in accordance with the regulations, an undertaking to produce it.

(3) Failure to comply with an undertaking referred to in this section or in section 44B is to be taken to constitute a contempt of the Tribunal committed in the face of the Tribunal.

(4) A contempt of the Tribunal referred to in this section or arising from the application, in accordance with this Part, 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.

(8) Section 45 (**Inquiries commissioned by Minister**):

Omit section 45 (1), insert instead:

(1) At the request of the Minister, the 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 discipline of members of the Police Force;
- (b) any matter relating to the exercise or performance by members of the Police Force, in a particular case

**SCHEDULE 1 - AMENDMENTS - *continued***

or cases, of their powers, authorities, duties and functions;

- (c) any matter which, in the opinion of the Minister, is relevant to or arises out of a matter referred to in paragraph (a) or (b).

**(9) Section 59 (Certain documents privileged):**

Omit section 59 (1), insert instead:

(1) A document brought into existence for the purposes of this Act is not admissible in evidence in any proceedings other than an inquiry under section 45 or proceedings which concern the discipline of members of the Police Force and which are dealt with by:

- (a) the Commissioner, or
- (b) the Tribunal; or
- (c) the Government and Related Employees Appeal Tribunal.

**SCHEDULE 2 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 4)

**Definition**

1. In this Schedule, the Police Regulation (Allegations of Misconduct) Act 1978 is referred to as the Principal Act.

**Members of the Internal Affairs Branch**

2. Section 34 (6) and (7) of the Principal Act, as amended by this Act, apply to any terms of office of a person who was a member of the Internal Affairs Branch before the commencement of Schedule 1 (2) in the same way as they apply to those of a person appointed to the Branch after that commencement.

**Existing rights of appeal preserved**

3. An appeal under section 43 of the Principal Act is to be heard and dealt with in accordance with that Act, as in force before the commencement of Schedule 1 (5), if the right to pursue the appeal accrued to the appellant before that commencement.



SCHEDULE 2 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

**Inquiries by Police Tribunal**

4. Section 45 of the Principal Act, as amended by this Act, applies to matters occurring or arising at any time after 31 March 1990.

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*[Minister's second reading speech made in -  
Legislative Council on 12 September 1990  
Legislative Assembly on 19 September 1990]*