



New South Wales

Police Service Amendment Act 1999 No 73

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Police Service Amendment Act 1999 No 73

Act No 73, 1999

An Act to amend the *Police Service Act 1990* in relation to the confidentiality of financial statements furnished by members of the Police Service, the protection of police officers from reprisals for making allegations of police misconduct or criminal activity, and other matters relating to the administration of the Police Service; and for related purposes. [Assented to 3 December 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Service Amendment Act 1999*.

2 Commencement

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

3 Amendment of Police Service Act 1990 No 47

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

Schedule 1 Amendments

(Section 3)

[1] Section 81 Appointment on merit

Omit section 81 (4).

[2] Section 91A

Insert after section 91:

91A Appointment of long-term temporary employees to permanent positions

(1) In this section:

long-term temporary employee is a temporary employee whose employment as such an employee falls within a continuous employment period of at least 2 years.

non-executive administrative position means a position of a non-executive officer (as defined in Part 6), being an administrative officer.

(2) A long-term temporary employee may be appointed to a non-executive administrative position under this section, if each of the following requirements is satisfied:

- (a) the duties of the position concerned must be substantially the same as the duties performed by the employee at the time of the employee's initial employment on merit (that is, the employment referred to in paragraph (e)),
- (b) the rate of salary or wages proposed to be payable to the holder of the position concerned at the time of appointment must not exceed the maximum rate payable for Grade 12, Administrative and Clerical Division, of the Public Service,
- (c) the Commissioner must be satisfied that on-going work is available in respect of the employee,

- (d) the Commissioner must be satisfied that the employee has the relevant skills, qualifications, experience, work performance standards and personal qualities to enable the employee to perform the duties of the position concerned,
 - (e) the employee must (initially or at some later stage) have been employed as a temporary employee in some form of open competition involving the selection of the person who, in the opinion of the then Commissioner, had the greatest merit among candidates for appointment.
- (3) An appointment under this section is not an appointment to which section 81 (Appointment on merit) applies.

[3] Section 97A

Insert after section 97:

97A Confidentiality of financial statements

- (1) A person cannot be required to produce any protected document or to divulge any protected information, except with the written consent of a relevant authority.
- (2) Subsection (1) applies whether the requirement:
 - (a) relates to production or divulging to a court or relates to production or divulging to another body, party or person, and
 - (b) is imposed by a subpoena, direction or order or is imposed in some other manner.

- (3) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

produce includes permit access to.

protected document means:

- (a) a document or thing comprising a financial statement that has been furnished under section 97, or

- (b) a document or thing comprising an explanation (furnished under section 97 (5)) of a matter arising out of a financial statement, or
- (c) a document or thing requiring such an explanation to be furnished, or
- (d) a document or thing comprising information that has otherwise come to attention under section 97 in relation to the financial affairs of a member of the Police Service, or
- (e) a copy of any such document or thing.

protected information means information or other matters contained in a protected document, or any other information that has come to attention under section 97 in relation to the financial affairs of a member of the Police Service.

relevant authority means:

- (a) the Minister or the PIC Commissioner, in relation to a financial statement furnished by the Commissioner of Police or to matters in or arising from such a statement, or
- (b) the Commissioner of Police or the PIC Commissioner, in any other case.

[4] Section 148A

Insert after section 148:

148A Alternative dispute management procedures may be used if warranted

If it appears to a police officer conducting an investigation that it is appropriate to do so, the police officer may attempt to resolve the relevant complaint by means of alternative dispute management procedures.

[5] Section 203

Omit the section. Insert instead:

203 Protection of police uniforms and police insignia

- (1) A person (not being a police officer) who wears or possesses a police uniform is guilty of an offence.
- (2) A person (including a police officer) who manufactures or sells police insignia is guilty of an offence.
- (3) A person (including a police officer) who uses police insignia otherwise than in the course of, and for the purpose of, exercising the functions of a police officer is guilty of an offence.
- (4) A person (including a police officer) who drives or possesses a motor vehicle that is not owned or leased by the State or an authority of the State and that has on it any police insignia is guilty of an offence.
- (5) A person is not guilty of an offence under this section if:
 - (a) the act or omission constituting the offence is authorised by the regulations or by a licence granted to the person by the Commissioner, or
 - (b) the person establishes that the person otherwise had the permission of the Commissioner for the act or omission, or
 - (c) the person establishes that the person had a reasonable excuse for the act or omission.
- (6) Without limiting subsection (5), a person is not guilty of an offence under subsection (1) if the person wore or was in possession of the police uniform for the purposes of a public entertainment.
- (7) The Commissioner may grant licences for the purposes of this section, with or without conditions, and may vary or revoke any such licences.
- (8) In this section:
motor vehicle has the same meaning as in the *Traffic Act 1909*.

police insignia means:

- (a) any items (being insignia, emblems, logos, devices, accoutrements and other things) that are generally recognised as pertaining to the Police Service or as being used by police officers, or
- (b) any parts of any such items, or
- (c) any reasonable imitation of any such items or parts, or
- (d) any thing or class of thing prescribed by the regulations as being within this definition (whether or not it may already be within this definition),

and includes police uniforms, but does not include any thing or class of thing prescribed by the regulations as being outside this definition.

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) any reasonable imitation of such a uniform, parts of a uniform or accoutrements.

sell means sell, exchange or let on hire, and includes:

- (a) offer, expose, possess, send, forward or deliver for sale, exchange or hire, or
- (b) cause, suffer or allow any of the above.

use of police insignia includes use of a reproduction or representation of police insignia.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

[6] Section 206 Protection against reprisals

Insert after paragraph (e) of the definition of ***detrimental action*** in section 206 (5):

- (f) the making of a complaint, or the furnishing of a report, under this Act or the regulations.

[7] Sections 211D and 211E

Insert after section 211C:

211D Use of statements made by police officers during alternative dispute management procedures

- (1) This section applies to any statement that is made in good faith by a police officer in the course of alternative dispute management procedures conducted in connection with a complaint concerning that officer's conduct.
- (2) The regulations may prescribe circumstances in which it is to be taken that alternative dispute management procedures are being conducted in connection with a complaint concerning a police officer's conduct.
- (3) A statement to which this section applies:
 - (a) is not admissible in any civil or criminal proceedings against the police officer if the proceedings relate to the conduct in connection with which the statement was made, and
 - (b) may not be used as the basis of taking reviewable or non-reviewable action (within the meaning of section 173) against the police officer.
- (4) In this section, *complaint* means a complaint referred to in section 122 (1) (that is, a complaint concerning the conduct of a police officer), including a complaint referred to in section 122 (2) (that is, a complaint that is not required to be dealt with in accordance with Part 8A).

211E Disclosure of information concerning former Police Board functions

- (1) A person who discloses any relevant information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the former Police Board) is guilty of an offence unless the disclosure is made:
 - (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the administration or execution of this Act (or any other such Act), or

- (c) for the purposes of any legal proceedings arising out of this Act (or any such Act) or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (2) In this section:

former Police Board means the Police Board established by this Act, as in force before 1 January 1997 (the date on which the Board was abolished as a consequence of the commencement of the *Police Legislation Further Amendment Act 1996*).

relevant information means information relating to the exercise of the functions of the former Police Board.

[Minister's second reading speech made in—
Legislative Assembly on 9 November 1999
Legislative Council on 24 November 1999]