

1991—No. 120

**POLICE REGULATION (ALLEGATIONS OF MISCONDUCT)
ACT 1978—REGULATION**

(Relating to subpoenas)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council., and in pursuance of the Police Regulation (Allegations of Misconduct) Act 1978, has been pleased to make the Regulation set forth hereunder.

TED PICKERING
Minister for Police and Emergency Services.

Commencement

1. This Regulation commences on 11th day of March, 1991.

Amendment

2. The Police Tribunal Regulation 1979 is amended:
 - (a) by omitting clause 9 and by inserting instead the following clauses:

Compliance with subpoena for production

9. (1) Where a person duly served with a subpoena for production of any document or thing, being a subpoena requiring attendance before the Tribunal, is not a party to the proceedings, the person is taken to have complied with the subpoena if the person produces the document or thing to the Registrar not later than the day before the first day on which the person's attendance is required, instead of attending and producing the document or thing as required by the subpoena.

(2) Where a document or thing is produced to the Registrar under subclause (1), the Registrar is to:

- (a) give a receipt to the person producing the document or thing; and
- (b) produce the document or thing as the nature of the proceedings as the Tribunal may direct.

(3) Where a document or thing is produced to the Registrar under subclause (1) and before the document or thing is tendered to the Tribunal the hearing of the proceedings is adjourned, other than to a date then fixed, the subpoena is no longer of any force or effect, and the Registrar is at liberty to return the document or thing to the person who produced it.

(4) Subclause (3) does not operate to prevent the issue of a further subpoena requiring the production of a document or thing returned by the Registrar under that subclause.

(5) This clause does not apply to so much of a subpoena as requires the person on whom it is duly served to give evidence at the proceedings.

Conduct money

9A. (1) A person is not required to comply with a subpoena to attend, or to attend and produce any document or thing, on any day on which the person's attendance is required by the subpoena unless, in relation to that day, the requirements of section 44A (3) of the Act have been met.

(2) The amount mentioned in section 44A (3) of the Act in respect of a person duly served with a subpoena is the amount that would be payable in respect of that person if the person were an ordinary witness in proceedings in the District Court and the party at whose request the subpoena was issued were entitled to claim witness's expenses in respect of that person as costs in those proceedings.

Undertakings

9B. (1) An undertaking referred to in section 44B (3) (b) of the Act is to be in or to the effect of Form 2 in Schedule 1.

(2) An undertaking given under section 44B (3) (b) of the Act in relation to a subpoena to attend and produce any document or thing is taken to be discharged if the person who gave the undertaking produces the document or thing to the Registrar not later than 24 hours before the time specified in the undertaking.

(3) The provisions of clause 9 (2), (3) and (4) apply, with necessary modifications, in respect of a document or thing produced to the Registrar under clause 9B (2).

(4) An undertaking referred to in section 44C (2) of the Act is

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to be in or to the effect of Form 3 in Schedule 1.
(b) by omitting Forms 2 and 3 from Schedule 1 and by inserting instead the following Forms:

FORM 2

(Cl. 9B (1))

UNDERTAKING TO REGISTRAR AFTER ARREST FOR FAILURE TO APPEAR IN ANSWER TO A SUBPOENA

I,, undertake to appear before the Tribunal on (date) at (time) in accordance with the requirements of the subpoena dated

Date Signature

FORM 3

(Cl. 9B (3))

UNDERTAKING TO TRIBUNAL AFTER ARREST FOR FAILURE TO PRODUCE DOCUMENT OR THING IN ANSWER TO A SUBPOENA

I,, undertake to produce to the Registrar on or before (time) on (date) the items required to be produced by the subpoena dated

Date Signature

EXPLANATORY NOTE

The object of this Regulation is to amend the Police Tribunal Regulation 1979 so as:

- (a) to omit the provisions concerning summonses to witnesses; and
 - (b) to provide the regulations (relating to compliance with subpoenas, conduct money to be tendered in respect of subpoenas and undertakings given in relation to them) contemplated by the Police Regulation (Allegations of Misconduct) Amendment Act 1990 to permit the commencement of the relevant provisions of that Act.
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