

NORTHERN TERRITORY OF AUSTRALIA  
POLICE ADMINISTRATION AMENDMENT ACT (No. 2) 1996

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No. 40 of 1996

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# NORTHERN TERRITORY OF AUSTRALIA

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No. 40 of 1996

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## AN ACT

to amend the *Police Administration Act*

[Assented to 17 September 1996]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Police Administration Amendment Act (No. 2) 1996*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Police Administration Act* is in this Act referred to as the Principal Act.

4. NEW SECTIONS

The Principal Act is amended by inserting after section 14 the following:

"14A. GENERAL ORDERS

"(1) The Commissioner may, from time to time, in writing, issue such general orders and instructions as are necessary to secure the good government and efficient working of the Police Force.

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*Police Administration Amendment (No. 2)*

"(2) Without limiting the generality of subsection (1), general orders under that subsection may include a Code of Conduct to be observed in the Police Force.

"14B. COMMISSIONER MAY TRANSFER MEMBERS

"The Commissioner may, as the Commissioner thinks fit, after giving a member written notice, transfer the member -

- (a) from the position held by the member in the Police Force to another position in the Police Force; and/or
- (b) from the locality in the Territory where the member is stationed to another locality in the Territory.

"14C. DISCIPLINARY PROCEDURES

"The Commissioner may, for the purposes of the general control and management of the Police Force, issue instructions relating to the counselling and cautioning of members (including the issuing of written cautions to members) who commit breaches of discipline that are of such minor nature as not to warrant action being taken under Part IV."

5. COMMISSIONER MAY APPOINT OR PROMOTE MEMBERS

Section 16(1A) of the Principal Act is amended by omitting "12 months" and substituting "2 years".

6. MEMBERS ON PROBATION

Section 16A(2) of the Principal Act is amended by omitting "12 months probation" and substituting "probation referred to in section 16(1A)".

7. REPEAL

Section 75 of the Principal Act is repealed.

8. BREACHES OF DISCIPLINE

Section 76 of the Principal Act is amended -

- (a) by omitting "A member who" and substituting "A member commits a breach of discipline if the member";
- (b) by omitting from paragraph (c) "section 75(2)" and substituting "section 14A(2)";
- (c) by omitting from paragraph (d) "section 75(1)" and "section 83(c)" and substituting "section 14A(1)" and "section 84D(c)", respectively;

- (d) by omitting from paragraph (h) "(e) or (f)," and substituting "(e) or (f)."; and
- (e) by omitting all words after paragraph (h).

9. NEW SECTION

The Principal Act is amended by inserting after section 76 the following:

"76A. SUSPENSION OF MEMBER FACING CRIMINAL CHARGES

"Where a member is charged with having committed an offence, whether within the Territory or elsewhere, the Commissioner may suspend the member from duty."

10. REPEAL AND SUBSTITUTION

Divisions 2 and 3 of Part IV of the Principal Act are repealed and the following substituted:

*"Division 2 - Public Interest Dismissal*

"78. DISMISSAL

"Notwithstanding anything else in this Act, a member may be immediately dismissed from the Police Force where the Commissioner -

- (a) is of the opinion that the member has committed a breach of discipline and it is in the public interest that the member be immediately dismissed; and
- (b) has taken into account any written response of the member made after service on the member of a notice under section 79.

*"Division 3 - Disciplinary Powers Generally*

"79. SERVICE OF NOTICE FOR ALLEGED BREACH OF DISCIPLINE

"Where -

- (a) the Commissioner believes, on reasonable grounds, that a member;
- (b) a prescribed member believes, on reasonable grounds, that a member of a rank below that of the prescribed member,

has committed a breach of discipline and considers that the breach is serious enough to warrant action being taken under this Part, the Commissioner or prescribed member shall serve a notice under section 84F on the member.

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"80. ACTION PENDING DECISION ON ALLEGED BREACH OF DISCIPLINE

"(1) Where -

- (a) the Commissioner believes, on reasonable grounds, that a member; or
- (b) a prescribed member believes, on reasonable grounds (and advises the Commissioner in writing of the belief), that a member of a rank below that of the prescribed member,

has committed a breach of discipline, the Commissioner may, at any time after the notice under this Part has been served on the member -

- (c) transfer the member -
  - (i) from the position held by the member in the Police Force to another position in the Police Force; and/or
  - (ii) from the locality in the Territory where the member is stationed to another locality in the Territory;
- (d) direct the member to take any leave that has accrued to the member under this Act; or
- (e) suspend the member from the Police Force,

or do any one or more of those things, to have effect either concurrently or sequentially.

"(2) A decision of the Commissioner under subsection (1) -

- (a) is final and not capable of being reviewed in a court; and
- (b) remains in force, unless varied or revoked by the Commissioner, until all actions under this Part in respect of the member are completed.

"81. MEMBER'S RESPONSE TO NOTICE FOR ALLEGED BREACH OF DISCIPLINE

"(1) Where the Commissioner or prescribed member is satisfied with the response provided by a member served with a notice under section 84F, the Commissioner or prescribed member shall take no further action on the matter.

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"(2) Where a member served with a notice under section 84F admits the breach of discipline or does not respond to the notice within the period specified in the notice, the Commissioner or prescribed member may -

- (a) take no further action on the matter;
- (b) counsel and caution the member;
- (c) cause the member to be formally cautioned in writing; or
- (d) where the Commissioner or prescribed member considers the breach of discipline is of such a serious nature that action under paragraph (a), (b) or (c) is not appropriate -
  - (i) in the case of the Commissioner - take such action under section 84D as the Commissioner thinks appropriate as if the Commissioner had received a report prepared under section 84C(1)(b); or
  - (ii) in the case of the prescribed member -
    - (A) take such action in relation to, or impose such a fine on, the member as the prescribed member has power to take or impose under this Act; or
    - (B) report the breach of discipline to the Commissioner recommending a course of action that the Commissioner might consider taking under section 84D.

"(3) Where a member served with a notice under section 84F -

- (a) does not respond to the notice within the period specified in the notice and the Commissioner or prescribed member does not consider action under subsection (2) is appropriate;
- (b) responds to the notice within the period specified but does not admit the breach of discipline; or
- (c) provides an explanation that the Commissioner or prescribed member does not consider satisfactory,

the Commissioner or prescribed member may arrange for an investigation to be carried out by a member or members to determine whether the member has in fact committed a breach of discipline.

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"82. CONDUCT OF INVESTIGATION

"(1) Nothing in this Part shall be taken as -

- (a) preventing a prescribed member who arranges an investigation referred to in section 81 from carrying out the investigation, alone or in conjunction with another member or other members; or
- (b) preventing more than one investigation to be carried out to determine whether a member has committed a breach of discipline.

"(2) Subject to subsection (3), an investigation referred to in section 81(3) shall be completed within 3 months after it is arranged.

"(3) The Commissioner may allow a longer period to complete an investigation under subsection (2) after reviewing the progress of the investigation before the expiration of the period of 3 months and thereafter before the expiration of each succeeding period of one month during which the investigation continues.

"83. MEDICAL EXAMINATIONS

"(1) In the course of an investigation referred to in section 81, if the member or members carrying out the investigation is or are of the opinion that it is relevant to the investigation for the member the subject of the investigation to be so examined, the member or members may direct that member to submit to an examination by one or more -

- (a) medical practitioners, dentists within the meaning of the *Dental Act* or persons registered under the *Health Practitioners and Allied Professionals Registration Act*; and/or
- (b) other persons having relevant qualifications,

as the member or members carrying out the investigation thinks or think fit.

"(2) Where a member has been directed under subsection (1) to submit to an examination, the member may, in addition, submit to an examination by a medical practitioner, dentist or other person referred to in that subsection of the member's own choice and submit the report of that examination to the Commissioner or prescribed member, as the case may be, who shall take the report into account.



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"84. OUTCOME OF INVESTIGATION

"Where, as a result of an investigation, the Commissioner or prescribed member -

- (a) is satisfied that the member has not committed a breach of discipline, the Commissioner or prescribed member shall take no further action; or
- (b) continues to believe, on the same or different reasonable grounds, that the member has committed a breach of discipline, the Commissioner or prescribed member may -
  - (i) take no further action;
  - (ii) counsel and caution the member;
  - (iii) cause the member to be formally cautioned in writing; or
  - (iv) charge the member with the breach of discipline alleged.

"84A. CHARGE OF BREACH OF DISCIPLINE

"(1) Where the Commissioner or prescribed member charges a member with a breach of discipline, the Commissioner or prescribed member shall appoint a prescribed member or prescribed members to conduct a hearing into the charge.

"(2) With the consent of the member charged, the prescribed member laying the charge may be appointed under subsection (1).

"(3) Where a member is charged with a breach of discipline, notice under section 84F shall be served on the member.

"84B. CONDUCT OF HEARING

"(1) At a hearing into a charge of breach of discipline by a member -

- (a) the member may be represented by a friend, a colleague, a legal practitioner or a member of an association to which the member belongs;
- (b) the hearing may proceed in the absence of the member where the member fails to attend and it is proved to the satisfaction of the member or members conducting the hearing that a notice under this Part was served on the member;

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- (c) the standard of proof to be applied in relation to the hearing is the civil standard of proof, on the balance of probabilities;
- (d) subject to this section, the hearing shall be at the discretion of the prescribed member or members conducting it and shall be conducted with as little formality and technicality as possible, given the need to properly and equitably consider the matters before the prescribed member or members;
- (e) the prescribed member or members conducting the hearing is or are not bound by the rules of evidence but the prescribed member is or members are bound by the rules of natural justice; and
- (f) the prescribed member or members conducting the hearing shall ensure that the hearing is electronically recorded.

"(2) Where a member is represented by a legal practitioner at a hearing under this section, the prescribed member or members conducting the hearing may be assisted at the hearing by a legal practitioner.

"(3) Representation or assistance provided by a legal practitioner under this section shall be as determined by the prescribed member or members conducting the hearing.

"84C. ACTION THAT MAY BE TAKEN AFTER HEARING

"(1) As soon as practicable after completing a hearing referred to in section 84B, the prescribed member or members conducting the hearing, if of the opinion that the member committed the breach of discipline -

- (a) may take such action in relation to, or impose such fine on, the member permitted by the Regulations as the prescribed member or members think fit; or
- (b) shall, if not permitted by the Regulations to take the action or impose the fine the prescribed member or members considers appropriate, in writing, report the opinion indicating the reasons for it and recommending a course of action the Commissioner or prescribed member might consider taking in the matter.

"(2) A report under subsection (1)(b) shall be delivered to -

- (a) the Commissioner or the prescribed member who made the appointment or appointments under section 84A(1); or

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- (b) a prescribed member who is permitted by the Regulations to take the action or impose the fine recommended in the report.

"84D. ORDER OF COMMISSIONER OR PRESCRIBED MEMBER

"The Commissioner or prescribed member, on receiving a report prepared under section 84C(1)(b), may take no further action on the matter or (in the case of a prescribed member, to the extent that the Regulations so permit) -

- (a) counsel and caution the member;
- (b) cause the member to be formally cautioned in writing;
- (c) take no further action on the basis that the member be of good behaviour for a period, not exceeding 12 months, fixed by the Commissioner or prescribed member;
- (d) impose on the member a fine not exceeding \$2,000;
- (e) reduce the member to a rank below the rank which the member held at the date of the hearing;
- (f) reduce the rate of salary of the member to a rate of salary within the limits of the salary fixed for the rank held by the member;
- (g) transfer the member -
  - (i) from the position held by the member in the Police Force to another position in the Police Force; and/or
  - (ii) from the locality in the Territory where the member is stationed to another locality in the Territory;
- (h) suspend the member from the Police Force, for a period not exceeding 3 months, subject to such conditions as the Commissioner specifies;
- (j) order the member to pay, by way of costs, compensation or restitution, such amount as the Commissioner or prescribed member considers appropriate to the matter; or
- (k) dismiss the member from the Police Force,

or do any one or more of those things, to have effect either concurrently or sequentially.

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"84E. REVIEW OF ACTIONS TAKEN OR FINES IMPOSED

"(1) Where under this Part a prescribed member takes action or imposes a fine on a member, the member may, within 7 days of being advised of the action or fine, apply in writing to the Command Head of the Police Command in which the member was employed at the time the breach was committed to have the matter reviewed.

"(2) As soon as practicable after receiving an application under subsection (1), the Command Head shall arrange for a prescribed member holding a rank higher than that of the prescribed member taking the action or imposing the fine to review the matter.

"(3) Subject to the Regulations and the directions, if any, of the Command Head, a prescribed member required under subsection (2) to review a matter may review it in such manner as the prescribed member thinks fit and, in substitution for the action taken or fine imposed by the other prescribed member, take such action or impose such fine as he thinks fit and which could have been taken or imposed by the other prescribed member.

"(4) Nothing in this section prevents a member from appealing under Part VI against an action taken or fine imposed under subsection (3) or section 81(2)(d)(ii).

*"Division 4 - General*

"84F. NOTICES

"(1) A notice -

(a) under section 79 shall contain -

(i) details of the action or omission constituting the breach of discipline; and

(ii) a statement that a written response is required from the member within 7 days of receipt of the notice; or

(b) under section 84A shall contain details of the charge of the breach of discipline and the date, time and place of the hearing.

"(2) A notice under section 79 or 84A shall be served on a member -

(a) by delivering it to the member personally; or

(b) by posting it to the member at the member's last-known place of residence.

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"84G. PAYMENT OF SALARY DURING SUSPENSION

"A member who is suspended under section 76A or 80 shall, unless the Minister otherwise directs, be paid salary during the period of the suspension.

"84H. PAYMENT, &c, WHERE NO DISCIPLINARY ACTION TAKEN OR APPEAL ALLOWED

"Where a member is, under section 80 -

- (a) suspended and his suspension is without salary; or
- (b). directed to take leave which has accrued to the member,

and subsequently no action under this Part is taken (or, as a result of an appeal under Part VI, no such action is allowed) in relation to the alleged breach of discipline -

- (c) the member shall be paid, in respect of the period of the suspension, the salary to which the member would have been entitled had the suspension not been imposed; or
- (d) have his leave re-instated,

as the case may be.

"84J. PAYMENT OF FINES AND AMOUNT OF MONEY

"(1) A fine imposed under this Part is a debt due and payable to the Territory by the member on whom it is imposed.

"(2) An order to pay an amount by way of costs, compensation or restitution under this Part is a debt due and payable to the person in respect of whom the order is made by the member against whom the order is made."

11. PROMOTIONS APPEAL BOARDS

Section 93 of the Principal Act is amended -

- (a) by omitting from subsection (2) "appointed by the Minister" and substituting "appointed by the Commissioner";
- (b) by omitting from subsection (2)(c) "other person" and substituting "other person who shall be appointed from a panel approved for that purpose by the Minister on the advice of the Commissioner"; and

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- (c) by omitting subsection (6) and substituting the following:

"(6) The Chairman and members of a Promotions Appeal Board hold office -

- (a) for 3 years; and
- (b) subject to the terms and conditions determined by the Minister."

12. INABILITY OR DISCIPLINARY APPEALS

Section 94 of the Principal Act is amended -

- (a) by omitting from subsection (2) "appointed by the Minister" and substituting "appointed by the Commissioner";
- (b) by omitting from subsection (2)(c) "other person" and substituting "other person who shall be appointed from a panel approved for that purpose by the Minister on the advice of the Commissioner"; and
- (c) by omitting subsection (4) and substituting the following:

"(4) The Chairman and members of a Disciplinary or Inability Appeal Board hold office -

- (a) for 3 years; and
- (b) subject to the terms and conditions determined by the Minister."

13. ACTIONS TO BE BROUGHT WITHIN SPECIFIED PERIODS

Section 162 of the Principal Act is amended -

- (a) by omitting from subsection (1) "All actions" and substituting "Subject to this section, all actions"; and
- (b) by adding at the end the following:

"(6) An action under Part IV in relation to a breach of discipline by a member shall be commenced within 6 months after the act or omission constituting the alleged breach of discipline was discovered, or such longer period as a magistrate allows.

"(7) The Commissioner may, at any time before the expiration of the period of 6 months referred to in subsection (6), apply for an extension of the time to commence an action under Part IV in relation to a breach of discipline by a member.

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"(8) An application under subsection (7) may be made in the absence of the member and evidence in support of the application may be given orally or by affidavit.

"(9) A magistrate to whom an application is made under subsection (7) may, after considering the evidence in support of the application and the submissions presented by the Commissioner, extend or refuse to extend the time to commence an action under Part IV.

"(10) In determining whether to extend the time to commence an action under Part IV, the magistrate shall have regard to -

- (a) the complexity of the investigation to determine whether the member should be charged with a breach of discipline;
- (b) any unforeseen delays that may have occurred during the investigation; and
- (c) any delays in the investigation caused by the member."

14. NEW SECTION

The Principal Act is amended by inserting after section 166A the following:

"166B. MEMBERS ENGAGING IN BUSINESS

"(1) Except with the written approval of the Commissioner, a member of the Police Force shall not, whether within or outside the Territory, engage in any remunerative employment, occupation or business outside the Police Force.

"(2) Subsection (1) does not prevent a member of the Police Force from becoming a member or shareholder of a corporation or an incorporated association but, except as provided by subsection (3), a member of the Police Force shall not take any part in the conduct of the business of the corporation or association otherwise than in the exercise of his rights as a member or shareholder of the corporation or association.

"(3) A member of the Police Force may, with the written approval of the Commissioner, act as a director of a co-operative society that is registered under the law of a State or Territory of the Commonwealth and which does not enter into contracts for the supply of goods or services to the Commonwealth or the Territory.

"(4) The Commissioner may, at any time, withdraw an approval given under this section."

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15. FURTHER AMENDMENTS

The Principal Act is further amended as set out in the Schedule.

16. TRANSITIONAL

The general orders and instructions issued under section 75 of the Principal Act as in force before the commencement of this Act shall be deemed to be general orders and instructions under section 14A of the Principal Act, as inserted by this Act, as if issued under that section on the commencement of this Act.

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SCHEDULE

Section 15

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Provision	Amendment	
	omit	substitute
Section 17(c)	"section 67(1)(g)"	"section 92"
Section 20(1)(b)	"one month's"	"14 days"
Section 20(1)(c)	"one month"	"14 days"
Section 86	the whole section	
Section 91(4) and (6)	"(or under section 79(7) or (8) or 88(2) or (3))"	
Section 94(1)(b)	"section 81(3)"	"section 84E(3)"
Section 94(1)(c)	"section 79(3)(d) or 83"	"section 81(2)(d) or 84D"
Section 94(1)	"section 81(3)"	"section 84E(3)"
Sections 134 and 148	"\$200" (wherever occurring)	"\$500"
Section 149	"\$500"	"\$1000"
Section 155	"\$500" (twice occurring)	"\$1000"
	"3 months" (twice occurring)	"6 months"
Section 167(2)(d)	"section 79(4)"	"section 81(3)"



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	"section 82"	"section 84B"
Section 167(2)(j)	"section 79(3)(d)(ii)"	"section 81(2)(d)(ii)"

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