

NORTHERN TERRITORY OF AUSTRALIA  
POLICE ADMINISTRATION AMENDMENT BILL 1994

TABLE OF PROVISIONS

Clause

1. Short title
2. Commencement
3. Principal Act
4. Interpretation
5. Commissioner may determine establishment of Police Force
6. New section:

"16AAA. TERM OR CONTRACT EMPLOYMENT"

7. Repeal
8. Repeal and substitution:

"PART IV - DISCIPLINE

*"Division 1 - Duties and obligations of Members*

- "75. GENERAL ORDERS
- "76. BREACHES OF DISCIPLINE
- "77. EFFECT OF PENDING CRIMINAL PROCEEDINGS

*"Division 2 - Public Interest Dismissal*

- "78. DISMISSAL

*"Division 3 - Disciplinary Powers Generally*

- "79. PROCEDURES IN RESPECT OF BREACHES OF DISCIPLINE
- "80. ACTION MAY BE TAKEN PENDING DECISION ON ALLEGED BREACH
- "81. REVIEW OF ACTIONS OR FINES UNDER SECTION 79(3)(d)(ii) OR 82(2)
- "82. CONDUCT OF INQUIRY
- "83. ORDERS BY COMMISSIONER OR PRESCRIBED MEMBER
- "84. PAYMENT OF FINES AND AMOUNTS OF MONEY

"PART V - INABILITY OF MEMBER TO DISCHARGE DUTIES

- "85. INTERPRETATION
- "86. APPLICATION OF PART
- "87. INABILITY OF MEMBER TO DISCHARGE DUTIES
- "88. REVIEW OF GROUNDS
- "89. ACTION FOLLOWING REVIEW

- "90. STAND-DOWN DURING REVIEW UNDER SECTION 88
- "91. MEDICAL INCAPACITY

"PART VI - APPEALS

*"Division 1 - Promotions Appeals*

- "92. PROMOTION APPEALS
- "93. PROMOTIONS APPEAL BOARDS

*"Division 2 - Inability and Disciplinary Appeals*

- "94. INABILITY OR DISCIPLINARY APPEALS
- "95. PROCEDURE, &c., OF APPEALS

*"Division 3 - General*

- "96. PERSON TO ANSWER QUESTIONS
- "97. STAFF OF APPEAL BOARDS
- "98. SERVING MEMBER ON APPEAL BOARD TO BE CONSIDERED ON DUTY
- "99. DISCLOSURE OF INTERESTS
- "100. COMMUNICATION OF APPEAL BOARD MATTERS
- "101. PROTECTION OF MEMBERS, PARTIES AND WITNESSES"

9. Repeal and substitution:

"150. FALSE COMPLAINTS"

- 10. Resisting member
- 11. New section

"160A. DISCIPLINARY, &c. INVESTIGATIONS"

- 12. Medical examinations
- 13. Regulations
- 14. Transitional
- 15. Transitional Regulations



## NORTHERN TERRITORY OF AUSTRALIA

# A BILL for AN ACT

to amend the *Police Administration Act*

**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. 3) 1993*.

### 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. INTERPRETATION

Section 4 of the Principal Act is amended -

(a) by inserting before the definition of "Assistant Commissioner" the following:

"'Appeal Board' includes a Promotions Appeal Board, a Disciplinary Appeal Board and an Inability Appeal Board;";

(b) by inserting after the definition of "Deputy Commissioner" the following:

"'dismiss', in Parts IV, V and VI, in relation to a member, means to terminate the employment of the member because of a breach of discipline;"; and

Police Administration Amendment

(c) by omitting the definitions of "Registrar" and "Secretary" and substituting the following:

"'prescribed member' means a member holding the prescribed rank;

'retire', in Parts IV, V and VI, in relation to a member, means to terminate the employment of the member otherwise than by dismissing the member;"

5. COMMISSIONER MAY DETERMINE ESTABLISHMENT OF POLICE FORCE

Section 15 of the Principal Act is amended by omitting "the Administrator may determine the number of members" and substituting "the Commissioner may determine the number of members and ranks".

6. NEW SECTION

The Principal Act is amended by inserting after section 16AA the following:

"16AAA. TERM OR CONTRACT EMPLOYMENT

"(1) The Commissioner may, from time to time, determine the duties or classes of duties in the Police Force of a member of or above the rank of Commander that -

(a) may be performed on an appointment for a fixed period; or

(b) may only be performed on an appointment for a fixed period.

"(2) Duties referred to in subsection (1) may, subject to the relevant determination under that subsection, be performed either by the appointment under section 16 of a person on contract or by the promotion or transfer of a member for a fixed term.

"(3) In making a determination under subsection (1), the Commissioner shall specify a period, not exceeding 5 years, as the period for which a person may be employed to perform the duties.

"(4) The Commissioner may determine the terms and conditions to apply to and in relation to employment to perform duties referred to in subsection (1), and where such a term or condition is inconsistent with this Act, the term or condition so determined prevails and the conditions of or under this Act, to the extent of the inconsistency, have no effect.

*Police Administration Amendment*

"(5) The period of employment to perform duties referred to in subsection (1) may be renewed from time to time by the Commissioner for a period not exceeding the duration of the original period.

"(6) Where duties referred to in subsection (1) are performed by a member promoted or transferred as referred to in subsection (2), the terms and conditions to which the member is subject as a permanent member at his rank shall be deemed to be varied, to the extent of the determination under subsection (4), for the duration of the period during which the member performs those duties."

7. REPEAL

Sections 23 and 24 of the Principal Act are repealed.

8. REPEAL AND SUBSTITUTION

Parts IV, V and VI of the Principal Act are repealed and the following substituted:

"PART IV - DISCIPLINE

*"Division 1 - Duties and obligations of Members*

"75. 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.

"(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.

"76. BREACHES OF DISCIPLINE

"A member who -

- (a) engages in disgraceful or improper conduct, either on or off duty;
- (b) is negligent, inefficient or careless in the discharge of the member's duties;
- (c) contravenes or fails to comply with a provision of a Code of Conduct referred to in section 75(2);

*Police Administration Amendment*

- (d) fails to obey a lawful direction, instruction or order given by, or caused to be issued by, the Commissioner or a member or person having authority over the member (including general orders and instructions issued under section 75(1)) or fails to be of good behaviour for a period fixed under section 83(c);
- (e) uses a substance (including liquor or a drug) in a manner that results in unacceptable performance of the member's duties or improper conduct whilst on duty;
- (f) is absent from duty except -
  - (i) where proper leave has been granted; or
  - (ii) with reasonable cause;
- (g) is convicted of an offence, whether within or outside the Territory; or
- (h) aids, abets, counsels or procures, or, by any act or omission, is directly or indirectly knowingly concerned in or a party to, a breach of discipline committed by another member in circumstances referred to in paragraphs (a), (b), (c), (d), (e) or (f),

by so being, using or doing, commits a breach of discipline.

"77. EFFECT OF PENDING CRIMINAL PROCEEDINGS

"For the avoidance of doubt, anything may be done or continued under this Part notwithstanding that criminal proceedings in respect of the matter to which it relates have been commenced or are contemplated.

*"Division 2 - Public Interest Dismissal*

"78. DISMISSAL

"(1) Notwithstanding section 79 or anything else in this or any other Act, but subject to this section, where the Commissioner is of the opinion that an action of or omission by a member which, in the Commissioner's opinion, constitutes a breach of discipline is of such a nature that it is in the public interest that the member be immediately dismissed from the Police Force, the Commissioner may dismiss the member from the Police Force.

"(2) The Commissioner shall not exercise the power of dismissal under subsection (1) -

- (a) unless a notice is served on the member -

*Police Administration Amendment*

- (i) setting out details of the action or omission constituting the breach of discipline and the reasons why the Commissioner is of the opinion that the member should be immediately dismissed; and
  - (ii) requesting the member to respond to the notice not later than 7 days after the notice is served on the member; and
- (b) until 7 days has elapsed since the service of the notice under paragraph (a) and the Commissioner has taken into account the response, if any, of the member.

"(3) A notice under subsection (2) shall be served by delivering it to the member personally or by posting it to the member at the member's last known place of residence.

"(4) The Commissioner may suspend a member from the Police Force, with or without salary, pending the response by the member to a notice under subsection (2).

"(5) A member who is suspended under subsection (4) shall, unless the Minister otherwise directs, be paid salary during the period of suspension.

*"Division 3 - Disciplinary Powers Generally*

"79. PROCEDURES IN RESPECT OF BREACHES OF DISCIPLINE

"(1) Where -

- (a) the Commissioner believes, on reasonable grounds, that a member; or
- (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 the member has not been dismissed under section 78, the Commissioner or the prescribed member shall, if the Commissioner or prescribed member considers that the breach is serious enough to warrant action being taken under this Division and, whether or not a response to a notice under section 78(2) is pending, serve a notice on the member containing details of the alleged breach of discipline and requiring the member to provide a written explanation within a period of 7 days after service of the notice.

"(2) Where the Commissioner or prescribed member is satisfied with the explanation provided as required under subsection (1), the Commissioner or prescribed member shall take no further action on the matter.

*Police Administration Amendment*

"(3) Where a member served with a notice under subsection (1) admits the breach of discipline or does not respond to the notice within the period specified in that subsection, the Commissioner or prescribed member may -

- (a) take no further action on the matter;
- (b) counsel 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 (b) or (c) is not appropriate -
  - (i) in the case of the Commissioner - take such action under section 83 as the Commissioner thinks appropriate as if the Commissioner had received a report under that section; or
  - (ii) in the case of the prescribed member - report the breach of discipline to the Commissioner recommending a course of action that the Commissioner might consider taking under section 83 or himself 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.

"(4) Where a member served with a notice under subsection (1) -

- (a) does not respond to the notice within the period specified;
- (b) responds to the notice within the period specified but does not admit the breach of discipline; or
- (c) the Commissioner or prescribed member is not satisfied with the explanation provided,

the Commissioner or prescribed member may -

- (d) as an alternative to immediate action under subsection (3), in a case referred to in paragraph (a) of this subsection; or
- (e) in any case referred to in paragraph (b) or (c), 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.



*Police Administration Amendment*

"(5) Nothing in this Part shall be taken as preventing a prescribed member who arranges an investigation referred to in subsection (4) from himself carrying out the investigation, alone or in conjunction with another member or other members.

"(6) An investigation referred to in subsection (4) shall be completed within a period of 3 months after it is arranged or such longer period as the Commissioner from time to time allows, after reviewing the progress of the investigation before the expiration of that period or the expiration of each succeeding period of one month during which the investigation continues.

"(7) In the course of an investigation referred to in subsection (4), if the member or members carrying out the investigation 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.

"(8) Where a member has been directed under subsection (7)(a) to submit to an examination, the member may, in addition, submit to an examination by a medical practitioner, dentist or other person registered as referred to in that paragraph, 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.

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

(a) continues to believe, on reasonable grounds, that the member has committed a breach of discipline, the Commissioner or prescribed member may -

(i) take no further action;

(ii) counsel the member;

(iii) cause the member to be formally cautioned in writing; or

*Police Administration Amendment*

(iv) charge the member with the breach of discipline alleged; or

(b) is satisfied that the member has not committed a breach of discipline, the Commissioner or prescribed member shall take no further action.

"(10) Where the Commissioner or prescribed member charges a member with a breach of discipline under subsection (9)(a)(iv), he shall appoint a prescribed member or prescribed members (including, with the consent of the member charged, the prescribed member laying the charge) to conduct an inquiry into the charge.

"(11) Where a member is charged with a breach of discipline under subsection (9)(a)(iv), a notice of the charge shall be served on the member.

"(12) A notice under subsection (11) shall -

(a) contain details of the charge and the date, time and place of the inquiry into the charge; and

(b) be served on the member by delivering it to the member personally or by posting it to the member at the member's last known place of residence.

"80. ACTION MAY BE TAKEN PENDING DECISION ON ALLEGED BREACH

"(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 subsection 79(1) has been served on the member -

(c) transfer the member to other duties at the same rank;

(d) direct the member to take any leave that has accrued to the member under this Act; or

(e) subject to subsection (3), suspend the member from the Police Force,

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

Police Administration Amendment

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

- (a) is final and is not capable of being reviewed in a court;
- (b) subject to paragraph (c), remains in force until all actions under this Part in respect of the member are completed; and
- (c) may be varied or revoked by the Commissioner at any time before those actions are completed.

"(3) A member who is suspended under this section shall, unless the Minister otherwise directs, be paid salary during the period of the suspension.

"(4) Where a member is -

- (a) suspended under this section and, in pursuance of subsection (3), his suspension is without salary; or
- (b) directed under subsection (1)(d) to take leave which has accrued to the member,

and subsequently no action under section 79(3) or (9) 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.

"81. REVIEW OF ACTIONS OR FINES UNDER SECTION 79(3)(d)(ii) OR 82(2)

"(1) Where under section 79(3)(d)(ii) or 82(2) a prescribed member takes action or imposes a fine on a member, the member may, within 7 days after being advised of the action or fine, apply in writing to the Assistant Commissioner in 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 Assistant Commissioner 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.

*Police Administration Amendment*

"(3) Subject to the Regulations and the directions, if any, of the Assistant Commissioner, 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 penalty 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 79(3)(d)(ii).

"82. CONDUCT OF INQUIRY

"(1) At an inquiry under section 79(10) into a charge of breach of discipline by a member -

- (a) the member may be accompanied by a friend or colleague or a member of an association of which the member belongs, but the member may not be represented by a legal practitioner;
- (b) the inquiry 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 inquiry that a notice under section 79(11) was served on the member;
- (c) the inquiry 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;
- (d) the prescribed member or members conducting the inquiry 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
- (e) the prescribed member or members conducting the inquiry shall ensure that the inquiry is electronically recorded.

"(2) As soon as practicable after completing an inquiry referred to in subsection (1), the prescribed member or members conducting the inquiry, 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

*Police Administration Amendment*

- (b) shall, if not permitted by the Regulations to take the action or impose a fine the prescribed member or members considers or consider appropriate, in writing, report the opinion to the Commissioner or the prescribed member making the appointment under section 79(10) (or another prescribed member who is permitted by the Regulations to take the action or impose the fine) indicating the reasons for the opinion and recommending a course of action the Commissioner or prescribed member might consider taking in the matter.

"83. ORDERS BY COMMISSIONER OR PRESCRIBED MEMBER

"The Commissioner or prescribed member, on receiving a report under section 79(3)(d)(ii) or 82(2), 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 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 inquiry;
- (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 to other duties;
- (h) suspend the member from the Police Force, for a period not exceeding 3 months, subject to such conditions as the Commissioner specifies;
- (j) dismiss the member from the Police Force; or
- (k) 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 do any one or more of those thing, to have effect either concurrently or sequentially.

*Police Administration Amendment*

"84. PAYMENT OF FINES AND AMOUNT OF MONEY

"(1) A fine imposed under section 79(3)(d), 81(2) or 83(d) 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 section 83(k) 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.

"PART V - INABILITY OF MEMBER TO DISCHARGE DUTIES

"85. INTERPRETATION

In this Part "Commissioner" includes a delegate of the Commissioner.

"86. APPLICATION OF PART

"This Part does not apply to or in relation to breaches of discipline to which Part IV applies or in relation to medical incapacity.

"87. INABILITY OF MEMBER TO DISCHARGE DUTIES

"Where the Commissioner is of the opinion, on reasonable grounds, that a member -

- (a) is not fit to discharge, suited to perform or capable of efficiently performing, the duties the member is employed to perform;
- (b) because of circumstances beyond the member's control, is not performing those duties efficiently or satisfactorily; or
- (c) is not qualified for the efficient and satisfactory performance of those duties,

the Commissioner shall, by notice in writing, advise the member of the Commissioner's opinion and the grounds on which the Commissioner has formed the opinion, and invite the member, within 14 days, to indicate in writing whether the member agrees with the Commissioner's opinion or to explain in writing any matter referred to in the notice.

"88. REVIEW OF GROUNDS

"(1) As soon as practicable after the expiration of the 14 days referred to in section 83, the Commissioner shall, if not satisfied with the member's explanation, if any, arrange for a review to be carried out by one or more members to determine whether the Commissioner's opinion is well founded and shall, in writing, advise the member accordingly.

Police Administration Amendment

"(2) In the course of a review referred to in subsection (1), if the member or members carrying out the review is or are of the opinion that it is relevant to the review for the member to be so examined, the member or members may direct the member to submit to an examination by one or more medical practitioners, dentists within the meaning of the *Dental Act* or persons registered under the *Health Practitioners and Allied Professionals Registration Act* as the member or members carrying out the review think fit.

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

"(4) Where a member refuses to comply with a direction under subsection (2), the member or members carrying out the review shall notify the Commissioner of the refusal and the Commissioner, on receiving the notification, shall take such action under this Act (other than dismissing the member) as the Commissioner thinks fit.

"(5) The member or members carrying out the review shall, in writing, advise the Commissioner and the member of their findings as a result of the review.

"89. ACTION FOLLOWING REVIEW

"If a member on whom a notice under section 87 is served indicates that the member agrees with the Commissioner's assessment or, as a consequence of a review referred to in section 88(1), the Commissioner remains of the opinion on the same or different grounds revealed by the review, the Commissioner may take no action or -

- (a) direct the member to take any leave that has accrued to the member under this Act;
- (b) stand the member down from the Police Force, on full salary on compassionate grounds, for a period not exceeding 3 months;
- (c) transfer the member to other duties, including duties (and at a rate of salary) of a lower rank; or
- (d) advise the member, in writing, that the Commissioner intends to retire the member from the Police Force.

*Police Administration Amendment*

"90. STAND-DOWN DURING REVIEW UNDER SECTION 88

"(1) At any time after a notice under section 87 has been served on a member the Commissioner may, if of the opinion that it is desirable to do so -

- (a) stand the member down from the Police Force for a period not exceeding 3 months;
- (b) direct the member to take any leave that has accrued to the member under this Act; or
- (c) transfer the member to perform other duties, including duties (and at a rate of salary) of a lower rank,

pending the explanation of the member under section 87, the outcome of the review under section 88, the expiration of the period in which an appeal can be made, or where such an appeal is made, the final determination of the appeal,

- (d) or do any one or more of those thing, to have effect either concurrently or sequentially.

"(2) Except as provided in this section, a decision of the Commissioner is final and is not capable of being reviewed in a court.

"(3) The Commissioner may, from time to time, extend a period during which a member is stood down under subsection (1) for such periods, each not exceeding 3 months, as the Commissioner thinks fit.

"(4) A member who is stood down under subsection (1) shall, unless the Minister otherwise directs, be paid salary during the period during which the member is stood down.

"(5) Where a member appeals against the intention of the Commissioner to retire the member as referred to in section 89(d) and the appeal is allowed, the standing down of the member under this section terminates on the date on which the appeal is allowed.

"(6) The standing down of a member under this section, unless it is sooner terminated, terminates on action being taken by the Commissioner under section 89(c) or (d).

"(7) If for any reason other than retirement as referred to in section 89(d) a period during which a member is stood down under this section without salary comes to an end, the member shall be paid, in respect of that period, the salary to which the member would have been entitled had he not been stood down.



Police Administration Amendment

"(8) Unless the Commissioner otherwise directs, a period during which a member is stood down under this section, other than a period that is terminated by or under this section, shall not be taken into account as service in calculating the person's sickness, recreation or long service leave entitlements as a member.

"91. MEDICAL INCAPACITY

"(1) A member shall be taken to be totally and permanently incapacitated for the purposes of this section if, because of a physical or mental condition, it is unlikely that the member will ever be able to work in any employment or hold any office for which the member is reasonably qualified by education, training or experience or could become reasonably qualified after retraining.

"(2) Where the Commissioner or a prescribed member is of the opinion, on reasonable grounds, that a member or a member of a rank below that of the prescribed member is unable to efficiently or satisfactorily perform the member's duties because of a physical or mental condition, the Commissioner or prescribed member may direct the member to submit to an examination by one or more medical practitioners, dentists within the meaning of the *Dental Act* or persons registered under the *Health Practitioners and Allied Professionals Registration Act* as the Commissioner or prescribed member, as the case may be, thinks fit.

"(3) Where a member has been directed under subsection (2) to submit to an examination, the member may, in addition, submit to an examination by a medical practitioner, dentist or other person registered as 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.

"(4) After considering the results of the examination or examinations under subsection (2) or (3) (or under section 79(7) or (8) or 88(2) or (3)) and all other relevant information available to the Commissioner or prescribed member, as the case may be -

- (a) the Commissioner may determine whether the member is totally and permanently incapacitated; or
- (b) the prescribed member shall report the findings of the examination to the Commissioner who may then so determine.

"(5) Where the Commissioner determines, or, following a report under subsection (4)(b), determines, that a member is totally and permanently incapacitated, the Commissioner may, after considering the provisions of any superannuation legislation applying to the member,

*Police Administration Amendment*

retire the member from the Police Force on the grounds of invalidity or take such action under this Part as the Commissioner thinks appropriate.

"(6) Where the Commissioner, after considering the results of the review and examinations under subsection (2) or (3) (or under section 79(7) or (8) or 88(2) or (3)) and all other information available to him (including a report under subsection (4)(b)) does not determine that the member is totally and permanently incapacitated but assesses the member to be unable to perform the member's duties efficiently or satisfactorily because of a physical or mental condition, the Commissioner shall take whatever steps he considers reasonable and practicable to facilitate the member resuming those duties or take such other action under this Part as the Commissioner thinks appropriate.

"PART VI - APPEALS

*Division 1 - Promotion Appeals*

"92. PROMOTION APPEALS

"(1) Subject to this section, where the Commissioner -

- (a) promotes under section 16(1)(b) or (3) a member to a rank of or below the rank of Senior Sergeant;
- (b) makes a decision referred to in section 17(b);
- (c) makes an appointment contrary to section 18(5); or
- (d) refuses under section 166AA(3) to promote or transfer a member,

an appeal may be made, in the prescribed manner and form, to a Promotions Appeal Board against the promotion, decision, appointment or refusal by -

- (d) in the case of a promotion referred to in paragraph (a) - a member who is qualified, and who has applied, for promotion to the rank to which that promotion was made;
- (e) in the case of a decision referred to in paragraph (b) - a member who is qualified, and who has applied, for promotion to the prescribed position;
- (f) in the case of an appointment referred to in paragraph (c) - a Police Cadet who was, at the time of the appointment, qualified for promotion to the rank of Constable and who is still so qualified; and

Police Administration Amendment

(g) in the case of a refusal referred to in paragraph (d) - the member whose promotion or transfer was refused.

"(2) An appeal under this section shall be lodged within 21 days after the notification in the *Police Gazette* is given of the promotion, decision or appointment, or such longer period as the Commissioner, in a particular case, allows.

"(3) The only ground on which an appeal may be made under this section is that the appellant has superior merit to the member promoted or person appointed, as the case may be.

"(4) Subject to subsection (5), the procedures in and in relation to an appeal under this section (including the power to compel the attendance of witnesses and the giving of evidence), are as prescribed or, where there is no procedure prescribed in relation to a particular matter, are in the discretion of the Appeal Board.

"(5) Neither the Commissioner nor an appellant may be represented by a legal practitioner at the hearing of an appeal under this section.

"93. PROMOTIONS APPEAL BOARDS

"(1) For the purposes of section 92, the Commissioner shall, from time to time, establish such number of Promotions Appeal Boards as are required to expeditiously deal with appeals under that section.

"(2) A Promotions Appeal Board shall be constituted by the following persons appointed by the Minister:

- (a) a Chairman, who shall be appointed from a panel approved for that purpose by the Minister on the advice of the Commissioner given after consultation by the Commissioner with the associations;
- (b) a person nominated by the relevant association; and
- (c) one other person.

"(3) A Promotions Appeal Board may -

- (a) strike out an appeal that it considers vexatious or frivolous; and
- (b) in any case, award costs in respect of an appeal.

*Police Administration Amendment*

"(4) In determining an appeal, a Promotions Appeal Board may -

- (a) disallow the appeal;
- (b) allow the appeal and direct the Commissioner to promote the appellant; or
- (c) direct the Commissioner to re-advertise the vacancy.

"(5) Where the Commissioner is directed under subsection (4)(b) to promote an appellant but the appellant is unwilling to accept the promotion, the Commissioner may refer the matter back to the Appeal Board for directions (and the Appeal Board has jurisdiction to give such directions) or re-advertise the vacancy.

"(6) The Chairman and members of a Promotions Appeal Board hold office for such periods and on such terms and conditions as the Minister thinks fit and specifies in the instrument of appointment.

*Division 2 - Inability and Disciplinary Appeals*

"94. INABILITY OR DISCIPLINARY APPEALS

"(1) A member aggrieved by -

- (a) the action of the Commissioner under section 77;
- (b) the action under section 81(3) by a member;
- (c) the action under section 79(3)(d)(ii) or 83 by the Commissioner or a prescribed member;
- (d) a direction, action or intention under section 89 by or of the Commissioner; or
- (e) a decision or opinion as a result of which such an action was taken, direction given or intention made,

may, within 14 days after being notified of the action, direction or intention (or, in a case referred to in paragraph (b), within 14 days after being notified of the action taken as a result of a review under section 81(3)), and in the prescribed manner and form -

- (f) in the case of an action referred to in paragraph (a), (b), (c) or a decision or opinion relating to such action - appeal to a Disciplinary Appeal Board against the action; or

*Police Administration Amendment*

- (g) in the case of a direction, action or intention referred to in paragraph (d) or a decision or opinion relating to such direction, action or intention - appeal to an Inability Appeal Board against the direction, action or intention.

"(2) For the purposes of this section, an Appeal Board shall be constituted by the following persons appointed by the Minister:

- (a) a Chairman, who shall be appointed from a panel approved for that purpose by the Minister on the advice of the Commissioner given after consultation by the Commissioner with the associations;
- (b) a person nominated by the relevant association; and
- (c) one other person.

"(3) Nothing in this Act prevents more than one Disciplinary or Inability Appeal Board (to deal with different matters under this Part) being in existence at the one time.

"(4) The Chairman and members of a Disciplinary or Inability Appeal Board hold office for such periods and on such terms and conditions as the Minister thinks fit and specifies in the instrument of appointment.

"(5) A person shall not be appointed as the Chairman of a Disciplinary or Inability Appeal Board unless the person is enroled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory of the Commonwealth and has been so enroled for not less than 5 years or, in the opinion of the Minister, the person has other suitable qualifications or experience.

"(6) In determining an appeal, a Disciplinary or Inability Appeal Board may -

- (a) disallow the appeal; or
- (b) allow the appeal in whole or in part and direct the Commissioner or member to take such action under sections 77, 79(3)(d)(ii), 81(3), 83 or 89 as the Appeal Board considers necessary.

"(7) In this section, for the purpose of enabling an appeal under subsection (1) against the dismissal of a member from the Police Force to be made, 'member' includes a former member.

Police Administration Amendment

"95. PROCEDURE, &c., OF APPEALS

"(1) This section applies only to and in relation to appeals under section 94.

"(2) Subject to subsection (3), an appeal shall be by way of a review of the material taken into account by the Commissioner or prescribed member against whose direction, action, intention, decision or opinion the appeal is lodged.

"(3) Where a party to an appeal considers that there was additional material that was not available to the Commissioner or prescribed member before he took the action or formed the intention, the party may, in the prescribed manner and form, apply to the Appeal Board to admit that material and, in its discretion, to deal with the appeal as a hearing *de novo*.

"(4) For the purpose of determining whether to admit the material or to declare the appeal a hearing *de novo*, the Appeal Board may conduct a preliminary hearing.

"(5) The decision of the Appeal Board on an application under subsection (3) is capable of being reviewed by a court.

"(6) The procedure for an appeal or a preliminary hearing is, subject to this section and the Regulations, within the discretion of the Appeal Board.

"(7) An appeal under this Part shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Part and a proper consideration of the matter permit.

"(8) If an Appeal Board thinks fit, an appeal may be determined without an oral hearing.

"(9) Where an Appeal Board conducts an appeal by holding an oral hearing, it shall give reasonable notice to the appellant, the Commissioner and any other person who is joined as a party to the appeal of the date, time and place at which the oral hearing is to occur.

"(10) An appeal shall not be heard in public unless either party to the appeal so requests and the Appeal Board agrees.

"(11) Where an Appeal Board conducts an appeal by holding an oral hearing, each party is entitled to appear and to tender a written summary of the submissions made at the oral hearing.

"(12) Where an Appeal Board conducts an appeal without holding an oral hearing, each party is entitled to tender written submissions.

Police Administration Amendment

"(13) An Appeal Board, when conducting an appeal as a hearing *de novo*, may admit evidence at the appeal notwithstanding that the evidence would not be admissible in a court.

"(14) An Appeal Board, when conducting an appeal as a hearing *de novo*, may -

- (a) summon a person whose evidence appears to be material to the appeal;
- (b) take evidence on oath and, for that purpose, may administer an oath; and
- (c) require a person to produce documents or records in the person's possession or under the person's control which appear to be material to the appeal.

"(15) A person who, without reasonable excuse (and to whom, where the person is not a member, payment or tender of reasonable expenses has been made), neglects or fails to attend in obedience to a summons under subsection (14) or to be sworn or make an affirmation, to answer relevant questions or to produce relevant documents when required to do so under that subsection, is guilty of an offence.

Penalty: \$5,000.

"(16) An Appeal Board may -

- (a) strike out an appeal that it considers vexatious or frivolous; and
- (b) in any case, award costs both in respect of a preliminary hearing and the appeal.

"(17) An Appeal Board shall give its decisions in writing, shall cause copies of decisions to be served on each of the parties and shall, if a party within 14 days after the copy of the relevant decision is served on him so requests, provide the party with written reasons for the decision.

Division 3 - General

"96. PERSON TO ANSWER QUESTIONS

"A person is not excused from answering a question when required to do so under this Part on the ground that the answer to the question might tend to incriminate the person or make the person liable to a penalty, but the answer to any such question is not admissible in evidence against the person in any other proceedings against the person under this Act or in criminal proceedings against the person in a court.

*Police Administration Amendment*

"97. STAFF OF APPEAL BOARDS

"(1) There shall be a Registrar of Appeal Boards who shall be appointed by the Minister.

"(2) The Registrar shall perform such duties and functions as are provided by or under this Act and such other duties and functions as a Chairman of an Appeal Board directs.

"(3) The Registrar, and the staff necessary to assist the Registrar, shall be persons appointed or employed under this Act or the *Public Sector Employment and Management Act*.

"98. SERVING MEMBER ON APPEAL BOARD TO BE CONSIDERED ON DUTY

"A member who attends or travels to or from a meeting of an Appeal Board in the member's capacity as a member of the Appeal Board shall be regarded as performing the functions and duties of his office as a member of the Police Force during that period.

"99. DISCLOSURE OF INTERESTS

"Where a matter comes before an Appeal Board in which a member of the Appeal Board is directly concerned, the member shall notify his interest to the Minister and shall temporarily cease to act, and the Minister shall, in the prescribed manner, appoint a temporary substitute member of the Appeal Board.

"100. COMMUNICATION OF APPEAL BOARD MATTERS

"A member of an Appeal Board shall not communicate information which he has received in the performance of the member's duties in connected with the exercise of the powers or the performance of the functions of the Appeal Board to a person other than a member of the Appeal Board or to a person to whom the Appeal Board has authorised the member to communicate the information.

Penalty: \$2,000.

"101. PROTECTION OF MEMBERS, PARTIES AND WITNESSES

"(1) A member of an Appeal Board has, in the performance of the member's duty as a member, the same protection as a Judge of the Supreme Court.

"(2) A legal practitioner or other person appearing before an Appeal Board has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.



*Police Administration Amendment*

"(3) Subject to this Act, a person summoned to attend or a person appearing before an Appeal Board as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, in any civil or criminal proceedings, as a witness in proceedings in the Supreme Court."

9. REPEAL AND SUBSTITUTION

Sections 150 and 151 of the Principal Act are repealed and the following substituted:

"150. FALSE COMPLAINTS

"(1) Where -

(a) a person, by any means -

(i) makes a statement;

(ii) creates a circumstance; or

(iii) does any other act or thing,

intending to create an impression, which the person knows to be false, that a situation exists or an event has occurred, being a situation or event that, if it did exist or had occurred, would be liable, upon the making of a complaint, to be investigated under this Act (irrespective of whether the person knew or intended that the situation or event would be liable to be investigated under this Act in particular); and

(b) a complaint to which this Act applies is made, whether by the person referred to in paragraph (a) or by another person, incorporating or referring to the statement, circumstances, act or thing as a material element of the complaint,

the first-mentioned person is guilty of an offence.

"(2) Proceedings for an offence against subsection (1) shall not be commenced except with the consent in writing of the Director of Public Prosecutions, or of a person, or of a person included in a class of persons, authorised by the Director of Public Prosecutions, by writing, to give such consents."

10. RESISTING MEMBER

Sections 158 of the Principal Act is amended by omitting "assault or" (twice occurring).

*Police Administration Amendment*

11. NEW SECTION

The Principal Act is amended by inserting in Part IX, before section 161, the following:

"160A. DISCIPLINARY, &c. INVESTIGATIONS

"Nothing in Part IV or V shall prevent the Commissioner or a prescribed member from conducting or causing to be conducted such investigations as he otherwise has the power to conduct or require to be conducted to establish a belief referred to in those Parts or shall prevent anything found as the result of such an investigation from being used in any investigation or inquiry under this Act or in criminal proceedings before a court."

12. MEDICAL EXAMINATIONS

Section 166AA of the Principal Act is amended -

- (a) by omitting from subsection (1) all words before paragraph (c) and substituting the following:

"(1) Where the Commissioner proposes to promote or transfer under this Act a member, the Commissioner -";

- (b) by omitting from subsection (1) "(c)" and substituting "(a)";
- (c) by omitting from subsection (1) "(d)" and substituting "(b)"; and
- (d) by omitting from subsection (3) "subsection (1) (c)" and substituting "subsection (1) (a)".

13. REGULATIONS

Section 167(2) of the Principal Act is amended -

- (a) by omitting paragraph (d) and substituting the following:

"(d) the powers and obligations of members carrying out or in relation to an investigation arranged in pursuance of section 79(4) or an inquiry under section 82, and the procedures of such an investigation or inquiry;"
- (b) by omitting from paragraph (gb) "fees;" and substituting "fees; and";
- (c) by omitting from paragraph (h) "Police Force; and" and substituting "Police Force."; and
- (d) by omitting paragraph (j).

Police Administration Amendment

14. TRANSITIONAL

(1) A determination under section 15 of the Principal Act, as in force immediately before the commencement of this Act, shall, on that commencement, continue in force as a determination of the Commissioner under section 15 of the Principal Act as amended by this Act, but may be revoked or varied as if made under that section by the Commissioner.

(2) General orders and instructions under section 75 of the Principal Act, as in force immediately before the commencement of this Act, shall, on that commencement, continue in force as general orders and instructions issued under section 75 of the Principal Act as inserted by this Act, but may be revoked or varied as if issued under that section by the Commissioner.

(3) The provisions of Part IV of the Principal Act, as inserted by this Act, apply to and in relation to a member believed, after the commencement of this Act, to have committed a breach of discipline notwithstanding that the conduct constituting the breach of discipline occurred before that commencement.

(4) The provisions of Part VI of the Principal Act, as inserted by this Act, apply to and in relation to an appeal commenced after the commencement of this Act notwithstanding that the promotion, decision, appointment, action or intention in relation to which the appeal is made occurred before that commencement.

(5) Without derogating from the effect of section 12 of the *Interpretation Act*, the Principal Act shall continue to apply to and in relation to an action (including an appeal) commenced under Part IV, V or VI of the Principal Act before the commencement of this Act as though the Principal Act had never been amended by this Act.

15. TRANSITIONAL REGULATIONS

(1) For the purposes only of ensuring the continuation of rights and obligations of members relating to matters dealt with in the Principal Act as amended by this Act, the Administrator may make such Regulations as the Administrator considers necessary or convenient to be made, notwithstanding that, but for this section, the Administrator may not have the power to make such Regulations.

(2) The power given by subsection (1) may only be exercised within one year after the commencement of this Act but a regulation made under this section shall remain in force until repealed under the Principal Act as amended by this Act.

*Police Administration Amendment*

(3) Regulations made under this section may be made retrospective to the date of commencement of this Act or any date after that commencement and shall have force accordingly.

(4) To the extent that the provisions of the Regulations made under this section are inconsistent with the Principal Act as amended by this Act or a provision of an Act specified in the Regulations, the Regulations shall prevail.

(5) In this section "member" includes the Commissioner of the Police Force.

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