



New South Wales

Police Service Amendment Act 1997 No 23

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New South Wales

Police Service Amendment Act 1997 No 23

Act No 23, 1997

An Act to amend the *Police Service Act 1990* so as to enable the Industrial Relations Commission to review the removal of police officers from the Police Service by the Commissioner of Police; and for other purposes.
[Assented to 24 June 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Service Amendment Act 1997*.

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.

4 Amendment of Police Integrity Commission Act 1996 No 28

The *Police Integrity Commission Act 1996* is amended as set out in Schedule 2.

Schedule 1 Amendment of Police Service Act 1990

(Section 3)

[1] Section 181D Commissioner may remove police officers

Omit section 181D (6).

[2] Section 181D (7)

Omit “subsection (6)”. Insert instead “Division 1C”.

[3] Section 181D (7A) and (7B)

Insert after section 181D (7):

(7A) Nothing in this section limits or otherwise affects the jurisdiction of the Supreme Court to review administrative action.

(7B) Nothing in Division 1C limits or otherwise affects the Commissioner’s power to vary or revoke an order in force under this section.

[4] Part 9, Divisions 1C and 1D

Insert after Division 1B:

Division 1C Review of Commissioner’s decision under Division 1B

181E Review generally

- (1) A police officer who is removed from the Police Service by an order under section 181D may apply to the Industrial Relations Commission (referred to in this Division as the *Commission*) for a review of the order on the ground that the removal is harsh, unreasonable or unjust.

- (2) An application under this section does not operate to stay the operation of the order in respect of which it is made.
- (3) Except to the extent to which the regulations otherwise provide, it is the duty of the Commissioner to make available to the applicant all of the documents and other material on which the Commissioner has relied in deciding that the Commissioner does not have confidence in the applicant's suitability to continue as a police officer, as referred to in section 181D (1).

181F Proceedings on a review

- (1) In conducting a review under this Division, the Commission must proceed as follows:
 - (a) firstly, it must consider the Commissioner's reasons for the decision to remove the applicant from the Police Service,
 - (b) secondly, it must consider the case presented by the applicant as to why the removal is harsh, unreasonable or unjust,
 - (c) thirdly, it must consider the case presented by the Commissioner in answer to the applicant's case.
- (2) The applicant has at all times the burden of establishing that the removal of the applicant from the Police Service is harsh, unreasonable or unjust. This subsection has effect despite any law or practice to the contrary.
- (3) Without limiting the matters to which the Commission is otherwise required or permitted to have regard in making its decision, the Commission must have regard to:
 - (a) the interests of the applicant, and
 - (b) the public interest (which is taken to include the interest of maintaining the integrity of the Police Service, and the fact that the Commissioner made the order pursuant to section 181D (1)).

181G Application of Industrial Relations Act 1996 to reviews

- (1) The provisions of the *Industrial Relations Act 1996* apply to an application for a review under this Division in the same way as they apply to an application under Part 6 (Unfair dismissals) of Chapter 2 of that Act, subject to this Division and to the following modifications:
- (a) section 83 (Application of Part) is to be read as if subsection (3) were omitted,
 - (b) section 85 (Time for making applications) is to be read:
 - (i) as if a reference to 21 days in that section were instead a reference to 14 days, starting from the day on which the applicant is given a copy of the order to which the application relates, and
 - (ii) as if subsection (3) were omitted,
 - (c) section 86 (Conciliation of applications) is to be read as if it provided that a judicial member of the Commission who is involved in any endeavour to settle the applicant's claim by conciliation must not subsequently be involved in the conduct of proceedings on the review,
 - (d) section 89 is to be read as if subsection (7) (Threat of dismissal) were omitted,
 - (e) section 162 (Procedure generally) is to be read as if the requirement of subsection (2) (a) of that section that the Commission is to act as quickly as is practicable were instead a requirement for the Commission to commence hearing the application within 4 weeks after the application is made,
 - (f) section 163 (Rules of evidence and legal formality) is to be read as if it provided that new evidence may not be adduced before the Commission unless:
 - (i) notice of intention to do so, and of the substance of the new evidence, has been given in accordance with the regulations under this Act, or
 - (ii) the Commission gives leave.

- (2) The Commission may grant leave as referred to in subsection (1) (f) (ii) in such circumstances as it thinks fit and having regard to the nature of proceedings under section 181F, and without limiting the generality of the foregoing, the Commission must grant leave in the following circumstances:
- (a) where the Commission is satisfied that there is a real probability that the applicant may be able to show that the Commissioner has acted upon wrong or mistaken information,
 - (b) where the Commission is satisfied that there is cogent evidence to suggest that the information before the Commissioner was unreliable, having been placed before the Commissioner maliciously, fraudulently or vexatiously,
 - (c) where the Commission is satisfied that the new evidence might materially have affected the Commissioner's decision.

181H Commissioner and members of Commissioner's Advisory Panels compellable witnesses only by leave

- (1) In any proceedings before the Commission under this Division, neither the Commissioner nor any member of a Commissioner's Advisory Panel is compellable to give evidence in relation to the exercise of the Commissioner's functions under section 181D unless the Commission gives leave.
- (2) The Commission may give such leave only if it considers that extraordinary grounds exist that warrant leave being given.
- (3) In this section, *Commissioner's Advisory Panel* means a panel established by the Commissioner to assist in the exercise of the Commissioner's functions under section 181D.

181I Matters relating to evidence

- (1) Section 128 (Privilege in respect of self-incrimination in other proceedings) of the *Evidence Act 1995* applies to a witness giving evidence before the Commission in proceedings under this Division in the same way as it applies to a witness giving evidence in proceedings before a court, and so applies as if a reference in that section to a court were a reference to the Commission.
- (2) Subject to subsection (1) of section 163 (Rules of evidence and legal formality) of the *Industrial Relations Act 1996*, nothing in this Division limits or otherwise affects the admissibility in evidence in proceedings before the Commission under this Division of any transcript of the proceedings of any other court or tribunal.

181J Application of Division to both reviews and appeals from review decisions

This Division applies not only to proceedings before the Commission on a review under this Division but also to proceedings before the Full Bench of the Commission on an appeal from a decision of the Commission under this Division.

Division 1D Constitution of Industrial Relations Commission for the purposes of proceedings under this Part

181K Constitution of Commission for the purposes of this Part

- (1) A review under this Part is to be conducted before the Industrial Relations Commission (referred to in this Division as the *Commission*) constituted by a single judicial member.
- (2) An appeal from the decision of the Commission on a review under this Part is to be conducted before a Full Bench of the Commission constituted by 3 judicial members.

- (3) Proceedings on a review under this Part, or on an appeal from the decision of the Commission on a review under this Part, are taken not to be proceedings of the Commission in Court Session.

[5] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Police Service Amendment Act 1997

[6] Schedule 4, Part 12

Insert after Part 11:

**Part 12 Provisions consequent on enactment of
Police Service Amendment Act 1997**

40 Definitions

In this Part:

amended Act means this Act, as amended by the amending Act.

amending Act means the *Police Service Amendment Act 1997*.

41 Application of amendments to existing orders under section 181D

An amendment made by Schedule 1 to the amending Act does not apply to any order made under section 181D before the commencement of that amendment.

42 Continuation of certain proceedings

Any proceedings before the Supreme Court:

- (a) that were commenced before the commencement of Schedule 1 [4] to the amending Act in connection with a decision or order made under section 181D, or

- (b) that are commenced after the commencement of Schedule 1 [4] to the amending Act in connection with a decision or order made under section 181D before that commencement,

are to be dealt with, and any judgment, order or direction of the Supreme Court in any such proceedings is to be given effect to, as if the amending Act had not been enacted.

43 Application of amendment to section 40 of Police Integrity Commission Act 1996

- (1) This clause applies to an answer made, or document or other thing produced, by a witness at a hearing before the Police Integrity Commission, as referred to in section 40 (3) of the *Police Integrity Commission Act 1996*.
- (2) The amendment made to section 40 (3) of the *Police Integrity Commission Act 1996* by Schedule 2 to the amending Act applies to an answer made, or document or other thing produced, before the commencement of that Schedule in the same way as it applies to an answer made, or document or other thing produced, after the commencement of that Schedule.

Schedule 2 Amendment of Police Integrity Commission Act 1996

(Section 4)

Section 40 Privilege as regards answers, documents etc

Insert “and in any proceedings under Division 1C of Part 9 of the *Police Service Act 1990* with respect to an order under section 181D of that Act” after “in any disciplinary proceedings” in section 40 (3).

[Minister’s second reading speech made in—
Legislative Assembly on 18 June 1997
Legislative Council on 19 June 1997]