

Queensland



POLICE SERVICE ADMINISTRATION ACT 1990

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This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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ACT 1990**

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POLICE SERVICE ADMINISTRATION ACT 1990

[as amended by all amendments that commenced on or before 24 June 1996]

An Act to provide for the Queensland Police Service and its administration

PART 1—PRELIMINARY

Short title

1.1 This Act may be cited as the *Police Service Administration Act 1990*.

Commencement

1.2(1) Section 1.1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided in subsection (1), the provisions of this Act, or such of them as are specified in the proclamation, commence on the day or days appointed by proclamation for commencement of those provisions.

Objects

1.3 The objects of this Act are to provide for—

- (a) the maintenance of the Queensland Police Service;
- (b) the membership of the Service;
- (c) the development and administration of the Service.

Definitions

1.4 In this Act—

“**approved form**” means a form approved by the commissioner for use under this Act;

“**award**” has the same meaning as in the *Industrial Relations Act 1990*;

“**breach of discipline**” means a breach of this Act or a direction of the commissioner given under this Act, but does not include misconduct;

“**commissioned officer**” means a person who holds a position in the Police Service as a commissioned officer;

“**commissioner**” means the commissioner of the Police Service;

“**commissioner for Police Service Reviews**” means a commissioner for Police Service Reviews under section 9.2A;

“**constable**” means a person who holds a position in the Police Service as a constable;

“**disciplinary action**” means action taken for misconduct, official misconduct or a breach of discipline;

“**executive officer**” means a person who holds a position in the Police Service as an executive officer;

“**industrial agreement**” has the meaning given by the *Industrial Relations Act 1990*;

“**industrial authority**” means the Industrial Commission or Industrial Court;

“**misconduct**” means conduct that—

- (a) is disgraceful, improper or unbecoming an officer; or
- (b) shows unfitness to be or continue as an officer; or
- (c) does not meet the standard of conduct the community reasonably expects of a police officer;

“**noncommissioned officer**” means a person who holds a position in the Police Service as a noncommissioned officer;

“**officer**” means a police officer;

“**official misconduct**” has the meaning given by sections 2.22 and 2.23 of the *Criminal Justice Act 1989*;

“**place**” means any, or any part of any, land, water, building, structure, vehicle, vessel, aircraft or carriage;

“**police officer**” means a person declared under section 2.2(2) to be a police officer;

“**police recruit**” means a person who holds a position in the Police Service as a police recruit;

“**prescribed responsibility**” means the commissioner’s responsibility under section 4.8;

“**recruit**” means a police recruit;

“**Service**” means the Police Service;

“**special constable**” means a person who holds a position as a special constable;

“**staff member**” means a person who is a staff member of the Police Service under section 2.5(1);

“**transfer**” of a police officer to a position has the meaning given by section 5.2(1).

Meaning of “tenure not limited by time”

1.5 A person is appointed to a position on a “**tenure not limited by time**” if the appointment does not specify an appointment period.

PART 2—QUEENSLAND POLICE SERVICE

Maintenance of Service

2.1 There is to be maintained at all times in the State a body of persons under the name and style ‘Queensland Police Service’.

Membership of Service

2.2(1) The Queensland Police Service consists of police officers, police recruits and staff members.

(2) Police officers are—

- (a) the commissioner of the Police Service;
- (b) the persons holding appointment as an executive police officer;
- (c) the persons holding appointment as a commissioned police officer;
- (d) the persons holding appointment as a noncommissioned police officer;
- (e) the persons holding appointment as a constable.

Functions of Service

2.3 The functions of the Police Service are—

- (a) the preservation of peace and good order—
 - (i) in all areas of the State; and
 - (ii) in all areas outside the State where the laws of the State may lawfully be applied, when occasion demands;
- (b) the protection of all communities in the State and all members thereof—
 - (i) from unlawful disruption of peace and good order that results, or is likely to result, from—
 - (A) actions of criminal offenders;
 - (B) actions or omissions of other persons;
 - (ii) from commission of offences against the law generally;
- (c) the prevention of crime;
- (d) the detection of offenders and bringing of offenders to justice;
- (e) the upholding of the law generally;

- (f) the administration, in a responsible, fair and efficient manner and subject to due process of law and directions of the commissioner, of—
 - (i) the provisions of the Criminal Code;
 - (ii) the provisions of all other Acts or laws for the time being committed to the responsibility of the Service;
 - (iii) the powers, duties and discretions prescribed for officers by any Act;
- (g) the provision of such services, and the rendering of such assistance, in situations of emergency or otherwise, as are required of officers by lawful authority or the reasonable expectations of the community, or as are reasonably sought of officers by members of the community.

Community responsibility preserved

2.4(1) The prescription of any function as one of the functions of the Police Service does not relieve or derogate from the responsibility and functions appropriately had by the community at large and the members thereof in relation to—

- (a) the preservation of peace and good order; and
- (b) the prevention, detection and punishment of breaches of the law.

(2) In performance of the functions of the Police Service, members of the Service are to act in partnership with the community at large to the extent compatible with efficient and proper performance of those functions.

Administration of staff members

2.5(1) Staff members are—

- (a) officers of the public service assigned to perform duties in the Police Service; and
- (b) persons appointed as staff members by the commissioner under—
 - (i) section 8.3(5); or

(ii) section 34 of the *Public Service Management and Employment Act 1988*.

(2) While performing duties in the Service, a staff member is subject to the commissioner's directions.

PART 3—POLICE OFFICERS' POWERS AND DUTIES RELATED TO THOSE OF CONSTABLE

Meaning of "officer" in Part

3.1 In this Part—

"officer" includes a special constable.

Relation to office of constable

3.2(1) Subject to section 7.1 where it applies, in performance of the duties of office, an officer is subject to the directions and orders of the commissioner and to the orders of any superior officer.

(2) A noncommissioned officer or a constable has and may exercise the powers, and has and is to perform the duties of a constable at common law or under any other Act or law.

(3) An officer other than one referred to in subsection (2) has and may exercise the powers of a constable at common law or under any other Act or law.

(4) Except as prescribed by this section and section 6.4, this Act does not, in relation to any officer, derogate from the powers, obligations and liabilities of a constable at common law or under any other Act or law.

Oath of office

3.3 Before a person begins to perform duty as an officer, the person is to take, or make, and subscribe the oath or affirmation prescribed by regulation.

Proof of office

3.4 If a question arises as to a person's identity as an officer, or to a person's entitlement to exercise the powers or to perform the duties of an officer—

- (a) the general reputation of a person, who is an officer, as being an officer is evidence of that identity and entitlement; and
- (b) the absence of, or failure to produce, any written appointment or other documentary proof to establish that identity or entitlement does not prejudice or otherwise affect the exercise of the powers or the performance of the duties by a person who is an officer.

Execution of process

3.5 Any officer may serve or execute any warrant, summons, order or command of any court, Judge, Magistrate or justice notwithstanding—

- (a) that the warrant, summons, order or command is not addressed to that officer; and
- (b) the requirements of any other Act or law, or rule having the effect of law, as to the person by whom the warrant, summons, order or command is to be executed.

Performance of duty

3.6 An officer performing a function of the Police Service is performing a duty of an officer even if what the officer is doing could be done by another person.

Termination of powers

3.7 Powers had by a person as an officer terminate immediately on the person ceasing, by whatever means, to be an officer.

PART 4—COMMISSIONER OF THE QUEENSLAND POLICE SERVICE

Establishment of office

4.1 There is hereby established the office of the commissioner of the Police Service.

Appointment

4.2(1) The Governor in Council may, on a recommendation agreed to by the chairperson of the Criminal Justice Commission, appoint an appropriate person as commissioner of the Police Service.

(2) The appointment is to be made by Gazette notice.

Conditions of appointment

4.3(1) The conditions on which an appointment as commissioner is held—

- (a)** are such as are for the time being agreed by the Minister and the chairperson of the Criminal Justice Commission, approved by the Governor in Council, and accepted by the person who is to be, or is, the commissioner; and
- (b)** are to be governed by a contract of employment made, or taken to be made, between the Crown and the commissioner; and
- (c)** are not subject to any award or industrial agreement, or any determination or rule of an industrial authority.

(2) If an offer of a contract of employment as commissioner on conditions in writing agreed to by the chairperson of the Criminal Justice Commission and approved by the Governor in Council in relation to the appointment, is made to a person before that person's appointment as commissioner, the person, on accepting appointment as commissioner, is taken to have made with the Crown (and the Crown is taken to have made with the appointee) a contract of employment that accords with the contract last offered to the person before the appointment was made.

Term of appointment

4.4 The commissioner is to be appointed for a term not less than 3 years or more than 5 years.

Removal and suspension of commissioner

4.5(1) The office of the commissioner becomes vacant if the commissioner—

- (a) dies; or
- (b) resigns the office by writing signed by the commissioner and accepted by the Governor in Council; or
- (c) is removed from office in accordance with this section.

(2) The commissioner may be removed from office pursuant to the contract that governs the commissioner's employment or if the commissioner has breached the contract of employment.

(3) Additional grounds on which the commissioner may be removed from office are—

- (a) incapacity, because of physical or mental infirmity, to properly perform the duties of office, or other unfitness to hold office;
- (b) incompetence in performing, or neglect of the duties of office;
- (c) being found guilty of official misconduct by a Misconduct Tribunal referred to in the *Criminal Justice Act 1989* where the tribunal orders the commissioner's dismissal;
- (d) conviction in the State of an indictable offence (whether on indictment or summarily);
- (e) imprisonment for any offence.

(4) If 1 or more of the grounds prescribed by subsection (3) exists, the commissioner may be removed from office by—

- (a) the Governor in Council, on a recommendation in which the chairperson of the Criminal Justice Commission concurs; or
- (b) in default of exercise of the authority conferred by paragraph (a), by the Governor, on an address from the Legislative Assembly praying for the commissioner's removal from office.

(5) If satisfied that 1 or more of the grounds prescribed by subsection (3) exists, or that the commissioner is charged with official misconduct or an offence referred to in subsection (3)(d), the Governor in Council may suspend the commissioner from office.

(6) If the commissioner is suspended from office, the commissioner is entitled to be reinstated in office, unless, upon action taken forthwith following the suspension and pursued diligently to its conclusion, the commissioner is removed from office in accordance with subsection (4).

Communications between Minister and commissioner

4.6(1) The commissioner—

- (a) is to furnish to the Minister reports and recommendations in relation to the administration and functioning of the Police Service, when required by the Minister to do so; and
- (b) may at any time furnish to the Minister such reports and recommendations as the commissioner thinks fit with a view to the efficient and proper administration, management and functioning of the Police Service.

(2) The Minister, having regard to advice of the commissioner first obtained, may give, in writing, directions to the commissioner concerning—

- (a) the overall administration, management, and superintendence of, or in the Police Service; and
- (b) policy and priorities to be pursued in performing the functions of the Police Service; and
- (c) the number and deployment of officers and staff members and the number and location of police establishments and police stations.

(3) The commissioner is to comply with all directions duly given under subsection (2).

Recording and publication of communications

4.7(1) The commissioner is to keep a register in which are to be recorded—

- (a) all reports and recommendations made to the Minister under section 4.6(1)(a); and
- (b) all directions given in writing to the commissioner under section 4.6(2).

(2) Within 28 days following 31 December in each year, the commissioner is to have prepared a copy of the register, which copy, being certified by the commissioner as a true copy of the register is to be furnished forthwith to the chairperson of the Criminal Justice Commission, with or without comment of the commissioner.

(3) Within 28 days following receipt of the certified copy of the register, the chairperson is to give the copy together with comments of the commissioner relating thereto, and with or without further comment of the chairperson, to the chairperson of the Parliamentary Criminal Justice Committee.

(4) The chairperson of the Parliamentary Criminal Justice Committee is to table in the Legislative Assembly—

- (a) the certified copy of the register; and
- (b) all comment relating thereto;

within 14 sitting days after the chairperson's receipt thereof.

Commissioner's responsibility

4.8(1) The commissioner is responsible for the efficient and proper administration, management and functioning of the Police Service in accordance with law.

(2) Without limiting the extent of the prescribed responsibility, that responsibility includes responsibility for the following matters—

- (a) determination of priorities;
- (b) determination of the appropriate organisational structure of the department;

- (c) designation and redesignation of offices;
- (d) control of the human, financial and other resources of the department;
- (e) selection of persons as officers and police recruits;
- (f) determination of the number and deployment of officers and staff members;
- (g) determination of the number and location of police establishments and police stations;
- (h) determination of levels of salaries or wages and allowances of members of the Service;
- (i) qualifications for offices within the Service and duties attaching to such offices;
- (j) promotion or demotion of officers and staff members;
- (k) training and development of members of the Service;
- (l) discipline of members of the Service;
- (m) dress and appearance of members of the Service;
- (n) appraisal of performance of members of the Service;
- (o) approval and administration of leave arrangements;
- (p) internal redeployment and retraining of officers and staff members;
- (q) termination of employment of members of the Service;
- (r) determination of times within which members of the Service are to perform their ordinary hours of work;
- (s) development of means to ensure all members of the Service are treated justly, fairly and with compassion;
- (t) maintenance of proper records.

(3) The commissioner is authorised to do, or cause to be done, all such lawful acts and things as the commissioner considers to be necessary or convenient for the efficient and proper discharge of the prescribed responsibility.

(4) In discharging the prescribed responsibility, the commissioner—

- (a) is to comply with all relevant awards or industrial agreements, determinations and rules made by an industrial authority; and
- (b) subject to this Act, is to ensure compliance with the requirements of all Acts and laws binding on members of the Police Service, and directions of the commissioner; and
- (c) is to have regard to section 4.6 and Ministerial directions duly given thereunder; and
- (d) is to discharge the responsibility in relation to such matters as are prescribed for the time being.

Commissioner's directions

4.9(1) In discharging the prescribed responsibility, the commissioner may give, and cause to be issued, to officers, staff members or police recruits, such directions, written or oral, general or particular as the commissioner considers necessary or convenient for the efficient and proper functioning of the Police Service.

(2) A direction of the commissioner is of no effect to the extent that it is inconsistent with this Act.

(3) Subject to subsection (2), every officer or staff member to whom a direction of the commissioner is addressed is to comply in all respects with the direction.

(4) In all proceedings—

- (a) a document purporting to be certified by the commissioner to be a true copy of a direction under subsection (1) is admissible as evidence of the direction; and
- (b) a direction under subsection (1) is to be taken as effectual until the contrary is proved.

Delegation

4.10(1) The commissioner may delegate powers of the commissioner under this Act or any other Act to a police officer or staff member.

(2) Without limiting subsection (1), the commissioner may also, under subsection (1), delegate powers of the commissioner to discharge the prescribed responsibility.

Acting as commissioner

4.11(1) The Minister may appoint an appropriate person to act as commissioner—

- (a) whenever there is a vacancy in the office of commissioner; or
- (b) during a period when the commissioner is suspended from office or cannot perform the duties of office because of physical or mental incapacity.

(2) The commissioner may appoint an appropriate person to act as commissioner during another period when the commissioner is absent from duty or cannot perform the duties of the office.

(3) The remuneration payable to a person who acts as commissioner must not be more than the remuneration payable to the commissioner.

Commissioner's official seal

4.12(1) The commissioner has an official seal.

(2) All courts and persons acting judicially are to take judicial notice of—

- (a) the signature of the commissioner or any person who at any time was the commissioner;
- (b) the fact that the commissioner has, or any such person had, an official seal;
- (c) the official seal of the commissioner or any such person;

if the signature or seal appears on a document made for the purposes of judicial proceedings or on a document purporting, or seeming, to have been made for the purposes of this Act.

PART 5—APPOINTMENT OF PERSONNEL

Ranks

5.1 The ranks of officers are those declared for the time being by the regulations.

Appointment to be on merit on impartial procedures

5.2(1) In this section—

“transfer” of a police officer to a position means the appointment of a police officer to a position in which the police officer will hold the same rank and be entitled to at least the same level of salary.

(2) A decision to appoint a person as a police recruit or to a police officer position must be made by fair and equitable procedures that—

- (a) include inviting applications and selection on the basis of the merit of applicants; and
- (b) prevent unjust discrimination, whether in favour of or against a person.

(3) However, if a decision is made to transfer a police officer on a basis prescribed by regulation, the decision need not involve the procedures mentioned in subsection (2)(a).

(4) Written notice to a police officer of a transfer because of a decision under subsection (3) must specify the prescribed basis used for the transfer.

(5) For the purposes of this section merit of an officer comprises—

- (a) the integrity, diligence and good conduct of the officer; and
- (b) the potential of the officer to discharge the duties of the position in question; and
- (c) the industry shown by the officer in performance of the duties of office in the course of the officer’s career; and
- (d) the physical and mental fitness of the officer to perform the duties of the position in question.

(6) For the purpose of determining the potential of an officer to discharge the duties of a position the following factors must be taken into account—

- (a) the performance of duties of office in the course of the officer's career;
- (b) the range of practical experience of the officer in the Service or outside the Service;
- (c) the ability, aptitude, skill, knowledge and experience determined by the commissioner to be necessary for the proper performance of the duties of the position in question;
- (d) any relevant academic, professional or trade qualifications of the officer.

Executive officers

5.3(1) The Governor in Council may appoint as executive officers such persons as are recommended by the commissioner for appointment.

(2) The number of positions as executive officer is to be such as is, for the time being, necessary for the effectual administration of this Act and the efficient and proper discharge of the prescribed responsibility and is recommended by the commissioner.

Conditions of employment

5.4(1) An appointment to a position as executive officer, including by way of promotion, is to be on the basis of full-time employment.

(2) The conditions on which an appointment as executive officer is held—

- (a) are such as are for the time being approved by the commissioner and accepted by the person who is, or is to be, the executive officer; and
- (b) are to be governed by a contract of employment made, or taken to be made, between the Crown and the executive officer; and
- (c) are not subject to any award or industrial agreement or any determination or rule of an industrial authority.

(3) If an offer of a contract of employment as an executive officer, on conditions in writing approved by the commissioner in relation to the appointment, is made to a person before that person's appointment as executive officer, the person, on accepting appointment as executive officer, is taken to have made with the Crown (and the Crown is taken to have made with the appointee) a contract of employment that accords with the contract last offered to the person before the appointment was made.

Acting as executive officer

5.5(1) The commissioner may appoint an appropriate person to act as executive officer during—

- (a) any vacancy, or all vacancies, in the office of executive officer; or
- (b) any period, or all periods, when the executive officer is absent from duty or, for another reason, cannot perform the duties of the office.

(2) The remuneration payable to a person who acts as an executive officer must not be more than the remuneration payable to the executive officer.

Other appointments

5.6 The commissioner may appoint such number of persons to be commissioned officers, noncommissioned officers, constables, police recruits as is necessary for the effectual administration of this Act and the efficient and proper discharge of the prescribed responsibility.

Conditions of employment of commissioned officers

5.7(1) Appointment to a position as a commissioned officer, including by way of promotion—

- (a) if the position is prescribed as one open to appointment on a part-time basis—may be on the basis of part-time employment; or
- (b) in the case of any other position—is to be on the basis of full-time employment.

(2) A person—

- (a) is to be appointed to, and employed in, a position as a commissioned officer on salary upon a tenure that is not limited by time, if the position is not one referred to in paragraph (b) or (c);
- (b) if a position of commissioned officer is prescribed as one open to appointment upon a limited duration of tenure—may be appointed to and employed in the position upon a limited duration of tenure;
- (c) if a position of commissioned officer is prescribed as one open to appointment on a contract basis—may be appointed to and employed in the position on a contract basis—
 - (i) upon a tenure that is not limited by time; or
 - (ii) for a limited duration of tenure.

(3) The conditions of employment from time to time of a commissioned officer duly appointed on a contract basis—

- (a) are such as are for the time being approved by the commissioner and accepted by the person who is, or is to be, the commissioned officer; and
- (b) are to be governed by a contract of employment made, or taken to be made, between the Crown and the commissioned officer; and
- (c) are not subject to any award or industrial agreement or any determination or rule of an industrial authority.

(4) If an offer of a contract of employment as a commissioned officer, on conditions in writing approved by the commissioner in relation to the appointment, is made to a person before that person's appointment as commissioned officer, the person, on accepting appointment as commissioned officer, is taken to have made with the Crown (and the Crown is taken to have made with the appointee) a contract of employment that accords with the contract last offered to the person before the appointment was made.

Acting as commissioned officer

5.8(1) The commissioner may appoint an appropriate person to act as a commissioned officer during—

- (a) any vacancy, or all vacancies, in the office of commissioned officer; or
- (b) any period, or all periods, when a commissioned officer is absent from duty or, for another reason, cannot perform the duties of the office.

(2) The remuneration payable to a person who acts as a commissioned officer must not be more than the remuneration payable to a person appointed to the office.

(3) While a person acts as a commissioned officer, the person is relieved of the duties of a constable at common law or under any Act or law.

Conditions of employment of noncommissioned officers and constables

5.9(1) Appointment to a position as a noncommissioned officer or constable, including by way of promotion—

- (a) is to be on the basis of full-time employment, if the position is not one referred to in paragraph (b);
- (b) if the position is prescribed as one, or one of a class, open to appointment on a part-time basis—may be on the basis of part-time employment.

(2) A person—

- (a) is to be appointed to and employed in a position as a noncommissioned officer or constable upon a tenure that is not limited by time, if the position is not one referred to in paragraph (b);
- (b) if the position is prescribed as one, or one of a class, open to appointment upon a limited duration of tenure—may be appointed and employed in a position as a noncommissioned officer or constable upon a limited duration of tenure.

Officer's election on termination of certain appointments

5.10(1) If an officer who holds a position in the Service on a contract basis or for a limited duration of tenure ceases to hold the position because—

- (a) the contract or tenure has expired and has not been renewed; or
- (b) the contract or tenure is terminated otherwise than by reason of—
 - (i) the officer's resignation from the Service or retirement from the Service; or
 - (ii) disciplinary action against the officer;

and before accepting the position that person was an officer in employment that satisfies the requirements of subsection (2) that person is entitled to elect to continue as an officer in accordance with this section.

(2) The requirements referred to in subsection (1) are—

- (a) the employment in the Service before acceptance of the position referred to in subsection (1) must have been on a tenure not limited by time;
- (b) the employment in the Service before acceptance of the position referred to in subsection (1) must have been, or be taken to have been, continuous.

(3) If a person makes an election under subsection (1), the commissioner may appoint the person at a rank determined by the commissioner—being a rank not lower than that at which the person was employed in the Service immediately before the person first accepted employment in the position referred to in subsection (1), or a rank prescribed for the time being to be equivalent to that rank.

(4) If a person makes an election under subsection (1), the person thereby renounces all entitlements secured to the person by the contract of employment in the event of its termination as referred to in subsection (1).

(5) An election made under subsection (1)—

- (a) must be made in writing signed by the elector and given to the commissioner within 14 days following—
 - (i) expiry of the contract or tenure in question; or

- (ii) notice of termination of the contract or tenure being given to the holder of the position in question; and
- (b) when duly made, has the effect that the elector's service as an officer is taken not to have been terminated by the expiry or termination of the contract or tenure in question, but to have continued in accordance with the foregoing provisions of this section.

(6) If the regulations prescribe requirements to be met, if service as an officer is to be taken as continuous, service of an officer referred to in this section is not continuous unless it accords with the requirements of the regulations, and subsection (5)(b) has operation subject to this subsection.

Conditions of employment of police recruits

5.11(1) The conditions of employment of a police recruit—

- (a) are as approved by the commissioner and accepted by the person who is, or is to be, the recruit; and
- (b) are to be governed by a contract of employment made, or taken to be made, between the Crown and the recruit; and
- (c) are not subject to any award or industrial agreement or any determination or rule of an industrial authority.

(2) If an offer of a contract of employment as a police recruit on conditions in writing approved by the commissioner in relation to the appointment, including the grounds on which the employment may be continued and discontinued, is made to a person before that person's appointment as a recruit, the person, on accepting appointment as a recruit, is taken to have made with the Crown (and the Crown is taken to have made with the appointee) a contract of employment that accords with the contract last offered to the person before the appointment was made.

Appointment on probation

5.12(1) This section does not apply in relation to an appointment as an officer made on a contract basis.

(2) An appointment as an officer of a person who was not an officer immediately before the appointment is an appointment on probation—

- (a) for a period not less than 12 months determined by the commissioner; or
- (b) in the absence of such a determination, for a period of 12 months.

(3) Unless the position as an officer is advertised in the Queensland Police Gazette as one to which appointment is to be made without a period of probation, an appointment of an officer to a position on promotion is an appointment on probation—

- (a) for a period not less than 6 months determined by the commissioner; or
- (b) in the absence of such a determination—for a period of 6 months.

(4) The commissioner may—

- (a) in respect of an appointee referred to in subsection (2)—
 - (i) at any time during the initial period of probation or during any extension of a period of probation, terminate the employment of the appointee;
 - (ii) at the end of any period of probation, confirm the appointment, extend or further extend the period of probation or terminate the employment of the appointee;
- (b) in respect of an appointee referred to in subsection (3) whose appointment is on probation—
 - (i) at any time during the initial period of probation or during any extension of a period of probation, terminate that appointment;
 - (ii) at the end of any period of probation, confirm the appointment, extend or further extend the period of probation or terminate that appointment.

(5) If an appointment is terminated under subsection (4)(b), the person who was the appointee is to be retained in employment as an officer at a level of salary not less than the level of salary of the person immediately before the appointment that is terminated until—

- (a) the person is appointed to another position in the Service; or
- (b) the person is otherwise dealt with under this Act.

Officer not to refuse transfer, but may object

5.13(1) A police officer who is transferred to a position must accept the transfer, even if the officer has not applied for it.

(2) However, if the officer did not apply for the transfer, the officer may—

- (a) object to the transfer under section 5.13A; or
- (b) apply for a review of the transfer under section 9.3.

Objection to transfer

5.13A(1) If a police officer is transferred to a position without applying for the transfer, the officer may object to the transfer by giving the commissioner written reasons for the objection within 14 days of receiving written notice of the transfer.

(2) The commissioner may allow or reject the objection.

(3) If the commissioner allows the objection, the transfer stops having effect.

(4) If the commissioner rejects the objection, the commissioner must give the officer written reasons for the rejection.

(5) This section—

- (a) does not limit the right of an officer to apply to a commissioner for Police Service Reviews for a review of the transfer (a “**transfer review**”); but
- (b) does limit the right of an officer to object to a transfer under this section once the officer has applied for a transfer review.

(6) If an officer objects to a transfer under this section, the time allowed by regulation for an application for a transfer review does not start to be counted until the day the commissioner gives the officer written reasons under subsection (4).

(7) If an officer applies for a transfer review, the officer cannot start or proceed further with an objection under this section.

Delay in attendance for duty on directed transfer to allow for objection and review

5.13B(1) If a police officer is transferred to a position, the commissioner cannot direct the officer to attend for duty in the position until—

- (a) after the time allowed for an objection under section 5.13A(1) has ended; and
- (b) if the officer objects to the transfer—the commissioner decides the objection.

(2) If—

- (a) the officer objects to the transfer under section 5.13; and
- (b) the commissioner rejects the objection;

the commissioner cannot direct the police officer to attend for duty until after the time allowed by regulation for an application to a commissioner for Police Service Reviews for a review of the transfer has ended.

(3) Despite section 9.2, if the officer applies to a commissioner for Police Service Reviews for a review of the transfer, the commissioner cannot direct the officer to attend for duty—

- (a) if the officer then withdraws the application—until at least 14 days after the withdrawal; or
- (b) if the officer does not withdraw the application and the commissioner decides under section 9.5 to proceed with the transfer—until at least 14 days after the day the officer receives written notice of the commissioner’s decision.

(4) This section does not limit the commissioner’s powers to direct an officer to attend for duty in a position in circumstances the commissioner considers are urgent.

Calculation of continuous service as officer

5.14(1) For the purpose of calculating continuous service of an officer, continuous service had by a person—

- (a) as an officer; and

- (b) as the holder of any prescribed office, offices or class of office under the Crown in any of its capacities;

where the service had as an officer and the service had as such holder are themselves continuous, are to be taken to constitute continuous service as an officer.

(2) A person who has continuous service as an officer pursuant to subsection (1), while the person continues as an officer, retains and may claim against the Crown in right of the State in respect of all benefits and entitlements that have accrued to the person throughout the continuous service.

(3) If the regulations prescribe requirements to be met, if service of an officer is to be taken as continuous, service or services referred to in this section is, or are, not continuous unless it accords, or they accord, with the regulations, and subsection (1) has operation subject to this subsection.

Officer as employee of Crown

5.15 An officer, other than one who holds appointment on a contract basis, is taken—

- (a) to be an employee of the Crown; and
- (b) to be within the application of the *Industrial Relations Act 1990* (or other Act passed in substitution therefor) to employees of the Crown as provided by that Act.

Special constables

5.16(1) The commissioner may, in writing, appoint on such terms and conditions as the commissioner thinks fit such number of persons to be special constables as, in the commissioner's opinion, is necessary for the effectual administration of this Act and the efficient and proper discharge of the prescribed responsibility.

(2) A special constable—

- (a) is not an employee of the Crown in right of the State or of the commissioner;

- (b) is not entitled to salary, allowances or other remuneration, except as provided for in the special constable's instrument of appointment;
- (c) has, during the continuance of the appointment as such, the powers and duties of an officer as specified in the special constable's instrument of appointment, and no other.

(3) Subject to subsection (2), such of the provisions of this Act relating to officers as may be reasonably applied to special constables so apply, as if a special constable were an officer.

PART 6—STANDING DOWN AND SUSPENSION

Power to stand down and suspend

6.1(1) If—

- (a) it appears to the commissioner, on reasonable grounds that—
 - (i) an officer is liable to be dealt with for official misconduct; or
 - (ii) an officer is liable to disciplinary action under section 7.4; or
 - (iii) the efficient and proper discharge of the prescribed responsibility might be prejudiced, if the officer's employment is continued; or
- (b) an officer is charged with an indictable offence; or
- (c) an officer is unfit for reasons of health to such an extent that the officer should not be subject to the duties of a constable;

the commissioner may—

- (d) stand down the officer from duty as an officer and direct the person stood down to perform such duties as the commissioner thinks fit; or
- (e) suspend the officer from duty.

(2) The commissioner may at any time revoke a standing down or suspension imposed under subsection (1).

Salary entitlement if stood down

6.2 An officer who is stood down from duty under section 6.1 is entitled to be paid salary and allowances at the rate at which the officer would have received salary and allowances had the standing down not occurred.

Salary entitlement if suspended

6.3(1) An officer suspended from duty under section 6.1 is entitled to be paid salary and allowances at the rate at which the officer would have received salary and allowances had the suspension not occurred, unless the commissioner otherwise determines in a particular case.

(1A) Except that an officer suspended under section 6.1(1)(c) is to be entitled to the salary and allowances to which that officer was previously entitled.

(2) An officer suspended from duty who is not entitled to be paid salary during the suspension—

- (a) may receive and retain salary, wages, fees or other remuneration from any lawful source during the suspension, unless the commissioner otherwise determines in a particular case;
- (b) if the officer resumes duty as an officer on the revocation of the suspension—is entitled to receive a sum equivalent to the amount of salary and allowances the officer would have received had the suspension not occurred, reduced by a sum equivalent to the amount of salary, wages, fees and other remuneration to which the officer became entitled from any other source during the suspension, unless the commissioner otherwise determines in a particular case.

(3) An officer suspended from duty without salary who enters into employment whereby the officer will become entitled to salary, wages, fees or other remuneration is to inform the commissioner immediately of the particulars of the employment.

(4) An officer suspended from duty who during the suspension becomes entitled to salary, wages, fees or other remuneration from a source incompatible with assessment of the officer as a fit and proper person to be

an officer and who fails to satisfy the commissioner that there are reasonable grounds for not dismissing the officer, may be dismissed from the Service.

Officer relieved of powers and duties while stood down or suspended

6.4 While an officer remains stood down or suspended under section 6.1—

- (a) the officer is relieved of the powers and duties of a constable at common law or under any Act or law;
- (b) the officer is not bound by the oath or affirmation taken or made by the officer as prescribed by section 3.3;
- (c) the officer is not to be taken to have breached such oath or affirmation, or provisions of any Act or law relating thereto, or to be liable to disciplinary action under section 7.4, by reason of the officer's failure to exercise or perform the powers or duties required of the officer by such oath or affirmation.

PART 7—INTERNAL COMMAND AND DISCIPLINE

Responsibility for command

7.1 At any incident—

- (a) that calls for action by police; and
- (b) at which officers are present;

the officer who is responsible for taking such action, and for action taken is—

- (c) the officer designated for the purpose in accordance with established administrative arrangements;
- (d) if there is no officer such as is referred to in paragraph (c)—the officer present who is most senior by rank;

- (e) if there is no officer such as is referred to in paragraph (c) or (d)—the officer present who is most senior by length of continuous service as an officer.

Duty concerning misconduct or breaches of discipline

7.2(1) In this section—

“conduct” means conduct of an officer, wherever and whenever occurring, whether the officer whose conduct is in question is on or off duty at the time the conduct occurs;

“officer” includes a police recruit.

(2) If any officer or staff member—

- (a) knows or reasonably suspects that conduct to which this section refers has occurred; or
- (b) is one in respect of whom it can be reasonably concluded that the officer or staff member knew or reasonably suspected that conduct to which this section refers has occurred;

it is the duty—

- (c) of the officer or staff member, in the case of conduct that is misconduct, to report the occurrence of the conduct, as soon as is practicable, to the commissioner and to the Complaints Section of the Official Misconduct Division of the Criminal Justice Commission; and
- (d) of the officer, in the case of conduct that is misconduct or a breach of discipline, to take all action prescribed by the regulations as action—
 - (i) to be taken in the circumstances of the case; and
 - (ii) to be within the authority of an officer of the rank or description to which that officer belongs.

Offence of victimisation

7.3 A person who—

- (a) prejudices, or threatens to prejudice, the safety or career of any person;
- (b) intimidates or harasses, or threatens to intimidate or harass any person;
- (c) does any action that is, or is likely to be, to the detriment of any person;

because the person referred to in paragraph (a), (b) or (c), or any other person, has complied with section 7.2 by performing the duty therein prescribed commits an offence against this Act.

Maximum penalty—100 penalty units.

Disciplinary action

7.4(1) In this section—

“officer”, in relation to a person liable to disciplinary action, includes a police recruit;

“prescribed officer” means an officer authorised by the regulations to take disciplinary action in the circumstances of any case in question.

(2) An officer is liable to disciplinary action in respect of the officer’s conduct, which the prescribed officer considers to be misconduct or a breach of discipline on such grounds as are prescribed by the regulations.

(3) Without limiting the range of disciplines that may be imposed by the prescribed officer by way of disciplinary action, such disciplines may consist of—

- (a) dismissal;
- (b) demotion in rank;
- (c) reprimand;
- (d) reduction in an officer’s level of salary;
- (e) forfeiture or deferment of a salary increment or increase;
- (f) deduction from an officer’s salary payment of a sum equivalent to a fine of 2 penalty units.

(4) Every order made by way of disciplinary action takes effect in law and is to be given effect.

PART 8—RESIGNATION RETIREMENT AND CHANGE IN STATUS

Resignation

8.1(1) Resignation from the Service of an officer who holds a position on the basis of a contract that provides for the manner of the officer's resignation must be effected in accordance with the contract.

(2) An officer, other than one referred to in subsection (1), may resign from the Service at any time in the manner prescribed by the regulations.

Retirement

8.2 An officer, other than one who holds a position on a contract basis—

- (a) may retire from employment in the Service upon, or at any time after, attaining the age prescribed by the regulations in relation to officers of the class to which that officer belongs;
- (b) may retire from employment in the Service when called upon under section 8.3 to retire from the Service;
- (c) is to retire from employment in the Service upon attaining the age of 60 years.

Unfitness for duty on medical grounds

8.3(1) If the commissioner suspects on reasonable grounds that an officer—

- (a) by reason of physical or mental infirmity is incapable of; or
- (b) for any other reason pertaining to the officer's health or condition, is unfit for the purpose of;

performing the duties of office, or any other duties as an officer that the commissioner might reasonably direct the officer to perform, the commissioner is to advise the officer, in writing, of the suspicion and if upon receipt of such advice the officer does not accept the truth of the commissioner's suspicion, the commissioner is to obtain medical opinion on the matter.

(2) For the purposes of subsection (1), the commissioner—

- (a) may nominate any medical practitioner or medical practitioners to examine the officer concerned and report to the commissioner on the physical or mental health or other relevant condition of the officer, as the case may require; and
- (b) may direct the officer concerned to submit to examination by the nominated medical practitioner or medical practitioners.

(2A) If the officer concerned fails without reasonable cause to comply in all respects with a direction given by the commissioner, it is to be conclusively presumed that the commissioner's suspicion is true.

(3) If, having regard to any medical opinions expressed by medical practitioners (including any such opinions furnished by the officer) on the health or condition of the officer concerned, or because of the presumption prescribed by subsection (2A), the prescribed authority is satisfied that the officer should not continue to be required to perform the duties of office, then, unless the commissioner takes action authorised by subsection (5), the prescribed authority may call upon the officer to retire from the Service within a time specified by the prescribed authority.

(4) If the officer called upon to retire does not retire within the time specified, the prescribed authority may dismiss the officer from the Service.

(5) If the commissioner believes the officer referred to in subsection (3) is sufficiently fit to perform duties as a staff member, then in lieu of the action authorised by subsections (3) and (4) and without limiting the commissioner's powers in relation to the officer, the commissioner may—

- (a) in writing, appoint the officer to a position as a staff member, at a rate of salary not less than that of the officer immediately before such appointment; and
- (b) may direct the officer to report for and perform duty in the position to which the officer is so appointed.

(6) The person appointed to a position under subsection (5) thereby ceases to be an officer and is relieved of all powers and duties of a constable at common law or under any Act or law.

(7) In subsections (3) and (4)—

“**prescribed authority**” means—

- (a) the Governor in Council, in respect of an officer appointed to office by the Governor in Council;
- (b) the commissioner, in respect of an officer appointed to office by the commissioner.

PART 9—REVIEW OF DECISIONS

Operation of Part

9.1 This Part does not confer an entitlement to seek a review under this Part, of a decision of a description referred to in section 9.3 on a person who has a right of appeal against, or a right to seek a review of, the decision in question pursuant to the *Criminal Justice Act 1989*.

Review does not stay decision

9.2 An application for review of a decision under this Part—

- (a) does not affect the operation and effect of the decision pending disposal of the application; and
- (b) does not have the effect of deferring the liability of the applicant to implementation of the decision.

Commissioner for Police Service Reviews

9.2A(1) The chairperson of the Criminal Justice Commission may nominate a member of the Criminal Justice Commission to be a commissioner for Police Service Reviews.

(2) More than 1 person may hold office as a commissioner for Police Service Reviews at any time.

Application for review

9.3(1) A police officer who is aggrieved by a decision about—

- (a) the selection of an officer for appointment to a police officer position, whether on promotion or transfer, if the selection procedures mentioned in section 5.2(2)(a) were required to be complied with; or
- (b) the selection of an officer for transfer to a police officer position, if the selection procedures mentioned in section 5.2(2)(a) were not required to be complied with; or
- (c) action against the officer for breach of discipline; or
- (d) suspension or standing down of the officer; or
- (e) another decision prescribed by regulation as open to review under this Part;

may apply to have the decision reviewed by a commissioner for Police Service Reviews.

(1A) An application for the review of a decision mentioned in subsection (1)(a) may only be made by a person who properly applied for appointment to the position concerned and was unsuccessful.

(1B) An application for the review of a decision mentioned in subsection (1)(b) may only be made by a police officer who was transferred to the position concerned without applying for the transfer.

(2) An application for review of a decision that relates to action for breach of discipline may seek the review in respect of—

- (a) the decision that such action should be taken; or
- (b) the nature of the discipline imposed;

or both, and a review may be conducted accordingly.

(3) Authority is hereby conferred on a commissioner for Police Service Reviews—

- (a) to hear and consider all applications for review under this Part duly made;
- (b) to make recommendations relating to any matters relevant to a review under this Part.

Procedures

9.4(1) An application for review under this Part must be made as prescribed by the regulations or, where the regulations do not make any or sufficient provision, in accordance with directions of a commissioner for Police Service Reviews.

(2) A review under this Part is to be conducted as prescribed by the regulations or, where the regulations do not make any or sufficient provision, as determined by a commissioner for Police Service Reviews, having regard to the following principles—

- (a) a review is an administrative proceeding of a non-adversarial nature;
- (b) proceedings on a review should be informal and simple;
- (c) legal representation is not permitted to any person concerned in a review.

Result of review

9.5(1) Upon conclusion of a review under this Part, a commissioner for Police Service Reviews is to make such recommendations as that commissioner considers appropriate to the matter under review to the commissioner of the Police Service.

(2) The commissioner of the Police Service, upon consideration of the matter reviewed and having regard to the recommendations made, is to take such action as appears to the commissioner of the Police Service to be just and fair.

Effect of rescission of decision

9.6 If, following a review of a decision under this Part, the decision is rescinded, it is to be taken that the decision was never made or implemented, whether or not any decision is substituted in its stead.

PART 10—MISCELLANEOUS PROVISIONS**Improper disclosure of information**

10.1(1) Any officer or staff member or person who has been an officer or a staff member who, except for the purposes of the Police Service, discloses information that—

- (a) has come to the knowledge of, or has been confirmed by, the officer or staff member or person through exercise, performance or use of any power, authority, duty or access had by the officer or staff member or person because of employment in the Service; or
- (b) has come to the knowledge of the officer or staff member or person because of employment in the Service;

commits an offence against this Act, unless—

- (a) the disclosure is authorised by the commissioner under section 10.2; or
- (b) the disclosure is made under due process of law; or
- (c) the information is not of a confidential or privileged nature; or
- (d) the information would normally be made available to any member of the public on request.

Maximum penalty—100 penalty units.

(2) In prosecution proceedings for an offence defined in subsection (1), it is irrelevant that information of the nature of that disclosed had also come to the defendant's knowledge otherwise than in a manner prescribed by subsection (1).

Authorisation of disclosure

10.2(1) The commissioner may, in writing, authorise disclosure of information that is in the possession of the Police Service.

(1A) Authorisation under subsection (1) must accord with any regulations made in relation to disclosure of such information, and any such authorisation is to be taken as authorising disclosure in accordance with any such regulations.

(2) Neither the Crown nor any person incurs any liability in law on account of a disclosure of information made under and in accordance with the commissioner's authorisation.

Protection from liability for reports

10.3(1) It is lawful for any officer or staff member to express in a report made in good faith in the execution of duty, matters of opinion, judgment or recommendation (of the person making the report or other person) in addition to matters of fact.

(2) A report is one made in the execution of duty if the person making the report reasonably believes the person to whom it is made to have the duty or authority to receive the report.

(3) Neither the Crown nor any person incurs liability in law on account of a report made in good faith in the execution of duty concerning efficiency, conduct or character of any officer or staff member.

(4) A report, such as is referred to in subsection (3) containing matter that is false, or grossly misleading in a material particular is not one made in good faith unless the defendant proves that the person who made the report reasonably believed the report to be true, and could not have discovered by exercise of reasonable diligence, the falsity or misleading nature of the matter.

(5) Except as prescribed by subsection (4), the burden of proving absence of good faith is upon the person who alleges such absence.

Rejection of frivolous complaints

10.4(1) This section relates only to a report, complaint or information concerning conduct of an officer that does not amount to misconduct.

(2) The commissioner may reject, and direct that no action be taken in relation to, a report or complaint made, or information furnished, that appears to the commissioner to have been made, or furnished, frivolously or vexatiously.

(3) A person who has been notified in writing by or on behalf of the commissioner that a report or complaint made, or information furnished, by the person—

- (a) appears to concern frivolous matter; or
- (b) appears to have been made or furnished vexatiously;

and who again makes a report or complaint, or furnishes information, to the same effect commits an offence against this Act.

Maximum penalty—100 penalty units.

(4) It is a defence to a charge of an offence defined in subsection (3) to prove—

- (a) that the report, complaint or information does not concern frivolous matter; or
- (b) that the report, complaint or information was not made or furnished vexatiously.

Liability for tort generally

10.5(1) The Crown is liable for a tort committed by any officer, staff member or recruit, acting, or purporting to act, in the execution of duty as an officer, a staff member or recruit, in like manner as an employer is liable for tort committed by the employer's servant in the course of employment.

(1A) The Crown is to be treated for all purposes as a joint tortfeasor with the officer, staff member or recruit who committed the tort.

(2) In no case does the Crown's liability for a tort committed by any officer, staff member or recruit extend to a liability to pay damages in the nature of punitive damages.

(3) In proceedings upon a claim by the Crown for damages in respect of a tort, actions done or omissions made by an officer acting, or purporting to act, in the execution of duty as an officer may be relied on by the Crown as constituting contributory negligence, if the actions or omissions could have

been so relied on if they had been done or made by a servant of the Crown in the course of employment.

(4) For the purposes of this section, an action done or omission made by an officer acting, or purporting to act, in the capacity of a constable is taken to have been done or made by the officer acting, or purporting to act, in the execution of duty as an officer.

(5) If an officer, staff member or recruit incurs liability in law for a tort committed by the officer, staff member or recruit in the course of rendering assistance, directly or indirectly, to a person suffering, or apparently suffering, from illness or injury in circumstances that the officer, staff member or recruit reasonably considers to constitute an emergency, and if the officer, staff member or recruit acted therein in good faith and without gross negligence, the Crown is to indemnify and keep indemnified the officer, staff member or recruit in respect of that liability.

Payment and recovery of damages

10.6(1) The Crown may pay—

- (a) the whole or part of damages, other than damages in the nature of punitive damages, and costs awarded against any officer, staff member or recruit, in proceedings with respect to a tort committed by the officer, staff member or recruit acting, or purporting to act, in the execution of duty; and
- (b) the whole or part of costs incurred, and not recovered, by the officer, staff member or recruit in the proceedings.

(2) If any officer, staff member or recruit is liable to pay a sum under a settlement of a claim that has, or might have, given rise to proceedings such as are referred to in subsection (1), the Crown may pay the whole or part of the sum.

(3) Except as provided by section 10.5(5), if the Crown has paid moneys by way of damages or costs in respect of a tort committed by any officer, staff member or recruit, or has paid moneys under a settlement referred to in subsection (2), the Crown may recover, in a court of competent jurisdiction, contribution from the officer, staff member or recruit in respect of that payment.

(4) In proceedings for contribution under subsection (3) the amount of contribution recoverable is such amount as is found by the court to be just and equitable in the circumstances.

Provision of legal representation

10.7(1) The commissioner may provide legal representation on behalf of any officer, staff member or recruit against whom any action, claim or demand or proceeding in respect of an offence is brought or made otherwise than by or on behalf of the Crown in any of its capacities on account of any action done or omission made by the officer, staff member or recruit acting, or purporting to act, in the execution of duty.

(2) If it is found, or conceded, in relation to any such action, claim, demand or proceeding that the officer, staff member or recruit, was not acting in the execution of duty in doing the action or making the omission on which the action, claim, demand or proceeding is based, the commissioner may recover from the officer, staff member or recruit the amount of costs and expenses incurred by the commissioner in providing legal representation under subsection (1) in any court of competent jurisdiction as a debt due and payable by the officer, staff member or recruit to the commissioner and unpaid.

Compensation for injury or death

10.8 If an officer or recruit suffers injury or death in circumstances such that, had the injury or death occurred to a worker employed elsewhere than in the Police Service, compensation or expenses would have been payable under the *Workers' Compensation Act 1990* to or on account of the worker or the worker's dependents, the Crown is to indemnify the officer or recruit and, if the case requires, the dependents of the officer or recruit as if the officer or recruit were a worker covered by a policy under that Act.

Service and production of documents

10.9(1) Any document that an Act requires or authorises to be given to or served on the commissioner is taken to have been duly so given or served if it is given to the holder for the time being of any office nominated in that behalf by the commissioner.

(1A) The commissioner must, from time to time, notify in the Gazette the offices so nominated.

(2) The holder for the time being of an office nominated under subsection (1) may, with the leave of the court or tribunal concerned, represent the commissioner in that court or tribunal to produce to that court or tribunal any document or thing required to be produced in response to the document referred to in subsection (1) and given or served as prescribed.

Police establishments

10.10(1) The commissioner may, by Gazette notice—

- (a) declare any place to be a police establishment or police station;
- (b) declare any place to be part of a police establishment or police station;
- (c) declare the cessation of any place as a police establishment or police station or as a part thereof;
- (d) assign a name to a police establishment or police station and change a name so assigned;
- (e) define the limits of a police establishment or police station as the commissioner thinks fit.

(2) In subsection (1)—

“**place**” means a place appropriated to the use of, or used by, the Police Service for the purpose of performing functions of the Service.

Ownership of official property

10.11 For the purpose of any legal proceedings—

- (a) every police establishment or police station; or
- (b) anything (animate or inanimate), which is not the private property of any person, that is appropriated to the use of, or is used by, the Police Service or any officer or staff member in the capacity as such;

is taken to be the property of the commissioner for the time being, and may be sufficiently described as the property of the commissioner of the Police Service.

Legal proceedings

10.12(1) Any proceedings or any action, claim or demand to which the commissioner for the time being is a party does not abate or terminate by reason that such party has ceased to be the commissioner, but may continue in the name of the successor in office.

(2) In any proceedings an allegation or averment in a complaint or other initiating process, or in any pleading or affidavit that—

- (a) a place specified therein is a police establishment or police station;
- (b) anything specified therein is appropriated to the use of, or is used by, the Police Service or any officer or staff member in the capacity as such;
- (c) the commissioner has not authorised or consented to an action, omission, conduct or breach of duty specified therein in relation to anything referred to in paragraph (a) or (b);

is sufficient proof of the matter alleged or averred in the absence of evidence to the contrary.

Surrender of equipment

10.13(1) Upon a person ceasing to be an officer, it is lawful for the person to retain all items of equipment, gear or accoutrements issued to the person as an officer, except such items as the person is directed in writing by the commissioner to surrender.

(1A) If the commissioner gives such a direction, the commissioner may specify therein a date by which the items are to be surrendered and the person to whom the direction is given is to comply with the direction.

(2) The person must comply with a direction given to the person under subsection (1).

Maximum penalty—100 penalty units.

(3) Upon a complaint of a commissioned officer a justice may issue a warrant authorising the commissioned officer—

- (a) to search for and seize on behalf of the commissioner anything that, pursuant to a direction of the commissioner is required to be surrendered and has not been surrendered; and
- (b) for that purpose to enter any place in which the thing sought is believed by the commissioned officer to be, and to break open any receptacle capable of containing the thing sought.

(4) Before executing a warrant in respect of any place, the commissioned officer is to show the warrant to the occupier (if any) of the place, if the occupier is present at the place, and seek the occupier's permission to enter and search the place and to seize anything that is sought and is found therein, but if the occupier is not present or refuses consent, the commissioned officer, and all persons acting in aid of the commissioned officer, may proceed to execute the warrant using such reasonable force as is necessary, and doing all other things reasonably required, to execute the warrant.

Vacating of premises

10.14(1) If a person who is in possession of premises—

- (a) that are the property of the commissioner; or
- (b) of which the commissioner is entitled to possession;

having been notified in writing, by the commissioner to vacate the premises, fails to vacate the premises within 28 days following the giving of notification to vacate in the approved form, a Magistrate, upon a complaint of the commissioner, or a person authorised in writing by the commissioner in that behalf, may issue a warrant authorising any officer—

- (c) to enter the premises and remove therefrom all persons (and their property) who are not authorised by the commissioner to be in or on the premises; and
- (d) to deliver vacant, or other, possession (as the commissioner requires) to the commissioner.

(1A) Notification to vacate premises may be given for the purposes of subsection (1) by any means calculated to bring the notification to the notice

of the person to whom it is directed, including by advertisement in an appropriate newspaper.

(2) An officer executing a warrant issued under subsection (1), and all persons acting in aid of the officer, may use such reasonable force as is necessary, and do all other things reasonably required, to execute the warrant.

Property in police possession

10.15(1) Anything (animate or inanimate) that lawfully comes into the possession of the Police Service, and that remains unclaimed for the prescribed period is to be disposed of as follows—

- (a) if the thing is of a prescribed class, it is to be disposed of as the commissioner directs;
- (b) if the thing is not of a prescribed class, it is to be disposed of at sale by public auction conducted by a person, and in the manner, prescribed.

(2) A sale by public auction under subsection (1) is subject to the following conditions—

- (a) the sale confers on the purchaser a title good against all others;
- (b) if stamp duty or other duty or tax is payable in connection with the sale, the liability to pay the duty or tax is the liability of the purchaser.

(3) Proceeds from the disposal of anything, after paying the costs and expenses of the disposal, are to be held as the commissioner directs for a period of 12 months following the disposal and—

- (a) if within that period a person establishes a lawful claim thereto—are to be applied in satisfaction of the claim to the extent of the sum held; or
- (b) if within that period no person establishes a lawful claim thereto—are to be paid into the Consolidated Fund.

Charges for police services

10.16(1) A person for whom prescribed police services are provided is liable for payment to the commissioner of charges for those services in an amount determined by the commissioner.

(2) Charges for provision of prescribed police services may be declared by regulation in which event the commissioner is not entitled to payment for the provision of particular services of any amount in excess of the charge so declared for the time being in relation to services of that description.

(3) In a proceeding for the recovery of a service charge for the provision of a prescribed police service, a certificate purporting to be signed by the commissioner and stating that a specified amount is payable to the commissioner by a specified person for a specified police service is evidence of the matter stated.

Exemption from tolls

10.17(1) Officers who are engaged in the actual performance of duty as officers are exempt from liability for payment of any toll, levy or other charge whatsoever upon—

- (a) passing through or over any tollgate, turnpike or road;
- (b) crossing any bridge;
- (c) using any ferry;

notwithstanding any other Act or law.

(2) The exemption prescribed by subsection (1) extends to—

- (a) all prisoners under the officers' charge;
- (b) all vehicles, vessels, carriages or horses used on the occasion in question solely for carrying officers, their prisoners and baggage;
- (c) a return journey to the officers' operational base undertaken as soon as practicable after the actual performance of duty that has taken the officers away from such base.

(3) A person engaged in the collection of tolls, levies or other charges who has reasonable grounds for believing that an exemption from payment thereof exists under subsection (1) or (2) and who receives payment in

disregard of such exemption commits an offence against this Act.

Maximum penalty—4 penalty units.

Prohibited use of words suggesting association with police

10.18(1) Except with the commissioner's consent thereto first obtained, a body or association of persons (whether incorporated or not) must not—

- (a) have a prescribed expression as, or as part of, its name;
- (b) use a prescribed expression in conjunction with its name, in any context.

(2) Except with the commissioner's consent thereto first obtained, a person must not—

- (a) have a prescribed expression as, or as part of, a name under which the person conducts business;
- (b) use a prescribed expression in conjunction with a name under which the person conducts business, in any context.

(3) In this section a “**prescribed expression**” is any of the following—

- (a) commissioner of Police;
- (b) commissioner of the Police Service;
- (c) member of the Police Service;
- (d) police;
- (e) police force;
- (f) police officer;
- (g) any expression that resembles any of the expressions mentioned in paragraph (a) to (f), or that includes words taken from 2 or more of the expressions.

(4) A person who contravenes, or is taken to have contravened subsection (1) or (2) commits an offence against this Act.

Maximum penalty—100 penalty units.

(5) If a contravention of subsection (1) occurs each member of the governing body of the body or association concerned is taken to have committed the contravention and is liable to the prescribed penalty for an offence against this Act.

Offences

10.19 A person—

(a) who knowingly—

- (i) harbours or entertains an officer in any place;
- (ii) permits an officer to abide or linger in any place over which the person has and may exercise control;

at any time when the officer is on duty, except where actual performance of duty by the officer requires the officer's presence in that place; or

(b) who has in possession—

- (i) a document of a confidential nature brought into existence for the purposes of the Police Service;
- (ii) anything (animate or inanimate) appropriated to the use of the Police Service;
- (iii) anything (animate or inanimate) on issue to an officer or to a person who was an officer;

unless the person has a lawful excuse for such possession; or

(c) who assumes the name of an officer with intent to mislead;

(d) who, being other than an officer lawfully entitled to do so—

- (i) assumes the designation or description of an officer or of a class of officer; or
- (ii) wears the uniform of an officer, or a colourable imitation thereof;

except in either such case—

- (iii) with the consent of the commissioner; or

- (iv) for the purposes of a theatrical, circus or similar entertainment; or
- (v) for the purposes of a ball, carnival or similar occasion for wearing fancy dress; or
- (e) who, being other than an officer lawfully entitled to do so, for the purposes of, or in connection with, any business, occupation or employment—
 - (i) assumes or uses the designation ‘detective’, ‘private detective’ or other designation that includes the word ‘detective’ or the name, designation, rank or description of any officer or any class of officer; or
 - (ii) being a person who was an officer, or a member of the police force, uses the designation, rank or description that was the person’s while an officer or such a member; or
- (f) who is found on, or having just left, any place appropriated to the use of, or used for the time being by, the Police Service, unless the person has a lawful excuse for being or having been in or on that place;

commits an offence against this Act.

Maximum penalty—100 penalty units.

Bribery or corruption of officers or staff members

10.20(1) A person who corruptly gives to, confers on, or procures for any officer or staff member property or a benefit of any kind, or offers, promises or agrees to do so with a view to—

- (a) the officer or staff member neglecting the officer’s or member’s duty; or
- (b) influencing the officer or staff member in performance of the officer’s or member’s duty or exercise of the officer’s powers; or
- (c) the officer or staff member using or taking advantage of the officer’s or member’s position in the Police Service to facilitate

commission of an offence, or to provide the person with any information, service or advantage whether or not the person would otherwise be entitled thereto;

commits an offence against this Act.

Maximum penalty—100 penalty units.

(2) Liability of a person to be dealt with for an offence under subsection (1) does not affect the person's liability to be dealt with under the Criminal Code for an offence defined therein, which is constituted by the person's conduct.

(3) However, the person is not to be dealt with under both subsection (1) and the Criminal Code in respect of the same conduct.

Assault etc. of police officer

10.20A(1) In this section—

“**assault**” has the meaning given by the Criminal Code;

“**obstruct**” means hinder, resist or attempt to obstruct.

(2) A person must not assault or obstruct a police officer in the performance of the officer's duties.

Maximum penalty—4 penalty units or 6 months imprisonment.

False representation causing police investigations

10.21(1) A person who by conduct, by statements (oral or written), or by conduct and statements (oral or written), falsely and with knowledge of the falsity represents that an action has been done or circumstances exist, which action or circumstances, as represented, is or are such as reasonably calls, or call, for investigation by an officer commits an offence against this Act.

Maximum penalty—100 penalty units.

(2) If statements alleged to have been made by a person relate to the conduct of an officer the person cannot be convicted in respect thereof on the uncorroborated evidence of an officer, or of officers.

(3) A court by which a person has been found guilty, or before which a person has pleaded guilty, of an offence defined in subsection (1), whether

or not it imposes a penalty in respect thereof, may order the person to pay to the Crown a reasonable sum for the expenses of or incidental to any investigation made by an officer as a result of the false representation.

(4) This section does not apply to a representation relating to an offence, or the circumstances of an offence that has actually been committed.

Apprehension etc. of offenders against Act

10.22(1) Any officer may, without warrant other than this Act, arrest any person whom the officer finds committing an offence against this Act against—

- (a) section 10.19 (Offences); or
- (b) section 10.20 (Bribery or corruption of officers or staff members); or
- (c) section 10.20A (Assault etc. of police officer).

(2) If a person is arrested under the authority of subsection (1), the officer in charge of the police establishment or police station to which the person is taken upon arrest, or is in custody, may take or cause to be taken the following particulars for identification of the person—

- fingerprints
- palm prints
- photograph.

(2A) Such reasonable force as is necessary for the purpose may be used by an officer engaged in taking the aforesaid particulars.

(3) If a person arrested under the authority of subsection (1) is not proceeded against, or is found not guilty of the offence, particulars taken from the person under subsection (2) must be destroyed in the person's presence, if the person so requests.

Proceedings for offences

10.23(1) Proceedings for prosecution in respect of an offence against this Act are to be taken in a summary manner under the *Justices Act 1886*—

- (a) in the case of an offence against section 10.19, 10.20 or 10.20A, on the complaint of any officer;
- (b) in the case of any other offence, on the complaint of an officer authorised, in writing, by the commissioner.

(2) An allegation or averment in a complaint that—

- (a) the complainant is an officer; or
- (b) the complainant is authorised by the commissioner to lay the complaint;

is sufficient proof of the matter alleged or averred in the absence of evidence to the contrary.

(3) Proceedings in respect of an offence against this Act may be commenced within 1 year following the commission of the offence or within 1 month after the commission of the offence first comes to the complainant's knowledge, whichever period is the later.

Representation of officers in court

10.24 In any proceedings in a Magistrates Court or a Childrens Court an officer who is concerned therein in the execution of duty otherwise than as a witness, may appear and be represented by any other officer.

Annual Report

10.26(1) As soon as is practicable after 30 June in each year the commissioner is to furnish to the Minister a report on—

- (a) the administration and operations of the Police Service; and
- (b) such other matters as are directed by the Minister;

within the period of 12 months preceding that date.

(2) The Minister is to lay the report before the Legislative Assembly within 14 sitting days after the day on which the Minister receives the report.

Review of Act

10.27(1) In the period of 6 months preceding the termination of the first term of appointment of the person who is the first commissioner after the passing of this Act the Minister is to carry out, or cause to be carried out, a review of the operation of this Act and at an appropriate time in the period of 5 years following completion of that review the Minister is to carry out, or cause to be carried out, a review of the operation of this Act as in force at that time.

(2) In the carrying out of a review under subsection (1) the Minister is to consider and have regard to—

- (a) the effectiveness of the operation of this Act and of the operations of the Police Service;
- (b) the views and comments of persons having an interest in the operation of this Act and the operations of the Police Service;
- (c) such other matters as the Minister considers to be relevant to the effectiveness of this Act.

(3) As soon as is practicable after completion of a review under subsection (1) the Minister is to prepare a report based on the review, and is to lay the report before the Legislative Assembly within 14 sitting days after the report is prepared.

Regulations

10.28(1) The Governor in Council may make regulations for the purposes of this Act.

(1A) A regulation may provide with respect to—

- (a) management and control of the affairs of the Police Service; and
- (b) powers, duties, entitlements, obligations and liabilities of officers and recruits; and
- (c) powers and duties of staff members; and
- (d) the institution and conduct of appeals or reviews about appointments, disciplinary action or related action within the Police Service.

(2) The regulations may prescribe with respect to any matter, other than duties, obligations or liabilities of members of the Police Service, by reference to—

- (a) determinations or rulings to be made from time to time by the commissioner;
- (b) standards to be set or adopted from time to time by the commissioner.

(3) The regulations may provide for offences against the regulations and in respect thereof impose a fine not exceeding 100 penalty units.

PART 11—TRANSITIONAL PROVISIONS

Interpretation of certain references

11.1(1) A reference in any Act or document to—

- (a) the Police Force is taken to be a reference to the Police Service; and
- (b) the commissioner of Police is taken to be a reference to the commissioner of the Police Service; and
- (c) a member of the police force, a police officer or a constable is taken to be a reference to an officer; and
- (d) a member of the police force, a police officer or a constable holding a rank that does not exist in the Police Service, but did exist in the Police Force, is taken to be a reference to an officer holding a corresponding rank in the Police Service.

(2) A regulation may prescribe a rank in the Police Service to be a corresponding rank to a rank in the Police Force.

References to repealed Act

11.2 A reference in an Act or document to the *Police Act 1937* is taken to be a reference to this Act.

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 24 June 1996. Future amendments of the Police Service Administration Act 1990 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

Reprint No.	Amendments included	Reprint date
1	to Act No. 77 of 1993	11 February 1994

5 Tables in earlier reprints

Name of Table	Reprint No.
Corrected minor errors	1
Renumbered provisions	1

6 List of legislation

Police Service Administration Act 1990 No. 4

date of assent 4 April 1990

ss 1.1, 1.2 commenced on date of assent

ss 1.3–4.12, 5.1–5.5, 5.10, 10.9–10.12, 10.25–10.27, 11.1–11.8, 11.11 commenced
8 May 1990 (proc pubd gaz 28 April 1990 p 2635)

remaining provisions commenced 18 June 1990 (proc pubd gaz 16 June 1990
p 921)

as amended by—

Statute Law (Miscellaneous Provisions) Act 1992 No. 36 s 2 sch 1

date of assent 2 July 1992

commenced on date of assent

Police Service Administration Amendment Act 1993 No. 77

date of assent 15 December 1993

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 s 3 sch 2

date of assent 1 December 1994

commenced on date of assent

7 List of annotations

Definitions

s 1.4 amd 1992 No. 36 s 2 sch 1
sub 1993 No. 77 s 2 sch 1

Meaning of “tenure not limited by time”

s 1.5 ins 1993 No. 77 s 2 sch 1

Membership of Service

s 2.2 amd 1993 No. 77 s 2 sch 1

Administration of staff members

s 2.5 subs 1993 No. 77 s 2 sch 1

Meaning of “officer” in Part

s 3.1 sub 1993 No. 77 s 2 sch 1

Oath of office

s 3.3 amd 1993 No. 77 s 2 sch 1

Performance of duty

s 3.6 sub 1993 No. 77 s 2 sch 1

Appointment

s 4.2 sub 1993 No. 77 s 2 sch 1

Conditions of appointment

s 4.3 amd 1993 No. 77 s 2 sch 1

Term of appointment

s 4.4 sub 1993 No. 77 s 2 sch 1

Removal and suspension of commissioner

s 4.5 amd 1993 No. 77 s 2 sch 1

Recording and publication of communications

s 4.7 amd 1993 No. 77 s 2 sch 1

Commissioner’s responsibility

s 4.8 amd 1993 No. 77 s 2 sch 1

Commissioner's directions

s 4.9 amd 1993 No. 77 s 2 sch 1

Delegation

s 4.10 sub 1993 No. 77 s 2 sch 1

Acting as commissioner

s 4.11 sub 1993 No. 77 s 2 sch 1

Appointment to be on merit on impartial procedures

s 5.2 amd 1993 No. 77 s 3

Conditions of employment

s 5.4 amd 1993 No. 77 s 2 sch 1

Acting as executive officer

s 5.5 sub 1993 No. 77 s 2 sch 1

Conditions of employment of commissioned officers

s 5.7 amd 1992 No. 36 s 2 sch 1; 1993 No. 77 s 2 sch 1

Acting as commissioned officer

s 5.8 sub 1993 No. 77 s 2 sch 1

Conditions of employment of police recruits

s 5.11 amd 1993 No. 77 s 2 sch 1

Officer not to refuse transfer, but may object

s 5.13 sub 1993 No. 77 s 4

Objection to transfer

s 5.13A ins 1993 No. 77 s 4

Delay in attendance for duty on directed transfer to allow for objection and review

s 5.13B ins 1993 No. 77 s 4

Officer as employee of Crown

s 5.15 amd 1993 No. 77 s 2 sch 1

Power to stand down and suspend

s 6.1 amd 1993 No. 77 s 2 sch 1

Salary entitlement if suspended

s 6.3 amd 1993 No. 77 s 2 sch 1

Retirement

s 8.2 amd 1993 No. 77 s 2 sch 1

Unfitness for duty on medical grounds

s 8.3 amd 1993 No. 77 s 2 sch 1

Commissioner for Police Service Reviews

s 9.2A ins 1993 No. 77 s 2 sch 1

Application for review

s 9.3 amd 1993 No. 77 s 5

Procedures

s 9.4 amd 1993 No. 77 s 2 sch 1

Result of review

s 9.5 amd 1993 No. 77 s 2 sch 1

Improper disclosure of information

s 10.1 amd 1993 No. 77 s 2 sch 1

Rejection of frivolous complaints

s 10.4 amd 1993 No. 77 s 2 sch 1

Compensation for injury or death

s 10.8 amd 1993 No. 77 s 2 sch 1

Police establishments

s 10.10 amd 1993 No. 77 s 2 sch 1

Legal proceedings

s 10.12 amd 1993 No. 77 s 2 sch 1

Surrender of equipment

s 10.13 amd 1993 No. 77 s 2 sch 1

Vacating of premises

s 10.14 amd 1993 No. 77 s 2 sch 1

Property in police possession

s 10.15 amd 1993 No. 77 s 2 sch 1

Charges for police services

s 10.16 amd 1993 No. 77 s 2 sch 1

Offences

s 10.19 amd 1993 No. 77 s 2 sch 1

Bribery or corruption of officers or staff members

s 10.20 amd 1993 No. 77 s 2 sch 1

Assault etc. of police officer

s 10.20A ins 1993 No. 77 s 2 sch 1

Apprehension etc. of offenders against Act

s 10.22 amd 1993 No. 77 s 2 sch 1

Proceedings for offences

s 10.23 amd 1993 No. 77 s 2 sch 1

Representation of officers in court

s 10.24 amd 1993 No. 77 s 2 sch 1

Regulations

s 10.25 renum as s 10.28 1993 No. 77 s 2 sch 1

Regulations

s 10.28 (prev s 10.25) amd 1993 No. 77 s 2 sch 1
renum 1993 No. 77 s 2 sch 1

PART 11—TRANSITIONAL PROVISIONS**pt 11** sub 1993 No. 77 s 2 sch 1**Interpretation of certain references****s 11.1** sub 1993 No. 77 s 2 sch 1
amd 1994 No. 87 s 3 sch 2**References to repealed Act****s 11.2** prev s 11.2 om 1993 No. 77 s 2 sch 1
pres s 11.2 ins 1994 No. 87 s 3 sch 2**References to Police Act****s 11.3** om 1993 No. 77 s 2 sch 1**Repeal of Police Act****s 11.4** om (see s 40 RA)**Certain references construed as reference to the Service****s 11.5** om 1993 No. 77 s 2 sch 1**Certain reference construed as reference to commissioner****s 11.6** om 1993 No. 77 s 2 sch 1**Certain references construed as reference to officers****s 11.7** om 1993 No. 77 s 2 sch 1**Oath etc. under Police Act continued****s 11.8** om 1993 No. 77 s 2 sch 1**Application of Part VII to probationaries etc.****s 11.9** om 1993 No. 77 s 2 sch 1**Saving of proceedings****s 11.10** om 1993 No. 77 s 2 sch 1**Regulations may supply deficiency****s 11.11** om 1993 No. 77 s 2 sch 1