

TASMANIA

POLICE SERVICE BILL 2003

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POLICE SERVICE BILL 2003

*(Brought in by the Minister for Police and Public Safety,
the Honourable David Edward Llewellyn)*

A BILL FOR

An Act to provide for the establishment and regulation of the Police Service

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Police Service Act 2003*.

Commencement

2. This Act commences on a day to be proclaimed.

Interpretation

3. In this Act –

“**ancillary constable**” means a person who is –

- (a) appointed as an ancillary constable
under section 14; or

- (b) an ancillary constable by virtue of clause 9 of Schedule 3;

“Assistant Commissioner” means an Assistant Commissioner appointed under section 10;

“authorised person” means a person authorised by the Commissioner;

“availability” means availability as defined in the Police Award;

“chairperson” means the chairperson of the Police Review Board;

“code of conduct” means the code of conduct specified in section 42;

“commissioned police officer” means a police officer of or above the rank of inspector;

“Commissioner” means the Commissioner of Police appointed under section 6;

“complaint” means a complaint under Division 2 of Part 3;

“conduct” includes any act or omission;

“demote” means to reduce the rank of a police officer to any lower rank;

“Deputy Commissioner” means the Deputy Commissioner of Police appointed under section 9;

“drug” means –

- (a) a prohibited substance or prohibited plant within the meaning of the *Poisons Act 1971*; and

- (b) a substance included in Schedule 2, 3, 4 or 8 to the Poisons List Order 2001; and
- (c) a controlled substance within the meaning of the *Misuse of Drugs Act 2001*; and
- (d) a substance included in the Australian Register of Therapeutic Goods established under the *Therapeutic Goods Act 1989* of the Commonwealth; and
- (e) a metabolite of a substance mentioned in paragraph (a), (b), (c) or (d);

“duties” includes functions and responsibilities;

“integrity test” means a test referred to in Division 3 of Part 3;

“junior constable” means a junior constable appointed under section 15;

“legal practitioner” means a legal practitioner as defined in the *Legal Profession Act 1993*;

“merit” means merit as specified in section 21;

“non-commissioned police officer” means a police officer below the rank of inspector;

“Police Award” means an award, determination, decision, order or agreement in force under the *Industrial Relations Act 1984* relating to police officers, trainees and junior constables;

“police dog” means a dog that is used by police officers in performing any duties or exercising any powers of police officers;

“police-dog handler” means a police officer whose duties include handling a police dog;

“Police Gazette” means the *Police Gazette* published under section 94;

“Police Manual” means the Police Manual published under section 93;

“police officer” means –

- (a) a member of the Police Service, other than a trainee or junior constable; and
- (b) a person seconded or transferred to the Police Service as a police officer;

“Police Review Board” means the Police Review Board established under section 53;

“Police Service” means the Police Service established under section 4;

“Promotion Selection Committee” means a committee established under section 17;

“Qualification and Accreditation Committee” means the committee established under section 16;

“qualified person” means –

- (a) a registered medical practitioner; or
- (b) a person who is a registered nurse or an enrolled nurse under the *Nursing Act 1995*;

“rank” means a rank specified in section 4(2);

“review” means a review under Part 4;

“senior officer” means a person who is determined under section 5 to be senior to another person;

“special constable” means a person who is appointed as a special constable under section 13;

“standby” means standby as defined in the Police Award;

“termination” means a termination of an appointment that is not as a result of the expiry of the instrument of appointment;

“trainee” means a person who is –

- (a) appointed as a trainee under section 15;
or
- (b) a trainee by virtue of clause 10 of Schedule 3.

PART 2 – POLICE SERVICE***Division 1 – Establishment of Police Service*****Police Service**

4. (1) There is established the Police Service.

(2) The Police Service consists of the following ranks:

- (a) Commissioner;
- (b) Deputy Commissioner;
- (c) Assistant Commissioner;
- (d) Commander;
- (e) Inspector;
- (f) Sergeant;
- (g) Constable;
- (h) Special Constable;
- (i) Trainee;
- (j) Junior Constable;
- (k) any other rank created under subsection (4).

(3) The total number of police officers comprising the Police Service is to be determined by the Minister after considering any recommendation of the Commissioner.

(4) The Commissioner or, in the case of a rank of or above the rank of inspector, the Governor may remove or create a rank.

Order of seniority

5. (1) The order of seniority is as follows:

- (a) police officers in the order set out in section 4(2)(a), (b), (c), (d), (e), (f), (g) and (h);
- (b) as between 2 police officers of different ranks, the police officer with the higher rank;
- (c) as between 2 police officers of the same rank, as determined by the Commissioner;
- (d) as between trainees, junior constables and police officers, as determined by the Commissioner.

(2) The seniority of a rank created under section 4(4) is as determined by the Commissioner or the Governor, as appropriate.

(3) The Commissioner is to publish or cause to be published a list of the order of seniority.

Division 2 - Appointments**Commissioner of Police**

6. (1) A person is to be appointed by the Governor as the Commissioner of Police for a period not exceeding 5 years as specified in the instrument of appointment.

(2) The Commissioner is entitled to the remuneration and allowances, and holds office subject to the terms and conditions, as specified in the instrument of appointment.

Responsibilities of Commissioner

7. (1) The Commissioner, under the direction of the Minister, is responsible for the efficient, effective and economic management and superintendence of the Police Service.

(2) Matters for which the Commissioner is responsible include, but are not limited to, the following:

- (a) determination of the organisational structure of the Police Service;
- (b) determination of the number, type and location of police stations and other buildings and structures used for the purposes of the Police Service;
- (c) determination and allocation of duties within the Police Service;
- (d) performance evaluation;
- (e) discipline within the Police Service;
- (f) training, education and development programs to ensure efficient and effective performance of duties;
- (g) the establishment of internal grievance-resolution procedures.

(3) The Commissioner may –

- (a) issue orders, directions, procedures and instructions for the efficient, effective and economic management and superintendence of the Police Service; and
- (b) do anything else necessary or convenient for the efficient, effective and economic

management and superintendence of the Police Service.

Delegation

8. The Commissioner, by instrument in writing, may delegate to a police officer, or an employee or officer within the meaning of the *State Service Act 2000*, any power, duty or responsibility of the Commissioner under this Act or any other Act, other than –

- (a) this power of delegation; or
- (b) the power to take action under section 29(4)(j) or 43(3)(k); or
- (c) the power to terminate, or recommend the termination of, the appointment of a police officer, trainee or junior constable under section 13(3), 15(6), 29(4)(h) or (i), 30, 31 or 43(3)(i) or (j).

Deputy Commissioner

9. (1) A person is to be appointed by the Governor as Deputy Commissioner of Police for a period not exceeding 5 years as specified in the instrument of appointment.

(2) The Deputy Commissioner is entitled to the remuneration and allowances, and holds office subject to the terms and conditions, as specified in the instrument of appointment.

(3) The Deputy Commissioner is to –

- (a) assist the Commissioner; and

- (b) act as Commissioner during any absence of the Commissioner or any vacancy in the office of Commissioner.

(4) Anything done or omitted to be done by the Deputy Commissioner while acting as the Commissioner is as valid, and has the same consequences, as if it had been done or omitted to be done by the Commissioner.

Assistant Commissioners

10. (1) Persons are to be appointed by the Governor as Assistant Commissioners for a period not exceeding 5 years as specified in the instrument of appointment.

(2) An Assistant Commissioner is entitled to the remuneration and allowances, and holds office subject to the terms and conditions, as specified in the instrument of appointment.

(3) An Assistant Commissioner is to –

- (a) assist the Commissioner and the Deputy Commissioner; and
- (b) act as Deputy Commissioner as authorised by the Commissioner during any absence of the Deputy Commissioner or any vacancy in the office of Deputy Commissioner.

(4) Anything done or omitted to be done by an Assistant Commissioner while acting as the Deputy Commissioner is as valid, and has the same consequences, as if it had been done or omitted to be done by the Deputy Commissioner.

Commissioned police officers

11. (1) Persons are to be appointed by the Governor as commanders for a period not exceeding 5 years as specified in the instrument of appointment.

(2) A commander is entitled to remuneration and allowances, and holds office subject to the terms and conditions, as specified in the instrument of appointment.

(3) Persons are to be appointed by the Governor as inspectors for a non-fixed period under the terms and conditions of the Police Award.

(4) Persons may be appointed by the Governor as commissioned police officers to a rank created under section 4(4).

Non-commissioned police officers

12. (1) The Commissioner may appoint persons as non-commissioned police officers –

- (a) for a non-fixed period under the terms and conditions of the Police Award; or
- (b) with the consent of the persons, for a period not exceeding 5 years, and subject to the terms and conditions, as specified in the instrument of appointment if –
 - (i) the person has specialist or expert qualifications; or
 - (ii) the person has experience as a police officer; or

- (iii) special circumstances exist which, in the opinion of the Commissioner, justify the appointment.

(2) The Commissioner may determine the qualifications, skills, attributes and medical, physical or other requirements for appointment under this section.

(3) The Commissioner may reduce the rank of a police officer appointed under subsection (1)(b) if the police officer is no longer required to use the specialist or expert qualifications or experience for which the police officer was appointed.

(4) This section does not apply to the appointment of a person as a special constable.

Special constables

13. (1) The Commissioner may appoint persons as special constables if of the opinion that it is necessary or convenient to do so.

(2) An appointment as a special constable –

- (a) is for a period and within an area the Commissioner determines or as specified in the instrument of appointment; and
- (b) is subject to the remuneration, terms and conditions the Commissioner determines or as specified in the instrument of appointment; and
- (c) is subject to any restrictions the Commissioner determines or as specified in the instrument of appointment.

(3) The Commissioner may suspend or terminate the appointment of a special constable for any reason the Commissioner considers appropriate.

Ancillary constables

14. (1) The Commissioner may appoint persons as ancillary constables for any event or purpose if of the opinion that it is necessary or convenient to do so.

(2) An appointment as an ancillary constable –

- (a) is for a period and within an area the Commissioner determines or as specified in the instrument of appointment; and
- (b) is subject to any terms and conditions the Commissioner determines or as specified in the instrument of appointment; and
- (c) is subject to any restrictions the Commissioner determines or as specified in the instrument of appointment.

(3) An ancillary constable is not a police officer but, subject to any restrictions the Commissioner determines or as specified in the instrument of appointment, has the powers and duties of a police officer with the rank of constable.

(4) The Commissioner may suspend or terminate the appointment of an ancillary constable for any reason the Commissioner considers appropriate.

Trainees and junior constables

15. (1) The Commissioner may appoint persons as trainees or junior constables for a period not exceeding 2

years subject to any terms and conditions as specified in the instrument of appointment.

(2) A person may only be appointed as a junior constable if the person is at least 16 years of age but has not attained the age of 21 years.

(3) A person may only be appointed as a trainee if the person is at least 18 years of age.

(4) The Commissioner may determine the qualifications, skills, attributes and medical, physical or other requirements for appointment under this section.

(5) A trainee or junior constable –

(a) is subject to the direction and control of the Commissioner; and

(b) is to undertake the duties assigned to him or her.

(6) The Commissioner may terminate the appointment of a trainee or junior constable for any reason the Commissioner considers appropriate.

Division 3 - Promotions

Qualification and Accreditation Committee

16. (1) The Commissioner may establish a Qualification and Accreditation Committee to be responsible for the provision of courses, examinations, assessments and accreditations relating to qualification for promotion.

(2) The Qualification and Accreditation Committee is to consist of at least 3 persons appointed by the Commissioner.

Promotion Selection Committees

17. (1) The Commissioner may establish Promotion Selection Committees to make recommendations relating to the promotion or otherwise of police officers.

(2) A Promotion Selection Committee is to consist of at least 3 persons appointed by the Commissioner.

Promotion

18. (1) A non-commissioned police officer who is qualified for promotion, by notice in writing to the Commissioner, may apply to be promoted.

(2) A non-commissioned police officer is qualified for promotion if the police officer has successfully completed, or is accredited with having successfully completed, the required examinations and other assessments as the Commissioner determines.

(3) The Commissioner may promote a non-commissioned police officer who is qualified for promotion to a rank below the rank of inspector and above the rank the police officer currently holds.

(4) The Commissioner may recommend to the Minister the promotion to the rank of inspector of a non-commissioned police officer who is qualified for promotion to that rank.

(5) In determining whether to promote or recommend the promotion of a police officer, the Commissioner may take into account the conduct of the police officer.

(6) A non-commissioned police officer, by notice in writing to the Commissioner, may withdraw an application for promotion.

(7) A promotion to the rank of inspector is to be in accordance with section 11(3).

Publication of intention to promote

19. If it is intended to promote a police officer, the Commissioner is to publish a notice of that intention in the *Police Gazette*.

Promotion taking effect

20. The promotion of a police officer –

- (a) if an application is not made under section 55, takes effect 15 days after the date of publication of the notice under section 19; or
- (b) if an application is made under section 55 and the Police Review Board makes a determination under section 58(1)(a) or 59(1)(a), is taken to have taken effect 15 days after the date of publication of the notice under section 19; or
- (c) if an application is made under section 55 and the Police Review Board makes a determination under section 58(1)(b) or 59(1)(b), takes effect on receipt by the police officer of the notice under section 75(2)(b); or
- (d) if an application is made under section 55 and the Police Review Board makes a determination under section 58(2) or 59(4) and the Commissioner decides to confirm the promotion of the police officer or recommends to the Minister that the promotion of the police officer be confirmed, is taken to have

taken effect 15 days after the date of publication of the notice under section 19; or

- (e) if an application is made under section 55 and the Police Review Board makes a determination under section 58(2) or 59(4) and the Commissioner decides to promote the applicant or recommends to the Minister that the applicant be promoted, takes effect on receipt by the police officer of a notice under section 58(3)(b) or 59(5)(b); or
- (f) if an application made under section 55 is withdrawn, is taken to have taken effect 15 days after the date of publication of the notice under section 19.

Promotion on merit

21. (1) The promotion of a police officer is to be on merit.

(2) Merit is the capacity of a person to perform the required duties having regard to –

- (a) the knowledge, skills, qualifications and experience of the person; and
- (b) the person's potential for further development.

Division not to apply to special constables

22. The provisions of this Division do not apply to special constables.

Division 4 – Secondments and transfers**Secondment**

23. (1) The Commissioner, by written agreement with a police officer, may arrange for the police officer to be seconded to –

- (a) a police force or police service of a foreign country or another State or a Territory of the Commonwealth; or
- (b) any other body or organisation, whether within or outside Tasmania.

(2) The Commissioner, by written agreement with a person, may arrange for the person to be seconded to the Police Service from –

- (a) a police force or police service of a foreign country or another State or a Territory of the Commonwealth; or
- (b) any other body or organisation, whether within or outside Tasmania.

(3) A secondment under this section is subject to the terms and conditions specified in the relevant agreement.

(4) The powers of a police officer seconded under subsection (1) are retained during the secondment, unless the Commissioner determines otherwise.

(5) A secondment under subsection (1) does not break the continuity of service of the police officer.

Transfer to and from Police Service

24. (1) The Commissioner, by written agreement with the Minister responsible for the administration of the *State Service Act 2000* and an employee or officer within the meaning of that Act, may arrange for that employee or officer to be transferred to the Police Service if that employee or officer satisfies the requirements for appointment as a police officer.

(2) The Commissioner, by written agreement with the Minister responsible for the administration of the *State Service Act 2000* and a police officer, may arrange for the police officer to be transferred to the State Service.

(3) A transfer under this section is subject to the terms and conditions as agreed to between the Commissioner and the Minister responsible for the administration of the *State Service Act 2000* and by the employee, officer or police officer concerned.

(4) A police officer who is transferred under subsection (2) does not retain any of the powers of a police officer on that transfer, unless the Commissioner determines otherwise.

Transfer within Police Service

25. (1) The Commissioner may transfer a police officer within the Police Service, with or without the consent of the police officer, if the Commissioner is of the opinion that it is necessary to do so for the effective management of the Police Service.

(2) A police officer may apply in writing to the Commissioner to be transferred within the Police Service.

(3) The Commissioner may grant or refuse to grant an application under subsection (2).

Division not to apply to special constables

26. This Division does not apply to special constables.

Division 5 – Resignations, retirements and terminations**Resignation**

27. (1) A police officer who wishes to resign from the Police Service must give 30 days' notice in writing to the Commissioner, unless the Commissioner otherwise authorises in writing.

Penalty: Fine not exceeding 2 penalty units.

(2) A resignation only takes effect when accepted by the Commissioner.

Retirement

28. (1) A police officer must retire from the Police Service on attaining the age of 65 years.

(2) A police officer may retire from the Police Service on or after attaining the age of 55 years.

(3) A police officer may retire from the Police Service if the Commissioner –

- (a) considers that the police officer is unable to efficiently and effectively perform his or her duties because of any reason specified under section 29; and
- (b) agrees in writing.

Inability to perform duties

29. (1) The Commissioner may determine that a police officer is unable to efficiently and effectively perform his or her duties because of –

- (a) any mental illness as defined in the *Mental Health Act 1996*; or
- (b) any injury, illness or disease; or
- (c) any general physical unfitness.

(2) The Commissioner may establish procedures for the investigation of whether a police officer is able to efficiently and effectively perform his or her duties.

(3) The Commissioner may direct a police officer to be medically examined by a registered medical practitioner nominated by the Commissioner in order to determine any matter relating to the ability of the police officer to efficiently and effectively perform his or her duties.

(4) The Commissioner may take one or more of the following actions in relation to a police officer who the Commissioner determines is unable to efficiently and effectively perform his or her duties:

- (a) direct that appropriate counselling be provided to the police officer;
- (b) direct that appropriate retraining be provided to the police officer;
- (c) direct that the remuneration of the police officer be reduced within the range of remuneration applicable to the police officer;
- (d) reassign the duties of the police officer;

- (e) transfer the police officer;
- (f) in the case of a non-commissioned police officer, demote the police officer;
- (g) in the case of a commissioned police officer, recommend to the Minister that the police officer be demoted;
- (h) in the case of a non-commissioned police officer, terminate the appointment of the police officer;
- (i) in the case of a commissioned police officer, recommend to the Minister that his or her appointment as a police officer be terminated;
- (j) take any other action the Commissioner considers appropriate.

(5) In determining which action or actions to take, the Commissioner is to consider taking any action in the order specified in subsection (4) as may be reasonable in the circumstances.

(6) The Commissioner, by notice served on the police officer, must notify the police officer of any action taken under subsection (4).

(7) If the Minister accepts a recommendation made by the Commissioner under subsection (4)(g) or (i), the Minister is to recommend to the Governor, as appropriate, that –

- (a) the commissioned police officer be demoted; or
- (b) his or her appointment as a police officer be terminated.

(8) The Governor, on receipt of the Minister's recommendation, may, as appropriate –

- (a) demote the commissioned police officer; or
- (b) terminate his or her appointment as a police officer.

(9) The Commissioner, by notice served on the commissioned police officer, must notify the commissioned police officer of the demotion or termination under subsection (8).

Termination or demotion of commissioned police officers

30. (1) The Commissioner may recommend to the Minister that the appointment of a commissioned police officer as a police officer be terminated or that the commissioned police officer be demoted if the Commissioner does not have confidence in that police officer's suitability to continue as a police officer or at his or her rank having regard to –

- (a) the police officer's competence, integrity, performance or conduct; or
- (b) the loss of community confidence in the Police Service if the police officer were to continue as a police officer or at his or her rank.

(2) If the Minister accepts the Commissioner's recommendation in respect of a commissioned police officer, the Minister is to recommend to the Governor that his or her appointment as a police officer be terminated or that the commissioned police officer be demoted, as appropriate.

(3) The Governor, on receipt of the Minister's recommendation under subsection (2), may terminate the appointment of the commissioned police officer as a police

officer or demote the commissioned police officer, as appropriate.

(4) The Commissioner, by notice served on the commissioned police officer, must notify the commissioned police officer of the termination or demotion.

(5) The Minister may recommend to the Governor that the appointment of the Commissioner as a police officer be terminated if satisfied that the Commissioner is not suitable to continue as Commissioner having regard to –

- (a) the Commissioner's competence, integrity, performance or conduct; or
- (b) the loss of community confidence in the Police Service if the Commissioner were to continue as Commissioner.

(6) The Governor, on receipt of the Minister's recommendation under subsection (5), may terminate the appointment of the Commissioner as a police officer.

(7) The Minister, by notice served on the Commissioner, must notify the Commissioner of the termination.

Termination or demotion of non-commissioned police officers

31. (1) The Commissioner may terminate the appointment of a non-commissioned police officer or demote the non-commissioned police officer if the Commissioner does not have confidence in that police officer's suitability to continue as a police officer or at his or her rank having regard to –

- (a) the police officer's competence, integrity, performance or conduct; or
- (b) the loss of community confidence in the Police Service if the police officer were to continue as a police officer or at his or her rank.

(2) The Commissioner, by notice served on the non-commissioned police officer, must notify the non-commissioned police officer of the termination or demotion.

Effective date of termination or demotion

32. A termination of appointment or a demotion under this Division takes effect on service of the notice of termination or demotion.

Division 6 - General provisions

Probation

33. (1) The appointment or promotion of a non-commissioned police officer is subject to any period of probation not exceeding 12 months as the Commissioner determines.

(2) The appointment or promotion of a commissioned police officer is subject to any period of probation not exceeding 12 months as the Governor determines.

(3) The period of probation may be extended as the Commissioner or Governor, as appropriate, determines.

(4) At the end of a period of probation, the Commissioner or the Governor, as appropriate, may –

- (a) confirm the appointment or promotion; or
- (b) refuse to confirm the appointment or promotion.

(5) A police officer whose promotion is not confirmed is taken to be demoted.

Acting in higher rank

34. (1) The Commissioner may authorise a police officer to act in any higher rank than the one the police officer holds for any period the Commissioner determines.

(2) A police officer acting in a higher rank is taken to be the holder of that rank.

Duties of police officers

35. (1) A police officer is subject to the direction and control of the Commissioner.

(2) A police officer –

- (a) is responsible for the management and control of any part of the Police Service as the Commissioner determines; and
- (b) must undertake the duties assigned to him or her; and
- (c) must comply with any lawful direction or lawful order of a senior officer.

Oaths and affirmations

36. (1) A person appointed as a special constable must take the oath specified in Part 1 of Schedule 1 or make the affirmation specified in Part 2 of Schedule 1 before acting as a special constable.

(2) A person appointed, seconded or transferred to the Police Service as a police officer must take the oath specified in Part 3 of Schedule 1 or make the affirmation specified in Part 4 of Schedule 1 before acting as a police officer.

(3) A person appointed as an ancillary constable must take the oath specified in Part 5 of Schedule 1 or make the affirmation specified in Part 6 of Schedule 1 before acting as an ancillary constable.

(4) A person who is appointed as a police officer or a special constable and takes the appropriate oath or makes the appropriate affirmation in Part 1, 2, 3 or 4 of Schedule 1 is taken to have entered into an agreement to serve in the Police Service at any rank the person may hold until his or her appointment as a police officer or special constable is terminated or ceases.

(5) An agreement referred to in subsection (4) is not void for want of consideration or reciprocity.

Reversion

37. (1) A person whose appointment under an instrument of appointment as a police officer is not renewed at expiry and who was a police officer immediately before commencing that appointment may, subject to subsection (5) and unless the instrument of appointment provides otherwise, elect to be reappointed as a police officer at the rank held before the appointment.

(2) An election is to be made –

- (a) in writing to the Commissioner; and
- (b) within 14 days after the expiry of the appointment.

(3) If a person makes an election under subsection (1), the period of appointment as a police officer is taken to be continuous.

(4) A police officer, at any time, may elect to revert to a rank that is lower than the rank the police officer currently holds subject to the approval of the Commissioner and any terms and conditions the Commissioner determines.

(5) This section does not apply to a police officer whose instrument of appointment was entered into before the commencement of this Act and which does not specify a right to revert to another rank.

(6) This section does not apply to special constables.

Stand-down

38. (1) The Commissioner may stand down a police officer from duty for any reason and for any period not exceeding 7 days the Commissioner considers appropriate.

(2) The Commissioner, by notice served on the police officer, must notify the police officer of the stand-down.

(3) A stand-down takes effect on service of the notice.

(4) The Commissioner may revoke a stand-down.

Effect of stand-down

39. A police officer who is stood down from duty –

- (a) is to be paid his or her usual remuneration and allowances; and
- (b) is not entitled to exercise any power, or perform any of his or her duties, during the period of being stood down; and
- (c) is subject to any direction of the Commissioner.

Suspension

40. (1) After a police officer has been stood down under section 38, the Commissioner may suspend the police officer from duty for any reason and for any period the Commissioner considers appropriate.

(2) The Commissioner, by notice served on the police officer, must notify the police officer of the suspension.

(3) A suspension takes effect on service of the notice.

(4) The Commissioner may revoke a suspension.

Effect of suspension

41. A police officer who is suspended from duty –

- (a) may be suspended with or without –
 - (i) his or her usual remuneration; or
 - (ii) his or her usual allowances; or

- (iii) his or her usual remuneration and allowances; and
- (b) is not entitled to exercise any power, or perform any of his or her duties, during that period of suspension; and
- (c) is subject to any direction of the Commissioner.

PART 3 – CONDUCT***Division 1 – Code of conduct*****Code of conduct**

42. (1) A police officer must behave honestly and with integrity in the course of his or her duties in the Police Service.

(2) A police officer must act with care and diligence in the course of his or her duties in the Police Service.

(3) A police officer must comply with –

- (a) all orders in the Police Manual; and
- (b) any lawful direction or lawful order given by a senior officer.

(4) A police officer must maintain appropriate confidentiality about any dealing made and information gained in the course of his or her duties in the Police Service.

(5) A police officer must disclose, and take reasonable steps to avoid, any conflict of interest in connection with his or her duties in the Police Service.

(6) A police officer must use the resources of the Police Service in a proper manner.

(7) A police officer, in connection with his or her duties in the Police Service, must not –

- (a) knowingly provide false or misleading information; or

- (b) omit to provide any matter knowing that without that matter the information is misleading.

(8) A police officer must not make improper use of –

- (a) information gained in the course of his or her duties in the Police Service; or
- (b) the duties, status, power or authority of the police officer –

in order to gain, or seek to gain, a gift, benefit or advantage for the police officer or for any other person.

(9) A police officer must not access any information to which the police officer is not entitled to have access.

(10) A police officer must not destroy, damage, alter or erase any official document, record or entry without the approval of the Commissioner.

(11) A police officer must not, at any time, conduct himself or herself or act in a manner that is likely –

- (a) to be prejudicial to the Police Service; or
- (b) to bring discredit on the Police Service.

(12) A police officer must not victimise or discriminate against another police officer because that other police officer has reported a breach of a provision of the code of conduct.

(13) A police officer must comply with any other prescribed conduct requirement.

Actions in relation to breaches of code of conduct

43. (1) The Commissioner must establish procedures for the investigation into any alleged breach of a provision of the code of conduct by a police officer.

(2) After considering the results of an investigation, the Commissioner must determine whether or not the police officer has breached a provision of the code of conduct.

(3) If the Commissioner determines that a police officer has breached a provision of the code of conduct, the Commissioner may take one or more of the following actions in relation to the police officer:

- (a) direct that appropriate counselling be provided to the police officer;
- (b) reprimand the police officer;
- (c) impose a fine not exceeding 20 penalty units;
- (d) direct that the remuneration of the police officer be reduced within the range of remuneration applicable to the police officer;
- (e) reassign the duties of the police officer;
- (f) transfer the police officer;
- (g) in the case of a non-commissioned police officer, place that police officer on probation for any specified period the Commissioner considers appropriate;
- (h) in the case of a non-commissioned police officer, demote the police officer;

- (i) in the case of a non-commissioned police officer, terminate the appointment of the police officer;
- (j) in the case of a commissioned police officer, recommend to the Minister that the appointment of the police officer be terminated or that the police officer be demoted or placed on probation for any specified period the Commissioner considers appropriate;
- (k) take any other action the Commissioner considers appropriate.

(4) If the Minister accepts a recommendation of the Commissioner made under subsection (3)(j), the Minister is to recommend to the Governor according to that recommendation.

(5) The Governor, on receipt of the Minister's recommendation, may act according to that recommendation.

(6) The Commissioner may determine that a fine be paid –

- (a) within a specified period; or
- (b) in such instalments as the Commissioner specifies.

(7) If there is no determination under subsection (6), a fine is to be paid within 14 days after service of a notice under subsection (9).

(8) If a police officer fails to pay a fine or any instalment of a fine as required, the Commissioner may –

- (a) direct that an amount equal to the fine or instalment be deducted from the remuneration

payable to the police officer in full or in any specified instalments; or

- (b) recover that amount as a debt due to the Police Service in a court of competent jurisdiction.

(9) The Commissioner, by notice served on the police officer, must notify the police officer of any action taken under this section.

(10) A termination of appointment or demotion under this section takes effect on service of the notice under subsection (9).

Division 2 – Complaints

Making complaints

44. (1) Any person may make a complaint about –

- (a) the conduct, on or off duty, of a police officer; or
- (b) the conduct, on or off duty, of a person who was a police officer at the time the conduct occurred.

(2) A complaint –

- (a) must be made in writing or in a manner approved by the Commissioner; and
- (b) must be made within 6 months after the conduct became known to the complainant; and
- (c) must contain details of the conduct; and
- (d) does not need to identify the complainant.

(3) The Commissioner –

- (a) may accept a complaint that is not made as specified in subsection (2)(a) if satisfied that special circumstances exist; and
- (b) if accepting the complaint, is to record the complaint in writing.

(4) The Commissioner may accept a complaint that is made outside the period referred to in subsection (2)(b) if satisfied that there are special circumstances.

Registration of complaints

45. (1) On receipt of a complaint, the Commissioner must enter the details of the complaint in a register of complaints.

(2) The register of complaints is to be in a form approved by the Commissioner.

Investigating complaints

46. (1) As soon as practicable after receiving a complaint, the Commissioner must determine whether to –

- (a) investigate the complaint; or
- (b) dismiss the complaint without an investigation.

(2) In determining whether to dismiss the complaint without an investigation, the Commissioner may take into account the following:

- (a) what action has been or is to be taken to remedy the subject matter of the complaint;

- (b) whether the complaint is frivolous, vexatious or not made in good faith;
- (c) whether the subject matter of the complaint is trivial;
- (d) whether the subject matter of the complaint is able to be resolved by conciliation;
- (e) whether there was or is an alternative and satisfactory means of redress available to the complainant;
- (f) whether the subject matter of the complaint is being, is to be, or has been, dealt with in other proceedings;
- (g) any other matter the Commissioner considers appropriate.

(3) The Commissioner may –

- (a) direct any police officer to –
 - (i) assist in the investigation of a complaint; and
 - (ii) provide any information or document or answer any question for the purpose of the investigation; and
- (b) conduct the investigation in any manner the Commissioner considers appropriate.

Determination of complaints

47. (1) At any time during an investigation of a complaint, the Commissioner may resolve the complaint by conciliation.

(2) On completion of an investigation of a complaint, the Commissioner may determine to take any action under section 43(3) if satisfied that a breach of a provision of the code of conduct has occurred.

(3) The Commissioner, by notice in writing, is to notify the determination to –

- (a) the complainant if the complainant is identifiable; and
- (b) the police officer who is the subject of the complaint if the police officer is informed of the complaint.

(4) A termination of appointment or demotion as a result of action taken under section 43(3) takes effect on service of the notice under section 43(9).

Division 3 – Integrity tests and financial statements

Integrity tests

48. (1) The Commissioner may conduct, or require an authorised person to conduct, a test of the integrity of a police officer if there are reasonable grounds to suspect that the police officer has engaged in, or is engaging in, or is likely to engage in, conduct that –

- (a) may constitute an indictable offence or any other offence punishable by imprisonment; or
- (b) is corrupt or seriously unethical.

(2) An integrity test may only involve an act or omission that, but for subsection (3), would be unlawful if –

- (a) it is reasonably necessary for the conduct of the integrity test; and
- (b) it is authorised by a magistrate.

(3) Despite any other Act or law to the contrary and subject to subsection (2), any act done or omission made in conducting an integrity test is lawful.

(4) The Commissioner may issue a certificate stating that on a specified date or during a specified period a specified person was authorised to conduct or participate in an integrity test involving a specified act or specified omission.

(5) An authorisation under subsection (2) or a certificate issued under subsection (4) –

- (a) is admissible in any legal proceedings; and
- (b) is evidence of the matters specified in the authorisation or certificate.

Financial statements

49. (1) The Commissioner may require a police officer to provide a financial statement if there are reasonable grounds to suspect that the police officer has engaged in, or is engaging in, or is likely to engage in, conduct that –

- (a) may constitute an indictable offence or any other offence punishable by imprisonment; or
- (b) is corrupt or seriously unethical.

(2) The Commissioner –

- (a) for the purpose of allocating duties may require a police officer to provide a financial statement; and

(b) is to cause to be published in the Police Manual a list of duties to which this subsection applies.

(3) A financial statement is to include details of –

(a) assets and liabilities; and

(b) income and expenditure.

(4) The Commissioner is to ensure that a financial statement provided under subsection (1) or (2) –

(a) is only used for the purposes of this Act; and

(b) is kept confidential, secure and in accordance with directions issued by the Commissioner.

Division 4 – Alcohol and drugs

Testing for alcohol and drugs

50. (1) The Commissioner or an authorised person, whether or not there is any suspicion that a police officer has recently consumed any alcohol or taken any drug, may require the police officer while on duty, reporting for duty, on standby or on availability to do any or all of the following:

(a) undergo a breath test or submit to a breath analysis for testing for the presence of any alcohol or drug;

(b) provide a sample of urine or saliva for testing for the presence of any alcohol or drug;

(c) with the consent of the police officer, permit a blood sample to be taken by a qualified person for testing for the presence of any alcohol or drug.

(2) If an incident involving a police officer while discharging the duties of a police officer occurs in which a person is killed or seriously injured, the Commissioner or an authorised person may require any police officer involved in the incident to –

- (a) undergo a breath test or submit to a breath analysis for testing for the presence of any alcohol or drug; or
- (b) provide a sample of urine or saliva for testing for the presence of any alcohol or drug; or
- (c) with the consent of the police officer, permit a sample of blood to be taken by a qualified person for testing for the presence of any alcohol or drug.

(3) If a police officer attends, or is admitted to, a hospital for examination or treatment because of an incident referred to in subsection (2), the Commissioner or an authorised person may require a sample of blood from the police officer to be taken by a qualified person at the hospital if the police officer –

- (a) is unable to undergo a breath test or submit to a breath analysis; or
- (b) is unable to provide a sample of urine or saliva; or
- (c) is unable to consent to the taking of a sample of blood.

(4) The taking of a sample of urine or saliva from a police officer under subsection (1) or (2) is to be carried out –

- (a) by an authorised person; and

- (b) in accordance with any directions issued by the Commissioner.

(5) The taking of a sample of blood is to be carried out in accordance with any directions issued by the Commissioner.

(6) A sample of urine, saliva or blood taken from a police officer under this section is to be divided into 3 approximately equal parts with one part to be analysed, one part to be the control sample and one part to be provided to the police officer if requested.

(7) The Commissioner or the police officer from whom a sample is taken may request that the control sample be analysed.

(8) Any sample taken or provided under this section may only be used for the purpose for which it was taken or provided.

(9) A certificate relating to the analysis of a sample provided under this section is evidence of the facts contained in that certificate.

Directions

51. (1) The Commissioner may issue directions to police officers relating to the following:

- (a) the consumption, and presence in the body, of alcohol or drugs while on duty, reporting for duty, on standby or on availability;
- (b) the consequences of a positive test for alcohol or drugs;
- (c) the follow-up testing of a police officer who has tested positive for alcohol or drugs;

- (d) the procedures for rehabilitation;
- (e) any other matter the Commissioner considers appropriate.

(2) The Commissioner must issue directions to police officers relating to –

- (a) the confidentiality of –
 - (i) any test or sample taken or given under section 50; and
 - (ii) any certificate relating to the analysis of a sample; and
- (b) the security and safekeeping of samples taken or given under section 50.

Part applies to Commissioner

52. This Part applies to the Commissioner as a police officer and any reference in this Part to the Commissioner is taken to be a reference to the Minister in its application to the Commissioner.

PART 4 – REVIEWS***Division 1 – Police Review Board*****Establishment of Police Review Board**

53. (1) There is established a Police Review Board.

(2) The Police Review Board consists of 5 members with the appropriate skills and experience appointed by the Minister after consultation with the Commissioner and the Police Association of Tasmania.

(3) The Minister is to appoint one of the members as chairperson.

(4) Schedule 2 has effect in respect of membership of the Police Review Board.

General functions and powers of Police Review Board

54. (1) The Police Review Board must determine applications for review in respect of –

- (a)** promotions, demotions and terminations under this Act; and
- (b)** other matters specified in section 65.

(2) The Police Review Board has power to do anything necessary or convenient to perform its functions.

Division 2 – Reviews relating to promotions**Application for review relating to promotion**

55. (1) A non-commissioned police officer, other than a special constable, may apply to the Police Review Board for a review of a decision relating to a promotion to a rank below the rank of commander if the police officer applied for that rank and is qualified for promotion to that rank.

(2) An application for a review under subsection (1) may be made on either or both of the following grounds:

- (a) that the applicant is of superior merit to the person to be promoted;
- (b) that there was an irregularity in the procedures relating to the process that affected the decision.

Constitution of Police Review Board for review relating to promotion

56. (1) Within 14 days after receipt of an application for a review relating to a promotion, the chairperson is to determine the constitution of the Police Review Board relating to that review.

(2) The Police Review Board constituted under subsection (1) is to include the chairperson and at least 2 other members of the Police Review Board.

Attendance at review relating to promotion

57. The Commissioner must make available to the Police Review Board any one or more of the following persons:

- (a) the chairperson of the Promotion Selection Committee involved in the promotion or, subject to the approval of the Police Review Board, a member or members of the relevant Promotion Selection Committee;
- (b) the person to be promoted;
- (c) the person applying for the review;
- (d) any police officer required or summoned to attend the review.

Determination relating to promotion to rank below inspector

58. (1) After conducting a review relating to a promotion below the rank of inspector under section 55(2)(a), the Police Review Board may –

- (a) confirm the promotion; or
- (b) direct that the applicant for the review be promoted.

(2) After conducting a review relating to a promotion below the rank of inspector under section 55(2)(b), the Police Review Board, if it determines that there was an irregularity in the procedures relating to the process that affected the decision, must refer the matter to the Commissioner for reconsideration as the Police Review Board specifies.

(3) If the Police Review Board refers a matter to the Commissioner under subsection (2), the Commissioner, by notice in writing, must notify the action taken as a result of the referral to –

- (a) the person originally intended to be promoted; and
- (b) the applicant for the review; and
- (c) the Police Review Board.

(4) The determination of the Police Review Board is final.

Determination relating to promotion to rank of inspector

59. (1) After conducting a review relating to a promotion to the rank of inspector under section 55(2)(a), the Police Review Board may –

- (a) confirm the promotion; or
- (b) direct the Commissioner to recommend to the Minister that the applicant be promoted to the rank of inspector in accordance with section 11.

(2) On receipt of the Commissioner's recommendation, the Minister is to recommend to the Governor according to that recommendation.

(3) The Governor, on receipt of the Minister's recommendation, may act according to the recommendation.

(4) After conducting a review relating to a promotion to the rank of inspector under section 55(2)(b), the Police Review Board, if it determines that there was an irregularity in the procedures relating to the process that affected the decision, must refer the matter to the Commissioner for reconsideration as the Police Review Board specifies.

(5) If the Police Review Board refers a matter to the Commissioner under subsection (4), the Commissioner, by notice in writing, must notify the action taken as a result of the referral to –

- (a) the person originally intended to be promoted; and
- (b) the applicant for the review; and
- (c) the Police Review Board.

(6) The determination of the Police Review Board is final.

Division 3 – Reviews relating to terminations and demotions

Application for review relating to termination or demotion

60. (1) A police officer, other than the Commissioner, the Deputy Commissioner, an Assistant Commissioner or a special constable, may apply to the Police Review Board for a review of a decision relating to –

- (a) the termination of his or her appointment; or
- (b) his or her demotion.

(2) An application for a review under subsection (1) may be made on any or all of the following grounds:

- (a) that there was an irregularity in the procedures relating to the process that affected the decision;
- (b) that new information has become available;
- (c) that the termination or demotion was unfair;

- (d) that the reason for the termination or demotion was invalid.

Constitution of Police Review Board for review relating to termination or demotion

61. (1) Within 14 days after receipt of an application for a review relating to termination or demotion, the chairperson is to determine the constitution of the Police Review Board relating to that review.

(2) The Police Review Board constituted under subsection (1) is to include the chairperson and at least 2 other members of the Police Review Board.

Attendance at review relating to termination or demotion

62. The Commissioner must make available to the Police Review Board any one or more of the following persons:

- (a) the person who has been demoted;
- (b) any police officer required or summoned to attend the review.

Determination relating to termination or demotion of commissioned police officer

63. (1) After conducting a review in relation to a termination of appointment of a commissioned police officer, the Police Review Board –

- (a) may confirm the termination; or

- (b) must refer the matter to the Commissioner for reconsideration of the recommendation to terminate if it determines that –
 - (i) there was an irregularity in the procedures relating to the process that affected the recommendation; or
 - (ii) new information has become available; or
- (c) may direct the Commissioner to recommend to the Minister that the applicant be –
 - (i) reinstated to the rank held before the termination with the remuneration and allowances at the same rate or less as specified by the Police Review Board; or
 - (ii) reappointed to a lower rank with the remuneration and allowances relevant to that rank and as specified by the Police Review Board.

(2) After conducting a review in relation to the demotion of a commissioned police officer, the Police Review Board –

- (a) may confirm the demotion; or
- (b) must refer the matter to the Commissioner for reconsideration of the recommendation to demote if it determines that –
 - (i) there was an irregularity in the procedures relating to the process that affected the recommendation; or
 - (ii) new information has become available; or

- (c) may direct the Commissioner to recommend to the Minister that the applicant be reinstated to the rank held before the demotion with the remuneration and allowances at the same rate or less as specified by the Police Review Board.

(3) On receipt of the Commissioner's recommendation under subsection (1)(c) or subsection (2)(c), the Minister is to recommend to the Governor according to that recommendation.

(4) The Governor, on receipt of the Minister's recommendation, may act according to that recommendation.

(5) If the Police Review Board refers a matter to the Commissioner under subsection (1)(b) or subsection (2)(b), the Commissioner, by notice in writing, is to notify the recommendation made as a result of the referral to –

- (a) the applicant for the review; and
- (b) the Police Review Board.

(6) If a person is reinstated or reappointed as a police officer, the person is taken to have continued in service as a police officer during any period of termination.

Determination relating to termination or demotion of non-commissioned police officer

64. (1) After conducting a review in relation to the termination of appointment of a non-commissioned police officer, the Police Review Board –

- (a) may confirm the termination; or

- (b) must refer the matter to the Commissioner for reconsideration of the determination to terminate if it determines that –
 - (i) there was an irregularity in the procedures relating to the process that affected the determination; or
 - (ii) new information has become available; or
- (c) may direct the Commissioner to –
 - (i) reinstate the applicant to the rank held before the termination with the remuneration and allowances at the same rate or less as specified by the Police Review Board; or
 - (ii) reappoint the applicant to a lower rank with the remuneration and allowances relevant to that rank and as specified by the Police Review Board.

(2) After conducting a review in relation to the demotion of a non-commissioned police officer, the Police Review Board –

- (a) may confirm the demotion; or
- (b) must refer the matter to the Commissioner for reconsideration of the determination to demote if it determines that –
 - (i) there was an irregularity in the procedures relating to the process that affected the determination; or
 - (ii) new information has become available; or

- (c) may direct the Commissioner to reinstate the applicant to the rank held before the demotion with the remuneration and allowances at the same rate or less as specified by the Police Review Board.

(3) If the Police Review Board refers a matter to the Commissioner under subsection (1)(b) or subsection (2)(b), the Commissioner, by notice in writing, is to notify the determination made as a result of the referral to –

- (a) the applicant for the review; and
- (b) the Police Review Board.

(4) If a person is reinstated or reappointed as a police officer, the person is taken to have continued in service as a police officer during any period of termination.

Division 4 – Reviews relating to other matters

Application for review relating to other matters

65. (1) A police officer, other than the Commissioner, the Deputy Commissioner, an Assistant Commissioner or a special constable, may apply to the Police Review Board for a review of a decision, direction, determination, action or requirement by the Commissioner relating to –

- (a) a reduction of remuneration under section 29(4)(c) or section 43(3)(d); or
- (b) a suspension of remuneration or allowances under section 41(a); or
- (c) a fine imposed under section 43(3)(c); or
- (d) the payment of costs under section 87(1).

(2) An application for a review under subsection (1) may be made on any or all of the following grounds:

- (a) that there was an irregularity in the procedures relating to the process that affected the decision;
- (b) that new information has become available;
- (c) that the reduction of remuneration, the suspension of remuneration or allowances, the imposition of a fine or the requirement to pay costs was unfair;
- (d) that the reason for the reduction, suspension, fine or requirement to pay costs was invalid.

Constitution of Police Review Board for review relating to other matters

66. (1) Within 14 days after receipt of an application for a review relating to other matters, the chairperson is to determine the constitution of the Police Review Board relating to that review.

(2) If the applicant is entitled to be represented by a legal practitioner under section 71, the Police Review Board constituted under subsection (1) is to include the chairperson and at least 2 other members of the Police Review Board.

Attendance at review relating to other matters

67. The Commissioner must make available to the Police Review Board any one or more of the following persons:

- (a) the applicant for the review;

- (b) any police officer required or summoned to attend the review.

Determination relating to other matters

68. (1) After conducting a review under this Division, the Police Review Board –

- (a) may, in the case of an application under section 65(1)(a), direct that the reduction of remuneration remain as originally directed or be reduced, increased or cancelled; or
- (b) may, in the case of an application under section 65(1)(b), direct that the suspension of remuneration or allowances remain as originally determined or be cancelled; or
- (c) may, in the case of an application under section 65(1)(c), direct that the fine remain as originally imposed or be reduced, increased or cancelled; or
- (d) may, in the case of an application under section 65(1)(d), direct that the requirement to pay costs remain as originally determined or be cancelled or that the amount of the costs be reduced or increased; or
- (e) must refer the matter to the Commissioner for reconsideration if it determines that –
 - (i) there was an irregularity in the procedures relating to the process that affected the decision; or
 - (ii) new information has become available.

(2) If the Police Review Board refers a matter to the Commissioner under subsection (1)(e), the Commissioner, by notice in writing, must notify the action taken as a result of the referral to –

- (a) the applicant for the review; and
- (b) the Police Review Board.

Division 5 – General provisions

Applications

69. (1) An application for a review must be –

- (a) made in writing stating the grounds on which it is made; and
- (b) for a review relating to promotion, lodged with the Police Review Board within 14 days of publication of the notice under section 19; and
- (c) for any other review, lodged with the Police Review Board within 14 days after service of a notice in respect of the subject matter of the review.

(2) An applicant must provide the Commissioner with a copy of the application within 3 days after lodging the application.

(3) The Police Review Board may extend the period in which an application is to be made if satisfied that exceptional circumstances exist.

(4) An applicant may withdraw an application for a review.

Attendance by persons

70. (1) The Police Review Board may require or summon a person to attend a review.

(2) The applicant for a review or the Commissioner may request the Police Review Board to require or summon a person to attend a review.

(3) A summons must be made by notice in writing served on a person requiring that person to attend to do any one or more of the following:

- (a) give evidence;
- (b) produce documents;
- (c) produce records.

(4) The summons must specify the following:

- (a) the name of the person on whom it is to be served;
- (b) the time and place at which the person is required to attend;
- (c) any document or record the Police Review Board requires the person to produce;
- (d) any other matter the Police Review Board determines.

(5) The Police Review Board may direct a person required to attend a review to do any one or more of the following:

- (a) give evidence;
- (b) produce documents;
- (c) produce records.

(6) A person summoned or required to attend must not –

- (a) without reasonable excuse, fail to attend the proceedings; or
- (b) refuse to answer any question put by the Police Review Board; or
- (c) give an answer that to his or her knowledge is false or misleading; or
- (d) without reasonable excuse, fail to produce any document or record specified in the notice or as required.

Penalty: Fine not exceeding 20 penalty units.

(7) Any evidence given under this section is not admissible in any legal proceedings other than proceedings under this Act.

Representation

71. (1) In a review relating to the termination of appointment or demotion, the applicant may be represented by a legal practitioner.

(2) In a review relating to a reduction of remuneration, the applicant –

- (a) may be represented by a legal practitioner if the reduction is the equivalent of 10 penalty units or more; or
- (b) may be represented by a person other than a legal practitioner if the reduction is less than the equivalent of 10 penalty units.

(3) In a review relating to a suspension of remuneration or allowances, the applicant –

- (a) may be represented by a legal practitioner if the remuneration or allowances suspended are the equivalent of 10 penalty units or more; or
- (b) may be represented by a person other than a legal practitioner if the remuneration or allowances suspended are less than the equivalent of 10 penalty units.

(4) In a review relating to a fine, the applicant –

- (a) may be represented by a legal practitioner if the fine is 10 penalty units or more; or
- (b) may be represented by a person other than a legal practitioner if the fine is less than 10 penalty units.

(5) In a review relating to the requirement to pay the cost relating to the loss or damage to equipment, the applicant –

- (a) may be represented by a legal practitioner if the cost is the equivalent of 10 penalty units or more; or
- (b) may be represented by a person other than a legal practitioner if the cost is less than the equivalent of 10 penalty units.

Attendance by Commissioner

72. (1) The Commissioner or a person authorised by the Commissioner is to attend any proceedings relating to a review under this Part.

(2) If a police officer is not entitled to be represented by a legal practitioner at the review, the Commissioner must not authorise a legal practitioner under subsection (1) to attend proceedings relating to that review.

Remuneration and allowances

73. (1) The applicant for a review and any other police officer required or summoned to attend before the Police Review Board are entitled to be paid as specified in the Police Award or in the instrument of appointment.

(2) A person who is not a police officer and who is required or summoned to attend before the Police Review Board is entitled to be paid any reasonable allowances, expenses and remuneration as the Police Review Board determines.

Documents

74. (1) The Police Review Board may require –

- (a) the applicant to lodge further documents or records within a specified period after the application is lodged; or
- (b) any other person to lodge any documents or records within a specified period.

(2) An application lapses if the applicant fails to comply with a requirement under subsection (1)(a).

(3) The Police Review Board may extend the period in which documents or records are required to be lodged under subsection (1) if satisfied that exceptional circumstances exist.

Conduct of review

75. (1) The rules of evidence do not apply to a review and the Police Review Board may be informed on any matter in any way it considers appropriate.

(2) The Police Review Board, by notice in writing, must notify its determination to –

- (a) for a review relating to a promotion, the person originally intended to be promoted; and
- (b) the applicant for the review; and
- (c) the Commissioner.

Proceedings closed to public

76. Any proceedings of the Police Review Board in the conduct of a review under this Part are closed to the public unless the Police Review Board determines that it is in the public interest to open the proceedings to the public.

PART 5 – OFFENCES**Bribery**

77. (1) A person must not directly or indirectly offer a bribe to, or make an agreement with, a police officer –

- (a) for the police officer to neglect his or her duties; or
- (b) to influence the police officer in the performance of any of his or her duties.

Penalty: Fine not exceeding 20 penalty units, or imprisonment for a term not exceeding 2 years, or both.

(2) A police officer must not take or solicit directly or indirectly a bribe from, or make an agreement with, another police officer or any person –

- (a) to neglect his or her duties; or
- (b) to influence the performance of any of his or her duties.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 2 years, or both.

Impersonation

78. A person who is not a police officer must not do any of the following without lawful excuse or the approval of the Commissioner:

- (a) wear or have in possession a police uniform or any part of a police uniform;

- (b) wear or have in possession any uniform or badge that resembles, or is likely to be perceived as, a police uniform or badge;
- (c) wear any head dress that incorporates a chequered cap band that is the same as or similar to that worn as part of a police uniform;
- (d) impersonate or represent himself or herself as a police officer;
- (e) use the designation of police officer or any rank in the Police Service in connection with any business, occupation or employment;
- (f) have in possession any arms or ammunition or other equipment supplied to any police officer;
- (g) have in possession any document issued for the use of the Police Service.

Penalty: Fine not exceeding 20 penalty units or a term of imprisonment not exceeding 2 years, or both.

Failing to assist police officer

79. A person of 18 years of age or more, without lawful excuse, must not fail to assist a police officer when required to do so by the police officer.

Penalty: Fine not exceeding 20 penalty units.

Names and addresses

80. (1) A police officer who becomes aware, or has reasonable grounds for believing, that a person has

committed or is committing an offence under section 77(1), 78 or 79 may require the person to state his or her name and address.

(2) A person must not –

- (a) fail or refuse to comply with the requirement;
or
- (b) give a name or address that is false.

Penalty: Fine not exceeding 20 penalty units or a term of imprisonment not exceeding 2 years, or both.

(3) A police officer may arrest without a warrant a person who –

- (a) fails or refuses to comply with the requirement; or
- (b) gives a name or address that the police officer reasonably believes is false.

False or misleading statements

81. (1) A person, in making an application for appointment or promotion or providing any information relating to the application, must not –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter knowing that without that matter the application or information is misleading.

Penalty: Fine not exceeding 20 penalty units.

(2) If a person commits an offence under subsection (1) and is, or subsequently becomes, a police officer, the Commissioner may take any action referred to in section 43(3) the Commissioner considers appropriate.

Return of equipment

82. (1) On ceasing to be a police officer, a person must return to an authorised person, within any period specified by the Commissioner, all items of equipment, clothing, firearms or ammunition issued to the person as a police officer, unless the Commissioner determines otherwise.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 3 months, or both.

(2) The Commissioner may apply to a justice for a warrant to –

- (a) enter and search any place; and
- (b) seize any item found in the place that is required to be returned under subsection (1).

(3) A justice may issue a warrant if satisfied that there are reasonable grounds for believing that there is on or in any place any item that is required to be returned under subsection (1).

(4) A warrant is to authorise a police officer –

- (a) to enter and search the place specified in the warrant; and
- (b) to seize any item that the police officer reasonably believes is required to be returned under subsection (1).

(5) A warrant is to specify the date on which, and time by which, the warrant ceases to have effect.

(6) If the occupier of the place is not present or refuses permission, the police officer may –

- (a) proceed to execute the warrant using any reasonable force necessary; and
- (b) do anything reasonably required to execute the warrant.

PART 6 – MISCELLANEOUS**Police powers**

83. A police officer has the powers, privileges and duties of a constable at common law or under any other Act or law.

Protection from liability for police officers

84. (1) A police officer does not incur any personal liability for any act or omission done or made in good faith in the exercise or performance, or purported exercise or performance, of any powers or duties at common law or under this or any other Act or law.

(2) A liability that, but for subsection (1), would lie against a police officer, lies against the Crown.

Immunity in relation to police dogs

85. (1) A police-dog handler who enters, or is on or in, a particular place in the performance of his or her duties as a police officer, may do so accompanied by a police dog.

(2) A police-dog handler or any other police officer accompanying the police-dog handler acting under subsection (1) does not incur any personal liability for any injury or damage arising from the presence of a police dog.

(3) A liability that, but for subsection (2), would lie against a police-dog handler or any other police officer lies against the Crown.

Protection from liability for other persons

86. (1) A person who, at the request, and under the direction of a police officer, assists the police officer does not incur any personal liability for any act or omission done or made in good faith.

(2) A liability that would, but for subsection (1), lie against a person assisting a police officer lies against the Crown.

Liability for lost or damaged equipment

87. (1) A police officer or a person who has ceased to be a police officer who has lost or damaged any equipment issued to him or her –

- (a) must report that loss or damage; and
- (b) is liable for that loss or damage if unable to account satisfactorily to the Commissioner for that loss or damage.

(2) If a liability arises under subsection (1), the Commissioner, by notice in writing, is to inform the police officer or person of –

- (a) the costs to be paid in respect of the loss or damage; and
- (b) the method of payment; and
- (c) the period within which the payment must be made.

Application to trainees and junior constables

88. The following provisions apply to a trainee and a junior constable as if he or she were a non-commissioned police officer:

- (a) Division 5 of Part 2;
- (b) sections 38, 39, 40 and 41;
- (c) Part 3;
- (d) section 57;
- (e) Division 3 of Part 4 in relation to a termination of appointment under section 43(3)(i);
- (f) Division 4 of Part 4 in relation to a fine imposed under section 43(3)(c) or a reduction of remuneration under section 43(3)(d);
- (g) Division 5 of Part 4;
- (h) Part 5, except sections 79, 80 and 82(4);
- (i) this Part, except sections 83 and 95.

Industrial Relations Act 1984: application

89. (1) The *Industrial Relations Act 1984* applies in respect of non-commissioned police officers, other than special constables, and inspectors in relation to an industrial matter within the meaning of that Act except –

- (a) any matter which is reviewable or has been determined by the Police Review Board; or

- (b) any act or omission of the Commissioner in respect of a particular non-commissioned police officer or a particular inspector under –
 - (i) section 29; or
 - (ii) sections 38 and 40; or
 - (iii) Part 3; or
- (c) any act or omission under Divisions 3 and 4 of Part 2.

(2) The *Industrial Relations Act 1984* applies in respect of trainees and junior constables in relation to an industrial matter within the meaning of that Act except –

- (a) any matter which is reviewable or has been determined by the Police Review Board; or
- (b) any act or omission of the Commissioner in respect of a particular trainee or a particular junior constable under –
 - (i) section 15; or
 - (ii) section 29; or
 - (iii) sections 38 and 40; or
 - (iv) Part 3.

Sale of goods

90. (1) The Commissioner may authorise the sale or other disposal of any goods or chattels that –

- (a) have come into the possession of a police officer in the course of his or her duties; and

- (b) remain unclaimed for a period of at least 3 months or, in the case of perishable goods, 5 days by a person with a legal right to those goods or chattels; and
- (c) are not capable of being sold or disposed of under any other Act.

(2) Before authorising the sale or other disposal of any goods or chattels that are not perishable goods, the Commissioner must publish that intention in a newspaper.

(3) A sale or other disposal under this section is valid against all persons and a claim does not lie for any compensation in relation to that sale or disposal.

(4) The proceeds of any sale or other disposal are to be paid into the Consolidated Fund.

Additional leave

91. The Commissioner, in addition to any prescribed leave or leave specified in the Police Award or in an instrument of appointment, may grant leave for a specified period to a police officer, with or without pay, as follows:

- (a) additional sick leave for ex-service persons;
- (b) leave for defence purposes other than that required by Commonwealth law;
- (c) leave due to injury sustained or illness contracted in the course of carrying out duties;
- (d) leave for any other reason the Commissioner considers appropriate.

Powers and duties during leave

92. The Commissioner may direct that a police officer not exercise any power or perform any duty of a police officer during any period of leave.

Police Manual

93. (1) The Commissioner must cause a document known as the Police Manual to be published.

(2) The Police Manual is to contain –

- (a) any orders, directions, procedures and instructions issued by the Commissioner as the Commissioner considers appropriate; and
- (b) any other matter the Commissioner considers appropriate.

Police Gazette

94. (1) The Commissioner must cause a document known as the *Police Gazette* to be published at any intervals the Commissioner determines.

(2) The *Police Gazette* is to contain appointments, notices and any other matters the Commissioner considers appropriate.

Evidence of appointment or rank

95. (1) The Commissioner may certify in writing that a specified person at a specified date or during a specified period –

- (a) was or was not a police officer; or
- (b) was or was not the holder of a specified rank.

(2) A certificate under subsection (1) is evidence of the facts contained in it.

(3) If a question arises as to a person's identity as a police officer, or to a person's entitlement to exercise the powers or to perform the duties of a police officer –

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

Fee for services

96. (1) The Commissioner may arrange for a copy of any document or information relating to the Police Service to be provided to a person on request and payment of any fee the Commissioner considers appropriate.

(2) The Commissioner may determine –

- (a) whether a fee is required for any service provided by a police officer; and
- (b) the amount of that fee.

(3) The Commissioner may recover an amount payable under this section as a debt in a court of competent jurisdiction.

(4) This section does not apply to a service in respect of which payment of a fee is prescribed under any other Act.

Police Pipe Band

97. (1) There is established a Police Pipe Band consisting of –

- (a) police officers; and
- (b) any other persons the Commissioner determines.

(2) The Commissioner may determine the ceremonial or other functions of the Police Pipe Band.

(3) A member of the Police Pipe Band who is not a police officer may wear a police uniform while performing ceremonial or other functions of the Police Pipe Band.

Regulations

98. (1) The Governor may make regulations for the purposes of this Act.

(2) Regulations may be made in respect of –

- (a) sick leave; and
- (b) the establishment and operation of a sick leave bank scheme; and
- (c) recreation leave.

(3) Regulations may be made so as to apply differently according to any matter, condition, limitation,

restriction, exception or circumstance specified in the regulations.

(4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Commissioner.

(5) The regulations may be of a savings or transitional nature consequent on the enactment of this Act.

(6) Regulations under subsection (5) may take effect from the commencement of this Act or on a later day.

Savings and transitional provisions

99. The savings and transitional provisions set out in Schedule 3 have effect.

Administration of Act

100. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Police and Public Safety; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Police and Public Safety.

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Police Regulation Act 1898 repealed

101. The *Police Regulation Act 1898* is repealed and any Statutory Rules made under that Act are rescinded or revoked.

SCHEDULE 1 - OATHS AND AFFIRMATIONS

Section 36

PART 1 - SPECIAL CONSTABLE OATH

I, (*name*), swear that I will faithfully execute the office of special constable in Tasmania, and that to the best of my power, without favour or affection, malice or ill-will, will cause the peace to be kept and preserved and prevent all offences against persons and properties in Tasmania, and that to the best of my ability, skill and knowledge will discharge all the duties of a special constable according to law and subject to any restrictions determined by the Commissioner. So help me God.

PART 2 - SPECIAL CONSTABLE AFFIRMATION

I, (*name*), affirm that I will faithfully execute the office of special constable in Tasmania, and that to the best of my power, without favour or affection, malice or ill-will, will cause the peace to be kept and preserved and prevent all offences against persons and properties in Tasmania, and that to the best of my ability, skill and knowledge will discharge all the duties of a special constable according to law and subject to any restrictions determined by the Commissioner.

PART 3 - POLICE OFFICER OATH

I, (*name*), swear that I will faithfully execute the office of police officer in Tasmania, and that to the best of my power, without favour or affection, malice or ill-will, will cause the peace to be kept and preserved and prevent all

offences against persons and properties in Tasmania, and that to the best of my ability, skill and knowledge will discharge all the duties of a police officer according to law. So help me God.

PART 4 - POLICE OFFICER AFFIRMATION

I, (*name*), affirm that I will faithfully execute the office of police officer in Tasmania, and that to the best of my power, without favour or affection, malice or ill-will, will cause the peace to be kept and preserved and prevent all offences against persons and properties in Tasmania, and that to the best of my ability, skill and knowledge will discharge all the duties of a police officer according to law.

PART 5 - ANCILLARY CONSTABLE OATH

I, (*name*), swear that I will faithfully execute the office of ancillary constable in Tasmania, and that to the best of my power, without favour or affection, malice or ill-will and to the best of my ability, skill and knowledge will discharge all the duties of an ancillary constable according to law and subject to any restrictions specified in my instrument of appointment. So help me God.

PART 6 - ANCILLARY CONSTABLE AFFIRMATION

I, (*name*), affirm that I will faithfully execute the office of ancillary constable in Tasmania, and that to the best of my power, without favour or affection, malice or ill-will and to the best of my ability, skill and knowledge will discharge all the duties of an ancillary constable according

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to law and subject to any restrictions specified in my instrument of appointment.

SCHEDULE 2 – MEMBERSHIP OF POLICE REVIEW BOARD

Section 53(4)

Interpretation

1. In this Schedule, “**member**” means a member of the Police Review Board and includes the chairperson.

Term of office

2. A member is to be appointed for a period of 4 years.

Holding other office

3. The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

Remuneration of members

4. A member is entitled to be paid any remuneration, allowances and expenses the Minister determines.

Vacation of office

5. (1) A member vacates office when the member –

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under subclause (2) or (3).

(2) The Minister may remove a member from office if the member –

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any part of the estate for their benefit; or
- (b) is convicted, in Tasmania or elsewhere, of a crime or an offence that, in the opinion of the Minister, justifies the removal; or
- (c) is convicted of an offence against this Act.

(3) The Minister may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.

Filling of vacancies

6. If the office of the chairperson or another member becomes vacant, the Minister may appoint a suitable person to the vacant office for the remainder of the term of office.

Validity of proceedings

7. (1) An act or proceeding of the Police Review Board or of a person acting under the direction of the Police Review Board is not invalid by reason only that at the time when

the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Police Review Board.

(2) An act or proceeding of the Police Review Board or of a person acting under the direction of the Police Review Board is valid even if –

- (a) the appointment of a member was defective; or
- (b) a person appointed as a member was disqualified from acting as, or was incapable of being, a member.

Presumptions

8. In any proceedings by or against the Police Review Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Police Review Board; or
- (b) the appointment of any member.

SCHEDULE 3 – SAVINGS AND TRANSITIONAL

Section 99

Interpretation

1. In this Schedule –

“**commencement day**” means the day on which this Act commences;

“**repealed Act**” means the *Police Regulation Act 1898*.

Commissioner

2. A person who, immediately before the commencement day, was the Commissioner of Police appointed under the repealed Act is, on that day, the Commissioner of Police under this Act subject to the same terms and conditions specified in the instrument of appointment.

Deputy Commissioner

3. A person who, immediately before the commencement day, was the Deputy-Commissioner under the repealed Act is, on that day, the Deputy Commissioner under this Act subject to the same terms and conditions specified in the instrument of appointment.

Assistant Commissioner

4. A person who, immediately before the commencement day, was an Assistant Commissioner under the repealed Act is, on that day, an Assistant Commissioner under this

Act subject to the same terms and conditions specified in the instrument of appointment.

Superintendents

5. A person who, immediately before the commencement day, was a superintendent under the repealed Act is, on that day, a police officer with the rank of commander under this Act subject to the same terms and conditions specified in the instrument of appointment.

Inspectors

6. A person who, immediately before the commencement day, was an inspector under the repealed Act is, on that day, a police officer with the rank of inspector under this Act and remains subject to the terms and conditions of the Police Award.

Sergeants

7. A person who, immediately before the commencement day, was a sergeant under the repealed Act is, on that day, a police officer with the rank of sergeant under this Act and –

- (a) if under an instrument of appointment, is subject to the same terms and conditions specified in that instrument; or
- (b) if not under an instrument of appointment, remains subject to the terms and conditions of the Police Award.

Constables

8. A person who, immediately before the commencement day was a constable under the repealed Act is, on that day, a police officer with the rank of constable under this Act and –

- (a) if under an instrument of appointment, is subject to the same terms and conditions specified in that instrument; or
- (b) if not under an instrument of appointment, remains subject to the terms and conditions of the Police Award.

Special constables

9. A person who, immediately before the commencement day, was a special constable under the repealed Act is, on that day, an ancillary constable under this Act.

Cadets

10. A person who, immediately before the commencement day, was a cadet under the repealed Act is, on that day, a trainee under this Act.

Oaths

11. (1) A person who, immediately before the commencement day, was a police officer (other than a special constable) and took the oath set out in Form 1 of Schedule 2 to the repealed Act is, on that day, taken to have taken the oath set out in Part 3 of Schedule 1 to this Act.

(2) A person who, immediately before the commencement day, was a special constable and took the oath set out in Form 2 of Schedule 2 to the repealed Act is, on that day, taken to have taken the oath set out in Part 5 of Schedule 1 to this Act.

Proceedings

12. Any proceedings instituted but not determined under the repealed Act before the commencement day may, on and after that day, be determined under the repealed Act.

Appeals

13. An appeal made but not determined under the repealed Act before the commencement day may, on and after that day, be determined under the repealed Act as if that Act had not been repealed.

Suspensions

14. A suspension imposed under the repealed Act that has not expired before the commencement day continues, on that day, until it is revoked by the Commissioner.

References to police force

15. Any reference in any document to the police force, police force of Tasmania, Tasmania police force, Tasmania Police or the Police Service is, on and after the commencement day, to be read as a reference to the Police Service.