



Independent Police Conduct Authority Amendment Act 2007

Public Act 2007 No 38
Date of assent 11 September 2007
Commencement see section 2

Contents

		Page
1	Title	3
Part 1		
Preliminary provisions		
2	Commencement	3
3	Principal Act amended	3
4	Long Title amended	3
5	Name of principal Act changed	3
Part 2		
Amendments to principal Act		
6	Interpretation	3
7	New section 4 and heading substituted	4
<i>Independent Police Conduct Authority</i>		
4	Independent Police Conduct Authority established	4
8	Crown entity	4
9	New sections 5 to 5C substituted	4
5	Membership of Authority	4
5A	Chairperson of Authority	4
5B	Appointment of Judge as member of Authority	5
5C	Resignation of member	5
10	New sections 6 and 7 substituted	5
6	Power to remove or suspend members	5
7	Filling of vacancy	5
11	Section 8 repealed	6
12	Superannuation or retiring allowances	6
13	Functions of Authority	6

14	Duty of Commissioner to notify Authority of certain incidents involving death or serious bodily harm	6
15	Mode of complaint	6
16	Duty of Commissioner to notify Authority of complaints	6
17	Action upon receipt of complaint	7
18	Authority may decide to take no action on complaint	7
19	Proceedings of Authority	7
20	Protection and privileges of witnesses, etc	8
21	Implementation of recommendations of Authority	8
22	Authority and staff to maintain secrecy	8
23	Proceedings privileged	8
24	Offences	9
25	New sections 40 to 48 and heading substituted	9

Transitional provisions

40	Complaints made to Police Complaints Authority	9
41	Police Complaints Authority is chairperson	9
42	Deputy Police Complaints Authority is member of Authority	10
43	Employees and officers transferred to Authority	10
44	References to Police Complaints Authority	11
45	Proceedings to which Police Complaints Authority party	11
46	Assets and liabilities vest in Authority	11
47	Authority must arrange annual report and accounts	11
48	Obligations and rights concerning Commission of Inquiry into Police Conduct unchanged	11

Part 3

Consequential amendments

26	Amendments to other Acts	12
27	Amendment to Corrections Regulations 2005	12

Schedule

Consequential amendments to other Acts

13

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Independent Police Conduct Authority Amendment Act 2007.

**Part 1
Preliminary provisions**

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

3 Principal Act amended

This Act amends the Act that was previously called the Police Complaints Authority Act 1988.

4 Long Title amended

The Long Title is amended by omitting “**an independent Police Complaints**” and substituting “**the Independent Police Conduct**”.

5 Name of principal Act changed

- (1) As from the commencement of this section, the principal Act is called the Independent Police Conduct Authority Act 1988.
- (2) Section 1(1) is consequentially amended by omitting “Police Complaints” and substituting “Independent Police Conduct”.

**Part 2
Amendments to principal Act**

6 Interpretation

- (1) Section 2 is amended by repealing the definition of **Authority** and substituting the following definitions:

“**Authority** means the Independent Police Conduct Authority established under section 4

“**chairperson** means the chairperson of the Authority appointed under section 5A(1)”.
- (2) Section 2 is amended by repealing the definition of **Deputy Authority**.

- (3) Section 2 is amended by adding the following definition:
“**member** means a member of the Authority appointed under section 5(1); and includes the chairperson.”
- 7 New section 4 and heading substituted**
Section 4 and the heading above section 4 are repealed and the following heading and section substituted:
“*Independent Police Conduct Authority*
- “4 Independent Police Conduct Authority established**
There is an authority known as the Independent Police Conduct Authority.”
- 8 Crown entity**
- (1) Section 4A(2) is amended by omitting “applies” in the second place where it appears and substituting “provides”.
- (2) Section 4A is amended by repealing subsections (3) and (4) and substituting the following subsection:
- “(3) The members of the Authority are the board for the purposes of the Crown Entities Act 2004.”
- 9 New sections 5 to 5C substituted**
Section 5 is repealed and the following sections are substituted:
- “5 Membership of Authority**
- “(1) The Authority consists of up to 5 members appointed by the Governor-General on the recommendation of the House of Representatives.
- “(2) Subsection (1) applies despite section 28(1)(b) of the Crown Entities Act 2004.
- “5A Chairperson of Authority**
- “(1) The Governor-General, on the recommendation of the House of Representatives, must appoint 1 member as the chairperson of the Authority.
- “(2) A person appointed as the chairperson of the Authority must be a Judge or a retired Judge.
- “(3) Subsection (1) applies despite clause 1(2) of Schedule 5 of the Crown Entities Act 2004.

“5B Appointment of Judge as member of Authority

- “(1) The appointment of a Judge as a member of the Authority does not affect his or her judicial office, rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges that he or she has as a Judge, including matters relating to superannuation.
- “(2) The time a Judge serves as a member of the Authority must be taken as service as a Judge.

“5C Resignation of member

- “(1) A member may resign from office by written notice to the Governor-General (with a copy to the Authority) signed by the member.
- “(2) The resignation is effective on receipt by the Governor-General of the notice or at any later time specified in the notice.
- “(3) This section applies despite section 44 of the Crown Entities Act 2004.”

10 New sections 6 and 7 substituted

Sections 6 and 7 are repealed and the following sections substituted:

“6 Power to remove or suspend members

- “(1) Section 42 of the Crown Entities Act 2004 applies to any member who is a Judge.
- “(2) Section 39(1) of the Crown Entities Act 2004 does not apply to any member.
- “(3) Instead, any member who is not a Judge may be removed for just cause by the Governor-General acting upon an address from the House of Representatives.
- “(4) **Just cause** has the same meaning as in section 40 of the Crown Entities Act 2004.

“7 Filling of vacancy

- “(1) If a vacancy occurs in the membership of the Authority, the Governor-General, on the recommendation of the House of Representatives, may appoint a successor.
- “(2) Despite subsection (1), if the vacancy exists at the close of a session, or the vacancy occurs while Parliament is not in

session, and the House of Representatives has not recommended an appointment to fill the vacancy, the Governor-General in Council may appoint a successor at any time before the commencement of the next ensuing session of Parliament.

“(3) An appointment made under subsection (2) lapses, and the office again becomes vacant, unless the appointment is confirmed by the House of Representatives before the end of the 24th sitting day following the date of the appointment.”

11 Section 8 repealed

Section 8 is repealed.

12 Superannuation or retiring allowances

Section 11 is amended by omitting “the Authority and the Deputy Authority” and substituting “members of the Authority”.

13 Functions of Authority

Section 12 is amended by inserting the following subsection after subsection (2):

“(2A) The Authority may receive complaints relating to a matter specified in subsection (1)(a) that occurred before, on, or after 1 April 1989.”

14 Duty of Commissioner to notify Authority of certain incidents involving death or serious bodily harm

Section 13 is amended by omitting “the member’s” and substituting “his or her”.

15 Mode of complaint

Section 14(5)(b) is amended by omitting “Mental Health Act 1969” and substituting “Mental Health (Compulsory Assessment and Treatment) Act 1992”.

16 Duty of Commissioner to notify Authority of complaints

- (1) Section 15 is amended by omitting “as soon as practicable”.
- (2) Section 15 is amended by adding the following subsection as subsection (2):

- “(2) Notification must be given as soon as practicable, but no later than 5 working days after receipt of the complaint.”

17 Action upon receipt of complaint

- (1) Section 17(1) is amended by inserting the following paragraph after paragraph (a):
- “(ab) refer the complaint to the police for investigation by the police:”.
- (2) Section 17(1)(b) is amended by adding “undertaken on behalf of the Authority”.
- (3) Section 17(1) is amended by inserting the following paragraph after paragraph (c):
- “(ca) defer action until the receipt of a report from the Commissioner following a criminal investigation or a disciplinary investigation, or both, initiated and undertaken by the police:”.
- (4) Section 17(2A)(b) is amended by inserting “or paragraph (ca)” after “(c)”.

18 Authority may decide to take no action on complaint

- (1) Section 18(1)(b)(i) is amended by omitting “trivial” and substituting “minor”.
- (2) Section 18(1)(b) is amended by repealing paragraph (v) and substituting the following paragraph:
- “(v) there is, or was, in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives, that it would be reasonable, or would have been reasonable, for the person alleged to be aggrieved to exercise.”

19 Proceedings of Authority

- (1) Section 23(3) is amended by inserting the following paragraph after paragraph (b):
- “(ba) the Authority may, in deciding whether to hold a hearing, have regard to whether any of the following are pending or are reasonably in contemplation:
- “(i) civil, criminal, or disciplinary proceedings:
- “(ii) a coroner’s inquest:”.
- (2) Section 23 is amended by adding the following subsections:

- “(5) The Authority has, for the purposes of any hearing under subsection (3), the same powers as are conferred on Commissions of Inquiry by sections 4 and 4B to 9 of the Commissions of Inquiry Act 1908, with all necessary modifications.
- “(6) Sections 4 and 4B to 9 of the Commissions of Inquiry Act 1908 apply to all persons involved in any capacity in a hearing under subsection (3) as if the inquiry were being conducted by a Commission under that Act.
- “(7) If there is any inconsistency between a provision of this Act and a provision of the Commissions of Inquiry Act 1908 referred to in subsection (5) or (6), the provision of this Act prevails.”

20 Protection and privileges of witnesses, etc

Section 25(5) is amended by omitting “where” in the second place where it appears and substituting “were”.

21 Implementation of recommendations of Authority

Section 29(2) is amended by omitting “may” and substituting “must”.

22 Authority and staff to maintain secrecy

- (1) Section 32(1) is amended by inserting “every member of the Authority,” after “The Authority,”.
- (2) Section 32(3) is repealed.

23 Proceedings privileged

Section 33(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

- “(a) no proceedings, whether civil or criminal, may lie against the Authority, any member of the Authority, or any person holding any office or appointment under the Authority, for anything done or said by them in the course of the exercise or intended exercise of their functions under this Act, unless it is shown that they acted in bad faith:
- “(b) the Authority, members of the Authority, and any person holding office or appointment under the Authority must not be called to give evidence in any court, or in

any proceedings of a judicial nature, in respect of anything coming to their knowledge in the exercise of their functions under this Act.”

24 Offences

Section 37 is amended by omitting “other” in each place where it appears.

25 New sections 40 to 48 and heading substituted

Section 40 is repealed and the following heading and sections are substituted:

“Transitional provisions

“40 Complaints made to Police Complaints Authority

Any complaint made to the Police Complaints Authority before the commencement of the Independent Police Conduct Authority Amendment Act 2007 that had not been finally dealt with before the commencement of that Act must be dealt with by the Authority under this Act (as amended by the Independent Police Conduct Authority Amendment Act 2007), whether or not any action was taken in relation to the complaint before the commencement of the Independent Police Conduct Authority Amendment Act 2007.

“41 Police Complaints Authority is chairperson

“(1) The person who, immediately before the commencement of the Independent Police Conduct Authority Amendment Act 2007, held office as the Police Complaints Authority under section 4(2) of this Act (as it read immediately before the commencement of the Independent Police Conduct Authority Amendment Act 2007) is taken to have been appointed to the office of chairperson of the Authority under section 5A(1) of this Act (as substituted by section 9 of the Independent Police Conduct Authority Amendment Act 2007).

“(2) The person who is taken to have been appointed as the chairperson of the Authority under this section is appointed on the same terms and conditions on which, and for the remainder of the term for which, the person was appointed under section 4(2) of this Act (as it read immediately before the commencement of the Independent Police Conduct Authority Amendment Act 2007).

“42 Deputy Police Complaints Authority is member of Authority

- “(1) The person who, immediately before the commencement of the Independent Police Conduct Authority Amendment Act 2007, held office as a Deputy Police Complaints Authority under section 8 of this Act (as it read immediately before the commencement of the Independent Police Conduct Authority Amendment Act 2007) is taken to have been appointed as a member of the Authority under section 5(1) of this Act (as substituted by section 9 of the Independent Police Conduct Authority Amendment Act 2007).
- “(2) The person who is taken to have been appointed as a member of the Authority under this section is appointed on the same terms and conditions on which, and for the remainder of the term for which, the person was appointed under section 8 of this Act (as it read immediately before the commencement of the Independent Police Conduct Authority Amendment Act 2007).

“43 Employees and officers transferred to Authority

- “(1) Every employee or officer appointed by the Police Complaints Authority immediately before the commencement of the Independent Police Conduct Authority Amendment Act 2007 is, on and from that date, an employee or officer of the Authority on the same terms and conditions that applied to the employee or officer immediately before that date.
- “(2) For the purposes of every enactment, law, contract, and agreement relating to the employment of the employee or officer,—
- “(a) the contract of employment of that employee or officer is taken to be unbroken; and
- “(b) the employee’s or officer’s period of service with the Police Complaints Authority and every other period of service of that employee or officer that was recognised by the Police Complaints Authority as continuous service is taken to have been a period of service with the Authority.
- “(3) A person to whom subsection (1) applies is not entitled to any compensation just because the person has ceased to be an employee or officer of the Police Complaints Authority.

“44 References to Police Complaints Authority

On the commencement of the Independent Police Conduct Authority Amendment Act 2007, unless the context otherwise requires, every reference to the Police Complaints Authority in any contract or other instrument, document, or notice must be read as a reference to the Independent Police Conduct Authority.

“45 Proceedings to which Police Complaints Authority party

Any proceedings to which the Police Complaints Authority was a party or that the Police Complaints Authority was considering bringing before the commencement of the Independent Police Conduct Authority Amendment Act 2007 may be brought, continued, completed, and enforced by or against the Authority.

“46 Assets and liabilities vest in Authority

On the commencement of the Independent Police Conduct Authority Amendment Act 2007, the assets and liabilities of the Police Complaints Authority vest in the Authority.

“47 Authority must arrange annual report and accounts

The Authority must perform the reporting requirements, and comply with the reporting obligations, relating to annual financial statements, annual reports, and audits that the Police Complaints Authority would have performed and complied with under the Police Complaints Authority Act 1988, the Crown Entities Act 2004, the Public Finance Act 1989, and any other enactment.

“48 Obligations and rights concerning Commission of Inquiry into Police Conduct unchanged

On the commencement of the Independent Police Conduct Authority Amendment Act 2007, the obligations, duties, rights, and powers of the Police Complaints Authority under the Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Act 2004 must be performed by, may be exercised by, or apply to, the Authority.”

Part 3

Consequential amendments

26 Amendments to other Acts

The Acts specified in the Schedule are amended in the manner set out in that schedule.

27 Amendment to Corrections Regulations 2005

- (1) This section amends the Corrections Regulations 2005.
 - (2) Regulation 168 is amended by omitting “Police Complaints” and substituting “Independent Police Conduct”.
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Schedule

Consequential amendments to other Acts

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Children’s Commissioner Act 2003 (2003 No 121)

Section 19(4)(f): omit “Police Complaints” and substitute “Independent Police Conduct”.

Section 23(3)(f): omit “Police Complaints” and substitute “Independent Police Conduct”.

Coroners Act 1988 (1988 No 111)

Section 29(3)(b)(i): omit “Police Complaints” in each place where it appears and substitute in each case “Independent Police Conduct”.

Coroners Act 2006 (2006 No 38)

Paragraph (l) of the definition of **other investigating authority** in section 9: omit “Police Complaints” in each place where it appears and substitute in each case “Independent Police Conduct”.

Section 72(a): omit “Police Complaints” in each place where it appears and substitute in each case “Independent Police Conduct”.

Corrections Act 2004 (2004 No 50)

Section 3(1): insert in its appropriate alphabetical order:

“**Independent Police Conduct Authority** includes any employee of the Authority”.

Paragraph (i) of the definition of **official agency** in section 3(1): omit “Police Complaints” and substitute “Independent Police Conduct”.

Definition of **Police Complaints Authority** in section 3(1): repeal.

Section 114(2)(c)(vi): omit “Police Complaints” and substitute “Independent Police Conduct”.

Crimes of Torture Act 1989 (1989 No 106)

Paragraph (b) of the definition of **National Preventive Mechanism** in section 16: omit “Police Complaints” and substitute “Independent Police Conduct”.

Crown Entities Act 2004 (2004 No 115)

Section 131(1): omit “Police Complaints” and substitute “Independent Police Conduct”.

Section 131(2): omit “Police Complaints” and substitute “Independent Police Conduct”.

Crown Entities Act 2004 (2004 No 115)—continued

First column of Part 3 of Schedule 1: insert the following item in its appropriate alphabetical order:

Independent Police Conduct
Authority

First column of Part 3 of Schedule 1: omit the item relating to the Police Complaints Authority.

Ombudsmen Act 1975 (1975 No 9)

Item relating to Crown entities within the meaning of section 7 of the Crown Entities Act 2004 (other than the Police Complaints Authority) in Part 2 of Schedule 1: omit “Police Complaints” and substitute “Independent Police Conduct”.

Police Act 1958 (1958 No 109)

Section 6(5)(d): omit “Police Complaints” and substitute “Independent Police Conduct”.

Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Act 2004 (2004 No 37)

Section 3: omit “Police Complaints” and substitute “Independent Police Conduct”.

Definition of **instruction communication** in section 4: omit “sections 17(1)(b) or (c)” and substitute “section 17(1)(ab), (b), (c), or (ca)”.

Paragraph (a) of the definition of **restricted matter** in section 4: omit “person holding office as the Authority or the Deputy Authority, or as” and substitute “member of the Authority, or”.

New subsection (2A) set out in section 6: insert “a member of the Authority,” after “the Authority,” in the first place where it appears.

Protected Disclosures Act 2000 (2000 No 7)

Paragraph (a)(vii) of the definition of **appropriate authority** in section 3: omit “Police Complaints” and substitute “Independent Police Conduct”.

Remuneration Authority Act 1977 (1977 No 110)

Schedule 4: omit the item relating to the Police Complaints Authority and the Deputy Police Complaints Authority and substitute the following item:

The members of the Independent Police Conduct Authority

Victims’ Rights Act 2002 (2002 No 39)

Section 49(2)(c): omit “Police Complaints” in each place where it appears and substitute in each case “Independent Police Conduct”.

Legislative history

4 December 2002	Introduction (Bill 18–1)
20 February 2003	First reading and referral to Law and Order Committee
17 November 2003	Reported from Law and Order Committee (Bill 18–2)
5 May 2005	Second reading
4 September 2007	Committee of the whole House (Bill 18–3)
6 September 2007	Third reading
11 September 2007	Royal assent

This Act is administered by the Ministry of Justice.
