



ANALYSIS

Title	<i>Disputes in Relation to Sworn Members of the Police</i>
1. Short Title and commencement	83. Settlement of disputes
2. Interpretation	84. Parties to dispute
3. Conditions of employment of sworn members of the Police	85. Restriction on scope of procedure
4. Individual employment contracts	11. Settlement of personal grievances
5. New sections substituted	12. Special provision where sexual harassment alleged
68. Effect of agreement	13. New sections substituted
69. Content and currency of agreement	93. Statements privileged
6. Variation of agreement	94. Remedies
7. Repeal	14. Choice of procedures
8. Conditions where person not reappointed	15. Employment Contracts Act 1991 and State Sector Act 1988 not to apply
9. Unlawful strikes and lockouts	16. New Third, Fourth, and Fifth Schedules substituted
10. New sections substituted	Schedule

1991, No. 29

An Act to amend the Police Act 1958

[7 May 1991]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Police Amendment Act 1991, and shall be read together with and deemed part of the Police Act 1958 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 15th day of May 1991.

2. Interpretation—(1) Section 2 of the principal Act (as substituted by section 2 of the Police Amendment Act 1989) is hereby amended by repealing the definition of the term “Arbitration Commission”.

(2) Section 2 of the principal Act (as so substituted) is hereby further amended by inserting, in their appropriate alphabetical order, the following definitions:

“ ‘Chief of the Employment Tribunal’ means the Chief of the Employment Tribunal appointed under section 81 (1) (a) of the Employment Contracts Act 1991:

“ ‘Employment Court’ means the Employment Court constituted under the Employment Contracts Act 1991:

“ ‘Employment Tribunal’ means the Employment Tribunal established by section 77 of the Employment Contracts Act 1991:

“ ‘Member of the Employment Tribunal’ means a member of the Employment Tribunal appointed under section 81 (1) of the Employment Contracts Act 1991; and includes a temporary member appointed under section 87 of that Act:”.

(3) Section 2 of the principal Act (as so substituted) is hereby further amended by repealing the definition of the term “union”.

3. Conditions of employment of sworn members of the Police—Section 67 (2) of the principal Act (as substituted by section 14 of the Police Amendment Act 1989) is hereby amended by omitting the words “registered with the Arbitration Commission”.

4. Individual employment contracts—The principal Act is hereby amended by inserting, after section 67 (as substituted by section 14 of the Police Amendment Act 1989), the following section:

“67A. (1) Subject to subsection (2) of this section, nothing in section 67 of this Act prevents the Commissioner and any sworn member of the Police from entering into an individual employment contract.

“(2) Where there is an applicable agreement under section 67 of this Act and the Commissioner and a sworn member of the Police enter into an individual employment contract, the provisions of the agreement shall prevail to the extent that there is any inconsistency between the individual employment contract and the agreement.”

5. New sections substituted—The principal Act is hereby amended by repealing sections 68 and 69 (as substituted by section 14 of the Police Amendment Act 1989), and substituting the following sections:

“68. Effect of agreement—Every agreement under section 67 of this Act shall be binding on the parties to it and on every sworn member of the Police to whom it applies.

“69. Content and currency of agreement—(1) Every agreement under section 67 of this Act shall contain a clause stating the group or class of sworn members of the Police to whom the agreement is applicable.

“(2) Every such agreement shall state the date on which it expires and shall remain in force only until the close of its expiry date.

“(3) Where the applicable agreement expires, each sworn member of the Police who continues in the employ of the Commissioner shall, unless the sworn member and Commissioner otherwise agree, be bound by an individual employment contract based on the expired applicable agreement.”

6. Variation of agreement—The principal Act is hereby amended by repealing sections 70 to 74 (as substituted by section 14 of the Police Amendment Act 1989), and substituting the following section:

“70. (1) The parties to any agreement made under section 67 of this Act may, at any time while it remains in force, agree in writing to the variation of any or all of its provisions.

“(2) Section 67 (6) of this Act shall not apply to any claim made by one party upon the other for a variation of an agreement under this section.”

7. Repeal—The principal Act is hereby amended by repealing section 78 (as substituted by section 14 of the Police Amendment Act 1989).

8. Conditions where person not reappointed—Section 79 (5) of the principal Act (as substituted by section 14 of the Police Amendment Act 1989) is hereby amended by omitting the expression “sections 76 to 78”, and substituting the expression “section 76 or section 77”.

9. Unlawful strikes and lockouts—(1) Section 80 of the principal Act (as substituted by section 14 of the Police Amendment Act 1989) is hereby amended by omitting the word “Labour” wherever it appears, and substituting in each case the word “Employment”.

(2) Section 80 of the principal Act (as so substituted) is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) Section 118 of the Employment Contracts Act 1991 relating to urgency shall apply to an application under this section.”

10. New sections substituted—The principal Act is hereby amended by repealing sections 83 to 86 (as substituted by section 14 of the Police Amendment Act 1989) and the heading above section 83, and substituting the following heading and sections:

“Disputes in Relation to Sworn Members of the Police

“83. Settlement of disputes—The procedure set out in the Fourth Schedule to this Act shall be available for settling any dispute about the interpretation, application, or operation of any provision of any agreement applying to sworn members of the Police or of any provision of any employment contract made pursuant to section 77 of this Act.

“84. Parties to dispute—The persons who are qualified to be parties to a dispute concerning the interpretation, application, or operation of an agreement negotiated under section 67 of this Act or any employment contract made pursuant to section 77 of this Act shall be the parties to the agreement or to the employment contract, as the case may be.

“85. Restriction on scope of procedure—(1) The dispute procedure set out in the Fourth Schedule to this Act or provided in any agreement or employment contract shall not be invoked to settle a dispute about any provision or part of a provision of a type described in subsection (2) of this section.

“(2) A provision of the type referred to in subsection (1) of this section is one which does not in itself fix conditions of employment or a formula for fixing such conditions but which provides for the parties to undertake further negotiations, whether on the occurrence of a particular event or otherwise, in order to fix those conditions or such a formula.

“(3) Without limiting the generality of subsection (1) of this section, where a provision of any agreement or employment contract deals with the issue of redundancy but does not specify either the level of redundancy compensation payable or a formula for fixing that compensation, neither the Employment Tribunal nor the Employment Court shall have

the jurisdiction to fix that compensation or specify a formula for fixing that compensation.”

11. Settlement of personal grievances—(1) Section 87 of the principal Act (as substituted by section 14 of the Police Amendment Act 1989) is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) The procedure set out in the Fifth Schedule to this Act in relation to personal grievances shall be available for use by any sworn member of the Police.

“(2) Nothing in this section prevents the inclusion in any employment contract made pursuant to section 77 of this Act of any other effective procedure for settling personal grievances.

“(2A) An agreed grievance procedure of the type referred to in subsection (2) of this section may confer jurisdiction on the Employment Tribunal to adjudicate on the grievance, and in any such case the Employment Tribunal shall hear and determine the grievance in accordance with the provisions of this Act.

“(2B) Where an agreed grievance procedure of the type referred to in subsection (2) of this section confers jurisdiction on the Employment Tribunal and provides for a right of appeal from the decision of the Employment Tribunal, that right of appeal shall be to the Employment Court.

“(2C) Nothing in this section prevents the parties to an employment contract from including in an agreed grievance procedure of the type referred to in subsection (2) of this section an appeal system that does not involve the Tribunal or the Court but no such appeal system shall confer jurisdiction, whether directly or indirectly, on any tribunal or court other than the Employment Tribunal or the Employment Court.”

(2) Section 87 of the principal Act (as so substituted) is hereby further amended by omitting from subsection (3) (b) the words “agreement registered under this Act”, and substituting the words “agreement or employment contract”.

12. Special provision where sexual harassment alleged—The principal Act is hereby amended by repealing section 90 (as substituted by section 14 of the Police Amendment Act 1989), and substituting the following section:

“90. Where a personal grievance involves allegations of sexual harassment, no account shall be taken of any evidence of the member’s sexual experience or reputation.”

13. New sections substituted—The principal Act is hereby amended by repealing sections 93 and 94 (as substituted by section 14 of the Police Amendment Act 1989), and substituting the following sections:

“**93. Statements privileged**—Any statements made or information given in the course of submitting a personal grievance in accordance with the procedure set out in the Fifth Schedule to this Act or in any employment contract or in the course of any proceedings in respect of a personal grievance shall be absolutely privileged.

“**94. Remedies**—(1) Where the Employment Tribunal or the Employment Court determines that a member has a personal grievance, the Employment Tribunal or the Employment Court, as the case may be, may, in settling that grievance, provide for any one or more of the following remedies:

“(a) The reimbursement to the member of a sum equal to the whole or any part of the wages or other money lost by the member as a result of the grievance:

“(b) Reinstatement of the member in the member’s former position or the placement of the member in a position no less advantageous to the member:

“(c) The payment to the member of compensation by the Commissioner, including compensation for—

“(i) Humiliation, loss of dignity, and injury to the feelings of the member; and

“(ii) Loss of any benefit, whether or not of a monetary kind, which the member might reasonably have been expected to obtain if the personal grievance had not arisen:

“(d) If the Employment Tribunal or the Employment Court finds a member to have been sexually harassed in that member’s employment, recommendations to the Commissioner concerning the action the Commissioner should take in respect of the person who made the request or was guilty of the behaviour, which action may include the transfer of that person, the taking of disciplinary action against that person, or the taking of rehabilitative action in respect of that person.

“(2) Where the Employment Tribunal or the Employment Court determines that a member has a personal grievance by reason of being unjustifiably dismissed, the Employment Tribunal or the Employment Court shall, in deciding both the nature and the extent of the remedies to be provided in respect

of that personal grievance, consider the extent to which the actions of the employee contributed towards the situation that gave rise to the personal grievance, and shall if those actions so require, reduce the remedies that would otherwise have been awarded accordingly.”

14. Choice of procedures—Section 95 of the principal Act (as substituted by section 14 of the Police Amendment Act 1989) is hereby amended by adding, as subsection (2), the following subsection:

“(2) For the purposes of subsection (1) (b) of this section, a member makes a complaint when the Human Rights Commission or the Race Relations Conciliator, as the case may be, accepts the complaint for investigation.”

15. Employment Contracts Act 1991 and State Sector Act 1988 not to apply—The principal Act is hereby amended by repealing section 96 (as substituted by section 14 of the Police Amendment Act 1989), and substituting the following section:

“96. (1) Except as otherwise expressly provided in this Act, nothing in either the Employment Contracts Act 1991 or the State Sector Act 1988 shall apply to any persons employed as members of the Police under this Act.

“(2) Subject to this Part of this Act,—

“(a) Section 56 of the Employment Contracts Act 1991, with any necessary modifications, shall apply to the non-observance of or non-compliance with any provision of this Part of this Act or of an agreement under this Act:

“(b) If any person wishes to apply for review under Part I of the Judicature Amendment Act 1972, or bring proceedings seeking a writ or order of, or in the nature of, mandamus, prohibition, certiorari, or declaration or injunction, in relation to the exercise, refusal, or proposed or purported exercise by any person or body under this Part of this Act, the provisions of subsections (2) to (4) of section 105 of the Employment Contracts Act 1991 shall apply:

“(c) Part VI of the Employment Contracts Act 1991 shall apply to proceedings before the Employment Court under this Part of this Act as if such proceedings were proceedings under that Act.”

16. New Third, Fourth, and Fifth Schedules substituted—(1) The principal Act is hereby amended by repealing the Third, Fourth, and Fifth Schedules (as added by section 17 of the Police Amendment Act 1989), and substituting the Third, Fourth, and Fifth Schedules set out in the Schedule to this Act.

(2) Section 17 of, and the First Schedule to, the Police Amendment Act 1989 are hereby consequentially repealed.

SCHEDULE

Section 16

NEW THIRD, FOURTH, AND FIFTH SCHEDULES TO PRINCIPAL ACT

Section 67 (6)

“THIRD SCHEDULE

“PROCEDURE FOR CONCILIATION AND ARBITRATION

1. Initiation of negotiations for agreements—Subject to this Act, the appropriate service organisation or the Commissioner may at any time initiate negotiations for the making or renewal of an agreement under section 67 of this Act by submitting a notice to the Chief of the Employment Tribunal.

2. Contents of notice—Every notice submitted under clause 1 of this Schedule shall indicate any claims that the initiating party wishes to make against the other party and shall identify the matters that may be fixed under section 67 (3) of this Act.

3. Power to withdraw notice—The initiating party may, at any time before a settlement has been reached, withdraw a notice submitted under clause 1 of this Schedule by giving written notice to that effect to the Chief of the Employment Tribunal.

4. Service of copies of notice—Immediately after the submission of a notice under clause 1 or clause 3 of this Schedule, the party that submitted the notice shall serve a copy on the other party.

5. Duty of Chief of the Employment Tribunal—The Chief of the Employment Tribunal shall, on receiving a notice submitted under clause 1 of this Schedule, designate a member of the Employment Tribunal to facilitate negotiations in relation to the claims made by the initiating party.

6. Member of Employment Tribunal to determine date for negotiations—(1) A member of the Employment Tribunal shall, as soon as practicable after being designated by the Chief of the Employment Tribunal determine, in consultation with the representatives of the parties, a date, time, and place for negotiations.

(2) The member of the Employment Tribunal shall—

- (a) Notify the service organisation and the Commissioner of the date, time, and place determined for the negotiations; and
- (b) Notify the service organisation and the Commissioner that they may each nominate up to 10 persons as negotiators on behalf of the parties to the negotiations.

SCHEDULE—*continued*NEW THIRD, FOURTH, AND FIFTH SCHEDULES TO PRINCIPAL ACT—*continued*“THIRD SCHEDULE—*continued*”“PROCEDURE FOR CONCILIATION AND ARBITRATION—*continued*”

7. Action where member of Employment Tribunal cannot arrange for negotiations—(1) Where the member of the Employment Tribunal is unable to bring together the parties for negotiations, the member of the Employment Tribunal shall inform the arbitrating body accordingly.

(2) The arbitrating body shall then attempt to facilitate or arrange to bring together the parties for negotiations and may, for that purpose,—

(a) Give such directions incidental thereto as it thinks fit:

(b) Call on the services of the Chief of the Employment Tribunal or any other person.

(3) Subject to subclause (4) of this clause, where the arbitrating body's actions do not result in bringing together the parties for negotiations, the arbitrating body shall proceed to hear and determine those parts of the claim that may be fixed under section 67 (3) of this Act by settling those terms of the agreement.

(4) Where the arbitrating body is satisfied that the inability of the member of the Employment Tribunal or other person to bring together the parties for negotiations was caused by the party which initiated the negotiations for an agreement under clause 1 of this Schedule, the arbitrating body—

(a) Shall not proceed to hear and determine the claim under subclause (3) of this clause; and

(b) Shall regard the notice submitted under clause 1 of this Schedule as being withdrawn and shall notify the parties to the negotiations accordingly.

(5) Where the parties to negotiations are notified under subclause (4) of this clause, those negotiations shall lapse.

8. Negotiators—(1) No barrister or solicitor who holds a practising certificate for the time being in force under the Law Practitioners Act 1982, whether that barrister or solicitor is acting under a power of attorney or otherwise, shall be allowed to act as a negotiator unless the parties agree.

(2) Nothing in subclause (1) of this clause prevents a person acting as a negotiator where that person is acting substantially as an employer or employee rather than as a barrister or solicitor.

(3) The member of the Employment Tribunal may permit any other person to act for a negotiator who is unable to attend any negotiations.

(4) The powers and functions of the parties to negotiate the claim, and of the member of the Employment Tribunal, shall not be affected by any vacancy in the office of negotiator for either party.

9. Powers and functions of member of Employment Tribunal—

(1) The member of the Employment Tribunal shall make every endeavour to bring about a settlement of the claim.

(2) The member of the Employment Tribunal shall determine, in consultation with the appropriate service organisation and the Commissioner, the procedures to be followed in the negotiations.

SCHEDULE—*continued*NEW THIRD, FOURTH, AND FIFTH SCHEDULES TO PRINCIPAL ACT—*continued*“THIRD SCHEDULE—*continued*“PROCEDURE FOR CONCILIATION AND ARBITRATION—*continued*

(3) The member of the Employment Tribunal may from time to time adjourn the negotiations.

(4) The member of the Employment Tribunal shall make and preserve a record of the negotiations.

(5) The member of the Employment Tribunal may at any time, of the member's own volition or at the joint request of the parties, state a case for the advice or opinion of the Employment Court.

10. Settlement—(1) If a settlement of the claim is arrived at in negotiations, the member of the Employment Tribunal shall record in writing the terms of settlement, which shall be signed and dated by—

(a) The member of the Employment Tribunal; and

(b) An authorised representative of the appropriate service organisation; and

(c) An authorised representative of the Commissioner.

(2) The terms of settlement shall be given by the member of the Employment Tribunal to—

(a) The representatives of the parties; and

(b) The Chief of the Employment Tribunal.

11. Unsettled disputes—If the claim to which this Schedule applies is not settled by negotiations, the member of the Employment Tribunal shall refer the claim to the arbitrating body.

12. Statement as to state of negotiations—(1) The appropriate service organisation and the Commissioner shall each provide the arbitrating body with a signed statement as to—

(a) The state of the negotiations; and

(b) The issues in dispute, identifying the matters that may be fixed under section 67 (3) of this Act.

(2) The statement shall indicate, among other things, whether or not a partial settlement has been reached.

13. Copies of statement—A copy of the statement shall be forwarded to the other party at the same time as it is provided to the arbitrating body.

14. Power of arbitrating body to determine dispute where parties agree—If the parties agree in writing, the arbitrating body, after giving the parties an opportunity to be heard, shall, subject to the provisions of this Schedule, hear and determine the claim by deciding the conditions of employment that may be included in the agreement under section 67 (3) of this Act.

15. Duty of arbitrating body where power to determine dispute not conferred on it—If the parties do not agree to the claim being heard and determined by the arbitrating body, the arbitrating body shall forthwith call the parties to a meeting for the purpose of determining the most appropriate method of resolving the dispute.

SCHEDULE—*continued*NEW THIRD, FOURTH, AND FIFTH SCHEDULES TO PRINCIPAL ACT—*continued*“THIRD SCHEDULE—*continued*”“PROCEDURE FOR CONCILIATION AND ARBITRATION—*continued*”

16. Hearing by the arbitrating body—At any such meeting the arbitrating body shall hear the parties and may do all or any of the following:

- (a) Refer the dispute to the Chief of the Employment Tribunal to arrange (by delegation if necessary) for further negotiations between the parties to try and resolve the dispute:
- (b) Consult such organisations as may be appropriate with a view to ascertaining whether they could assist in resolving the dispute:
- (c) With the written consent of the parties, refer it to the arbitrating body to hear and determine the matters that may be fixed under section 67 (3) of this Act:
- (d) Take such other action as the arbitrating body considers in all the circumstances might assist to resolve the dispute.

17. Other actions of arbitrating body—Any action or actions taken by the arbitrating body under clause 16 of this Schedule shall not preclude the arbitrating body from taking any further action under that clause.

18. Lapse of negotiations—Where, in respect of any dispute,—

- (a) The arbitrating body has exercised any or all of the powers conferred by clause 16 of this Schedule; and
- (b) The arbitrating body is satisfied that no action short of hearing and determining the dispute will settle it; and
- (c) The parties do not agree to the dispute being heard and determined by the arbitrating body,—

those matters which may be fixed under section 67 (3) of this Act and which remain in dispute shall be referred to compulsory arbitration in accordance with clauses 19 to 26 of this Schedule. All other matters raised in the claim shall lapse.

19. Arbitrating body—(1) The arbitrating body, for the purposes of the compulsory arbitration, shall be a committee appointed from time to time under this clause.

(2) The Committee shall consist of—

- (a) An equal number of representatives (not exceeding 2) nominated respectively by the service organisations jointly and the Commissioner; and
- (b) A person to chair the committee, who shall be either a person mutually agreed by the service organisations and the Commissioner or a member of the Employment Tribunal or other person appointed by the Chief of the Employment Tribunal.

(3) The members of the committee shall be appointed from time to time by the Chief of the Employment Tribunal.

(4) If the service organisations or the Commissioner fail to make nominations for the purposes of subclause (2) (a) of this clause or act in such a way that the committee cannot be established, in accordance with subclause (2) of this clause, the Chief of the Employment Tribunal shall

SCHEDULE—*continued*NEW THIRD, FOURTH, AND FIFTH SCHEDULES TO PRINCIPAL ACT—*continued*“THIRD SCHEDULE—*continued*”“PROCEDURE FOR CONCILIATION AND ARBITRATION—*continued*”

appoint as members of the committee such persons as the Chief of the Employment Tribunal thinks fit.

(5) The members of the committee shall hold office at the pleasure of the Chief of the Employment Tribunal.

20. Statement as to state of negotiations—The appropriate service organisation and the Commissioner shall each provide the arbitrating body with a signed statement as to—

- (a) The issues in dispute in accordance with clause 18 of this Schedule; and
- (b) The position on those issues of the party providing the statement; and
- (c) Full particulars of the final offer being made by the party providing the statement.

21. Copies of statement—When the arbitrating body has received both of the statements required under clause 20 of this Schedule, it shall supply—

- (a) A copy of the service organisation’s statement to the Commissioner; and
- (b) A copy of the Commissioner’s statement to the service organisation.

22. Hearing and determination of dispute—(1) The arbitrating body, after giving the parties an opportunity to be heard, shall, subject to the provisions of this Schedule, hear and determine the dispute and settle the terms of the agreement.

(2) The arbitrating body shall, at the conclusion of the hearing and before making its determination, give each of the parties the opportunity to restate in writing, within a specified time or before a specified date, its final offer.

(3) Where any party so restates its final offer, the offer as restated shall be that party’s final offer for the purposes of clause 25 of this Schedule.

23. Criteria to be observed by arbitrating body—The arbitrating body, in hearing and determining a dispute in relation to a proposed agreement, shall have regard to—

- (a) The supply and demand factors for the skills of the members covered by the proposed agreement; and
- (b) The need for fairness and equity in the rate of pay and conditions of employment for work covered by the proposed agreement; and
- (c) Any changes in the content of any job or in the skills, duties, or responsibilities of positions covered by the proposed agreement; and
- (d) Any changes in productivity arising from, for example, the introduction of new technology; and
- (e) Relativities within the proposed agreement, and between it and other awards and agreements; and
- (f) The special conditions applicable to employment as a member of the Police; and

SCHEDULE—*continued*NEW THIRD, FOURTH, AND FIFTH SCHEDULES TO PRINCIPAL ACT—*continued*“THIRD SCHEDULE—*continued*“PROCEDURE FOR CONCILIATION AND ARBITRATION—*continued*

- (g) Such other matters as the Commissioner or the arbitrating body, as the case may be, considers relevant, or as may be agreed upon between the Commissioner and the appropriate service organisation.

24. Application of criteria—In applying the criteria, the arbitrating body—

- (a) Shall not be bound by historical precedent and practice of any sort; and
 (b) Shall consider whether relativities or conditions of employment should be changed to take account of factors that are specific to the work covered by the proposed agreement; and
 (c) Shall not have any regard whatsoever to any matters that remained in dispute but were not matters that may be fixed under section 67 (3) of this Act.

25. Duty of arbitrating body to accept one final offer—(1) In determining any dispute under this Schedule, the arbitrating body shall accept either the final position adopted by the service organisation or the final position adopted by the Commissioner.

(2) The arbitrating body must accept in full the final offer made by one of the parties.

(3) The arbitrating body may not adopt only a part or parts of one final offer and a part of the other final offer.

26. Right of parties to agree on other methods—Nothing in this Schedule prevents the parties from agreeing to have the dispute or any issues in dispute determined in a way different from that set out in clauses 19 to 25 of this Schedule.

27. Power of arbitrating body to waive technical irregularities—The arbitrating body in its discretion may waive any technical irregularity or omission that may have occurred in the submission or reference of a dispute of interest to the arbitrating body, if it is satisfied that the provisions of this Act have been substantially complied with.

SCHEDULE—*continued*NEW THIRD, FOURTH, AND FIFTH SCHEDULES TO PRINCIPAL ACT—*continued*

Section 83

“FOURTH SCHEDULE

“PROCEDURE FOR SETTLEMENT OF DISPUTES FOR SWORN MEMBERS OF THE
POLICE

1. Application of procedure—The procedure set out in this Schedule shall, in accordance with section 83 of this Act, be available for settling any dispute about the interpretation, application, or operation of any provisions of any agreement or employment contract applying to sworn members of the Police.

2. Persons who may invoke procedure—Any person being—

(a) The Commissioner; or

(b) A sworn member of the Police to whom the agreement or the employment contract applies,—

may invoke the procedure.

3. Submission of dispute to other party—The party invoking the procedure shall advise the other party to the contract of—

(a) The existence of the dispute; and

(b) The basis of the dispute; and

(c) The solution sought in respect of the dispute.

4. Meetings—The parties shall then meet to discuss the dispute.

5. Written statement—If the parties fail to resolve the dispute, the party who invoked the procedure shall give to the other party or parties a written statement setting out—

(a) The nature of the dispute; and

(b) The relevant facts in relation to the dispute; and

(c) The solution sought in respect of the dispute.

6. Response—If the other party is not prepared or able to provide the solution sought, and the dispute has not otherwise been settled, the other party shall, not later than the 14th day after the day of receiving the written statement of the dispute under clause 5, provide a written response setting out—

(a) That party's view of the facts; and

(b) The reason why that party is not prepared or able to provide the solution sought.

7. Waiver of written statements—Where the parties agree in writing that the exchange of written statements under the preceding provisions is inappropriate or unnecessary, they may dispense with those parts of the procedure.

8. Power to refer dispute to Employment Tribunal—If—

(a) The party invoking the procedure is not satisfied with the other party's written response; or

(b) The other party fails to provide, within the 14-day period required, a written response; or

(c) The parties have agreed to waive the requirement for an exchange of written statements and the party invoking the procedure is not satisfied that the dispute has been resolved,—

SCHEDULE—*continued*NEW THIRD, FOURTH, AND FIFTH SCHEDULES TO PRINCIPAL ACT—*continued*“FOURTH SCHEDULE—*continued*”“PROCEDURE FOR SETTLEMENT OF DISPUTES FOR SWORN MEMBERS OF THE POLICE—*continued*”

the party invoking the procedure may refer the dispute to the Employment Tribunal in the prescribed manner.

9. Role of Employment Tribunal—The Employment Tribunal shall, as soon as practicable,—

- (a) Where appropriate, provide mediation assistance to the parties; and
- (b) If necessary, proceed to adjudicate on the dispute and, in doing so, shall consider—
 - (i) The written statement (if any); and
 - (ii) The written response (if any); and
 - (iii) Any evidence or submissions given by or on behalf of the parties; and
 - (iv) Such other matters as the Employment Tribunal thinks fit.

10. Representation—(1) Where this Schedule confers on any sworn member of the Police the right to do anything or take any action—

- (a) In respect of the Commissioner; or
 - (b) In the Employment Tribunal or the Employment Court,—
 - that sworn member of the Police may choose any other person to represent that sworn member of the Police for the purpose.
 - (2) Any person purporting to represent any sworn member of the Police shall establish that person’s authority for that representation.
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SCHEDULE—*continued*NEW THIRD, FOURTH, AND FIFTH SCHEDULES TO PRINCIPAL ACT—*continued*

Section 87 (1)

“FIFTH SCHEDULE

“PROCEDURE IN RELATION TO PERSONAL GRIEVANCES (SWORN MEMBERS OF THE POLICE)

1. Application of procedure—The procedure set out in this Schedule shall apply in relation to personal grievances under section 87 of this Act.

2. Submission of grievance to Commissioner—Any sworn member of the Police who considers that he or she has grounds for a personal grievance may submit the grievance to the Commissioner or a representative of the Commissioner.

3. Time within which personal grievance must be submitted—
(1) The grievance shall be so submitted within the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance has occurred or has come to the notice of the sworn member of the Police, whichever is the later, so as to enable the Commissioner to remedy the grievance rapidly and as near as possible to the point of origin.

(2) If the grievance is not submitted within the time prescribed in subclause (1) of this clause, the Commissioner shall not be obliged to consider the grievance of the sworn member of the Police, unless—

- (a) The Commissioner consents to the personal grievance being submitted after the expiration of the 90 day period; or
- (b) The Employment Tribunal grants the sworn member of the Police leave to submit the personal grievance after the expiration of the 90 day period.

(3) Where a personal grievance is submitted in accordance with paragraph (a) or paragraph (b) of subclause (2) of this clause, the provisions set out below shall apply to that personal grievance.

4. Power of Tribunal to grant leave—Where, on an application by a sworn member of the Police for leave under clause 3 (2) (b) of this Schedule, the Tribunal, after giving the sworn member an opportunity to be heard—

- (a) Is satisfied the delay in submitting the personal grievance was occasioned by exceptional circumstances; and
 - (b) Considers it just to do so,—
- the Tribunal may grant leave accordingly, subject to such conditions (if any) as it thinks fit.

5. Written statement of sworn member of the Police—If the grievance is not settled in discussions between the sworn member of the Police and the Commissioner, the sworn member of the Police shall promptly give to the Commissioner a written statement setting out—

- (a) The nature of the grievance; and
- (b) The facts giving rise to the grievance; and
- (c) The remedy sought.

6. Commissioner's response—If the Commissioner is not prepared to grant the remedy sought, and the parties have not otherwise settled the grievance, the Commissioner shall as soon as possible, but in any event not

SCHEDULE—*continued*NEW THIRD, FOURTH, AND FIFTH SCHEDULES TO PRINCIPAL ACT—*continued*“FIFTH SCHEDULE—*continued*”“PROCEDURE IN RELATION TO PERSONAL GRIEVANCES (SWORN MEMBERS OF THE POLICE)—*continued*”

later than the 14th day after the day on which the Commissioner receives the written statement of the sworn member of the Police, give to the sworn member of the Police a written response setting out—

- (a) The Commissioner’s view of the facts; and
- (b) The reasons why the Commissioner is not prepared to grant the remedy sought.

7. Written statements waived—Where the sworn member of the Police and the Commissioner agree in writing that the exchange of written statements under the preceding provisions is inappropriate or unnecessary, that agreement shall not in any way affect the further application of this procedure.

8. Power to refer personal grievance to Employment Tribunal—
If—

- (a) The sworn member of the Police is not satisfied with the Commissioner’s written response; or
- (b) The Commissioner fails to provide, within 14 days after the day on which the Commissioner receives the written statement of the sworn member of the Police, a written response; or
- (c) The Commissioner and the sworn member of the Police have agreed to waive the requirement for an exchange of written statements and the sworn member of the Police is not satisfied with the Commissioner’s response to the grievance,—

the sworn member of the Police may refer the grievance to the Employment Tribunal in the prescribed manner.

9. Role of Employment Tribunal—The Employment Tribunal shall, as soon as practicable,—

- (a) Where appropriate, provide mediation assistance to the parties; and
- (b) If necessary, proceed to adjudicate on the grievance and, in doing so, shall consider—
 - (i) The sworn member’s written statement (if any); and
 - (ii) The Commissioner’s written response (if any); and
 - (iii) Any evidence or submissions given by or on behalf of the parties; and
 - (iv) Such other matters as the Employment Tribunal thinks fit.

10. Representation—(1) Where this Schedule confers on any sworn member of the Police the right to do anything or take any action—

- (a) In respect of the Commissioner; or
- (b) In the Employment Tribunal or the Employment Court,—

that sworn member of the Police may choose any other person to represent that sworn member of the Police for the purpose.

(2) Any person purporting to represent any sworn member of the Police shall establish that person’s authority for that representation.”