

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 15 October 1987.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. Peter Tapsell

**POLICE COMPLAINTS AUTHORITY AND
MISCELLANEOUS AMENDMENTS**

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*Police Complaints Authority and
Miscellaneous Amendments*

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A BILL INTITULED

An Act to make better provision for the investigation and resolution of complaints against the Police by establishing an independent Police Complaints Authority, and to amend the Police Act 1958

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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 Complaints Authority and Miscellaneous Amendments Act 1987.

(2) Subject to subsection (3) of this section, this Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

New

(3) Part I of this Act shall come into force on a date to be fixed by the Governor-General by Order in Council.

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PART I

POLICE COMPLAINTS AUTHORITY

2. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Authority” means the Police Complaints Authority established under section 4 of this Act:

“Commissioner” means the Commissioner of Police appointed under the Police Act 1958:

5 “Deputy Authority” means the person appointed as the deputy to the Police Complaints Authority under section 8 of this Act.

3. Act to bind the Crown—This Part of this Act shall bind the Crown.

Police Complaints Authority

4. Police Complaints Authority—(1) There shall be an
10 authority to be known as the Police Complaints Authority.

(2) The Authority shall be a person appointed by the Governor-General on the recommendation of the House of Representatives.

(3) No person shall be appointed as the Authority unless that
15 person—

(a) Is qualified as a barrister or solicitor of the High Court; and

(b) Possesses suitable legal experience for the task.

(4) The appointment of a Judge as the Authority shall not
20 affect the Judge’s tenure of judicial office, rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as a Judge (including matters relating to superannuation) and, for all purposes, service by a Judge as the Authority shall be taken to be service as a Judge.

25 (5) No person shall be deemed to be employed in the service of the Crown for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956 by reason of that person’s appointment as the Authority.

5. Term of office of Authority—(1) Every person
30 appointed as the Authority shall be appointed for a term of not less than 2 years and not more than 5 years, and may be reappointed.

(2) Every person appointed as the Authority shall, unless
35 sooner vacating office by death, resignation, removal, or failure to be confirmed in office under section 7 (3) of this Act, continue to hold office, notwithstanding the expiry of that person’s term of appointment, until—

(a) Reappointment as the Authority; or

(b) Appointment of a successor; or

- (c) The person is informed in writing by the Minister of Justice that the person is not to be reappointed and is not to hold office until a successor is appointed.
- (3) The person appointed as the Authority—
- (a) May resign the office at any time by written notice given to the Governor-General: 5
- (b) Shall resign the office on attaining the age of 72 years.

6. Power to remove or suspend Authority—The person appointed as the Authority may be removed or suspended from office by the Governor-General, upon an address from the House of Representatives, for disability, bankruptcy, neglect of duty, or misconduct. 10

7. Filling of vacancy—(1) Where any vacancy occurs in the office of Authority, the vacancy shall, subject to subsection (2) of this section, be filled by the appointment of a successor by the Governor-General on the recommendation of the House of Representatives. 15

(2) Where—

(a) A vacancy occurs while Parliament is not in session, or exists at the close of a session; and 20

(b) The House of Representatives has not recommended an appointment to fill the vacancy,—

the vacancy may, at any time before the commencement of the next ensuing session of Parliament, be filled by the appointment of a successor by the Governor-General in Council. 25

(3) Any appointment made under subsection (2) of this section shall lapse and the office shall again become vacant unless, before the end of the 24th sitting day of the House of Representatives following the date of the appointment, the House confirms the appointment. 30

8. Deputy Police Complaints Authority—(1) There may from time to time be appointed a deputy to the person appointed as the Police Complaints Authority, who, subject to the control of the Authority, shall have and may exercise all the powers, duties, and functions of the Authority under this Act (including the power of delegation conferred by section 37A of this Act). 35

(2) The Deputy Authority shall be appointed in the same manner as the Authority, and sections 4 to 7 of this Act shall 40

apply to the Deputy Authority in the same manner as they apply to the Authority.

(3) On the occurrence from any cause of a vacancy in the office of Authority, and in case of the absence from duty of the
5 person appointed as the Authority (from whatever cause arising), and for so long as any such vacancy or absence continues, the Deputy Authority shall have and may exercise all the powers, duties, and functions of the Authority.

(4) The fact that the Deputy Authority exercises any power,
10 duty, or function of the Authority shall be conclusive evidence of his or her authority to do so.

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9. Oath to be taken by Authority and Deputy Authority—(1) Before entering upon the exercise of duties
15 under this Act, every person appointed as the Authority, or as Deputy Authority, shall take an oath that he or she will faithfully and impartially perform the duties of that office, and will not, except in accordance with the provisions of this Act, divulge any information received by that person under this Act.
20 (2) The oath shall be administered by the Speaker or the Clerk of the House of Representatives.

10. Salaries and allowances—(1) There shall be paid to the Authority and the Deputy Authority—
25 (a) A salary at such rate as the Higher Salaries Commission from time to time determines; and
(b) Such allowances as are from time to time determined by the Higher Salaries Commission.
(2) There shall also be paid to the Authority and the Deputy
30 Authority, in respect of time spent in travelling in the exercise of their functions, travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Authority or the Deputy Authority were a member of a statutory Board and the travelling were in the service of the
35 statutory Board.

11. Staff—(1) Subject to the provisions of this section, the Authority may appoint such officers and employees as may be

necessary for the efficient carrying out of its functions, powers, and duties under this Act.

(2) The number of persons that may be appointed under this section, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Minister of Justice. 5

(3) Officers and employees appointed under **subsection (1)** of this section shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Authority from time to time determines in agreement with the State Services Commission, or as the Minister of Justice from time to time determines in any case where the Authority and the State Services Commission fail to agree. 10

(4) No person shall be deemed to be employed in the service of the Crown for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956 by reason of that person's appointment under this section. 15

12. Superannuation or retiring allowances of Authority, Deputy Authority, and staff—For the purpose of providing a superannuation fund or retiring allowance for the Authority, the Deputy Authority, and any officer or employee of the Authority, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this section. 20 25

Functions of Authority

13. Functions of Authority—(1) The functions of the Authority shall be—

- (a) To receive complaints— 30
 - (i) Alleging any misconduct or neglect of duty by any member of the Police; or
 - (ii) Concerning any practice, policy, or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity: 35
- (b) To investigate of its own motion, where it is satisfied that there are reasonable grounds to carry out an investigation in the public interest, any incident involving death or serious (*injury*) bodily harm notified to the Authority by the Commissioner under section 14 of this Act: 40

- (c) To take such action in respect of complaints, incidents, and other matters as is contemplated by this Act.

New

(1A) In the course of taking action in respect of any
5 complaint the Authority may investigate any apparent
misconduct or neglect of duty by a member of the Police, or
any Police practice, policy, or procedure, which appears to the
Authority to relate to the complaint, notwithstanding that the
complaint itself does not refer to that misconduct, neglect,
10 practice, policy, or procedure.

(2) Nothing in subsection (1) of this section shall authorise the Authority to investigate any matter relating to the terms and conditions of service of any person as a member of the Police.

**14. Duty of Commissioner to notify Authority of
15 certain incidents involving death or serious bodily
harm**—Where a member of the Police acting in the execution
of the member's duty causes, or appears to have caused, death
or serious (*injury*) bodily harm to any person, the
Commissioner shall as soon as practicable give to the Authority
20 a written notice setting out particulars of the incident in which
the death or serious (*injury*) bodily harm was caused.

15. Mode of complaint—(1) A complaint may be made either orally or in writing.

(2) A complaint made orally shall be reduced to writing as
25 soon as practicable.

(3) A complaint may be made to the Authority, to any member of the Police, to an Ombudsman, or, where the complaint is in writing, to the Registrar or Deputy Registrar of any District Court.

(4) Any Ombudsman or Registrar or Deputy Registrar to whom a complaint is made shall forward it to the Authority as soon as (*possible*) practicable.

(5) Notwithstanding any provision in any enactment, where any letter appearing to be written by or on behalf of—

35 (a) A person in custody on a charge or after conviction of any offence; or

(b) A patient of any hospital within the meaning of the Mental Health Act 1969,—

is addressed to the Authority, the person for the time being in charge of the place or institution where the person is in custody or is a patient shall immediately forward the letter, unopened, to the Authority.

16. Duty of Commissioner to notify Authority of complaints—The Commissioner shall notify the Authority as soon as practicable of every complaint received by the Police, other than a complaint notified to the Commissioner by the Authority. 5

17. Duty of Authority to notify Commissioner of complaints—The Authority shall notify the Commissioner as soon as practicable of every complaint received by it, other than a complaint notified to it by the Commissioner. 10

18. Action upon receipt of complaint—(1) On receiving or being notified of a complaint under this Act, the Authority may do all or any of the following: 15

(a) Investigate the complaint itself, whether or not the Police have commenced a Police investigation:

(b) Defer action until the receipt of a Police report on a Police investigation of the complaint: 20

(c) Oversee a Police investigation of the complaint:

(d) Decide, in accordance with **section 19** of this Act, to take no action on the complaint.

(2) The Authority shall, as soon as practicable, advise the Commissioner and the complainant of the procedure it proposes to adopt under **subsection (1)** of this section. 25

(3) Where any complaint appears to the Authority to be capable of resolution by conciliation in accordance with any (general instructions issued under section 30 of) conciliation procedure established by or under the Police Act 1958, it may indicate that view to the Commissioner. 30

19. Authority may decide to take no action on complaint—(1) The Authority may in its discretion decide to take no action, or, as the case may require, no further action, on any complaint if— 35

(a) The complaint relates to a matter of which the person alleged to be aggrieved has had knowledge for more than 12 months before the complaint was made; or

(b) In the opinion of the Authority—

(i) The subject-matter of the complaint is trivial; or 40

(ii) The complaint is frivolous or vexatious or is not made in good faith; or

(iii) The person alleged to be aggrieved does not desire that action be taken or, as the case may be, continued; or

(iv) The identity of the complainant is unknown and investigation of the complaint would thereby be substantially impeded; or

(v) There is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives, which it would be reasonable for the person alleged to be aggrieved to exercise.

(2) The Authority may decide not to take any further action on a complaint if, in the course of the investigation of the complaint by the Authority or the Police, or as a result of the Police report on a Police investigation, it appears to the Authority that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

(3) In any case where the Authority decides to take no action, or no further action, on a complaint, it shall inform the complainant of that decision and the reasons for it.

20. Subsequent powers in relation to complaint—The Authority may at any time—

(a) Review a Police investigation of a complaint:

(b) Decide to investigate a complaint itself:

(c) Where it oversees a Police investigation, give such directions to the Police concerning the investigation as it thinks fit:

(d) Direct the Police to re-open an investigation, and thereafter oversee the investigation:

(e) Direct the Police to reconsider their proposals for action on a complaint:

(f) Decide, in accordance with **section 19** of this Act, to take no further action on the complaint:

(g) Decide that no action by the Authority is required on the ground that it considers that the outcome of a Police investigation is satisfactory.

21. Duty of Commissioner to report to Authority on Police investigation of complaint—(1) The *(Police) Commissioner* shall as soon as practicable, and in no case later

than (3) 2 months, after the completion of a Police investigation of a complaint, report to the Authority—

(a) Whether the complaint has been upheld and, if so, what action has been taken or is proposed to be taken to rectify the matter: 5

(b) Whether the complaint has been settled by conciliation.

(2) When reporting to the Authority under this section, the (Police) Commissioner shall supply to the Authority accompanying material sufficient to enable the Authority to assess the adequacy of the Police investigation. 10

(3) The (Police) Commissioner may consult the Authority on (their) any Police proposals for action on a complaint before reporting to the Authority under this section.

22. Commissioner to provide information and assistance at request of Authority— 15

(1) The Commissioner shall, (where) whenever the Authority so requests, provide to the Authority all such information and assistance as is necessary for the proper performance by the Authority of its functions in relation to its investigation of any complaint, incident, or other matter under this Act. 20

(2) Where the Authority oversees a Police investigation of a complaint, the Commissioner shall, (where) whenever the Authority so requests, provide to the Authority—

(a) Any or all information in the possession or under the control of the Police that is relevant to the complaint: 25

(b) A report on the progress of the investigation.

23. Power of Police to investigate complaints and other matters— 30

(1) Nothing in this Act shall prevent the Commissioner from commencing or continuing a Police investigation into any complaint, incident, or other matter. 30

(2) If, either before or after the commencement of a Police investigation, the Commissioner forms a view that the complaint, incident, or other matter should be investigated by the Authority, the Commissioner may request the Authority to do so. 35

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24. Procedure where complaint or other matter appears to be outside jurisdiction of Authority—

(1) Where a complaint has been received by or notified to the

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Authority, and it appears to the Authority that it has no jurisdiction to investigate the complaint, the Authority shall—

- (a) Notify the complainant in writing accordingly; and
 - 5 (b) Inform the complainant of the right to make a complaint under the Ombudsmen Act 1975; and
 - (c) Where the complainant so requests, forward the complaint to an Ombudsman.
- (2) The Chief Ombudsman may, in respect of any complaint
10 or other matter relating to the Police, request the opinion of the Authority on whether an investigation into that complaint or other matter is within the jurisdiction of the Authority, and the Authority shall, as soon as practicable, notify the Chief Ombudsman in writing of its view.
- 15 (3) The Authority may at any time, by notice in writing to the Chief Ombudsman, request that any complaint or other matter relating to the Police be investigated by an Ombudsman.

Proceedings of Authority

25. Proceedings of Authority—(1) Before proceeding to
20 investigate any matter under this Act the Authority shall inform the Commissioner, the complainant (if any), and, unless the interests of justice otherwise require, any person alleged to be aggrieved (if not the complainant) of its intentions to make the investigation.

25 (2) Every investigation by the Authority under this Act shall be conducted in private.

(3) Subject to **section 33** of this Act,—

- 30 (a) The Authority may hear or obtain information from such person as it thinks fit, including, where it considers that cultural matters are a factor relevant to a complaint or investigation, information from such persons as the Authority thinks have knowledge or experience in those matters:
- (b) It shall not be necessary for the Authority to hold any
35 hearing:
- (c) No person shall be entitled as of right to be heard by the Authority.

26. Powers of Authority in relation to investigations—

(1) The Authority may require any person who in its opinion is

able to give information relating to any matter under investigation by the Authority to furnish such information, and to produce such documents or things in the possession or under the control of that person, as in the opinion of the Authority are relevant to the subject-matter of the investigation. 5

(2) The Authority may summon before it and examine on oath any person who in its opinion is able to give any information relating to the matter under investigation, and may for the purpose administer an oath to any person so summoned. 10

(3) Every (*investigation*) such examination by the Authority shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury). 10

27. Protection and privileges of witnesses, etc.—

(1) Except as provided in **subsection (2)** of this section and in **section 28 (2)** of this Act, every person shall have the same privileges in relation to the giving of information to the Authority, the answering of questions put by the Authority, and the production of documents and things to the Authority, as witnesses have in any Court. 15 20

(2) Where the Authority requires any person to give any information or produce any document or thing, and compliance with that requirement would breach an obligation of secrecy or non-disclosure imposed on that person by or under any enactment,— 25

(a) The existence of the obligation shall not constitute a ground for refusal or failure to give the information or produce the document or thing, as the case may be; and

(b) Compliance with any such requirement is not a breach of the relevant obligation of secrecy or non-disclosure, or of the enactment or provision by which that obligation is imposed. 30

(3) No person shall be liable to prosecution for an offence against any enactment, other than **section 38** of this Act, by reason of that person's compliance with any requirement of the Authority under **section 26** of this Act. 35

(4) Except in proceedings for perjury within the meaning of the Crimes Act 1961 in respect of sworn testimony given before the Authority, or for an offence against **section 38** of this Act,— 40

(a) No statement made or answer given by any person in the course of any investigation by or proceedings before the Authority shall be admissible in evidence against

that or any other person in any Court or in any inquiry or other proceeding; and

(b) No evidence in respect of proceedings before the Authority shall be given against any person.

5 (5) Where the attendance of any person is required by the Authority under **section 26** of this Act, the person shall be entitled to the same fees, allowances, and expenses as if the person were a witness in a Court and, for the purpose,—

10 (a) The provisions of any regulations in that behalf under the Summary Proceedings Act 1957 shall apply accordingly; and

(b) The Authority shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or to increase, any amounts payable under the regulations.

28. Disclosure of certain matters not to be required—

(1) Where—

(a) The Prime Minister certifies that the giving of any information or the production of any document or thing might prejudice—

(i) The security or defence of New Zealand, or the international relations of the Government of New Zealand; or

25 (ii) Any interest protected by section 7 of the Official Information Act 1982 (which relates to the Cook Islands, Niue, Tokelau, and the Ross Dependency); or

(b) The Attorney-General certifies that the giving of any information or the production of any document or thing—

(i) Might prejudice the prevention, investigation, or detection of offences; or

35 (ii) Might involve the disclosure of proceedings of Cabinet, or any committee of Cabinet, relating to matters of a secret or confidential nature, and such disclosure would be injurious to the public interest,—

the Authority shall not require the information to be given, or, as the case may be, the document or thing to be produced.

40 (2) Except as provided in **subsection (1)** of this section, the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest, shall not

apply in respect of any investigation by or proceedings before the Authority.

Procedure on Completion of Investigation

29. Procedure after investigation by Authority—

(1) Where the Authority itself undertakes an investigation under this Act it shall form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which was the subject-matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable.

(2) The Authority shall convey its opinion, with reasons, to the Commissioner, and may make such recommendations as it thinks fit, including a recommendation that disciplinary or criminal proceedings be considered or instituted against any member of the Police.

30. Procedure after investigation by Police—

(1) Where the Police report to the Authority, pursuant to section 21 of this Act, on a Police investigation of a complaint, the Authority shall form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which was the subject-matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable.

(2) After considering the Police report and forming its opinion, the Authority—

(a) Shall indicate to the Commissioner whether or not it agrees with the Commissioner's decision or proposed decision in respect of the complaint:

(b) May, where it disagrees with the Commissioner's decision or proposed decision, make such recommendations, supported by reasons, as it thinks fit, including a recommendation that disciplinary or criminal proceedings be considered or instituted against any member of the Police.

31. Implementation of recommendations of Authority—(1) The Commissioner shall, as soon as reasonably practicable after receiving any recommendation of the Authority under section 29 (2) or section 30 (2) of this Act,—

(a) Notify the Authority of the action (if any) proposed to be taken to give effect to the recommendation; and

- (b) Give reasons for any proposal to depart from, or not to implement, any such recommendation.
- (2) If, within a reasonable time after a recommendation is made, no action is taken which seems to the Authority to be adequate and appropriate, the Authority may, after considering any comments made by the Commissioner,—
- (a) Send a copy of its opinion and recommendations on the matter, together with the comments of the Commissioner, to the Attorney-General and the Minister of Police; and
- (b) Where it considers it appropriate, transmit to the Attorney-General for tabling in the House of Representatives such report on the matter as it thinks fit.
- (3) The Attorney-General shall, as soon as practicable after receiving a report under subsection 2 (b) of this section, lay the report before the House of Representatives.

32. Parties to be informed of progress and result of investigation—Where the Authority investigates a complaint, it shall—

- (a) Conduct the investigation with due expedition; and
- (b) If it seems appropriate, inform the complainant and the Commissioner of the progress of the investigation; and
- (c) In every case inform the parties concerned, as soon as reasonably practicable after the conclusion of the investigation, and in such manner as it thinks proper, of the result of the investigation.

33. Adverse comment—The Authority shall not, in any opinion or recommendation given under section 29 or section 30 of this Act, or in any report made or published under section 31 or section 36 of this Act, make any comment that is adverse to any person unless that person has been given a reasonable opportunity to be heard.

Miscellaneous Provisions

34. Authority and staff to maintain secrecy—(1) The Authority, and every person holding any office or appointment under the Authority, shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions, and shall not communicate any such matter to any

person except for the purpose of carrying out their functions under or giving effect to this Part of this Act.

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(2) Every person holding any office or appointment under the Authority shall, before entering upon any official duty under this Act, take an oath, to be administered by the Authority or Deputy Authority, that that person will not divulge any information received by that person under this Act except for the purpose of giving effect to **this Part** of this Act. 5

(3) Notwithstanding **subsection (1)** of this section, the Authority may disclose such matters as in the opinion of the Authority ought to be disclosed— 10

(a) For the purposes of carrying out an investigation or other duty of the Authority under this Act; or

(b) In order to establish grounds for the Authority's conclusions and recommendations,— 15
other than any matter which is likely to prejudice any of the interests described in **subsection (1) of section 28** of this Act, whether or not any certificate has been given under that subsection. 20

(4) The Authority, and every person holding any office or appointment under the Authority, shall be deemed for the purposes of sections 105 and 105A of the Crimes Act 1961 to be officials.

35. Proceedings privileged—(1) Subject to **subsection (2)** of this section,— 25

(a) No proceedings, civil or criminal, shall lie against the Authority, or against any person holding any office or appointment under the Authority, for anything done or reported or said by the Authority or person in the course of the exercise or intended exercise of their functions under **this Part** of this Act, unless it is shown that the Authority or person acted in bad faith: 30

(b) Neither the Authority, nor any person holding any office or appointment under the Authority, shall 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 Part** of this Act. 35

(2) Nothing in **subsection (1)** of this section applies in respect of proceedings for—

- (a) An offence against section 78 or section 78A (1) or section 105 or section 105A of the Crimes Act 1961; or
- 5 (b) The offence of conspiring to commit an offence against section 78 or section 78A (1) or section 15 or section 105A of the Crimes Act 1961; or
- (c) The offence of attempting to commit an offence against section 78 or section 78A (1) or section 105 or section
- 10 105A of the Crimes Act 1961; or
- (d) An offence against **section 38** of this Act.

(3) Anything said or any information given or any document or thing produced by any person in the course of any investigation by or proceedings before the Authority under **this**

15 **Part** of this Act shall be privileged in the same manner as if the investigation or proceedings were proceedings in a Court.

(4) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954,—

- 20 (a) Any report, opinion, or recommendation given by the Authority under **section 29** or **section 30** or **section 31** of this Act; and
 - (b) Any report published by the Authority or the Commissioner under **section 36** of this Act,—
- shall be deemed to be an official report made by a person
- 25 holding an inquiry under the authority of the Government of New Zealand.

36. Publication of reports by Authority and by Commissioner—(1) The Authority may from time to time, in the public interest or in the interests of any person, publish

30 reports relating to—

- (a) The general exercise of its functions under this Act; or
 - (b) Any particular case or cases in relation to which it has exercised its functions under this Act,—
- whether or not the matters dealt with in the report have been
- 35 the subject of a report to the Attorney-General and the Minister of Police, or to the House of Representatives, under **section 31** of this Act.

(2) The Commissioner may, after receiving from the Authority any opinion or recommendation given under **section**

40 **29** or **section 30** of this Act, publish all or any part of the opinion or recommendation.

(3) In determining the desirability or extent of publication under **subsection (2)** of this section, the Commissioner shall take

into account any recommendation of the Authority concerning publication.

(4) Neither the Authority nor the Commissioner shall, in any report published under this section, disclose any matter which is likely to prejudice any of the interests described in subsection (1) of section 28 of this Act, whether or not any certificate has been given under that subsection. 5

37. Annual report—(1) Without limiting the right of the Authority to report at any time under section 31 or section 36 of this Act, the Authority shall in each year furnish to the Minister of Justice a report on the exercise of its functions under this Act. 10

(2) A copy of every such report shall be laid before the House of Representatives as soon as practicable after the date on which it is furnished to the Minister. 15

New

37A. Delegation of powers by Authority—(1) With the prior approval of the Minister of Justice, the Authority may from time to time, by writing under the Authority's hand, delegate to any person holding office under the Authority any of the Authority's powers under this Act, except this power of delegation and the power to make any report or recommendation under this Act. 20

(2) Any delegation under this section may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class. 25

(3) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Authority.

(4) Any such delegation may be made subject to such restrictions and conditions as the Authority thinks fit, and may be made either generally or in relation to any particular case or class of cases. 30

(5) Until any such delegation is revoked, it shall continue in force according to its tenor. In the event of the Authority ceasing to hold office, it shall continue to have effect as if made by the Authority's successor in office. 35

(6) Any person purporting to exercise any power of the Authority by virtue of a delegation under this section shall,

New

when required to do so, produce evidence of that person's authority to exercise the power.

- 38. Offences**—Every person commits an offence under this Act and is liable on summary conviction to a fine not exceeding \$2,000 who,—
- (a) Without reasonable excuse, obstructs, hinders, or resists the Authority or any other person in the exercise of their powers under **this Part** of this Act:
 - (b) Without reasonable excuse, refuses or fails to comply with any requirement of the Authority or any other person under **this Part** of this Act:
 - (c) Makes any statement or gives any information to the Authority, or to any other person exercising powers under **this Part** of this Act, knowing that the statement or information is false or misleading.

- 39. Money to be appropriated by Parliament for purposes of this Act**—All salaries, allowances, and other expenditure payable or incurred under or in the administration of **this Part** of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

Struck Out

- 40. Amendment of Ombudsmen Act 1975, and saving**—(1) Section 13 (7) of the Ombudsmen Act 1975 is hereby amended by repealing paragraph (d), and substituting the following paragraph:

- “(d) Any decision, recommendation, act, or omission of any member of the Police other than—
- “(i) Any matter relating to the terms and conditions of service of any person as a member of the Police; or
 - “(ii) Any complaint or matter in respect of which the Police Complaints Authority has, in accordance with **section 24** of the **Police Complaints Authority and Miscellaneous Amendments Act 1987**, determined that it

Struck Out

has no jurisdiction, or requested that an investigation be undertaken by an Ombudsman.”

(2) Notwithstanding **subsection (1)** of this section, nothing in **this Part** of this Act shall apply to any matter which an Ombudsman has commenced to investigate before the commencement of this Act, and the Ombudsman may continue and complete the investigation of any such matter as if this Act had not been passed. 5

41. Amendments to other Acts—(1) *The Police Act 1958 is hereby amended by repealing section 60.* 10

New

(1) Section 13 (7) of the Ombudsmen Act 1975 is hereby amended by repealing paragraph (d), and substituting the following paragraph: 15

“(d) Any decision, recommendation, act, or omission of any member of the Police, other than any matter relating to the terms and conditions of service of any person as a member of the Police.”

(2) The Higher Salaries Commission Act 1977 is hereby amended by inserting in the Fourth Schedule (as substituted by section 3 of the Higher Salaries Commission Amendment Act 1980), after the item “The Commissioner of Police and the Deputy Commissioner of Police”, the following item: 20

“The Police Complaints Authority and the Deputy Police Complaints Authority.” 25

Struck Out

(3) The Official Information Act 1982 is hereby amended by inserting, in the First Schedule, in its appropriate alphabetical order, the following item: 30

Struck Out

“Police Complaints Authority”.

New

- 41A. Savings and transitional**—(1) Nothing in this Act
5 shall apply to any complaint or matter which an Ombudsman
has been requested or has commenced to investigate before the
commencement of this Act, and the Ombudsman may proceed
with and complete the investigation of any such complaint or
matter as if this Act had not been passed.
- 10 (2) Except where the Authority takes action on a complaint
referred to in **subsection (3)** of this section, nothing in this Act
shall apply to any complaint received by the Police before the
commencement of this Act, and the Police may proceed with
and complete the investigation of any such complaint as if this
15 Act had not been passed.
- (3) Where the Authority receives or is notified of any
complaint that has also been received by the Police before the
commencement of this Act, it shall not take any action on the
complaint (other than any preliminary inquiry to determine
20 whether or not this subsection applies) unless—
- (a) Subject to **subsection (4)** of this section, the complainant is a
person who, if this Act had not been passed, could
have complained to an Ombudsman in accordance
with section 13 (7) (d) of the Ombudsmen Act 1975,
25 but has not so complained; or
- (b) The Commissioner requests the Authority to investigate
the complaint under **section 23 (2)** of this Act; or
- (c) In any other case, the Authority considers that there are
exceptional circumstances that make it desirable that
30 the Authority take action on the complaint.
- (4) The Authority shall not take any action on a complaint
referred to in **subsection (3) (a)** of this section where it considers
that, in all the circumstances, a reasonable period of time was
available before the commencement of this Act during which
35 the complainant could have complained to an Ombudsman
about the final result of the Police investigation into the original
complaint or any Police failure to investigate the complaint.

PART II

AMENDMENTS TO POLICE ACT 1958

42. This Part to be read with Police Act 1958—This Part of this Act shall be read together with and deemed part of the Police Act 1958* (hereinafter referred to as the principal Act). 5

43. Other commissioned officers—Section 7 (1) of the principal Act is hereby amended by omitting the word “Minister”, and substituting the word “Commissioner”.

44. Recruits—The principal Act is hereby amended by inserting, after section 11, the following new section: 10

“11A. (1) The Commissioner may from time to time, in accordance with and subject to the provisions of regulations made under this Act, appoint such recruits as the Commissioner considers necessary.

“(2) For the purposes of this Act, recruits shall be members of the Police. 15

“(3) Notwithstanding subsection (2) of this section,—

“(a) Except as expressly provided in this Act, no recruit shall have or exercise in relation to members of the public any of the powers, functions, or duties of a member of the Police under this Act, or under any other enactment or at common law: 20

“(b) The provisions of this Act applying to members of the Police shall apply to recruits subject to such necessary or reasonable modifications as may be prescribed by regulations made under this Act. 25

“(4) Every recruit appointed under this section shall hold office at the will of the Commissioner.”

45. Temporary members of the Police—(1) Section 12 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection: 30

“(1) The Commissioner may from time to time appoint as temporary members of the Police such commissioned officers (other than commissioned officers holding office during the pleasure of the Governor-General), non-commissioned officers, and constables as the Commissioner considers necessary.” 35

(2) Section 12 (3) of the principal Act is hereby amended by omitting the words “of the Minister or as the case may require,”.

46. Appeal against recommendations for appointments—(1) Section 14 (1) of the principal Act is hereby amended by omitting the words “or a cadet”, and substituting the words “a cadet, or a recruit”.

5 (2) Section 14 (4) of the principal Act (as enacted by section 4 of the Police Amendment Act 1978) is hereby amended by omitting the words “the Minister or the Commissioner, as the case may require,”, and substituting the words “the Commissioner”.

10 **47. Inquiries as to breaches of duty**—(1) Section 33 (1) of the principal Act is hereby amended by omitting from both paragraph (a) and paragraph (b) the word “Minister”, and substituting in each case the word “Commissioner”.

15 (2) Section 33 (3) of the principal Act is hereby amended by inserting, after the word “constable”, the words “or a cadet or a recruit”.

(3) Section 33 (5) of the principal Act is hereby amended by omitting the words “the Minister or, as the case may require, the Commissioner,”, and substituting the words “the
20 Commissioner”.

48. Appeal following inquiry into breach of duty—

(1) Section 34 (1) of the principal Act is hereby amended by inserting, after the words “a cadet”, the words “or a recruit”.

25 (2) Section 34 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

30 “(4) The Appeal Board shall after full inquiry report thereon to the Commissioner, making such recommendations as it thinks fit, whether as to the allowing or dismissal of the appeal, the dismissal of the offender from the Police, the penalty to be imposed on the offender, the granting or refusal of pay during any period of suspension resulting from the charge, or otherwise, and the Commissioner may thereupon make such
35 in no case shall a penalty be inflicted that is more severe than that recommended by the Board.”

49. Appeal by Commissioner against finding of disciplinary proceedings—Section 34A (4) of the principal Act (as enacted by section 7 of the Police Amendment Act

1976) is hereby amended by omitting from paragraph (c) the words “The Minister or, as the case may require,”.

50. Dismissal—Section 35 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection: 5

“(1) The Commissioner may at any time dismiss from the Police—

“(a) Any commissioned officer below the rank of Chief Superintendent; or

“(b) Any non-commissioned officer; or 10

“(c) Any constable,—

who in the opinion of the Commissioner is for any reason unfit to remain a member of the Police ”

51. Oath to be taken—Section 37 (1) of the principal Act is hereby amended by omitting the words “member of the Police”, and substituting the word “constable”. 15

52. Particulars for identification of person in custody—Section 57 of the principal Act is hereby amended by adding the following subsection:

“(4) For the purposes of this section, a recruit appointed under subsection 11A of this Act shall have the powers, functions, and duties of a member of the Police.” 20

53. General search of person in custody—Section 57A of the principal Act (as enacted by section 2 of the Police Amendment Act 1979) is hereby amended by adding the following subsection: 25

“(6) For the purposes of this section, a recruit appointed under section 11A of this Act shall have the powers, functions, and duties of a member of the Police.”

New

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<p>53A. Limitation of actions—Section 60 of the principal Act is hereby repealed.</p>
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54. New sections (relating to charging for Police services) inserted in principal Act—The principal Act is

hereby amended by inserting, after section 63, the following sections:

“63A. **Power to charge for Police services**—(1) Without limiting any power of the Police to enter into contracts involving consideration for the provision of special Police services, the Police may charge such fees as may be prescribed for the provision of services specified in regulations made under section 63B of this Act.

“(2) Any fee payable in accordance with such regulations shall be recoverable in any Court of competent jurisdiction as a debt due to the Crown.

“(3) All such fees shall be paid into the Public Account and form part of the Consolidated Account.

“63B. **Regulations prescribing services for which fees payable, and amount of such fees**—(1) The Governor-General may from time to time, by Order in Council, make regulations prescribing or providing for the fixing of fees payable in respect of all or any of the following matters:

“(a) The attendance of members of the Police at profit-making sporting or entertainment events:

“(b) Services provided at the request of any person or body relating to matters of identification, including—

“(i) Fingerprint comparison services:

“(ii) Preparation of fingerprint material:

“(iii) Preparation of certificates of identity:

“(iv) The taking of fingerprints for foreign visa applications:

“(v) Vetting of identities for official and approved organisations:

“(c) The supply of photographic prints:

“(d) Examinations for the purpose of establishing the authenticity or validity of questioned documents:

“(e) The supply to insurance companies of information relating to the loss or theft of, or damage to, property, or the circumstances of any other matter in which an insurance company has a proper interest:

“(f) Inquiries into and the issue of permits connected with boxing and wrestling contests:

“(g) Supervision of the drawing of raffles and lotteries, where Police supervision is—

“(i) Required by or under any enactment; or

- “(ii) Requested by the promoter of the raffle or lottery:
- “(h) The provision of special advisory services relating to crime prevention:
- “(i) The giving of lectures or holding of courses in any specialist subject, including lectures and courses on fingerprints, photography, and document examination: 5
- “(j) Provision of facilities and services for conferences, seminars, and courses held at the Royal New Zealand Police College: 10
- “(k) Police attendance in response to intruder alarms activated otherwise than by unlawful entry:
- “(l) Police assistance in response to raid alarms activated otherwise than in response to a criminal act. 15
- “(2) Any such regulations may—
- “(a) Prescribe specific fees for specific services:
- “(b) Prescribe a scale of fees or a rate based on the time involved in performing the service:
- “(c) Prescribe penal or overtime fees or rates for services performed outside normal working hours or at weekends or on statutory holidays: 20
- “(d) Prescribe additional charges for reimbursement of travelling time, accommodation, and other expenses: 25
- “(e) Prescribe different fees or rates depending on the circumstances in which, or the persons by whom, the services are performed:
- “(f) Prescribe for the refund or waiver, in whole or in part, of any fee. 30
- “(3) Any regulations made under **paragraph (a) of subsection (1)** of this section in respect of attendance at profit-making sporting or entertainment events may—
- “(a) Prescribe the types or classes of events in respect of which fees are payable, whether by reference to their nature, venue, or the amount or nature of any charge for attendance: 35
- “(b) Prescribe any period of notice required to be given before any such event, or type or class of event, is to be held, and the manner or form in which such notice is to be given: 40
- “(c) Require the payment, or security to be given for the payment, of any fee, in whole or in part, before the event is held:
- “(d) Require the payment, in whole or in part, of any costs or expenditure reasonably incurred by the Police in 45

preparation for a proposed event, whether or not the event takes place:

5 “(e) Prescribe offences in respect of the contravention of or non-compliance with any regulations made under this section, and the amount of any fine that may be imposed in respect of any such offence, which fine shall be an amount not exceeding \$1,000.

10 “(4) For the purposes of this section, the expression ‘profit-making sporting or entertainment event’ means any sporting or entertainment event that—

“(a) Is open to the public on payment of a charge, irrespective of—

15 “(i) The destination of the charge or the purpose for which it is to be applied; or

“(ii) Whether any profit is actually made, or intended to be made; and

“(b) Is to occur at a venue which, at any one time, has an audience capacity in excess of 2000 people; and

20 “(c) In the case of a sporting event, is—

“(i) An international, national, or interprovincial event; or

25 “(ii) An event which could reasonably be expected to involve a standard of competition equal to that involved in any international, national, or interprovincial event; or

“(iii) A boxing or wrestling contest; or

“(iv) A race or race meeting that is subject to rules made under section 30 or section 31 of the Racing Act 1971;—

30 but does not include—

“(d) Events in the nature of fairs, gala days, or open days:

35 “(e) Events, being events in the nature of agricultural, pastoral, industrial, manufacturing, scientific, or trade shows or exhibitions, that are primarily designed to draw a range of products, services,

processes, or other matters to the attention of the public.”

New

55. Regulations—Section 64 (2) of the principal regulations is hereby amended by inserting, after paragraphy (h), the following paragraph: 5

“(ha) Prescribing conciliation procedures in respect of complaints lodged about members of the Police, and the circumstances in which such procedures may or are to be followed:”.

10