



Police Amendment Regulations 2007

Anand Satyanand, Governor-General

Order in Council

At Wellington this 10th day of December 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 64 of the Police Act 1958, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations**1 Title**

These regulations are the Police Amendment Regulations 2007.

2 Commencement

These regulations come into force on 1 February 2008.

3 Principal regulations amended

These regulations amend the Police Regulations 1992.

4 Interpretation

- (1) Regulation 2 is amended by revoking the definitions of **District Commander** and **Region Commander**, **inquiry**, and **Tribunal** and inserting the following definitions in their appropriate alphabetical order:

“**code of conduct** means the Code of Conduct for Members of the Police prescribed by the Commissioner under regulation 30(1)

“**disciplinary hearing**,—

“(a) in relation to a sworn member, means an inquiry into misconduct alleged against the member undertaken by a person or persons appointed by the Commissioner for the purposes of section 12 of the Act; and

“(b) in relation to a non-sworn member, means an inquiry into misconduct alleged against the member undertaken by a person or persons appointed by the Commissioner

“**misconduct** includes neglect of duty

“**outcome**, in relation to a member,—

“(a) means a penalty, or steps to be taken to manage the member’s performance; and

“(b) includes a decision that there will be no penalty or steps to be taken to manage the member’s performance

“**penalty**, in circumstances where removal from employment is possible, includes removal from employment”.

- (2) Regulation 2 is amended by adding the following subclause as subclause (2):

“(2) In the calculation of any period of days under these regulations, no account is to be taken of—

“(a) any day that is Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, or Labour Day; or

“(b) any day in the period commencing on Christmas Day in one year and ending at the close of the day after New Year’s Day in the next year; or

“(c) in the case of a notice by the Commissioner to a member, or by or on behalf of a member to the Commissioner, the day observed as Anniversary Day in the area in which the member is employed.”

5 New Part 1A inserted

The following Part is inserted after Part 1:

**“Part 1A
“Discipline generally**

“Initial actions

“7A Commissioner to decide how conduct to be dealt with

“(1) If satisfied by the results of an initial investigation into the conduct of a member that the conduct should be investigated, the Commissioner must decide whether it—

“(a) should be dealt with as possible unsatisfactory performance; or

“(b) should be the subject of a disciplinary hearing.

“(2) Promptly after deciding how the conduct should be dealt with, the Commissioner must give the member written notice of the decision.

“Unsatisfactory performance

“7B Possible unsatisfactory performance

The Commissioner must ensure that there are in place policies on unsatisfactory performance, and procedures for—

“(a) determining whether conduct is unsatisfactory performance; and

“(b) addressing unsatisfactory performance.

“7C Commissioner may review how conduct to be dealt with

If it is determined in accordance with the policies and procedures put in place for the purposes of regulation 7B that a member’s conduct is misconduct, the Commissioner may (unless it has already been the subject of a disciplinary hearing) decide that the member’s conduct should be the subject of a disciplinary hearing.

“Disciplinary hearings

“7D Certain conduct to be inquired into

“(1) If the Commissioner decides that the conduct should be the subject of a disciplinary hearing, he or she must appoint one or more persons to undertake a disciplinary hearing into it, and report to the Commissioner on it.

“(2) If the Commissioner has appointed one or more persons to undertake a disciplinary hearing into the conduct of a member, the Commissioner may make a statement to the news media advising that it has been decided to undertake a disciplinary hearing.

“7E Appointment of panel for disciplinary hearings

“(1) The Commissioner must appoint a panel from which to appoint persons to undertake disciplinary hearings.

“(2) Appointments must be made after consultation with the relevant unions or service organisations.

“(3) The tenure of each person on the panel must be for no more than 3 years, unless the Commissioner and the relevant unions or service organisations agree otherwise.

“(4) The Commissioner must provisionally appoint one or more members of the panel to undertake any particular hearing.

“(5) If the member whose conduct is to be the subject of the hearing, or a provisional appointee, thinks that the provisional appointee (or, if there is more than one provisional appointee, a provisional appointee) may have an actual or perceived conflict of interest in the hearing, he or she may advise the Commissioner of the matter within 7 days of the provisional appointment.

“(6) After taking into account any matter raised under subclause (5), the Commissioner must either—

“(a) confirm the appointment of the provisional appointee or, if there is more than one provisional appointee, those provisional appointees; or

“(b) provisionally appoint another person or persons on the panel to undertake the hearing.

“7F Fixing of date for hearing

Within 28 days of the confirmation of the appointment of a person or persons to undertake a disciplinary hearing, the person or persons must fix a date for the hearing.

“7G Undertaking of disciplinary hearings

“(1) A person or persons undertake a disciplinary hearing for the purpose of—

- “(a) determining what conduct has in fact occurred, its seriousness, and the circumstances in which it occurred; and
 - “(b) reporting his or her or their findings about the conduct to the Commissioner.
- “(2) In undertaking the hearing, the person or persons must—
- “(a) comply with the principles of natural justice; and
 - “(b) act in a manner that is reasonable having regard to his or her or their role under subclause (1) without undue regard to technicalities; and
 - “(c) take into account the unique nature of the policing environment.

“7H Member may admit facts

If a member whose conduct is being or is to be considered in a disciplinary hearing formally admits the facts alleged, the person or persons undertaking the hearing may accept those facts, and proceed directly to determining the seriousness of the conduct admitted to and the circumstances in which it occurred.

“7I Findings to be reached on basis of evidence presented

A person or persons undertaking a disciplinary hearing must reach his or her or their findings on the basis of the evidence (and any admissions) before him or her or them.

“7J Admission to disciplinary hearings

A disciplinary hearing is private; and only those necessary to its undertaking and those approved by the person or persons undertaking the hearing or by the Commissioner may be present.

“7K Member to be notified

The person or persons undertaking a disciplinary hearing must give the member concerned written notice of his or her or their findings no later than when he or she or they report them to the Commissioner.

“7L Findings not to be disclosed without Commissioner’s consent

- “(1) Except as provided in these regulations, neither the person or persons undertaking a disciplinary hearing nor any other person may disclose any part of the findings of the person or persons undertaking the hearing to any person without the Commissioner’s consent.
- “(2) Subclause (1)—
- “(a) does not prevent the member whose conduct is being investigated from disclosing any matter to his or her legal representative, a relevant union or service organisation, or a member of his or her immediate family; and
- “(b) does not prevent the disclosure of any matter by or on behalf of the member if it is necessary for the purpose of commencing legal proceedings by the member, or maintaining any legal proceedings commenced by the member.

“7M Outcomes if Commissioner satisfied that misconduct has occurred

- “(1) If, in the light of the findings of the person or persons undertaking a disciplinary hearing, the Commissioner is satisfied that conduct is misconduct, the Commissioner—
- “(a) may institute the removal of the member concerned from his or her employment; or
- “(b) may impose on the member any or all of the penalties stated in section 5(7) of the Act; or
- “(c) may decide that no penalty should be imposed on the member, and that instead the misconduct should be dealt with under the policies put in place for the purposes of regulation 7B.
- “(2) Subclause (1)(a) is subject to sections 5(4) and 5A(1) of the Act.
- “(3) A penalty stated in section 5(7) of the Act has effect on a day stated by the Commissioner when imposing it.
- “(4) If, in the light of the findings of the person or persons undertaking a disciplinary hearing, the Commissioner is not satisfied that conduct is misconduct, the Commissioner may nevertheless, if he or she considers it appropriate, direct that the conduct be treated as possible unsatisfactory performance; and in that case regulations 7A(2) and 7B apply accordingly.

“7N Outcomes generally

In acting under regulation 7M, the Commissioner—

- “(a) must determine outcomes that are reasonable in all the circumstances; and
- “(b) must take into account—
 - “(i) all submissions made under these regulations; and
 - “(ii) the employment history of the member concerned.

“7O Notification of initial outcomes

- “(1) Before finally determining under regulation 7M the outcomes for any misconduct, the Commissioner must give the member concerned written notice of the Commissioner’s preliminary decision as to outcomes.
- “(2) Within a reasonable period after receiving the notice (being a period specified in the notice by the Commissioner), the member and his or her representative may each make to the Commissioner written or oral submissions (or both) on the matter of outcomes.

“7P Removals from employment

- “(1) Removal of a member from his or her employment is at first provisional only.
- “(2) If within a reasonable period after being notified of his or her provisional removal (being a period specified by the Commissioner in the notice of provisional removal) a member applies to the Commissioner for the Commissioner to do so, the Commissioner—
 - “(a) must consider whether alternative outcomes should be applied by agreement; and
 - “(b) having done so, must either confirm the removal or substitute alternative outcomes.
- “(3) If within the period allowed for making an application under subclause (2) the member does not apply to the Commissioner for the Commissioner to consider whether alternative outcomes should be applied by agreement, the removal is confirmed.

“General

“7Q Notifications to complainants

If a disciplinary matter arises out of a complaint, the Commissioner must keep the complainant informed of the progress being made in dealing with it; and must advise the complainant when an outcome has been reached.

“7R Recourse to employment institutions

Nothing in these regulations prevents a member from having recourse to any employment institution provided for by the Employment Relations Act 2000.”

6 New Part 4 substituted

Part 4 is revoked and the following Part substituted:

**“Part 4
“Code of conduct**

“30 Code of conduct for members of Police

- “(1) The Commissioner must prescribe in general instructions a Code of Conduct for Members of the Police, stating the standards of behaviour expected from members of the Police.
- “(2) It is the duty of every member to conduct himself or herself in accordance with the code of conduct.”

7 Transitional

Conduct of a member occurring before the commencement of these regulations must be dealt with as if the amendments effected by regulations 4 to 6, and 9, had not been effected, unless the member elects to be dealt with as if it had occurred after that commencement.

8 Continuing conduct

- (1) In the determination of how conduct of a member occurring after the commencement of these regulations is to be dealt with, regard may be had to similar conduct occurring before that commencement.
- (2) Subclause (1) overrides regulation 7.

9 Part 2 revoked

- (1) Part 2 is revoked.

(2) Regulation 7 overrides subclause (1).

Rebecca Kitteridge,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 February 2008, amend the Police Regulations 1992, so as to—

- put in place a new disciplinary system for members of the Police; and
- provide for the issue of a single code of conduct for all members of the Police.

Section 12(1) of the Police Act 1958—

- provides for the Commissioner of Police to appoint “one or more persons” to inquire into alleged misconduct or neglect of duty by a sworn member of the Police, and to report back to the Commissioner on the matter; and
- requires the person or persons holding the inquiry to follow the procedure prescribed in regulations.

Previously the regulations provided for inquiries to be something in the nature of a prosecution, held before a “Tribunal”.

There was no equivalent procedure for non-sworn members of the Police.

Amendments effected by these regulations put in place a single new system for dealing with alleged misconduct by members of the Police, whether sworn or non-sworn. (For the purposes of this system, neglect of duty will be dealt with as a form of misconduct.)

If, after preliminary investigation of the conduct of a member, the Commissioner is of the view that the conduct should be investigated, the Commissioner will decide whether the conduct—

- should be dealt with as possible unsatisfactory performance;
- or
- should be the subject of a disciplinary hearing.

Disciplinary hearings—

- will be inquiries undertaken for the sole purpose of establishing the facts; and

- will replace the Tribunal system.

A disciplinary hearing will be undertaken by one or more people selected by the Commissioner from a panel appointed after consultation with the relevant unions or service organisations.

The person or people undertaking the hearing will reach findings on the basis of the evidence available (and any admissions), and report them to the Commissioner.

If, in the light of the findings, the Commissioner is satisfied that conduct is misconduct, a penalty (which may be dismissal if the misconduct meets the criteria for dismissal stated in the Police Act 1958) may be imposed.

Issued under the authority of the Acts and Regulations Publication Act 1989.

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These regulations are administered by the New Zealand Police.
