

## EMPLOYMENT AND THE LAW IN THE NEW SOUTH WALES POLICE FORCE

### *Appointment, Tenure of Office, Promotion and Discharge*

The history of the police is the history of the office of constable and, notwithstanding that present day police forces are the creation of statute and that the police have numerous statutory powers and duties, in essence a police force is neither more nor less than a number of constables, whose status derives from the common law, organised together in the interests of efficiency<sup>1</sup> . . . A member of the police force of whatever rank, when carrying out his duties as a constable acts as an officer of the Crown and a public servant. His powers whether conferred on him by common law or statute are exercised by him by virtue of his office. . . .<sup>2</sup>

Although the common law status of the constable continues to be of prime importance,<sup>3</sup> the modern police force is essentially a creature of statute. In New South Wales, it is the Police Regulation Act, 1899-1961, the Rules and Instructions made thereunder and various associated statutes,<sup>4</sup> which, following a common Australian pattern, establish a State police force. The result is a detailed paternalistic code which regulates, *inter alia*, employment conditions in the Force.

Entry into the police force is at the rank of probationary constable;<sup>5</sup> indeed it is the only way to become a policeman in New South Wales.<sup>6</sup> The entrant must be physically fit, of good character and have attained certain minimum educational standards. Probation continues for at least a year and if the entrant's record has been satisfactory he is enlisted as a "permanent" member of the Force at the rank of ordinary constable. Thereafter, his position in the Force depends on promotion, a matter to be discussed later. All persons entering the police force must take the Oath set out in section 9 of the Police Regulation Act;<sup>7</sup> this is doubly important because failure to do so would not only debar them from holding office under the New South Wales Act, it would also prevent them from becoming a "sworn constable" at common law.

What is the tenure of office of a policeman who has taken this Oath? Section 10 of the Police Regulation Act provides:

Every person taking and subscribing such oath shall be deemed to have thereby entered into a written agreement with and shall be bound thereby

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<sup>1</sup> Halsbury, *Laws of England* (3 ed.) vol. 30 (Police) at 43.

<sup>2</sup> *Id.* at 45. See also *Reedman v. Hoare* (1959) 102 C.L.R. at 186, per Windeyer, J.

<sup>3</sup> Note: s.27 of the Police Regulation Act, 1899-1961 (N.S.W.):

Nothing in this Act contained shall be deemed to diminish the duties or restrict or affect the liabilities of constables at common law, or under any Act now in force or hereafter to be passed.

<sup>4</sup> Notably, Police Regulation (Superannuation) Act, 1906-1960, Police Regulation (Appeals) Act, 1923-1958, Crown Employees Appeal Board Act 1944-1962, Industrial Arbitration Act, 1912-1961.

<sup>5</sup> Police Rules, s.IV, r.1(o).

<sup>6</sup> See *Appeal of A. J. Holmes* (Crown Employees Appeal Board) 27/11/1958 per McKeon, J.

<sup>7</sup> Police Rules, s.IV, r.1(p).

to serve Her Majesty as a member of the police force and in the capacity in which he has taken such oath, at the current rate of pay for such member and from the day on which such oath has been taken and subscribed until legally discharged:

Provided that—

(a) no such agreement shall be set aside, cancelled, or annulled for want of reciprocity;

(b) such agreement may be cancelled at any time by the lawful discharge, dismissal or other removal from office of any such person, or by the resignation of any such person accepted by the Commissioner or other person acting in his stead.

It is clear from a number of decided cases,<sup>8</sup> that neither this provision, nor the Act or Rules as a whole, prevent a policeman from being dismissed at the pleasure of the Crown. Like other servants of the Crown he holds office at its pleasure and is dismissible at will without any reason having to be given. Moreover, no action for wrongful dismissal will lie in such a case. This power to dismiss at will may, however, be expressly limited by statute binding on the Crown and here it becomes important to distinguish, in New South Wales, between dismissals made by the Executive and dismissals made by the Commissioner. In the former case, there is no limitation, express or implied, on the right of the Crown to dismiss at will, except, it would seem, in the case of the Commissioner himself whose tenure of office is regulated by section 4 of the Police Regulation Act. Where, however, the dismissal has been made by the Commissioner, the person affected has a right of appeal to the Crown Employees' Appeal Board.<sup>9</sup> But since the Commissioner is acting here on behalf of the Crown, again no action for wrongful dismissal will lie—simply the statutory right of appeal.<sup>10</sup>

As already indicated, one's rank in the Force is governed solely by promotion. Every probationary constable has, as it were, the Commissioner's baton in his Gladstone bag. "Promotion", say the Rules, "to the higher ranks of the service is the natural and proper ambition of every constable, and will, in addition to the passing of the prescribed examination, depend on the reports of Officers, as to the qualifications, efficiency, and conduct in the performance of duty."<sup>11</sup> Sometimes, no doubt, this admonition falls on stony ground, but for most policemen promotion is of particular importance, for theirs is a specialised and confined field of employment with no alternative avenues in either private industry or other branches of the public service. The main factors in determining promotion are seniority, ability, qualifications, (including the passing of the prescribed examinations), a good record and satisfactory health. While it is true that the Police Rules stress that length of service and good conduct "are not enough in themselves, and preference must always be given to those who have shown such intelligence, energy and integrity in the discharge of their duties as would indicate their fitness for advancement to a higher one",<sup>12</sup> it would be true to say that seniority is still the most important factor in promotion. If all other things are equal, the Crown Employees' Appeal Board will generally uphold the appeal of the senior man who has been passed

<sup>8</sup> E.g., *Power v. The Queen* (1873) 4 A.J.R. 144; *Enever v. The Queen* (1906) 3 C.L.R. 969; *Ryder v. Foley* (1906) 4 C.L.R. 422; *Fletcher v. Nott* (1938) 60 C.L.R. 55; *Kaye v. Attorney-General (Tasmania)* (1954) 94 C.L.R. 193; *Readman v. Hoare* (1959) 102 C.L.R. 177.

<sup>9</sup> Section 6. Police Regulation (Appeals) Act.

<sup>10</sup> *Appeal of A. J. Holmes, supra, per* McKeon, J.

<sup>11</sup> Police Rules, s.VI, r.1. *Note:* Promotions up to and including the rank of Sergeant are made by the Commissioner, while those of the commissioned officers are by the Governor, but on the recommendation of the Commissioner.

<sup>12</sup> Police Rules, s.VI, r.22.

over. In determining whether all other things *are* equal, it has interpreted the Act and Rules as meaning that promotion is not to an office but to a rank<sup>13</sup> and although the employer may specify reasonable requirements for the position to be filled,<sup>14</sup> he cannot promote a person on the grounds of his particular fitness for a special post.<sup>15</sup> Promotion is not only from rank to rank, but within a rank itself and the Commissioner when making an appointment can specify the seniority of the person within that class, subject, of course, to a right of appeal by those passed over. In determining what promotions are to be made, the Commissioner acts largely on the recommendations of his Superintendents.<sup>16</sup> In *Re Phillips*,<sup>17</sup> the Crown Employees' Appeal Board, referred to the practice which had grown up in the Police Department of promotions being discussed and recommended by a Promotions Board consisting of the Commissioner, Deputy-Commissioner, Superintendents and certain Inspectors, some seventy in all. Apparently this practice has been dropped and promotions are now dealt with on the basis of recommendations from the Superintendents. Where it is intended to promote some one to a higher rank, all those senior to him and eligible for promotion must be notified—this is to enable them to appeal to the Crown Employees' Appeal Board should they so desire.

In a confined employment area, pyramidal in structure, such as the New South Wales police force, promotion is a matter of key importance, raising inevitably some awkward and difficult issues. Undue emphasis on seniority tends to penalise ambition, resourcefulness and initiative at the expense of dull, if orderly progression. What is more, it probably has the effect of discouraging able and well-educated young men from joining the police force; certainly this seems to have been the experience in England where Henry Willink, chairman of the 1962 Royal Commission on the English police, remarked that

we put it on record that we had come across no recent instance of a university graduate entering the police service and that in our view it was deplorable that the police to a far greater extent than any of the other public services, law, commerce, industry or indeed any major branch of our national life, should for years have been failing to recruit anything like their proper share of able and well-educated young men.<sup>18</sup>

Promotion with the emphasis on ability rather than seniority is, however, likely to breed suspicion of favouritism or even patronage, although this suspicion can be minimised by a process of selection which is (and which appears to be) impartial and by an independent system of review. Once, however, there is mistrust of the method of promotion, morale is likely to suffer and this may prove a high price to pay for theoretical efficiency.

The difficulty, of course, is to reconcile the competing claims of ability and seniority. It should be possible, with the co-operation of both sides, to develop a system of promotion which represents a workable compromise. This could take various forms, for example, promotion up to commissioned rank on the seniority basis and thereafter with the emphasis on ability and qualifications. Or the reverse pattern could be used, and so on. An independent system of review also appears essential—in fact, of course, this task is now carried out by the Crown Employers' Appeal Board, and its presence would seem equally necessary in the event of a changed method of promotion.

<sup>13</sup> *In re McNeill* (1953) A.R. (N.S.W.) 377.

<sup>14</sup> *Appeal of P. F. Small* (Crown Employees' Appeal Board) 27/11/61.

<sup>15</sup> *In re McNeill*, *supra*. See also *In re Phillips* (1954) A.R. (N.S.W.) 52 for a survey of promotion principles.

<sup>16</sup> See Police Rules, s.VI, r.22.

<sup>17</sup> (1954) A.R. (N.S.W.) 52.

<sup>18</sup> Letter by Henry Willink to *London Times*, 4th December, 1963.

Service in the police force involves submission to a rigorous code of behaviour to a degree quite unacceptable in other areas of employment. The Police Rules lay down standards of conduct which might be thought to be beyond the range of most mortals—according to the Rules, a policeman must be honest, obedient, respectful, frugal, impartial, discreet, energetic, sympathetic, alert, good natured, close-lipped, a teetotaler in public and a limited smoker.<sup>19</sup> This, however, is the necessary price of public service as a policeman. Those who deviate too far from this code are liable to suffer the various penalties of the service—reprimand, delayed promotion, fine, demotion and even dismissal. The Rules lay down a detailed procedure for inquiries into complaints against policemen,<sup>20</sup> a procedure which is intended to secure a fair and impartial hearing. These inquiries take two main forms, *viz.*, Departmental Inquiries (where a policeman is charged) and Open Departmental Inquiries (where no member of the Force is definitely charged). If, as a result of such an inquiry, a person is punished, he can, in most cases, appeal to the Crown Employees' Appeal Board.

A person's service with the police force may come to an end in various ways; he may die, retire, become unfit, resign or be dismissed. Leaving the other matters aside for the moment, it may be noted that a policeman's power to resign is a limited one. Unless he obtains the written authorisation of the Commissioner, he must give the three months' notice of his intention to resign and failure to do so renders him liable to a maximum penalty of £20.<sup>21</sup>

Along with other members of the State public service, members of the police force have a right of appeal in relation to various matters to the Crown Employees' Appeal Board. By s.6 of the Police Regulation (Appeals) Act 1923-1958—

Any person who . . . is a member of the police force, if dissatisfied with any decision of the Commissioner . . . in regard to the granting or refusal of promotion to him or the imposition upon him, of any punishment where such punishment consists of the infliction of a fine, suspension, or reduction, whether in rank or pay, dismissal, discharge or transfer, or if dissatisfied with any decision of the Commissioner . . . in regard to the granting or refusal of leave of absence on full pay for any period of absence occasioned by any wound or injury (received on a daily or periodic journey, etc.) . . . may appeal to the Board against such decision.

The Board consists of a Chairman, who is a Supreme Court judge,<sup>22</sup> and a representative each of the employers and employees concerned. In police appeals, the employer's representative is appointed by the Commissioner while the employees' representative is from the Public Service Association or the Police Association, depending on whether the appeal concerns a commissioned or a non-commissioned police officer. Decision is by majority vote except where questions as to jurisdiction, admissibility of evidence or procedure arise, in which case decision is by the chairman alone. Voting normally follows interest lines with one side voting with the chairman. Most police appeals are in connection with promotion or disciplinary matters. Curiously, they appear to be declining in number, perhaps because departmental practices have become more standardised. Speaking of the function of the Board in *Conaghan v. Commissioner of Police*, McKeon J. said:

In my view this Appeal Board is a domestic tribunal reviewing decisions

<sup>19</sup> See Police Rules, ss.II, III and VIII.

<sup>20</sup> Police Rules, s.IX.

<sup>21</sup> Section 18, Police Regulation Act; see also s.10. At the time of going to press, legislation is proposed which will confer political and civil rights on policemen, *i.e.*, the right to stand for parliament without first having to resign.

<sup>22</sup> At present Doughan, J.

of employers given in relation to their employees on matters related to their employment. In a sense it stands in the same situation as the employer in each particular case. It is, as it were, exercising a statutory supervisory authority over the employer.<sup>23</sup>

One might add that in a closed employment area, such as the police force, its function is necessary in the interests of good employer-employee relations.

### *Employment Conditions*

The paternalistic character of the police force and the special features of work there mean that many aspects of employment which would, in other occupations, be the subject of negotiation or award remain under the exclusive control of the employer. The overall pattern of employment conditions is to be found by adding to the rather slender agreements made by the Police Department with its employees, the detailed Police Rules and Instructions, and the various provisions in the Police Regulation Act, Police Regulation (Superannuation) Act and the Police Regulation (Appeals) Act.

In 1946, members of the police force were, by an amendment of the Industrial Arbitration Act,<sup>24</sup> empowered to approach the State industrial tribunals. However, the matters for which they could seek an award were, in effect, limited to the prescription of (minimum) rates for work done, thus excluding working hours and other factors. Nevertheless, applications were made to the Industrial Commission and awards were granted in respect of both commissioned and non-commissioned police officers.<sup>25</sup> But, in 1955, these awards were superseded by agreements made with the Public Service Board, and this has been the practice ever since. There are two agreements, one for commissioned police officers (Superintendents and Inspectors) made between the Public Service Board and the Public Service Association and one for non-commissioned police officers (sergeants and constables) made between the Public Service Board and the Police Association. Curiously, they are not the typical Section 14B agreements made under the Public Service Act but special agreements made by the Public Service Board on behalf of the Police Department. The agreements are very similar in form, listing a table of (composite) wage rates for different grades, specifying the rights of persons relieving those senior to them, preserving existing privileges and agreeing not to seek an award during its three year currency. The Non-Commissioned Police Officers' Agreement also provides penalty rates for policemen required to work on public holidays. These agreements are, of course, observed without qualification but it is interesting to speculate as to their legal status, in the context of a compulsory arbitration system. Several points merit comment. Firstly, the wages are composite or "rolled up" rates to cover not only the work value element but also to compensate for weekend work, shift work and other incidents of employment—this appears expressly in the Non-Commissioned Police Officers' Agreement and is implied in the other.<sup>26</sup> This is, of course, a departure from the normal practice of the industrial tribunals in this State which attempt to fix the work value and then add allowances to compensate for special disabilities. In the second place, the regulation of hours (apart from some provisions in the Non-Commissioned Police Officers' Agreement relating to penalty rates for holiday work) is not dealt with. This it will be recalled was, in the case of members of the police force, left outside the powers of the industrial tribunals and the same pattern continues in the agreements. In any case, regulation of

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<sup>23</sup> Crown Employees' Appeal Board—7/12/1956.

<sup>24</sup> Section 20(1)—Proviso.

<sup>25</sup> See N.S.W. Industrial Gazette Vol. 102, (1951) 341, 343; (1951) A.R. (N.S.W.) 185.

<sup>26</sup> See *Re Non-Commissioned Police Officers' Award* (1951) A.R. (N.S.W.) 185.

hours, and particularly overtime, would be difficult, if not impracticable, in police employment. The present practice, which appears satisfactory, is to give time off in lieu of overtime. Thirdly, it is difficult to ascertain the principles, if any, employed in the determination of wage rates for policemen. Relevant factors in the periodic negotiations between the Public Service Board and the police appear to be such matters as general movements in wage rates, as for instance those following Commonwealth margins decisions, and, more particularly, the wage rates paid to policemen in other States, notably Victoria. The last-named technique is hardly scientific and may end up as a sort of vicious circle. Just how one should assess a policeman's wages, it is difficult to say, but there is some case, perhaps, for a detailed investigation by an industrial tribunal armed with full power to deal with every aspect of this employment.

The wage rates in these agreements are supplemented by many different allowances for which provision is made in Section XVII of the Police Rules. Under this head comes (a) allowances for police who are not provided with quarters; (b) allowances for police living temporarily at public works sites; (c) travelling allowances; (d) special plain clothes allowance; (e) special allowances paid to persons with professional, technical or clerical qualifications and experience and to police doing instruction work and (f) locality and disability allowances paid to persons living in certain remote parts of the State. In effect, this represents, a widespread addition to the ordinary wage rates. Other substantial benefits associated with police employment are the provision of uniforms and of free medical and hospital treatment (where injured in the course of duty) and the generous leave entitlements, now to be discussed.

#### *Leave Benefits, Superannuation and Compensation for Injury*

It is convenient, though not very scientific, to treat together under this heading matters which in other areas of employment would cover such a range of matters as annual leave, sick leave and long service leave, superannuation and retirement benefits and workers' compensation. This is so because, in the case of police employment, these benefits have a common statutory origin in the Police Regulation Act and the Police Regulation (Superannuation) Act.

#### *Benefits under the Police Regulation Act and Rules*

##### *(a) Annual Leave*

Leave of absence for members of the police force, including probationary constables, accrues at the rate of forty-two days per year, which amount represents thirty working days and twelve rest days. If possible, leave will be granted at the time requested, but not if this interferes with the needs of the service. It is the duty of the Superintendents to see that leave is evenly distributed and to take, if necessary, a ballot for this purpose. Leave is not permitted to accumulate and if not taken when it becomes due, it will, unless the inability to take it is due to service reasons or illness, be forfeited. Special provision is made for policemen who have to travel long distances for the purpose of taking leave; extra travelling time is added to the amount of their leave while, in the case of persons living west of 145° longitude, special allowances are made in certain cases, to cover the cost of travel by themselves and their families. A policeman on leave is liable to be recalled, although this would only be done in cases of emergency; failure to report when requested is a serious breach of discipline.<sup>27</sup>

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<sup>27</sup> See generally: Police Rules, s.XII.

(b) *Extended Leave (Long Service Leave)*

The extended leave entitlements are as follows:—

(i) Three months on full pay or six months on half-pay for fifteen years' service. A further three months or six months, as the case may be, after twenty years' service, making a total of six months on full pay after twenty years' service. Thereafter, extended leave accumulates at the rate of six months on full pay for twenty years' service.<sup>28</sup>

(ii) Two months' leave on full pay after serving for ten years and then being retrenched or discharged as medically unfit or resigning lawfully from the service. For service between ten and fifteen years a further proportionate amount of leave is granted on the basis of three months for fifteen years' service.<sup>29</sup>

(iii) A gratuity payable to the widow, children or other dependents of a policeman who, at the time of his death had accumulated extended leave benefits, equivalent to the amount of those benefits. Such a gratuity is paid in addition to any superannuation payments due to the deceased.<sup>30</sup>

(iv) A gratuity equivalent to the amount of extended leave benefits accumulated where a member of the police force has lawfully resigned, been retrenched, retired at the age of sixty, or been discharged as medically unfit. Such a gratuity is in addition to any other gratuity to which the person may be entitled.<sup>31</sup>

(v) Where a person retires from the Force any superannuation allowance is to commence from the date "upon which his extended leave, if taken, would have commenced". But where he has been discharged from the Force his superannuation "shall commence from the date following that upon which all leave of absence other than extended leave, if taken, would have terminated".<sup>32</sup>

(vi) Extended leave during service may be paid for in advance, if desired.

(vii) The rate of pay, received during or in lieu of leave is "the remuneration ordinarily received in money by a member of the police force as the ordinary pay of his rank but not to include or to have included any allowances in kind or any money paid him by way of allowance other than an allowance which is solely in the nature of an increase in the remuneration received in money by him".<sup>33</sup>

The extended leave benefits are, in terms of quantum, much more favourable than those provided for as the minimum requirements under the Long Service Leave Act, 1955-1963. On the other hand, leave entitlements do not accrue until a policeman has completed at least ten years' service, compared with five years, in certain cases, under the Long Service Leave Act. In view of the fact that service in the police force is a career occupation, this is, in most cases, of no significance but it can be important where a policeman has through injury or the like been discharged during the first ten years of his service. Moreover, the Long Service Leave Act, particularly since the 1963 amendment of that Act, severely limits the grounds on which a worker may be disentitled from receiving long service leave, whereas extended leave along with other benefits and payments may, in certain cases,<sup>34</sup> be refused to a policeman, subject however to an appeal to the Crown Employees' Appeal Board. This matter will be referred to in the following section of this paper.

<sup>28</sup> Police Regulation Act, s.12A(1).

<sup>29</sup> Police Regulation Act, s.12A(2). See also ss.8, 10, Police Regulation (Superannuation) Act.

<sup>30</sup> Police Regulation Act, s.12B.

<sup>31</sup> Police Regulation Act, s.12C; Police Regulation (Superannuation) Act, ss.8, 9, 10.

<sup>32</sup> Police Regulation Act, s.12C.

<sup>33</sup> Police Regulation Act, s.3.

<sup>34</sup> Police Regulation Act, s.33.

(c) *Sick Leave*

A policeman who becomes ill when off duty is entitled to leave of absence on pay from the Force. The yearly quantum of leave is thirty days on full pay for probationary constables and sixty days on full pay with a further thirty days on half-pay for all other police. The Commissioner has power, however, to extend these periods in appropriate cases.

The statutory sick leave benefits are supplemented by two voluntary schemes. In the first place, members of the Police Association who have elected to contribute to the special Association Relief Fund,<sup>35</sup> are entitled to have the other half of their pay made up from the Fund during the period they are on sick leave at half pay. No similar scheme is run by the Commissioned Police Officers' Association, but police who have been promoted to Commissioned rank are entitled to continue to contribute to and to collect from the Fund and in fact, a number do so. In the second place, there is a voluntary scheme run within the police force, with the co-operation of the Police Department, whereby each member of the force may elect (and almost everyone does) to contribute one day's annual leave to the Police Mutual Leave Bank. This scheme is administered by a Leave Bank Council, representing all ranks of the Force as well as the Department. The Leave Bank, which obtains leave credits at the rate of over five thousand days a year, is used to grant sick leave on full pay to policemen whose statutory benefits have been consumed; that is, those who have already received ninety days' statutory leave. After a four-day waiting period, to discourage malingerers, but which, in fact, is made up (in the case of contributors) out of the Police Association Relief Fund, the sick policeman is entitled to such sick leave benefits as the Leave Bank Council determines. As a considerable leave credit has been accumulated, lengthy benefits can be (and have been) paid to sick members of the Force. Since the voluntary schemes, just described, do not, directly at least, impose an additional burden on government revenue, sick policemen are given every opportunity to recuperate and will not be discharged as medically unfit until it is clear that they can no longer function satisfactorily in the Force. Finally, as a matter of interest, the Leave Bank scheme which is a New South Wales innovation has been copied in most, if not all, of the other Australian States.

The sick employee must pay for his own medical and hospital treatment, although he may avail himself (at his own cost) of the facilities provided by the special police ward at the Prince Henry Hospital, Sydney.

(d) *Injury on Duty*

A policeman injured in the execution of his duty is entitled, with the approval of the Commissioner,<sup>36</sup> to leave of absence on full pay for the full period of his incapacity. Likewise he is entitled to leave on full pay where he is wounded or injured on a daily or periodic journey<sup>37</sup> without serious and wilful misconduct on his part and not during any substantial interruption or deviation unconnected with the journey or during any break not reasonably incidental to it.<sup>38</sup> He is not entitled to such sick pay, however, if the injury arises from his own misconduct.

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<sup>35</sup> This is a small contribution, at present 1/- per week.

<sup>36</sup> The Commissioner decides whether the employee was injured on duty and from his decision there is no appeal. Where the policeman was injured on a "periodic" or "daily" journey, however, an appeal lies against the Commissioner's decision to the Crown Employees' Appeal Board.

<sup>37</sup> As defined in s.10A, Police Regulation (Superannuation) Act.

<sup>38</sup> Police Rules, s.XII. *Note:* An appeal lies to the Crown Employees' Appeal Board against the decision of the Commissioner to grant sick leave in such cases.



It will be seen that these provisions are modelled on the N.S.W. Workers' Compensation Act, but are somewhat narrower in scope as regards the disentitling effect of both misconduct and substantial deviation or interruption. It may be added that members of the police force are expressly excluded from the operation of the Workers' Compensation Act,<sup>39</sup> although they are not excluded in relation to bush fire fighters' compensation<sup>40</sup> and occasional claims by policemen do arise under that head.

The above statutory rights do not, of course, prevent an injured policeman from suing, at common law, another who has caused his injury.

*Benefits under the Police Regulation (Superannuation) Act, and  
Part III of the Police Regulation Act*

Under this legislation, members of the police force are entitled to the following benefits.

(a) *Retirement Benefits*

The age of retirement from the police force is normally sixty years,<sup>41</sup> except in the case of the Commissioner who retires at the age of sixty-five.<sup>42</sup> On retirement, a member who "has served with diligence and fidelity for twenty years and upwards" is paid an allowance which "shall not exceed one-fortieth of the salary of his office at his retirement for each complete year of service, less a deduction of three per centum per annum: Provided such allowance shall not exceed three-quarters of such salary less three per centum".<sup>43</sup> In effect, this means, the retiring member always gets the maximum allowance.

(b) *Benefits for Members Discharged as Medically Unfit*

Retirement allowances are not paid to persons under sixty years of age unless they are medically certified as being incapable of discharging their duties.<sup>44</sup> In such a case, the amount an incapacitated policeman receives depends on his length of service. Where he has served upwards of twenty years, his superannuation benefit is calculated as above, which means that he reaches the maximum benefit after thirty years' service. Where his service is less than twenty years, however, he is paid a gratuity amounting to one month's salary for each year of service.<sup>45</sup>

(c) *Benefits for Members Disabled in the Execution of Their Duty*

A policeman who is injured in the execution of his duty or on any of the daily or periodic journeys referred to in section 10A of the Police Regulation (Superannuation) Act or while temporarily absent during any ordinary recess (subject in the last two cases to the qualifications stated in section 10 of that Act) is paid a gratuity determined by the Police Superannuation Board, which amount is commensurate with the nature of the wound or injury received, but which is not to exceed the salary of his office at the time of his disablement.<sup>46</sup> Reference may be made here to a somewhat curious, perhaps anomalous,

<sup>39</sup> Workers' Compensation Act, 1926-1961 (N.S.W.) s.6 (definition of "worker").

<sup>40</sup> Workers' Compensation Act, Part IIA.

<sup>41</sup> Police Regulation (Superannuation) Act, s.9. In special circumstances the services of a policeman may be retained until he reaches the age of 65.

<sup>42</sup> Police Regulation Act, s.4(3).

<sup>43</sup> Police Regulation (Superannuation) Act, s.7(1)(c). See also s.7(1)(a)(b), (2), (3), (4).

<sup>44</sup> Police Regulation (Superannuation) Act, s.8.

<sup>45</sup> Police Regulation (Superannuation) Act, s.14.

<sup>46</sup> Police Regulation (Superannuation) Act, s.10.

distinction drawn by s.6 of the Police Regulation (Appeals) Act. It will be recalled that that section allows an appeal in relation to, *inter alia*, "the granting or refusal of leave on full pay for any period of absence occasioned by any wound or injury being a wound or injury received in circumstances to which paragraph (b) or (c) of subsection one of section ten of the Police Regulation (Superannuation) Act (i.e. wounds or injuries received on a daily or periodic journey or while temporarily absent during any ordinary recess) is applicable and whether or not the member of the police force is disabled thereby. . .". No such right of appeal exists in a case where the Commissioner refused to grant leave where the policeman has been injured in the actual execution of his duty (that is, section 10(1)(a) Police Regulation (Superannuation) Act). It is hard to see why this distinction should be drawn.

Superannuation benefits and gratuities paid to persons disabled by illness or injury are to be distinguished from leave of absence occasioned by illness or injury and dealt with previously. Leave of absence in the last mentioned cases presupposes only temporary incapacity and that the policeman will return to service whereas the matters dealt with in this part refer to the case of a person being disabled from further performance of his work.

(d) *Benefits for the Dependants of Members Killed in the Execution of Their Duty*

Where a policeman has been killed or died from wounds or injuries received in the actual execution of his duties or (subject to certain conditions) on a daily or periodic journey or while temporarily absent during an ordinary recess, his widow or other dependants are paid a gratuity which the Police Superannuation Board considers reasonable in the circumstances.<sup>47</sup>

The disablement and death benefits, just referred to, are, of course, the counterpart of the incapacity and death benefits under the Workers' Compensation Acts and, indeed, much the same language is used in both Acts. The Police Regulation (Superannuation) Act is, however, administered by the Police Superannuation Board and not by the Workers' Compensation Commission, although it follows the general principles laid down by the Commission. Thus the same basic interpretation applies to "serious and wilful misconduct", "substantial deviation" and the other relevant expressions.

(e) *Benefits for the Dependants of Members Dying Through Illness or Accident Not Associated with the Execution of Their Duty*

Where a member of the police force has died in the above circumstances a gratuity not exceeding the amount equivalent to sixty months' salary may be paid to his widow or other dependants. Where the deceased member had served a period of less than ten years in the Force the gratuity is at the rate of one month's salary for each year of service and where more than ten years, then ten months' salary plus two months' pay for each year of service after the tenth year. The method of payment is determined by the Police Superannuation Board.<sup>48</sup>

(f) *Benefits Payable to Dependants of Members Dying Within Five Years of Receiving Superannuation Allowance*

Where a member of the police force dies within five years of receiving his superannuation allowance a payment of all or part of the allowance may,

<sup>47</sup> Police Regulation (Superannuation) Act, s.12.

<sup>48</sup> Police Regulation (Superannuation) Act, s.13.

at the discretion of the Board, be paid to the widow or other dependants of the deceased, but not for a period exceeding five years from the time when the superannuation allowance commenced.<sup>49</sup>

(g) *Where Member Disentitled from Receiving Superannuation Benefits, Allowances, etc.*

Where a member of the police force has been guilty of the conduct specified in section 33 of the Police Regulation Act, for example, conviction of felony, misdemeanour or other disgraceful conduct, fraudently claiming superannuation, breach of discipline, engaging in illegal employment, he may forfeit, on the recommendation of the Commissioner, the whole or part of any allowance, compensation, remuneration or superannuation. This forfeiture is in addition to any other punishment which may be inflicted on him. The Commissioner is, however, required to give him thirty days' notice of his intention to make such a recommendation and during that time the member concerned may appeal to the Crown Employees' Appeal Board. Its decision is final and is to be implemented by the Commissioner.<sup>50</sup>

But a member who resigns, or is dismissed or discharged, whatever the reason therefor, is entitled to be reimbursed any moneys paid by him into the Superannuation and Reward Fund, less amounts already paid to him as pensions or gratuities.<sup>51</sup>

(h) *Procedure for Obtaining Superannuation, Gratuities, etc.*

The power to grant or refuse superannuation and the like benefits rests ultimately with the Government, though in fact, of course, it is exercised by the Police Superannuation Board. After the necessary investigations an order is made directing that the member in question be superannuated and thereupon he ceases to be a member of the police force.<sup>52</sup>

(i) *Finance and Administration*

Superannuation and other associated benefits are paid out of the Police Superannuation and Reward Fund which is financed in part by a levy on the salaries of all members of the Force—at present 4% of their salaries,<sup>53</sup> and in part by payments out of Consolidated Revenue.

This Fund, in particular, and the Superannuation Scheme in general, is administered by the Police Superannuation Board. This body consists of the Commissioner (or some officer acting for him) as Chairman, the Government Actuary and the Under-Secretary of the Premier's Department (or some officer representing him). The Secretary of the Police Department acts as the Secretary of the Board.<sup>54</sup>

### *Industrial Unrest*

Detailed provision is made in the Police Rules for ensuring harmonious relations (including industrial relations) between different ranks of the Force and for the hearings of complaints and grievances by superior officers.<sup>55</sup>

<sup>49</sup> Police Regulation (Superannuation) Act, s.11.

<sup>50</sup> Police Regulation Act, s.33.

<sup>51</sup> Police Regulation Act, s.29A.

<sup>52</sup> Police Regulation Act, s.29.

<sup>53</sup> Police Regulation Act, ss.28, 29; Police Regulation (Superannuation) Act, ss.4, 5,

6. See also generally Police Rules, s.XX.

<sup>54</sup> Police Rules, s.XX, r.1.

<sup>55</sup> See, e.g. Police Rules, ss. II, IX.

Petitions signed by combinations of police are, however, discouraged.<sup>56</sup>

Unrest reaching the proportions of a strike or "go-slow" tactics is, of course, quite unacceptable and almost unimaginable. Practical and ethical questions aside, however, it is clear that apart from any other measures which might be taken, a strike by the police would be unlawful as being an illegal strike within the meaning of sections 99, 100 and 101 of the Industrial Arbitration Act (N.S.W.).

#### *Conclusion*

The police force is a paternalistic hierarchy, organised and run on para-military lines. These characteristics are not peculiar to New South Wales but exist in every police force. Indeed, they are necessary and desirable in the interests of efficient operation. This means, of course, that employment conditions in the Force are, and presumably always will be, rather different from those in other occupations. The winds of industrial change will blow through the Police Department along with other areas of employment but it is unlikely they will produce radical changes in its basic structure or employment policy.

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<sup>56</sup> Police Rules, s.IX, r.6.

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