



## ANALYSIS

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1989, No. 138

**An Act to amend the Police Act 1958**

[19 December 1989]

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

**1. Short Title and commencement**—This Act may be cited as the Police Amendment Act 1989, and shall be read together with and deemed part of the Police Act 1958 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the day on which it receives the Royal assent.

(3) Except as provided in subsection (4) of this section, section 14 of this Act and Part IV of the principal Act (as substituted by section 14 of this Act) shall come into force on the 1st day of March 1990.

(4) Sections 67 to 69 and sections 76 to 79 of the principal Act (as enacted by section 14 of this Act) shall come into force on the day on which this Act receives the Royal assent.

**2. Interpretation**—The principal Act is hereby amended by repealing section 2, and substituting the following section:

“2. In this Act, unless the context otherwise requires,—

“‘Appropriate service organisation’, in relation to any member or class of members of the Police, means the service organisation that covers that member or those members:

“‘Arbitration Commission’ means the Arbitration Commission established under the Labour Relations Act 1987:

“‘Commissioned officer’ means any person appointed under this Act as a commissioned officer of Police:

“‘Commissioner’ means the Commissioner of Police appointed under this Act:

“‘Employment’ includes any office held as a member of the Police:

- “ ‘Minister’ means the Minister in Charge of Police:
- “ ‘Non-commissioned officer’ means a member of the Police above the rank of constable and below the rank of commissioned officer:
- “ ‘The Police’ means the Police of New Zealand; and includes all members of either sex appointed to the Police under this Act:
- “ ‘Police Gazette’ means the *New Zealand Police Gazette* published by the Commissioner in accordance with section 61 of this Act; and includes any supplement to the *Police Gazette*:
- “ ‘Service organisation’ includes the New Zealand Police Officers Guild Incorporated, the New Zealand Police Association Incorporated, and any other organisation from time to time prescribed by regulations under this Act as representing members of the Police or of any class or classes of members of the Police:
- “ ‘Union’ means a union registered or deemed to be registered under the Labour Relations Act 1987.”

**3. New Part I substituted**—The principal Act is hereby amended by repealing Part I (comprising sections 3 to 16), and substituting the following Part:

“PART I

“APPOINTMENT, PROMOTION, AND RESIGNATION OF MEMBERS OF THE POLICE

“**3. Commissioner of Police**—(1) The Governor-General may from time to time appoint a fit and proper person to be the Commissioner of Police, who shall have the general control of the Police.

“(2) The Commissioner shall hold office during the pleasure of the Governor-General.

Cf. 1958, No. 109, s. 3 (1)

“**4. Deputy Commissioners of Police**—(1) The Governor-General may from time to time appoint one or more fit and proper persons to be Deputy Commissioners of Police.

“(2) Each Deputy Commissioner shall hold office during the pleasure of the Governor-General.

“(3) Each Deputy Commissioner shall have and may exercise such of the powers, authorities, duties, and functions of the Commissioner as the Commissioner may delegate to that Deputy Commissioner either generally or in any particular case.

“(4) Every delegation under subsection (3) of this section shall be revocable at will, and no such delegation shall prevent the exercise of any powers by the Commissioner.

“(5) In the case of absence from duty of the Commissioner (from whatever cause arising) or on the occurrence of a vacancy in the office of Commissioner (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers, authorities, duties, and functions of the Commissioner may be exercised and performed by the Deputy Commissioner longest in office as such.

“(6) The fact that a Deputy Commissioner exercises any power, authority, duty, or function, pursuant to this section, shall, in the absence of proof to the contrary, be sufficient evidence of his or her authority to do so.

Cf. 1958, No. 109, s. 3 (2), (3), (4), (5)

“**5. Members of the Police**—(1) The Commissioner may from time to time appoint such sworn and non-sworn members of the Police (including acting or temporary or casual appointees) as the Commissioner thinks necessary for the efficient exercise of the functions, duties, and powers of the Police.

“(2) Where the Commissioner thinks it is necessary to do so for the efficient exercise of the powers, functions, and duties of the Police, the Commissioner may designate any position within the Police that may be filled by any member of the Police.

“(3) The Commissioner may assign to any sworn member of the Police such rank as the Commissioner considers appropriate.

“(4) Subject to—

“(a) The provisions of this Act, any general instructions issued under section 30 of this Act, and any regulations made under section 64 of this Act; and

“(b) The conditions of employment set out in any agreement under section 67 or section 75 of this Act; and

“(c) The conditions of employment set out in any individual contract of service under this Act,—

the Commissioner may at any time remove any member of the Police from that member’s employment.

“(5) Except as otherwise expressly provided in this Act, the Commissioner shall have all of the rights, duties, and powers of an employer in respect of all members of the Police.

“(6) Nothing in subsection (5) of this section shall limit or affect the powers and duties conferred or imposed on the office of constable by common law or any enactment.

“(7) Without limiting subsection (4) of this section, where the Commissioner is satisfied that any sworn member of the Police is guilty of any misconduct or neglect of duty, the Commissioner may impose all or any of the following penalties:

“(a) Reduction to any rank, whether commissioned or otherwise:

“(b) Reduction in seniority by any specified number of years:

“(c) Reduction in pay for any specified period:

“(d) A fine not exceeding \$500.

“(8) Where subsection (7) of this section applies, the Commissioner may order the payment by the member concerned of such sum as the Commissioner thinks just and reasonable towards the costs of any inquiry into that member’s misconduct or neglect of duty.

Cf. 1958, No. 109, ss. 4, 4A, 5, 7, 8, 10, 11, 12

“**6. Non-sworn members of the Police**—(1) Except as otherwise expressly provided in this Act or any other enactment,—

“(a) No non-sworn member of the Police shall have or may 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 any other enactment or at common law; and

“(b) No reference in this Act or any other enactment to any member of the Police shall be read as including a reference to a non-sworn member of the Police.

“(2) Any non-sworn member of the Police may, on being authorised to do so by warrant under the hand of the Commissioner, exercise any particular power, function, or duty of a member of the Police under any other enactment, except a power to arrest or search any person.

“(3) It is the duty of every person exercising any power, function, or duty under a warrant issued under subsection (2) of this section—

“(a) To have the warrant with him or her; and

“(b) To produce the warrant during the exercise of any such power, function, or duty, if requested.

“(4) Every reference to any members of the Police—

“(a) In sections 5 to 11, 13, 15, 30, 39 to 44, 50 to 52, 54 (1), 55, 55A, 57 to 59, 61A, 64, 76 to 79, and 96 of this Act; and

“(b) In the Police Complaints Authority Act 1988,— shall be read as including a reference to non-sworn members of the Police, subject to any modifications made in that behalf by those provisions.

“7. **Employment principles**—The Commissioner shall operate a personnel policy that complies with the principle of being a good employer by following, subject to this Act, as closely as possible and as if he or she were the chief executive of a Department, the provisions of sections 56 and 58 of the State Sector Act 1988.

“8. **Appointments on merit**—The Commissioner, in making an appointment under section 5 of this Act, shall give preference to the person who is best suited to the position.

“9. **Obligation to notify vacancies**—Except as otherwise provided in regulations made under section 64 of this Act, where the Commissioner intends to fill a position that is vacant or is to become vacant in the Police, the Commissioner shall, wherever practicable, notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified persons to apply for the position.

“10. **Obligation to notify appointments**—Except as otherwise provided in regulations made under section 64 of this Act, the Commissioner shall notify the members of the Police of every appointment (other than that of an acting, temporary, or casual appointee) to a vacant position in the Police.

“11. **Review of appointments and decisions under section 28D**—(1) The Commissioner shall establish, after consultation with the State Services Commission, a procedure for reviewing appointments made under section 5 of this Act and refusals to permit members to leave the Police under section 28D of this Act, that are the subject of any complaint by a member of the Police.

“(2) Nothing in subsection (1) of this section shall apply to—

“(a) Any acting, temporary, or casual appointment; or

“(b) Any appointment to any position to which section 76 of this Act applies.

“12. **Inquiry into misconduct**—(1) Where any misconduct or neglect of duty is alleged against any sworn member of the Police, the Commissioner may appoint one or more persons to inquire into the alleged misconduct or neglect of duty and to report to the Commissioner on that matter.

“(2) Where such an allegation is made against any sworn member of the Police, the Commissioner may suspend the

member from duty under section 32 of this Act, but shall not take any other action against that member in respect of a matter being investigated under this section until the Commissioner has considered the report to be provided under this section.

“(3) The person or persons holding the inquiry shall—

“(a) Take all reasonable steps to ensure that the member against whom the allegation is made is given notice of the reasons for the inquiry; and

“(b) Give the member or his or her counsel or agent a reasonable opportunity to make submissions and be heard in respect of the allegation.

“(4) The person or persons holding the inquiry shall follow the procedure prescribed in regulations made under section 64 of this Act, but may receive any relevant information whether or not the same information would be admissible in a Court of law.

“(5) For the purposes of this section the person or persons holding any such inquiry shall have the same powers and authority to summon witnesses and receive evidence as are conferred upon Commissions of Inquiry by the Commissions of Inquiry Act 1908, and the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.

“(6) No person shall be called upon to produce any paper, document, record, or thing, or give any evidence if the Minister certifies in writing that to do so would be injurious to the public interest or the interests of the Police.

“(7) So long as any person engaged in any inquiry under this section acts bona fide in the discharge of that person’s duties, no action shall lie against that person for anything that he or she may report or say in the course of the inquiry.

“(8) Every witness attending and giving evidence and every counsel or agent appearing at any inquiry under this section shall have the same privileges and immunities as witnesses and counsel in Courts of law.

“(9) Where the allegation under inquiry involves 2 or more sworn members of the Police, the person or persons holding the inquiry may hear the cases together.

Cf. 1958, No. 109, s. 33

“13. **Acting appointments**—(1) In the case of the absence from duty of any member of the Police other than the Commissioner (from whatever cause arising) or on the occurrence from any cause of a vacancy (whether by reason of

death, resignation, or otherwise) and from time to time while the absence or vacancy continues, or for any other special purpose, the Commissioner may—

“(a) Authorise any member of the Police to exercise all or any of the powers and duties under this Act or any other Act, of any rank higher than that member’s own rank; or

“(b) Appoint any member of the Police temporarily to any higher rank, whether commissioned or non-commissioned.

“(2) Any authority or appointment under this section may be given or made before the occasion arises or while it continues, and no such authority or appointment, and nothing done by any member of the Police acting pursuant to any such authority or appointment, shall be questioned in any proceedings on the ground that the occasion has not arisen or had ceased, or on the ground that the member had not been appointed to any rank to which the authority relates.

“(3) The Commissioner may at any time revoke any authority given or any appointment made under this section.

Cf. 1958, No. 109, s. 15

“14. **Resignation**—(1) No sworn member of the Police may resign his or her office unless that member has given to the Commissioner not less than 14 days notice in writing of his or her intention to resign, or has been authorised in writing by the Commissioner to resign.

“(2) Except with the permission of the Commissioner, no sworn member of the Police may withdraw any such notice of intention to resign.

“(3) Where in the opinion of the Governor-General special circumstances require that no sworn member of the Police shall resign without permission, the Governor-General may, by Warrant under the Governor-General’s hand, declare that no sworn member of the Police shall resign except on the conditions set out in the Warrant.

“(4) Any sworn member who resigns his or her office otherwise than in accordance with the provisions of this section, or otherwise than in accordance with the provisions of a Warrant for the time being in force under this section, or who deserts from the Police, commits an offence and shall be liable to a fine not exceeding \$100 or to forfeit all pay then due or becoming due to him or her as a member of the Police, or both.

Cf. 1958, No. 109, s. 16



**“15. Power to transfer members within the Police—**

(1) Where the Commissioner at any time finds in respect of any duties being carried out by the Police—

“(a) That those duties are no longer to be carried out by the Police; or

“(b) That a greater number of members of the Police is employed on those duties than is considered by the Commissioner to be necessary for the efficient carrying out of those duties,—

the Commissioner may, without complying with sections 8 and 9 of this Act, but subject to the provisions of any agreement under section 67 or section 75 of this Act and to subsections (2) and (3) of this section, appoint to other positions in the Police any or all of the members who are carrying out those duties.

“(2) The only appointments that may be made under this section shall be—

“(a) The appointment of any sworn member of the Police to a sworn position; and

“(b) The appointment of any non-sworn member of the Police to a non-sworn position.

“(3) Before making an appointment under this section, the Commissioner shall consult with the member about the proposed appointment.

“(4) Nothing in section 11 of this Act applies in relation to any appointment made under this section.”

**4. Commissioner to prescribe standards of fitness—**

Section 28A (1) of the principal Act (as inserted by section 4 of the Police Amendment Act 1985) is hereby amended by omitting the expression “sections 28c and 28E”, and substituting the expression “sections 11 (1) and 28c”.

**5. Application of sections 28c and 28D—**The principal Act is hereby amended by repealing section 28B (as inserted by section 4 of the Police Amendment Act 1985), and substituting the following section:

“28B. Sections 28c and 28D of this Act shall apply to and in respect of every member of the Police who is a member of the Government Superannuation Fund Police Sub-Scheme (as defined in section 27 (9) of this Act).”

**6. Compulsory disengagement of unfit—**Section 28c of the principal Act (as so inserted) is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Where the member takes a personal grievance action under section 87 of this Act in respect of the requirement to leave the Police, the member shall remain a member of the Police until the action is disposed of; but if reinstatement is not ordered, the member shall cease to be a member of the Police on the date on which written notice of the decision disposing of the action is given to the member.”

**7. General instructions**—Section 30 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) In any such general instructions, the Commissioner may, in respect of sworn members of the Police, fix any conditions of employment that are not for the time being fixed under section 67 of this Act.”

**8. Suspension pending hearing of charge**—Section 32 of the principal Act is hereby amended by repealing subsection (1) (as substituted by section 4 (1) of the Police Amendment Act 1973 and amended by section 5 of the Police Amendment Act 1978), and substituting the following subsections:

“(1) Subject to this section, where the Commissioner makes or contemplates making against any sworn member of the Police any criminal charge, or any allegation of misconduct or neglect of duty of or by that member, the Commissioner may—

“(a) Suspend the member until—

“(i) The member has been sentenced or otherwise dealt with by a Court; or

“(ii) A decision has been made under section 5 (4) of this Act; or

“(iii) A decision to proceed or not with the allegation against the member has been made; and

“(b) Direct that the suspension be with or without pay, or without such part of the member’s pay as the Commissioner directs.

“(1A) The Commissioner may, at any time while a suspension remains in force, vary or rescind the decision to suspend the member, or determine that the suspension shall cease on a date earlier than the date on which it would otherwise cease.

“(1B) Before suspending any sworn member of the Police under subsection (1) of this section, the Commissioner shall—

“(a) Take all reasonable steps to ensure that the member is given notice of the reasons for the proposed suspension; and

“(b) Give the member or his or her counsel or agent a reasonable opportunity to make submissions and be heard in respect of the proposed suspension.”

**9. Repeals**—Sections 33 and 35 of the principal Act are hereby repealed.

**10. Police Promotion Board and Police Appeal Board abolished**—(1) The Police Promotion Board and the Police Appeal Board established by the principal Act are hereby abolished.

(2) Sections 28E, 34, 34A, 36, 45, 46, 47, and 48 of the principal Act are hereby consequentially repealed.

(3) Notwithstanding subsections (1) and (2) of this section, if, immediately before the commencement of this section,—

(a) An appeal is pending under any of sections 28E, 34, 34A, and 36 of the principal Act; or

(b) There is a right to such an appeal,—  
the provisions repealed by subsection (2) of this section, so far as they are applicable, shall continue to apply to that appeal as if those provisions had not been repealed.

**11. Delegation of powers by Commissioner**—(1) Section 55A (1) of the principal Act (as inserted by section 9 of the Police Amendment Act 1976) is hereby amended by omitting the words “, of a rank not less than Inspector,”.

(2) Section 55A of the principal Act (as so inserted) is hereby further amended by inserting, after subsection (1), the following subsections:

“(1A) Notwithstanding subsection (1) of this section, the Commissioner shall not delegate to any non-sworn member of the Police or to any other member of the Police who holds a rank below Inspector the power to issue a warrant under section 6 (2) of this Act.

“(1B) In any case where the Commissioner has, pursuant to subsection (1) of this section, delegated any powers, authorities, duties, or functions to any member of the Police, that member may, with the prior approval in writing of the Commissioner, delegate such of those powers, authorities, duties, or functions as the Commissioner approves to any other member of the Police.”

(3) Section 55A (3) of the principal Act (as so inserted) is hereby amended by omitting the words “Subject to subsection (1) of this section,”.

**12. Confidentiality of *Police Gazette* and other documents protected**—(1) Section 61A of the principal Act (as substituted by section 7 of the Police Amendment Act 1978) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) The following publications and documents, namely,—

“(a) The *Police Gazette*; and

“(b) Every other Police Notice or Police Circular or other document of a like nature that—

“(i) Contains information the disclosure of which would be likely to prejudice the maintenance of law, including the prevention, detection, and investigation of offences; and

“(ii) Is published by any member of the Police; and

“(iii) Is intended by that member for circulation only to members of the Police; and

“(c) Every copy of any such document,—

are hereby declared to be confidential Police documents, and shall not be disclosed pursuant to the Official Information Act 1982 or otherwise without the written permission of the Commissioner.”

(2) Section 61A (3) of the principal Act (as so substituted) is hereby repealed.

**13. Regulations**—Section 64 (2) (f) of the principal Act is hereby repealed.

**14. New Part IV substituted**—The principal Act is hereby amended by repealing Part IV (comprising sections 66A to 86), and substituting the following Part:

#### “PART IV

##### “REMUNERATION AND CONDITIONS OF EMPLOYMENT

###### “*Sworn Members of the Police*

**“67. Conditions of employment of sworn members of the Police**—(1) Except as otherwise provided in this Act or in any agreement under this section, the conditions of employment of sworn members of the Police shall be fixed in accordance with this section.

“(2) The conditions of employment to which this section applies for any group or class of sworn members of the Police shall be contained in a single agreement registered with the Arbitration Commission.

“(3) The conditions of employment that may be fixed under this section for any group or class of sworn members of the Police shall be—

“(a) The remuneration of such members of the Police:

“(b) The terms and conditions upon which relieving, travelling, lodging, meal and other allowances and expenses including clothing allowances and allowances payable in respect of work warranting payment, may be granted:

“(c) The rates of any such allowances or expenses:

“(d) Such other conditions of employment as may be agreed to by the Commissioner and the appropriate service organisation.

“(4) Every agreement under this section shall include only such conditions of employment as may be agreed by negotiation between the Commissioner and the appropriate service organisation and, before entering into any such negotiations, the Commissioner shall consult with the State Services Commission over the conditions of employment to be negotiated. The Commission may at any time, either before or during the negotiations, indicate to the Commissioner that it wishes to participate with the Commissioner in the negotiation or continued negotiation of the conditions of employment of sworn members of the Police, and the Commissioner shall allow the Commission to so participate in the negotiations.

“(5) Once a condition of employment has been included in an agreement under subsection (3) of this section it shall remain in the agreement until the Commissioner and the service organisation agree that it shall cease to be so included in the agreement.

“(6) Where the Commissioner and the service organisation are unable to reach a voluntary settlement of any claim made by one party upon the other for an agreement under this section then the procedures prescribed in the Third Schedule to this Act shall be used to fix the conditions of employment of sworn members of the Police.

Cf. 1978, No. 32, s. 8 (1); 1987, No. 125, s. 3

“68. **Registration of agreement**—(1) Subject to subsection (2) of this section, every agreement under section 67 of this Act shall be registered by the Arbitration Commission as an agreement under this Act.

“(2) The Arbitration Commission shall refuse to effect registration under subsection (1) of this section if, after having

given the parties the opportunity to be heard, it is satisfied that—

“(a) The parties or any of them do not have the right to represent the members of the Police or some of the members of the Police whom the agreement would purport to cover if the proposed agreement were registered by the Arbitration Commission as an agreement; or

“(b) Any matter contained in the proposed agreement is contrary to any enactment; or

“(c) There is a current agreement binding on the Commissioner and covering the members of the Police which the agreement proposes to cover, or some of those members.

“(3) Every agreement registered under this section shall be binding on the parties to it and on every sworn member of the Police to whom it applies.

“69. **Content and currency of agreement**—(1) Every agreement under section 67 of this Act shall contain a coverage clause.

“(2) Every such agreement shall specify the date on which it expires and shall continue in force at least until the close of that date.

“(3) In no case shall the date on which any such agreement, or any part of it, is to come into force be earlier than the date of the expiry of the currency of an existing agreement being wholly or partially superseded by the first-mentioned agreement.

“(4) Notwithstanding the expiry of the currency of any such agreement, it shall continue in force to the extent that it is not superseded by another agreement; but it shall be cancelled at the expiry of 1 year after the expiry of its currency unless any party to it notifies the Arbitration Commission in writing before the expiration of that year that the party wishes the agreement to continue in force for a period of 1 year.

“(5) Where an agreement has continued in force under subsection (4) of this section, it shall be cancelled at the end of the period for which it was so continued in force unless any party to it notifies the Arbitration Commission in writing before the expiration of that period that the party wishes it to continue in force for a further period of 1 year.

“(6) Notwithstanding anything in subsections (4) and (5) of this section, no such agreement shall continue in force for more than 3 years after the expiry of its currency.

“(7) For the purposes of this Act, the period for which an agreement is current is the period beginning on the date on which it is expressed to come into force and ending on the date specified in it for its expiry.

*“New Matters*

“70. **New matters**—(1) Where the appropriate service organisation or the Commissioner considers, in relation to an existing agreement under section 67 of this Act,—

“(a) That the existing agreement does not deal adequately with any new matter relating to sworn members of the Police employed under it; and

“(b) That as a result negotiations under this Act should be entered into between the parties for—

“(i) An amendment to that existing agreement; or

“(ii) Another agreement to come into force during the currency of that existing agreement,—

the service organisation or the Commissioner, either alone or jointly, may apply to the Labour Court to determine whether or not a new matter exists.

“(2) For the purposes of this Part of this Act, a new matter, in relation to any agreement, means a matter, significantly affecting the terms and conditions of employment of sworn members of the Police employed under the agreement, which—

“(a) Has arisen as a result of the action of the Commissioner since the date on which the agreement was settled in writing; and

“(b) Is not dealt with in the agreement or is dealt with in the agreement only in the most general terms; and

“(c) Is not a dispute of rights.

“(3) Neither the making of an application under subsection (1) of this section nor the entering into of negotiations in relation to any new matter prevents claims in respect of that matter being addressed in any negotiations for a new agreement.

“71. **Application to Labour Court**—(1) Every application to the Labour Court under section 70 (1) of this Act shall include—

“(a) A description of both the new matter and the manner in which it arose; and

“(b) Details of the claims that the applicant wishes to make in relation to the new matter; and

“(c) The name of the other party with whom the applicant wishes to negotiate; and

“(d) An indication whether the service organisation wishes to negotiate—

“(i) An agreement to take the place of the existing agreement; or

“(ii) An amendment to the existing agreement; or

“(iii) An agreement to take some sworn members of the Police out of the coverage of an existing agreement.

“(2) On any application under section 70 (1) of this Act, the applicant shall forthwith serve a copy of the application on the other party to the existing agreement.

“72. **Decision of Labour Court**—(1) The Labour Court shall, on hearing an application under section 70 (1) of this Act and on being satisfied that copies of it have been served in accordance with section 71 (2) of this Act, determine, after hearing the parties or after giving them an opportunity to be heard, whether the matter to which the application relates is a new matter.

“(2) It shall be for the applicant to establish on the balance of probabilities that the matter to which the application relates is a new matter.

“(3) If the Labour Court determines that the matter to which the application relates is a new matter, the applicant may enter into negotiations under this Act.

“(4) The jurisdiction conferred on the Labour Court by this section shall be exercised by a Judge sitting alone, and section 296 of the Labour Relations Act 1987 relating to urgency shall apply.

*“Method of Negotiating New Matters*

“73. **Negotiations for agreement**—(1) Where the Labour Court has determined on an application under section 70 (1) of this Act that a new matter exists, the applicant may negotiate—

“(a) An amendment to an existing agreement; or

“(b) An agreement to take the place of an existing agreement; or

“(c) An agreement to take some sworn members of the Police out of the coverage of the agreement,—  
and section 67 of this Act shall apply, with all necessary modifications, in relation to the agreement or amendment.



“(2) Notwithstanding anything in section 69 (3) of this Act, where negotiations are initiated as a result of such a determination by the Court and they result in an agreement or an amendment to an agreement, the agreement or amendment may come into force on any date (other than a date earlier than the date of the commencement of the existing agreement).

“(3) Where such an agreement or amendment amends an agreement or takes some sworn members of the Police out of the coverage of an existing agreement, the Arbitration Commission shall, on registering the agreement, make such amendments as are required to the existing agreement to ensure that any members concerned are covered by a single agreement.

“(4) Where such an agreement replaces an existing agreement, the Arbitration Commission shall, on registering the agreement, cancel the existing agreement, and the agreement shall be current for the period specified in it.

“(5) Where such an agreement amends an existing agreement, the agreement shall have the same currency as the existing agreement.

**“74. Registration of agreements arising out of new matters—**(1) The Arbitration Commission may refuse to register an agreement or amendment thereof that has been negotiated following a determination by the Labour Court that the dispute concerned a new matter if it is satisfied that the terms of the agreement or amendment address matters other than the new matters.

“(2) Notwithstanding subsection (1) of this section, where the registration of a new agreement will have the effect of removing some sworn members of the Police from the coverage of an existing agreement, the new agreement may incorporate not only the provisions relating to new matters but also the clauses relating to terms and conditions of employment contained in the existing agreement.

*“Non-Sworn Members of the Police*

**“75. Conditions of employment of non-sworn members of the Police—**(1) Part VI of the State Sector Act 1988, with any necessary modifications and subject to this section, shall apply in relation to non-sworn members of the Police in the same manner as that Part applies in relation to the Public Service.

“(2) For the purposes of the application of the State Sector Act 1988 under this section, every reference to the Commission shall be read as a reference to the Commissioner of Police.

“(3) Before entering into any negotiation under Part VI of the State Sector Act 1988 in respect of the conditions of employment of non-sworn members of the Police the Commissioner shall consult with the State Services Commission over the conditions of employment to be negotiated. The State Services Commission may at any time, either before or during the fixing of such conditions of employment, indicate to the Commissioner that it wishes to participate in the fixing of those conditions of employment, and the Commissioner shall allow the State Services Commission to participate accordingly.

*“Senior Positions*

**“76. Senior positions may be excluded from agreement—**(1) The Commissioner may from time to time designate senior positions held by members of the Police as not being covered by any agreement negotiated under section 67 or section 75 of this Act.

“(2) The number of positions for the time being designated under subsection (1) of this section shall not exceed 20.

“(3) The number of 20 may be altered from time to time by agreement between the Commissioner and the appropriate service organisation or union.

“(4) The Commissioner shall in respect of any position designated under subsection (1) of this section notify the vacancy or the impending vacancy of any such position in such manner as the Commissioner thinks sufficient to enable suitably qualified persons to apply for the position.

“(5) The Commissioner in making an appointment to a position designated under subsection (1) of this section shall give preference to the person who is best suited to the position.

“(6) Notwithstanding the provisions of subsections (4) and (5) of this section, where at the time of the designation of a position under subsection (1) of this section that position is occupied, the Commissioner may appoint the incumbent of that position to that designated position for a term of not more than 5 years.

**“77. Conditions of employment for senior staff—**(1) Except where the specific conditions of employment are provided in this Act, the conditions of employment of every person appointed to a position to which section 76 of this Act applies shall be determined in each case by agreement between

the Commissioner and the person to be appointed, but the Commissioner shall consult with the State Services Commission before finalising the conditions of employment.

“(2) Every person appointed to a position to which section 76 of this Act applies shall be appointed for a term of not more than 5 years.

“(3) Every person who holds a position to which section 76 of this Act applies shall be eligible for reappointment.

“(4) The provisions determined, either generally or particularly, under subsection (1) of this section in relation to any person shall be included in that person’s contract of service.

**“78. Application of Labour Relations Act 1987 and this Act in respect of senior positions—**(1) No agreement that applies to or purports to apply to any position to which section 76 of this Act applies shall be registered under the Labour Relations Act 1987 or this Act.

“(2) Where, after the registration of any agreement in respect of any members of the Police, the Commissioner designates any position to which that agreement applies to be a senior position under section 76 of this Act, that position shall, with effect from the date specified in the agreement as the date on which it expires, cease to be covered by the agreement as registered and that agreement shall be deemed to be amended accordingly.

“(3) Nothing in this Act—

“(a) Prevents a membership rule of a service organisation or union from covering a position to which section 76 of this Act applies; or

“(b) Prevents a person appointed to a position to which section 76 of this Act applies belonging to the service organisation or union whose membership rule covers that position.

**“79. Conditions where person not reappointed—**(1) Where a member of the Police who has been appointed to a position to which section 76 of this Act applies is not reappointed to that position at the expiration of his or her term of appointment, or for any reason whatever that appointment is terminated before the expiration of that term, other than as a result of an appointment to another position in the Police, or as a consequence of that person resigning from the Police, the Commissioner shall, at the Commissioner’s option, either—

“(a) Place the member, under the employment of the Commissioner, on such duties as the Commissioner

determines from time to time to be appropriate, in which case the Commissioner shall determine with the member concerned the conditions of employment that are to apply to that member during the period of employment under this paragraph; or

“(b) Terminate the member’s employment in accordance with the provisions of that member’s contract.

“(2) No person who is assigned duties under subsection (1) (a) of this section shall be entitled to receive any payment in respect of the completion of any preceding term of office notwithstanding any conditions of employment negotiated under section 77 of this Act to the contrary.

“(3) The Commissioner shall determine from time to time the period for which a person is employed under subsection (1) (a) of this section.

“(4) Employment of a member under subsection (1) (a) of this section shall end if, before the expiration of the period from time to time determined by the Commissioner, that member—

“(a) Is appointed to another position in the Police; or

“(b) Dies or resigns or otherwise ceases to be a member of the Police.

“(5) Subject to the provisions of any particular contract, nothing in this Act shall prevent a person employed under sections 76 to 78 of this Act from being appointed to any other position, whether in a senior position designated under section 76 of this Act or otherwise.

*“Strikes and Lockouts Involving Sworn Members of the Police*

“80. **Unlawful strikes and lockouts**—(1) A strike or lockout, as defined in section 81 or section 82 of this Act, shall be unlawful.

“(2) Where such a strike occurs or is threatened, the Commissioner may apply to the Labour Court for an injunction to prevent the strike or an order for the resumption of full work.

“(3) Where such a lockout occurs or is threatened, the appropriate service organisation may apply to the Labour Court for an injunction to prevent the lockout or an order for the lockout to cease.

“(4) The Labour Court shall have full and exclusive jurisdiction to hear and determine any proceedings under this section, and no other Court shall have jurisdiction to hear and determine such proceedings.

“(5) The jurisdiction conferred on the Labour Court by this section shall be exercised by a Judge alone, and the provisions of section 296 of the Labour Relations Act 1987 relating to urgency shall apply.

“81. **Definition of strike**—For the purposes of section 80 of this Act, the term ‘strike’ means the act of any number of sworn members of the Police—

“(a) In discontinuing the performance of their duties, whether wholly or partially, or in reducing the normal performance of their duties; or

“(b) In breaking their conditions of employment; or

“(c) In refusing or failing after any such discontinuance to resume or return to their duties; or

“(d) In refusing or failing to accept engagement for any work in which they are usually employed; or

“(e) In reducing their normal output or their normal rate of work—

the said act being due to any combination, agreement, common understanding, or concerted action, whether express or implied, made or entered into by any sworn members of the Police; but does not include a service organisation meeting allowed under any Act or authorised by the Commissioner.

“82. **Definition of lockout**—For the purposes of section 80 of this Act, the term ‘lockout’ means the act of the Commissioner—

“(a) In closing any office of the Police; or

“(b) In discontinuing the employment of any normal duties of any sworn members of the Police, whether wholly or partially; or

“(c) In breaking some or all of the conditions of employment fixed in respect of any such members in an agreement registered under this Act; or

“(d) In refusing or failing to engage any such members for any work for which such members are usually employed—

with a view to compelling any such members to accept conditions of employment or comply with any demands made by the Commissioner.

*“Disputes of Rights in Relation to Sworn Members of the Police*

“83. **Settlement of disputes of rights**—(1) The procedure set out in the Fourth Schedule to this Act shall be available for use by the Commissioner and the appropriate service organisation, in settling disputes of rights.

“(2) For the purposes of this section, a ‘dispute of rights’ means, and is confined to, a dispute over the interpretation, application, or operation of any provision of an agreement applying to any sworn members of the Police and registered under this Act.

“**84. Failure to observe dispute of rights procedure**—Where either party to a dispute of rights fails to observe the procedure set out in the Fourth Schedule to this Act, the other party to the dispute may refer it to the Labour Court for settlement.

“**85. Report**—(1) Where a dispute of rights is referred to the Labour Court under this Act or an appeal is brought to the Labour Court in relation to a dispute of rights, the person chairing the disputes committee shall, as soon as practicable, lodge with the Registrar of the Labour Court a written report on—

- “(a) The facts of the dispute; and
- “(b) The issues involved in the dispute.

“(2) Where a report is lodged under subsection (1) of this section, the Labour Court may at any time direct that a further report be lodged by the person chairing the committee.

“(3) A copy of every report lodged under subsection (1) or subsection (2) of this section shall be supplied forthwith by the person chairing the committee to both parties to the dispute and each party shall be entitled, at the hearing of the dispute, to be heard and to tender evidence on any matter referred to in, or alleged to have been omitted from, the report.

“**86. Role of Labour Court**—Where the Labour Court is required by this Part of this Act to hear and determine any dispute of rights (whether on appeal or by reference), the Labour Court shall—

- “(a) Afford both parties the opportunity to be heard and to tender evidence;
- “(b) Have regard to any report provided under section 85 of this Act;
- “(c) Make a determination by way of final settlement of the dispute, which shall be binding on the parties.

*“Personal Grievances in Relation to Sworn Members of the Police*

“**87. Settlement of personal grievances**—(1) The procedure set out in the Fifth Schedule to this Act shall be available for use by the appropriate service organisation and any sworn member of the Police who is a member of that organisation, in settling personal grievances.

“(2) Any member of the Police who is not a member of a service organisation, and who considers that he or she has grounds for a personal grievance, shall have the right to refer the grievance to the Commissioner; and the Commissioner shall consider and determine the grievance as rapidly as possible.

“(3) For the purposes of this section, ‘personal grievance’ means any grievance that a sworn member of the Police may have against the Commissioner because of a claim—

“(a) That the member has been unjustifiably dismissed; or

“(b) That the member’s employment, or one or more conditions thereof, is or are affected to the member’s disadvantage by some unjustifiable action by the Commissioner (not being an action deriving solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision of any agreement registered under this Act); or

“(c) That the member has been discriminated against in the member’s employment; or

“(d) That the member has been sexually harassed in the member’s employment; or

“(e) That the member has been subject to duress in the member’s employment in relation to the membership or non-membership of an appropriate service organisation.

“(4) For the purposes of subsection (3) (b) of this section, an action by the Commissioner (other than the imposition of a penalty under this Act) shall not be unjustifiable if—

“(a) The Commissioner’s principal reason for taking the action is to ensure that an operational requirement is met; and

“(b) Any failure to perform the requirement would be likely to result in a breach of the oath of office prescribed by section 37 of this Act.

“(5) In this Act a ‘representative’, in relation to the Commissioner and in relation to an alleged personal grievance, means a person—

“(a) Who is a member of the Police or is employed by the Police; and

“(b) Who either—

“(i) Has authority over the member alleging the grievance; or

“(ii) Is in a position of authority over other members in the workplace of the member alleging the grievance.

“88. **Discrimination**—(1) For the purposes of section 87 (3) (c) of this Act, a member is discriminated against in that member’s employment if the Commissioner or a representative of the Commissioner—

“(a) Refuses or omits to offer or afford to that member the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other members of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or

“(b) Dismisses that member or subjects that member to any detriment, in circumstances in which other members employed on work of that description are not or would not be dismissed or subjected to such detriment—

by reason of the colour, race, ethnic or national origins, sex, marital status, or religious or ethical belief of that member or by reason of that member’s involvement in service organisation activities.

“(2) For the purposes of subsection (1) of this section, a member is deemed to be involved in service organisation activities if, at any time within 12 months before the action complained of, that member—

“(a) Was an officer of any service organisation or branch of a service organisation or was a member of the committee of management of any service organisation or branch, or was otherwise an official or representative of any service organisation or branch; or

“(b) Had represented a service organisation or a branch of a service organisation in any negotiations between the Commissioner and members; or

“(c) Had made or caused to be made a claim for some benefit of a determination under this Part of this Act either for that member or any other member, or had supported any such claim, whether by giving evidence or otherwise; or

“(d) Had submitted another personal grievance to the Commissioner.

“(3) For the purposes of this section, ‘ethnic or national origins’ and ‘ethical belief’ have the meanings assigned to them by the Human Rights Commission Act 1977.



**“89. Sexual harassment—**(1) For the purposes of section 87 (3) (d) of this Act, a member is sexually harassed in that member’s employment if the Commissioner or a representative of the Commissioner—

“(a) Makes a request of that member for sexual intercourse, sexual contact, or other form of sexual activity that contains—

“(i) An implied or overt promise of preferential treatment in that member’s employment; or

“(ii) An implied or overt threat of detrimental treatment in that member’s employment; or

“(iii) An implied or overt threat about the present or future employment status of that member; or

“(b) By—

“(i) The use of words (whether written or spoken) of a sexual nature; or

“(ii) Physical behaviour of a sexual nature,—  
subjects the member to behaviour that is unwelcome or offensive to that member (whether or not that is conveyed to the Commissioner or representative) and which is either repeated or of such a significant nature that it has a detrimental effect on that member’s employment, job performance, or job satisfaction.

“(2) For the purposes of section 87 (3) (d) of this Act, a member is also sexually harassed in that member’s employment if—

“(a) A request of the kind described in subsection (1) (a) of this section is made to a member; or

“(b) A member is subjected to behaviour of the kind described in subsection (1) (b) of this section—

by a person (not being a representative of the Commissioner) who is a member of the Police or is in the employ of the Commissioner.

**“90. Special procedures where sexual harassment alleged—**Where a personal grievance involves allegations of sexual harassment,—

“(a) Any grievance committee shall, if the sworn member of the Police concerned so requires, consist of one person, being either—

“(i) A person (who may be a mediator) mutually agreed on by the parties; or

“(ii) If there is no such agreement, either a mediator or a person appointed by a mediator; and

“(b) The person or persons constituting the grievance committee may, before or after hearing the parties, conduct an investigation into the grounds of the personal grievance, but shall ensure that all parties have an opportunity to be heard regarding the findings of that investigation; and

“(c) Neither the grievance committee nor the Labour Court shall take into account any evidence of the member’s sexual experience or reputation; and

“(d) Subject to paragraphs (a) to (c) of this section, the procedure otherwise applicable in respect of that grievance shall apply.

“91. **Sexual harassment by other persons**—(1) Where—

“(a) A request of the kind described in section 89 (1) (a) of this Act is made to a sworn member of the Police; or

“(b) A sworn member of the Police is subjected to behaviour of the kind described in section 89 (1) (b) of this Act—

by a person (not being a representative of the Commissioner) who is in the employ of the Commissioner, the member may make a complaint in writing about that request or behaviour to the Commissioner or to a representative of the Commissioner.

“(2) The Commissioner or representative, on receiving a complaint under subsection (1) of this section, shall—

“(a) Inquire into the facts; and

“(b) If satisfied that such a request was made or that such behaviour took place, take whatever steps are practicable to prevent any repetition of such a request or of such behaviour.

“(3) Where any person, being a person in relation to whom a member of the Police has made a complaint under subsection (1) of this section,—

“(a) Either—

“(i) Makes to that member after the complaint a request of the kind described in section 89 (1) (a) of this Act; or

“(ii) Subjects that member after the complaint to behaviour of the kind described in section 89 (1) (b) of this Act; and

“(b) The Commissioner or a representative of the Commissioner has not taken whatever steps are practicable to prevent the repetition of such a request or such behaviour,—

that member shall be deemed for the purposes of this Act to have a personal grievance by virtue of having been sexually harassed in the course of the member's employment as if the request or behaviour were that of the Commissioner; and the procedure for the settlement of a personal grievance shall apply accordingly.

“92. **Duress**—For the purposes of section 87 (3) (e) of this Act, a member is subject to duress in that member's employment in relation to membership or non-membership of a service organisation if the Commissioner or a representative of the Commissioner—

“(a) Makes membership of a service organisation or of a particular service organisation a condition to be fulfilled if that member wishes to retain the member's employment; or

“(b) Makes non-membership of a service organisation or of a particular service organisation a condition to be fulfilled if that member wishes to retain that member's employment; or

“(c) Exerts undue influence on that member, or offers, or threatens to withhold, or does withhold, any monetary incentive or advantage to or from that member, or threatens to or does impose any monetary disadvantage on that member, with intent to induce that member—

“(i) To become or remain a member of a service organisation or a particular service organisation; or

“(ii) To cease to be a member of a service organisation or a particular service organisation; or

“(iii) Not to become a member of a service organisation or a particular service organisation; or

“(iv) To support a change in service organisation coverage; or

“(v) Not to support a change in service organisation coverage; or

“(vi) To participate in the formation of a new service organisation; or

“(vii) Not to participate in the formation of a new service organisation; or

“(viii) On account of the fact that that member is, or, as the case may be, is not, a member of a service organisation or a particular service organisation, to resign from or leave any employment.

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

**“94. Remedies—**(1) Where a disputes committee or the Labour Court determines that a dispute of rights exists, the committee or the Court, as the case may be, may, in settling that dispute, make recommendations to the appropriate service organisation and the Commissioner concerning future conduct or actions.

(2) Where a grievance committee or the Labour Court determines that a member has a personal grievance, the committee or the Court, as the case may be, may, in settling that grievance, provide for any one or more of the following remedies:

“(a) Reinstatement, which may include the reinstatement of the member in the member’s former position or the placement of the member in the position that the member would have been in if the personal grievance had not arisen or in a position no less advantageous to the member:

“(b) The reimbursement to the member of a sum equal to the whole or any part of the pay or other money lost by the member:

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

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

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

“(d) Recommendations to the service organisation and the Commissioner and the member concerning future conduct or actions:

“(e) If a grievance committee or the Labour Court finds a member to have been sexually harassed in that member’s employment, recommendations to the Commissioner concerning the action the Commissioner should take in respect of the person who made the request or was guilty of the behaviour, which action may include the transfer of that person,

the taking of disciplinary action against that person, or the taking of rehabilitative action in respect of that person.

**“95. Choice of procedures—**Where the circumstances giving rise to a personal grievance by a member are also such that that member would be entitled to make a complaint under the Human Rights Commission Act 1977 or the Race Relations Act 1971, or would be entitled to invoke any provision in this Act (other than a provision applicable in relation to personal grievances), the member may take one but not both of the following steps:

“(a) The member may invoke, in relation to those circumstances, the procedures applicable in relation to personal grievances under this Act:

“(b) The member may make, in relation to those circumstances, a complaint under the Human Rights Commission Act 1977 or the Race Relations Act 1971, or may invoke any provision in this Act (other than a provision applicable in relation to personal grievances).

**“96. Labour Relations Act 1987 and State Sector Act 1988 not to apply—**(1) Except as otherwise expressly provided in this Act, nothing in either the Labour Relations Act 1987 or the State Sector Act 1988 shall apply to any persons employed as members of the Police under this Act.

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

“(a) Section 207 of the Labour Relations Act 1987, with any necessary modifications, shall apply to the non-observance of or non-compliance with any provision of this Part of this Act or of an agreement registered under this Act:

“(b) If any person wishes to apply for review under Part I of the Judicature Amendment Act 1972, or bring proceedings seeking a writ or order of, or in the nature of, mandamus, prohibition, certiorari, or a declaration or injunction, in relation to the exercise, refusal, or proposed or purported exercise by any person or body under this Part of this Act or, in the case of a service organisation, by or under this Part of this Act or by or under the constitution or other instrument of incorporation, rules, or bylaws of the organisation, the provisions of subsections (3) to (6) of section 280 of the Labour Relations Act 1987 shall apply:

“(c) Part XI of the Labour Relations Act 1987 shall apply to proceedings before the Arbitration Commission or the Labour Court under this Part of this Act as if such proceedings were proceedings under that Act.”

**15. Transfer of special purpose appointees—**  
(1) Notwithstanding anything in any other enactment or rule of law, this section shall apply to every member of the Police who, at the commencement of this Act, holds an appointment under regulation 24 of the Police Regulations 1959 (in this section referred to as a special purpose appointee).

(2) Subject to subsection (3) of this section, at such time as the Commissioner thinks fit, the Commissioner shall appoint every special purpose appointee to be either a sworn member or a non-sworn member of the Police under section 5 of the principal Act.

(3) No special purpose appointee shall be appointed as a non-sworn member of the Police under section 5 of the principal Act if that appointee is occupying a position that, in the opinion of the Commissioner, requires the exercise of the powers of a constable.

(4) Every special purpose appointee who is appointed under this section shall continue to be subject to the conditions of employment applicable to the appointee immediately before his or her appointment under this section, but those conditions of employment shall be subject to any subsequent agreement under section 67 or section 75 of the principal Act that expressly varies those conditions of employment.

(5) Every special purpose appointee who, at the commencement of this Act, is a member of the Government Superannuation Fund Police Sub-Scheme subject to Part VIA of the Government Superannuation Fund Act 1956, shall remain a member of that Sub-Scheme; and the provisions of Part VIA of that Act and Part II of the principal Act shall apply to every such special purpose appointee.

(6) On the appointment of any special purpose appointee under this section, that person's former appointments under regulation 24 of the Police Regulations 1959 and any provision of the principal Act shall be deemed to be cancelled.

**16. Transitional provision in respect of civilian employees—**(1) Every person who, at the commencement of this section, holds any position on the civilian staff of the Police Department shall be deemed for all purposes to have been

appointed to that position as a non-sworn member of the Police under section 5 of the principal Act.

(2) Where, before the commencement of this section, any person to whom subsection (1) of this section applies was required by or under any Act or instructions, in force at the commencement of this section, to retire from his or her office or employment on attaining a specified age, nothing in this Act entitles that person to retire before attaining that age or continue in that office or employment after attaining that age.

(3) Nothing in this Act shall affect the eligibility of any person appointed as a non-sworn member of the Police under section 5 of the principal Act to remain a member of any superannuation scheme under the Government Superannuation Fund Act 1956.

**17. New Schedules added to principal Act**—The principal Act is hereby amended by adding the Schedules set out in the First Schedule to this Act.

**18. Amendment to Ombudsmen Act 1975**—The Ombudsmen Act 1975 is hereby amended by omitting so much of Part I of the First Schedule as relates to the Police Department.

**19. Amendments to Wanganui Computer Centre Act 1976**—The Wanganui Computer Centre Act 1976 is hereby amended—

- (a) By omitting from the definition of the term “User Departments” in section 2 (as substituted by section 2 of the Wanganui Computer Centre Amendment Act 1989) the words “(including civilian staff)”;
- (b) By omitting from section 4 (3) and also from section 4c (1) (a) (as substituted by section 3 of the Wanganui Computer Centre Amendment Act 1989) the words “(including civilian staff)”;
- (c) By omitting from the Schedule the heading “*Police Department Records*”, and substituting the heading “*Police Records*”.

**20. Consequential repeals**—The enactments specified in the Second Schedule to this Act are hereby consequentially repealed.

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## SCHEDULES

### FIRST SCHEDULE

Section 17

#### NEW THIRD, FOURTH, AND FIFTH SCHEDULES ADDED TO PRINCIPAL ACT

#### “THIRD SCHEDULE

Section 67 (6)

#### “PROCEDURE FOR CONCILIATION AND ARBITRATION

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

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

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

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

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

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

“(2) The mediator shall—

“(a) Notify the service organisation and the Commissioner of the date, time, and place determined for the negotiations; and

“(b) Notify the service organisation and the Commissioner that they may each nominate up to 10 persons as negotiators on behalf of the parties to the negotiations.

“7. **Action where mediator cannot arrange for negotiations**—(1) Where the mediator is unable to bring together the parties for negotiations, the mediator shall inform the Arbitration Commission accordingly.

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

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

“(b) Call on the services of the Chief Mediator or any other person.

“(3) Subject to subclause (4) of this clause, where the Arbitration Commission's actions do not result in bringing together the parties for negotiations, the Arbitration Commission shall, subject to section 68 of this Act, proceed to hear and decide those parts of the claim that may be fixed under section 67 (3) of this Act by settling those terms of the agreement and registering it.

“(4) Where the Arbitration Commission is satisfied that the inability of the mediator or other person to bring together the parties for negotiations was caused by the party which initiated the negotiations for an agreement under clause 1 of this Schedule, the Arbitration Commission—

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



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

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

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

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

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

“(3) The mediator may permit any other person to act for a negotiator who is unable to attend any negotiations.

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

“9. **Powers and functions of mediator**—(1) The mediator shall make every endeavour to bring about a settlement of the claim.

“(2) The mediator shall determine, in consultation with the appropriate service organisation and the Commissioner, the procedures to be followed in the negotiations.

“(3) The mediator may from time to time adjourn the negotiations.

“(4) The mediator shall make and preserve a record of the negotiations.

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

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

“(a) The mediator; and

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

“(c) An authorised representative of the Commissioner.

“(2) The terms of settlement shall be given by the mediator to—

“(a) The representatives of the parties; and

“(b) The Chief Mediator; and

“(c) The Arbitration Commission.

“(3) When the Arbitration Commission has received the terms of settlement, an Arbitration Commissioner shall, subject to section 68 of this Act,—

“(a) Register the terms of settlement that have a matter that may be fixed under section 67 (3) of this Act as an agreement; and

“(b) Forward a copy of the agreement to—

“(i) The representatives of the parties; and

“(ii) The Chief Mediator.

“11. **Unsettled disputes**—If the claim to which this Schedule applies is not settled by negotiations, the mediator shall refer the claim to the Arbitration Commission.

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

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

“(a) The state of the negotiations; and

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

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

“13. **Copies of statement**—A copy of the statement shall be forwarded to the other party at the same time as it is provided to the Arbitration Commission.

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

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

“16. **Hearing by Arbitration Commissioner**—At any such meeting the Arbitration Commissioner shall hear the parties and may do all or any of the following:

“(a) Refer the dispute to the Chief Mediator to arrange (by delegation if necessary) for further negotiations between the parties to try and resolve the dispute:

“(b) Consult such organisations as may be appropriate with a view to ascertaining whether they could assist in resolving the dispute:

“(c) With the written consent of the parties, refer it to the Arbitration Commission to hear and determine the matters that may be fixed under section 67 (3) of this Act:

“(d) Take such other action as the Arbitration Commissioner considers in all the circumstances might assist to resolve the dispute.

“17. **Other actions of Arbitration Commissioner**—Any action or actions taken by an Arbitration Commissioner under clause 16 of this Schedule shall not preclude the Arbitration Commissioner from taking any further action under that clause.

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

“(a) An Arbitration Commissioner has exercised any or all of the powers conferred by clause 16 of this Schedule; and

“(b) That Arbitration Commissioner is satisfied that no action short of hearing and determining the dispute will settle it; and

“(c) The parties do not agree to the dispute being heard and determined by the Arbitration Commission,—

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

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

“19. **Arbitrating body**—The arbitrating body, for the purposes of the compulsory arbitration, shall be the Arbitration Commission.

“20. **Statement as to state of negotiations**—The appropriate service organisation and the Commissioner shall each provide the Arbitration Commission with a signed statement as to—

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

“21. **Copies of statement**—When the Arbitration Commission has received both of the statements required under clause 20 of this Schedule, it shall supply—

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

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

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

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

“23. **Criteria to be observed by Arbitration Commission**—The Arbitration Commission, in hearing and determining a dispute in relation to a proposed agreement, shall have regard to—

- “(a) The supply and demand factors for the skills of the members covered by the proposed agreement; and
- “(b) The need for fairness and equity in the rate of pay and conditions of employment for work covered by the proposed agreement; and
- “(c) Any changes in the content of any job or in the skills, duties, or responsibilities of positions covered by the proposed agreement; and
- “(d) Any changes in productivity arising from, for example, the introduction of new technology; and
- “(e) Relativities within the proposed agreement, and between it and other awards and agreements; and
- “(f) The special conditions applicable to employment as a member of the Police; and
- “(g) Such other matters as the Commissioner or the Arbitration Commission, as the case may be, considers relevant, or as may be agreed upon between the Commissioner and the appropriate service organisation.

“24. **Application of criteria**—In applying the criteria, the Arbitration Commission—

- “(a) Shall not be bound by historical precedent and practice of any sort; and

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

“(b) Shall consider whether relativities or conditions of employment should be changed to take account of factors that are specific to the work covered by the proposed agreement; and

“(c) Shall not have any regard whatsoever to any matters that remained in dispute but were not matters that may be fixed under section 67 (3) of this Act.

“25. **Duty of Arbitration Commission to accept one final offer—**

(1) In determining any dispute under this Schedule, the Arbitration Commission shall accept either the final position adopted by the service organisation or the final position adopted by the Commissioner.

“(2) The Arbitration Commission must accept in full the final offer made by one of the parties.

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

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

“27. **Power of Arbitration Commissioner to waive technical irregularities—**An Arbitration Commissioner in his or her discretion may waive any technical irregularity or omission that may have occurred in the submission or reference of a dispute of interest to the Arbitration Commission, if he or she is satisfied that the provisions of this Act have been substantially complied with.

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

Section 83 (1)

## “FOURTH SCHEDULE

“PROCEDURE IN RELATION TO DISPUTE OF RIGHTS  
(SWORN MEMBERS OF THE POLICE)

“1. **Application of procedure**—The procedure set out in this Schedule shall apply in relation to disputes of rights under section 83 of this Act.

“2. **Persons who may invoke procedure**—Either the appropriate service organisation or the Commissioner may invoke the procedure.

“3. **Disputes committee**—The person or persons who invoke the procedure shall refer the dispute to a committee consisting of an equal number of representatives appointed respectively by each of the 2 parties to the dispute, together with an independent person to chair the committee.

“4. **Person in the chair**—The committee shall be chaired by—

“(a) A person (who may be a mediator) mutually agreed upon by the parties; or

“(b) If there is no such agreement, a mediator or a person appointed by a mediator.

“5. **Decisions of disputes committee**—(1) A decision reached by a majority of the committee (not including the person chairing the committee) shall be the decision of the committee; but if those members of the committee are equally divided in opinion, the person chairing the committee may either—

“(a) Make a decision, which shall then be the decision of the committee; or

“(b) Refer the dispute forthwith to the Labour Court to be heard and determined.

“(2) The person chairing the committee shall record the decision of the committee in writing.

“(3) The person chairing the committee shall give a copy of the committee’s decision to each of the following persons:

“(a) The parties to the dispute:

“(b) The Chief Mediator:

“(c) The Secretary of Labour.

“(4) Subject to the right of appeal conferred by clause 6 of this Schedule, the decision of the committee shall be binding on the parties to the dispute.

“6. **Limited right of appeal**—(1) Where the decision of the committee is a decision made by the person chairing the committee, any party may appeal to the Labour Court against that decision or any part of it by lodging with the Registrar of the Labour Court, within 14 days after the date on which the decision is made known to the appellant, a written notice of appeal.

“(2) Either before or immediately after the lodging of the notice of appeal, the appellant shall give a copy of the notice of appeal to every other party to the appeal and to the person who chaired the committee.

“(3) Every notice of appeal shall specify the decision or the part of the decision to which the appeal relates.

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

## “FIFTH SCHEDULE

Section 87 (1)

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

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

“2. **Submission of grievance to employer**—(1) Any sworn member of the Police who considers that he or she has grounds for a personal grievance may submit the grievance to the Commissioner or a representative of the Commissioner.

“(2) The grievance shall be so submitted as soon as practicable after the grievance has arisen so as to enable the Commissioner to remedy the grievance rapidly and as near as possible to the point of origin.

“3. **Notice to service organisation**—Where—

“(a) The grievance so submitted is not remedied by the Commissioner;  
or

“(b) The grievance is of such a nature that direct discussion between the member and the Commissioner or a representative of the Commissioner is regarded by the worker as inappropriate,—  
the member may request the appropriate service organisation to pursue resolution of the grievance.

“4. **Discussion between service organisation and Commissioner**—Where the service organisation considers that the personal grievance has substance, it shall forthwith take the matter up with the Commissioner or a representative of the Commissioner with a view to reaching a settlement of the grievance.

“5. **Service organisation’s written statement**—If the grievance is not settled in discussion between the service organisation and the Commissioner, the service organisation shall promptly give to the Commissioner a written statement setting out—

“(a) The nature of the grievance; and

“(b) The facts giving rise to the grievance; and

“(c) The remedy sought.

“6. **Commissioner’s response**—If the Commissioner is not prepared to grant the remedy sought, and the parties have not otherwise settled the grievance, the Commissioner shall, not later than the 14th day after the day on which the Commissioner receives the service organisation’s written statement, give to the service organisation a written response setting out—

“(a) The Commissioner’s view of the facts; and

“(b) The reasons why the Commissioner is not prepared to grant the remedy sought.

“7. **Grievance committee**—(1) If the service organisation is not satisfied with the Commissioner’s written response, it may call for the setting up of a grievance committee.

“(2) The method of setting up the grievance committee shall be decided by the parties.

“(3) Where both parties are willing to participate in the setting up of the grievance committee, it shall consist of—

“(a) An equal number of representatives (not exceeding 3) nominated respectively by the service organisation and the Commissioner; and

“(b) A person to chair the committee, who shall be either a person mutually agreed on by the parties or a mediator or other person appointed by a mediator.

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

“(4) Where the Commissioner fails to appoint any representative or acts in such a way that the grievance committee cannot be established in accordance with subclause (3) of this clause, the grievance committee shall consist of—

“(a) A representative or representatives (not exceeding 3) nominated by the service organisation; and

“(b) A person to chair the committee, who shall be either a mediator or a person appointed by a mediator.

“8. **Written evidence**—When a grievance committee has been set up, the service organisation shall ensure that copies of the organisation’s written statement and the Commissioner’s written response (if any) are placed before the committee.

“9. **Role of committee**—(1) The grievance committee shall proceed to hear and determine the grievance and, in doing so, shall consider—

“(a) The service organisation’s written statement (if any); and

“(b) The Commissioner’s written response (if any); and

“(c) Any evidence given by or on behalf of the parties or the member of the Police concerned.

“(2) The grievance committee may at any stage during the hearing of a grievance call for independent expert advice (including, where appropriate, advice from the Human Rights Commission) on any matter raised before it but in such a case the committee shall ensure that the parties hear or are informed of that advice and are each given an opportunity to respond to it.

“10. **Representation**—The Commissioner may be assisted or represented before the grievance committee by an employers organisation.

“11. **Method of decision**—A decision reached by a majority of the grievance committee (not including the person chairing the committee) shall be the decision of the committee; but if the members of the committee (other than the person chairing the committee) are equally divided in opinion, the person chairing the committee may either—

“(a) Make a decision, which shall then be the decision of the committee;  
or

“(b) Refer the grievance forthwith to the Labour Court for settlement.

“12. **Record of proceedings**—(1) The person chairing the grievance committee shall record in writing,—

“(a) Where the committee has made a decision, the decision of the committee; or

“(b) Where the grievance has been referred to the Labour Court, a report of the proceedings of the committee.

“(2) Every such written decision and written report shall set out—

“(a) The facts of the grievance;

“(b) The issues involved in it;

“(c) Where appropriate, the actual decision of the committee.

“13. **Copies of decision**—(1) The person chairing the committee shall give a copy of the committee’s written decision to—

“(a) The parties;

“(b) The member of the Police concerned;

“(c) The Chief Mediator;

“(d) The Secretary of Labour.

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

“(2) The person chairing the committee may, before giving a copy of the committee’s decision to any person under subclause (1) of this clause, make such deletions or alterations to the copy as the person chairing the committee considers necessary to protect the privacy of any person.

“14. **Effect of decision**—Subject to the exercise of any right of appeal, the decision of the grievance committee shall be binding on the parties and the member of the Police concerned.

“15. **Right of appeal**—(1) Subject to the provisions of the next succeeding clause, where the decision of the grievance committee is a decision of the person chairing the committee, any party may appeal to the Labour Court against that decision or any part of it by lodging with the Registrar of that Court, within 14 days after the date on which the decision is made known to the appellant, a written notice of appeal.

“(2) Either before or immediately after the lodging of the notice of appeal, the appellant shall give a copy of the notice of appeal to the other party, to the member of the Police concerned, and to the person who chaired the committee.

“(3) Every notice of appeal shall specify the decision or the part of the decision to which the appeal relates.

“16. **Restriction on right of appeal**—(1) Where the service organisation or the Commissioner has failed to comply in any material respect with the procedure applicable under these clauses in respect of the settlement of the personal grievance, the party at fault may appeal against the decision of the grievance committee only with the leave of the Labour Court.

“(2) Leave to appeal may be given subject to such conditions as the Labour Court thinks fit.

“17. **Record for Labour Court**—(1) Where any such personal grievance is placed before the Labour Court, whether by a reference or on appeal, the person who chaired the grievance committee shall, as soon as practicable, lodge with the Registrar of the Labour Court—

“(a) A copy of the service organisation’s original written statement and of the Commissioner’s written response (if any); and

“(b) A copy of the record of proceedings, being either—

“(i) A copy of the written decision of the committee; or

“(ii) A copy of the written report of the committee’s proceedings.

“(2) In any case the Labour Court may at any time direct the person who chaired the committee to lodge with the Labour Court a report in addition to the written record of proceedings.

“(3) A copy of every record or report lodged with the Labour Court under this clause shall be supplied forthwith by the person who chaired the committee to the parties and the member of the Police concerned.

“18. **Decision of Labour Court**—Subject to section 312 of the Labour Relations Act 1987, the decision of the Labour Court on any personal grievance placed before it under this procedure shall be final and conclusive.”



Section 20

**SECOND SCHEDULE**  
**ENACTMENTS REPEALED**

- 1972, No. 32—The Police Amendment Act 1972: Sections 2, 3, and 4.  
(R.S. Vol. 17, p. 600.)
- 1973, No. 103—The Police Amendment Act 1973: Sections 2, 3, 4 (1), 6,  
and 7. (R.S. Vol. 17, p. 601.)
- 1976, No. 154—The Police Amendment Act 1976: Sections 2, 5, and 7.  
(R.S. Vol. 17, p. 602.)
- 1978, No. 32—The Police Amendment Act 1978: Sections 2, 3, 4, 5, 8 (1),  
8 (3), 9, 10, 11 (2), and 12. (R.S. Vol. 17, p. 603.)
- 1980, No. 130—The Police Amendment Act 1980: Section 2 (1). (R.S.  
Vol. 17, p. 604.)
- 1981, No. 86—The Police Amendment Act 1981: Sections 2 and 3 (2).  
(R.S. Vol. 17, p. 605.)
- 1983, No. 133—The Police Amendment Act 1983: Sections 2 and 3 (1).  
(R.S. Vol. 17, p. 605.)
- 1987, No. 77—The Labour Relations Act 1987: Section 347 (2).
- 1987, No. 125—The Police Amendment Act 1987.
- 1988, No. 3—The Police Amendment Act 1988: Sections 2 to 9.
- 1988, No. 28—The Police Amendment Act (No. 2) 1988.

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This Act is administered in the Police Department.

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