

PO301*

Police Act 1892

Police Force Amendment Regulations 2003

Made by the Governor in Executive Council under section 138A.

1. Citation

These regulations may be cited as the *Police Force Amendment Regulations 2003*.

2. Commencement

These regulations come into operation on the day on which section 8 of the *Police Amendment Act 2003* comes into operation.

3. The regulations amended

The amendment in these regulations is to the *Police Force Regulations 1979**.

[* Reprinted as at 15 June 2001.

For amendments to 11 August 2003 see Western Australian Legislation Information Tables for 2002, Table 4, p. 294 and Gazette 30 June 2003.]

4. Part VIA inserted

After regulation 626 the following Part is inserted —

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Part VIA — Procedure relating to Part IIB of the Act

6A01. Interpretation

In this Part, unless the contrary intention appears —

“**Assistant Commissioner**” means a person holding or acting in the office of Assistant Commissioner (Professional Standards);

“**member**” has the same meaning as it has in section 33K of the Act;

“**notice**” means a notice given under section 33L(1) of the Act;

“privilege” means —

- (a) a privilege that would attach to documents prepared for the purpose of pending or contemplated proceedings or in connection with the obtaining or giving of legal advice;
- (b) immunity from production of documents or materials where their disclosure would be against the public interest; or
- (c) immunity from production of documents or materials under an enactment;

“review officer” means a person appointed under regulation 6A02.

6A02. Appointment of review officer

- (1) If a complaint or other information is received by the Commissioner or the Assistant Commissioner concerning a member’s integrity, honesty, competence, performance or conduct, the Commissioner or the Assistant Commissioner may appoint a review officer in relation to that member.
- (2) If practicable, a person is not to be appointed as a review officer in relation to a member if that person is or has been involved in an investigation that resulted in the complaint being made or the information being supplied to the Commissioner or the Assistant Commissioner.

6A03. Role of review officer

- (1) In subregulation (2) —
“relevant materials” means materials relevant to issues identified in the Summary of Investigation concerning the member.
- (2) The review officer shall conduct an inquiry into the member referred to in regulation 6A02(1) and prepare —
 - (a) a written report, called a “Summary of Investigation”, that includes reference to relevant materials that were gathered by the review officer for the purpose of the inquiry; and
 - (b) a written list, called an “Inspection List”, of relevant materials that were gathered by the review officer for the purposes of the inquiry.
- (3) The review officer shall identify in the Inspection List any documents in respect of which privilege is claimed and state in that List the grounds on which the privilege is claimed.

- (4) The review officer is subject to the direction of the Assistant Commissioner in conducting the inquiry and preparing the Summary of Investigation and Inspection List.

6A04. Provision of materials to the Commissioner

- (1) When the review officer completes his or her inquiry, the review officer or the Assistant Commissioner shall provide the Commissioner with —
 - (a) the Summary of Investigation;
 - (b) the Inspection List; and
 - (c) any material referred to in the Inspection List that the review officer or the Assistant Commissioner considers appropriate.
- (2) Before the Commissioner decides whether or not to issue a notice, the Commissioner or the Assistant Commissioner may cause further materials, including written reports, to be provided to the Commissioner.
- (3) The Commissioner may direct the review officer to conduct a further review in accordance with regulation 6A03 and subregulation (1) to prepare and submit to him or her a supplementary Summary of Investigation and a supplementary Inspection List.
- (4) The Commissioner's direction may include a direction as to the matters to be investigated and included in the supplementary Summary of Investigation.

6A05. Notice for purpose of section 33L(1) of the Act

- (1) Apart from the matter set out in section 33L(1) of the Act, a notice shall —
 - (a) set out the particular conduct or behaviour on which the Commissioner's loss of confidence is based; and
 - (b) advise the member that within 21 days of being given the notice or such longer period as is allowed by the Commissioner he or she may make a written submission to the Commissioner in respect of the grounds on which the Commissioner has lost confidence in the member's suitability to continue as a member.
- (2) As soon as practicable after the Commissioner gives a notice to a member, the Commissioner shall —
 - (a) provide to the member a copy of any of the following documents relating to the decision to give the notice —
 - (i) the Summary of Investigation and any supplementary Summary of Investigation;

- (ii) the Inspection List and any supplementary Inspection List;
 - (iii) any document examined and taken into account in deciding to issue the notice;
 - and
 - (b) make available to the member for inspection any other material examined and taken into account in deciding to issue the notice.
- (3) Subregulation (2) does not apply to any document or material that is privileged.
- (4) If the Commissioner does not provide a member with a copy of a document or make available to the member for inspection any other material because it is privileged the Commissioner shall advise the member of the ground for the document or material being privileged.

6A06. Access to material

- (1) During the period referred to in section 33L(2) of the Act, the Commissioner shall permit a member who has been given a notice or the member's legal representative to inspect any materials referred to in the Inspection List that are not privileged.
- (2) If a member who has been given a notice wishes to inspect any material, other than material provided to the member under these regulations, that —
- (a) the member has seen or created in the course of his or her duties as a member; and
 - (b) is relevant to issues concerning the member referred to in the notice,

the member may make a request in writing to the Assistant Commissioner for permission to inspect that material.

- (3) The request shall be made as soon as practicable after, and in any event within 14 days of, the day on which the member was given the notice.
- (4) During the period referred to in section 33L(2) of the Act the Commissioner shall as far as practicable permit the member or the member's legal representative to inspect the material the subject of a request under subregulation (2).

6A07. Commissioner's assessment of the member's submission

- (1) If the Commissioner receives a submission from a member under section 33L(2) of the Act, the Commissioner or the Assistant Commissioner may cause further materials, including written reports, to be provided to the Commissioner.

- (2) The Commissioner shall within 21 days, where practicable, and in any event within 42 days of the end of the period referred to in section 33L(2) of the Act decide whether or not a period for further investigation or analysis of any submission of the member is necessary.
- (3) If the Commissioner decides that a further period for investigation or analysis is required, the Commissioner shall endeavour to cause that investigation or analysis to be completed within 7 weeks of receiving the member's submission.
- (4) If the further investigation or analysis cannot be completed within the period referred to in subregulation (3), the Commissioner shall give the member a notice stating —
 - (a) the reasons for the further investigation or analysis;
 - (b) the period of time required to complete the further investigation or analysis; and
 - (c) the reason for the need for that period of time.
- (5) Despite deciding under section 33L(3)(a) of the Act not to take removal action, the Commissioner may consider whether or not the member's performance or conduct warrants other action being taken in relation to the member under the Act or these regulations.

6A08. Further ground for removal, or revocation of appointment

- (1) If during an assessment under this Part the Commissioner concludes that he or she has lost confidence in the suitability of the member the subject of the assessment to continue as a member on a ground other than a ground set out in the notice the Commissioner shall —
 - (a) give the member notice in writing of the further ground;
 - (b) provide to the member a copy of any documents and make available for inspection any other materials that have been examined and taken into account by the Commissioner during the assessment under this Part with the exception of —
 - (i) those documents copies of which have already been given to the member or materials which have already been made available for inspection by the member under this Part; and

- (ii) privileged documents or materials;
 - and
 - (c) allow the member a specified period to provide a response to the further ground.
- (2) For the purpose of subregulation (1), the specified period is —
 - (a) the period of 21 days beginning on the day on which the member is given the notice of the further ground or copies of documents under subregulation (1), whichever is the later; or
 - (b) such other longer period as the Commissioner may approve on an application made before the expiration of the period referred to in paragraph (a).
- (3) If the Commissioner does not provide the member with a copy of a document or make available for inspection any other material that was examined and taken into account by the Commissioner during the assessment because it is privileged the Commissioner shall advise the member of the ground for the document or material being privileged.
- (4) Subregulation (3) does not apply if the Commissioner has already advised the member under this Part of the ground for the document or material being privileged.

6A09. Notice of Commissioner's recommendation or revocation of appointment of aboriginal aide

- (1) A notice under section 33L(3)(b) of the Act shall be given to the member within 7 days of the making of the decision to take removal action.
- (2) The Commissioner is not required to comply with section 33L(5)(b) of the Act —
 - (a) to the extent that he or she has already provided the member with a copy of the documents or made available to the member for inspection any other materials under this Part; or
 - (b) the documents or materials are privileged.
- (3) If the Commissioner does not comply with section 33L(5)(b) of the Act because the documents or materials are privileged the Commissioner shall advise the member of the ground for the documents or materials being privileged.
- (4) Subregulation (3) does not apply if the Commissioner has already advised the member under this Part of the ground for the documents or materials being privileged.

6A10. Services of notices or documents

- (1) If a notice or document is required to be given to a member under Part IIB of the Act or this Part, service may be effected on the member —
 - (a) by delivering it to the member personally;
 - (b) by properly addressing and posting it (by pre-paid post) as a letter to the usual or last known place of abode of the member or address for service given by the member in writing to the Assistant Commissioner;
 - (c) by leaving it for the member at his or her usual or last known place of abode; or
 - (d) by leaving it for the member at an address for service given by the member in writing to the Assistant Commissioner.
- (2) Service under subregulation (1) is to be taken to be effected —
 - (a) in the case of service under subregulation (1)(a), at the time of delivery to the member;
 - (b) in the case of service under subregulation (1)(b), at the time when the letter would have been delivered in the ordinary course of post;
 - (c) in the case of service under subregulation (1)(c), at the time it is left at the abode; or
 - (d) in the case of service under subregulation (1)(d), at the time it is left at the address given to the Assistant Commissioner.

6A11. Members unfit for further active service

Regulations 6A02 to 6A08 do not apply where removal action is taken or to be taken in respect of a member because the medical board has reported under regulation 1402(4) that he or she is unfit for further active service.

6A12. Restriction on suspending member's pay

During any period in which consideration is being given to a member's suitability to continue as a member of the Police Force the Commissioner of Police and the Governor shall not suspend the member's pay.

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By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.