



Western Australia

## **Acts Amendment (Police Immunity) Act 1999**

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**No. 42 of 1999**

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**An Act to amend the *Police Act 1892* and to make consequential amendments to various other Acts.**

*[Assented to 25 November 1999]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Acts Amendment (Police Immunity) Act 1999*.

**2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

## Part 2 — *Police Act 1892* amended

### 3. The Act amended by this Part

The amendments in this Part are to the *Police Act 1892*\*.

[\* Reprinted as at 31 January 1997.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 196, and Act No 18 of 1999.]

### 4. Section 53K amended

- (1) Section 53K(1) is amended by deleting “A Justice, police officer or any person” and inserting instead —

“ A person to whom section 137 does not apply ”.

- (2) Section 53K(2) is repealed.

### 5. Sections 136 and 137 inserted

Before section 138 the following sections are inserted —

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#### 136. Interpretation for sections 137 and 138

- (1) In sections 137 and 138 —

“**member of the Police Force**” means a person appointed under Part I, III or IIIA.

- (2) In sections 137 and 138, a reference to the doing of anything includes a reference to an omission to do anything.

#### 137. Protection from personal liability

- (1) This section —

(a) is in addition to section 5 of the *Criminal Code Act 1913*; and

- (b) does not affect any right to recover damages from the owner or driver of a motor vehicle in respect of the death of or bodily injury to a person directly caused by, or by the driving of, the motor vehicle,

but otherwise applies despite any other written law.

- (2) This section applies to and in respect of anything done after the commencement of the *Acts Amendment (Police Immunity) Act 1999*.
- (3) An action in tort does not lie against a member of the Police Force for anything that the member has done, without corruption or malice, while performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law.
- (4) An action in tort does not lie against a person for anything that the person has done, without corruption or malice, in assisting a member of the Police Force who is performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law.
- (5) The Crown is liable for a tort that results from —
  - (a) anything done by a member of the Police Force, without corruption or malice, while performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law;
  - (b) anything done by a person, without corruption or malice, in assisting a member of the Police Force who is performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law.
- (6) The Crown's liability under subsection (5) does not extend to exemplary or punitive damages.

- (7) If a person to whom subsection (3) or (4) applies does not cooperate fully with the Crown in the defence of an action in tort against the Crown in respect of anything done by the person, the Crown may recover from the person the Crown's costs of defending the action and any damages and costs awarded against the Crown in the action.
- (8) For the purposes of subsection (7), a person does not cooperate fully with the Crown if the person refuses —
  - (a) to answer any question, including a question the answer to which is or may be self-incriminating; or
  - (b) to produce any object or recorded information in the person's possession or control,that is relevant to the defence of the action.
- (9) If a person, in cooperating with the Crown in the defence of an action referred to in subsection (8), gives an answer that is or may be self-incriminating, the answer is not admissible in any criminal or disciplinary proceedings against the person except proceedings for a criminal or disciplinary offence arising from the giving of a false answer.

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**6. Section 138 replaced**

Section 138 is repealed and the following section is inserted instead —

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**138. Corrupt or malicious acts by police**

- (1) This section applies if a person (“**the claimant**”), in an action in tort, is awarded damages —
  - (a) against a member of the Police Force (“**the defendant**”) for anything that the member has

done maliciously or corruptly while performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law; or

- (b) against a person (“**the defendant**”) for anything that the person has done maliciously or corruptly in assisting a member of the Police Force who is performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law,

and the thing was done after the commencement of the *Acts Amendment (Police Immunity) Act 1999*.

- (2) The claimant may request the Treasurer to pay the damages awarded to the claimant, other than exemplary or punitive damages, and any costs ordered to be paid to the claimant.
- (3) The Treasurer may pay the claimant all or some of the damages and costs if satisfied —
  - (a) that the claimant is unlikely to recover them from the defendant; and
  - (b) that there is no relationship or connection between the claimant and the defendant, or a close relative of the defendant, that is likely to result in a benefit or advantage to the defendant if the claimant were paid the damages and costs.
- (4) Any amount paid by the Treasurer to the claimant is a debt due to the Crown by the defendant and may be recovered in a court of competent jurisdiction.

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### Part 3 — Consequential amendments

7. ***Explosives and Dangerous Goods Act 1961* amended**

Section 60 of the *Explosives and Dangerous Goods Act 1961*\* is amended by deleting “or member of the police force” in the 2 places where it appears.

[\* *Reprinted as at 21 November 1996.*

*For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 87.]*

8. ***Mining Act 1978* amended**

Section 160A of the *Mining Act 1978*\* is amended by deleting “a member of the Police Force or” and inserting instead —

“ any ”.

[\* *Reprinted as at 26 July 1999.*]

9. ***Road Traffic Act 1974* amended**

Section 101 of the *Road Traffic Act 1974*\* is amended by deleting “police officer, member of the Police Force,”.

[\* *Reprinted as at 25 March 1997.*

*For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 219, and Acts Nos 16 and 24 of 1999.]*

10. ***Transport Co-ordination Act 1966* amended**

Section 61 of the *Transport Co-ordination Act 1966*\* is amended as follows:

(a) by deleting “or by any member of the Police Force,”;

(b) by deleting “, or subject the member of the Police Force,”.

[\* *Reprinted as at 9 September 1997.*

*For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 256, and Acts Nos 32 of 1998 and 16 of 1999.]*

**s. 11**

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**11. *Veterinary Preparations and Animal Feeding Stuffs Act 1976*  
amended**

Section 67 of the *Veterinary Preparations and Animal Feeding Stuffs Act 1976*\* is amended by deleting “or by any member of the Police Force,”.

[\* *Act No. 56 of 1976.*

*For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, pp. 262-3.]*

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