



Western Australia

## **Police Act 1892**

Compare between:

[16 Nov 2006, 12-b0-03] and [01 Feb 2007, 12-c0-04]



## Police Act 1892

### **An Act to consolidate and amend the law relating to the police in Western Australia.**

[1. *Omitted under the Reprints Act 1984 s. 7(4)(f).]*

#### **2. Interpretation**

In this Act, unless the context otherwise requires —

“**chairman**” of the local government includes mayor of a city or town and president of a shire;

“**lock-up**” includes a place prescribed as a lock-up for the purposes of the *Court Security and Custodial Services Act 1999*;

“**street**” includes road, thoroughfare, and public place;

“**thoroughfare**” includes any bridge, tunnel, under-pass, arcade, pavement, footpath, court, or passage to or through which access is permitted to the public, whether or not on private property;

“**valuable security**” includes any document which is the property of any person, and which is evidence of the ownership of any property or of the right to recover or receive any property.

*[Section 2 amended by No. 10 of 1959 s. 2; No. 28 of 1964 s. 2; No. 29 of 1979 s. 2; No. 73 of 1994 s. 4; No. 14 of 1996 s. 4; No. 47 of 1999 s. 29.]*

**3. Short title**

This Act may be cited as the *Police Act 1892*<sup>1</sup>.

*[Section 3 amended by No. 11 of 1928 s. 2; No. 15 of 1952 s. 5; No. 28 of 1953 s. 3; No. 25 of 1954 s. 3; No. 28 of 1964 s. 3; No. 18 of 1975 s. 2; No. 146 of 1976 s. 3; No. 57 of 1981 s. 23; No. 108 of 1982 s. 3; No. 21 of 1983 s. 4; No. 14 of 1996 s. 4; No. 10 of 1998 s. 59.]*

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**Part I — As to the appointment of officers and  
constables of the Police Force**

[4. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

**5. Commissioner of Police, appointment and functions of**

The Governor may from time to time appoint a fit and proper person to be Commissioner of Police throughout the said State, and as occasion shall require may remove any Commissioner of Police and appoint another in his stead; and every Commissioner of Police shall be charged and vested with the general control and management of the Police Force of the said State, and also of any special constables who may be appointed as hereinafter provided.

**6. Commissioned officers, appointment and control of**

The Governor may appoint such officers of police as may be found necessary, who shall hold commissions under the hand of the Governor for such appointments; and such commissioned officers shall be subject to the control and discipline of the Commissioner of Police, and shall be respectively charged with the government and superintendence of such portion of the Police Force as such Commissioner may from time to time direct.

*[Section 6 amended by No. 24 of 1969 s. 2; No. 6 of 1978 s. 2.]*

**7. Non-commissioned officers, appointment and functions of**

- (1) The Commissioner of Police may appoint so many non-commissioned officers and constables of different grades as he shall deem necessary for preservation of peace and order throughout the said State, subject, however, to the approval of the Governor; and such non-commissioned officers and constables shall have all such powers and privileges, and be liable to all such duties and obligations as any constable duly appointed now or hereafter may have, or be liable to, either by

**s. 8**

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the common law, or by virtue of any statute law now or hereafter to be in force in the said State.

- (2) The Minister, or a person authorised by him, may appoint persons to be police cadets who shall have such powers and privileges and be liable to such duties and obligations as may be prescribed, but shall not be members of the Police Force.

*[Section 7 amended by No. 6 of 1978 s. 3.]*

**8. Commissioned and non-commissioned officers, removal of**

- (1) The Governor may, from time to time as he shall see fit, remove any commissioned officer of police, and upon any vacancy for a commissioned officer, by death, removal, disability, or otherwise, the Governor may appoint some other fit person to fill the same; and the Commissioner of Police may, from time to time, as he shall think fit, suspend and, subject to the approval of the Minister, remove any non-commissioned officer or constable; and in case of any vacancy in the Police Force by reason of the death, removal, disability or otherwise of any non-commissioned officer or constable, the Commissioner of Police may appoint another person to fill such vacancy.
- (2) The powers of removal referred to in subsection (1) can be exercised only if the Commissioner of Police has complied with section 33L and that removal action has not been revoked under section 33N(1).
- (3) Subsection (2) does not apply where a person is removed from a commissioned office to be appointed to another commissioned office so long as that appointment —
- (a) is to an office at a level not less than the level of the office from which the person was removed; or
  - (b) is made with the consent of the person.
- (4) Subsection (2) does not apply to the removal of a police probationary constable.

*[Section 8 amended by No. 24 of 1969 s. 3; No. 7 of 2003 s. 4.]*

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## Part II — As to the regulations, duties and discipline of the Police Force

### 9. Commissioner may make rules, orders and regulations for the Police Force, police cadets and related matters

The Commissioner of Police may, from time to time, with the approval of the Minister, frame rules, orders, and regulations for the general government of the members of the Police Force and of police cadets, as well with respect to their places of residence, their classification, grade, distribution, particular service, and inspection, as to the description of the arms, accoutrements, and other necessaries to be furnished to them and all such other rules, orders, and regulations relative to the Police Force and cadets, and the control, management, and discipline thereof as may be necessary for rendering the same efficient for the discharge of the several duties thereof, and for the purpose of preventing neglect or abuse; and as the Minister considers necessary or desirable for establishing and conducting a Police Force Canteen.

*[Section 9 amended by No. 40 of 1958 s. 8; No. 91 of 1975 s. 3; No. 6 of 1978 s. 4.]*

### 10. Engagement to be subscribed by officers and constables

No person shall be capable of holding any office, or appointment in the Police Force, or of acting in any way therein, until he shall have subscribed the following engagement, namely —

I, A.B., engage and promise that I will well and truly serve our Sovereign Lady the Queen, in the office of [*Commissioner of Police, inspector, sub-inspector, or other officer, or constable, as the case may be*], without favour or affection, malice, or illwill, until I am legally discharged; that I will see and cause Her Majesty's peace to be kept and preserved, and that I will prevent, to the best of my power, all offences against the same; and that, while I shall continue to hold the said office, I

**s. 11**

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will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.

And the said engagement shall be subscribed in the presence of and attested by a Justice or commissioned officer of the Force.

*[Section 10 amended by No. 91 of 1975 s. 4.]*

**11. Person subscribing engagement bound to serve as member of the Police Force**

Every person, on subscribing such engagement, shall be thereby bound to serve Her Majesty as a member of the Police Force, at the current rate of pay for such member, and until legally discharged, from the day on which such engagement shall have been subscribed: Provided that no such engagement shall be set aside for the want of reciprocity: Provided further, that such engagement may be cancelled at any time by the lawful discharge, dismissal, or removal from office of any such person, or by the resignation of any such person being accepted by the Commissioner of Police.

**12. Non-commissioned officer and constable not to resign without leave or notice**

No non-commissioned officer or constable shall be at liberty to resign his office, or to withdraw himself from the duties thereof, notwithstanding the period of his engagement shall have expired, unless expressly authorised in writing to do so by the Commissioner of Police, or unless he shall have given to such Commissioner 3 calendar months' notice of his intention so to resign or withdraw, if stationed north of the 18th parallel of south latitude or one calendar month's notice if stationed elsewhere, and every member who shall so resign or withdraw himself without such leave or notice shall, upon conviction thereof, be liable to forfeit all arrears of pay then due to him, and to a penalty of not more than \$50, or may be committed to prison for a period not exceeding 14 days.



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*[Section 12 amended by No. 28 of 1964 s. 4; No. 113 of 1965 s. 8; No. 91 of 1975 s. 5; No. 59 of 2004 s. 141.]*

**13. Former members of Police Force to return uniforms, etc.**

Every member of the Police Force, whether special or ordinary, having been dismissed from, or having ceased to hold his office, shall forthwith deliver to the Commissioner of Police, or to such person, and at such time and place, as the said Commissioner or a commissioned officer of the Force may direct, all and every the clothing, arms, ammunition, and accoutrements, horses, saddles, bridles, appointments, and other property which have been supplied to him for the execution of his duty, or which may be in his custody by virtue of his office; and in default of such delivery shall, on conviction thereof, be liable to a penalty not exceeding \$300, in addition to the value of the property not so delivered; and any Justice may issue his warrant to search for and seize all and every the clothing, arms, ammunition, and accoutrements, horses, saddles, bridles, appointments, and property not so delivered, wherever the same may be found.

*[Section 13 amended by No. 28 of 1964 s. 5; No. 113 of 1965 s. 8; No. 91 of 1975 s. 6; No. 51 of 1992 s. 16(3); No. 78 of 1995 s. 147; No. 59 of 2004 s. 141.]*

**14. Officers and constables subject to duty in any part of the State, as if no Police District had been established**

Notwithstanding the establishment of any Police District, all officers and constables belonging to the Police Force who may be stationed in any such district shall continue as part of such Force and be subject to the same authority, and be liable, if required, to perform the same duty in any part of the said State or elsewhere, as if no such Police District had been established; and if any members of the Police Force be employed beyond the limits of the said State every member so employed shall be amenable to and obey in all respects the lawful commands of his superior officers, and shall be liable to the same penalties, forfeitures, and punishments, in all respects, for any offence

**s. 15**

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against the discipline of the Police Force, in any service in which he may be so employed beyond the limits of the said State, in the same manner as if such offence against the discipline of the Police Force had been committed within the said State.

*[Section 14 amended by No. 6 of 1978 s. 5.]*

**15. Members of the Force taking bribes**

Any member of the Police Force who shall take any bribe, pecuniary, or otherwise, either directly or indirectly, to forego his duty, or who shall in any manner aid, abet, assist, or connive at the escape, or any attempt or preparation to escape, of any prisoner from lawful custody, or who shall desert his post, or assault his superior officer, shall for every such offence, without prejudice to any other penalties or punishment to which he shall by law be liable, upon conviction thereof, forfeit and pay a penalty not exceeding \$4 000, or may, either instead of or in addition to such forfeiture and payment, be imprisoned for a term not exceeding 12 months.

*[Section 15 amended by No. 28 of 1964 s. 6; No. 113 of 1965 s. 8; No. 91 of 1975 s. 7; No. 50 of 2003 s. 85(2); No. 59 of 2004 s. 141.]*

**16. Police clothing, unauthorised possession of**

(1) In this section —

**“police clothing”** means any article of clothing or any accessory that is issued to a member of the Police Force to be worn in the course of the member’s duties.

(2) A person who is not a member of the Police Force must not, without lawful excuse, be in possession of police clothing.

Penalty: a fine of \$9 000 and imprisonment for 9 months.

(3) Subsection (2) does not apply to a person who, with the approval of the Commissioner, possesses police clothing for use in the course of his or her duties —

- (a) as a supervisor of a Police and Citizens' Youth Club;
  - (b) as a member of the Police Band; or
  - (c) as a chaplain to the Police Force.
- (4) An allegation in a charge of an offence under this section that at the material time the accused was not a member of the Police Force or was not authorised under subsection (3) must be taken to be proved, unless the contrary is proved.
- (5) In a prosecution for an offence under subsection (2), the accused has the onus of proving that the accused had a lawful excuse.

*[Section 16 inserted by No. 70 of 2004 s. 41.]*

**16A. "Detective", unauthorised use of the term**

- (1) Any person, not being either a member of the Police Force of this State or a member of the Police Force of the Commonwealth or of any other State of the Commonwealth temporarily residing in this State, who uses in any manner whatsoever the word "detective" as descriptive of the nature of his business, vocation, calling, or means of livelihood with a view to soliciting, procuring or obtaining the engagement or employment by other persons of his service as an inquiry agent or investigator in respect of matters in relation to which such other persons require information or evidence shall be guilty of an offence.

Penalty: \$2 500.

- (2) On the trial of a person charged with an offence under subsection (1) the averment in the charge that he was not at some particular time either a member of the Police Force of this State or a member of the Police Force of the Commonwealth or any other State of the Commonwealth is sufficient evidence of the fact until the contrary is proved.

*[Section 16A inserted by No. 5 of 1945 s. 2; amended by No. 28 of 1964 s. 8; No. 113 of 1965 s. 8; No. 24 of 1969 s. 5; No. 91 of 1975 s. 9; No. 50 of 2003 s. 85(4); No. 84 of 2004 s. 80.]*

**s. 17**

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**17. Repute to be evidence of appointment**

If any question shall arise as to the right of the Commissioner of Police, or any other officer or member of the Police Force, to hold or execute his office, common reputation shall to all intents and purposes be deemed sufficient evidence of such right, and it shall not be necessary to have or produce any written appointment, or any oath, or other document or matter whatsoever, in proof of such right.

[18. *Repealed by No. 70 of 2004 s. 42.*]

[19. *Repealed by No. 6 of 1978 s. 6.*]

[20. *Repealed by No. 70 of 2004 s. 43.*]

**21. Non-commissioned officers and constables to execute court process**

Every non-commissioned officer and constable of the Police Force shall execute all process to him directed for levying the amount of any recognisance forfeited to Her Majesty, or of any fine imposed on any jurors, witnesses, parties, or persons, at any Court of Judicature, or any other fine imposed under any Act in force in the said State, and any process, or any other warrant or command of any Justice directed, delivered, or given to any such non-commissioned officer or constable, shall or may be executed and enforced by any other such officer or constable, or his assistants; and every such last-mentioned officer, constable, and his assistants, shall have all and every the same rights, powers, and authorities for and in the execution of such process, order, warrant, or command, as if the same had originally been directed to him or them expressly by name. And a breach of the condition of a recognisance may be proved upon ex parte proof on oath thereof.

[Section 21 amended by No. 92 of 1994 s. 32; No. 59 of 2004 s. 141.]

**22. Constables to attend courts of summary jurisdiction**

The Commissioner or other commissioned officer of police shall take care that a sufficient number of police constables shall be available to every court of summary jurisdiction for the purpose of executing such summonses and warrants as may be directed to them, and returning the same.

*[Section 22 amended by No. 30 of 1983 s. 3; No. 47 of 1999 s. 30; No. 59 of 2004 s. 141.]*

**Inquiries into misconduct and penalties****23. Disciplinary offences, how they are dealt with**

- (1) The Commissioner, or an officer appointed by the Commissioner for the purpose, may examine on oath any member of the Police Force and any police cadet upon a charge of an offence against the discipline of the Police Force being made against any member of the Force or cadet.
- (2) Where the member of the Force against whom the charge is alleged is an officer, an examination under this section shall be conducted by an officer of the rank of Chief Superintendent or above.
- (3) The Commissioner or officer conducting an examination under this section shall have the same power to summon and examine witnesses and to administer oaths as a Justice.
- (4) Where the Commissioner or officer conducting an examination under this section determines as a result of that examination that any other member of the Police Force or any police cadet has committed an offence against the discipline of the Police Force, he shall record that determination in writing and, subject to the provisions of subsection (5), may thereupon caution such member or cadet or by order in writing impose on him one or more of the following punishments —
  - (a) a reprimand;

**s. 23**

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- (b) a fine of not more than 3% of the annual base rate of pay of the member or cadet;
  - (c) reduction to a lower rank;
  - (d) reduction in salary to a specified rate within the limits of salary fixed in relation to the rank held by him;
  - (e) suspension from duty;
  - (f) discharge or dismissal from the Force.
- (5) An order made under subsection (4) for reduction in rank or salary, suspension from duty, discharge or for dismissal, shall not have effect unless or until —
- (a) in the case of a member who is not an officer, or of a cadet, it is imposed or confirmed by the Commissioner;  
or
  - (b) in the case of an officer, it is confirmed by the Governor.
- (6) An order made under subsection (4) which is subject to confirmation by the Governor shall not be submitted to the Governor for such confirmation unless or until —
- (a) the time within which an appeal to the Board against the punishment, decision or finding to which the order relates may be made under this Act has elapsed and no such appeal has been instituted; or
  - (b) such an appeal to the Board has been instituted and has been determined by the Board in accordance with the provisions of this Act.
- (7) A fine imposed pursuant to this section may be recovered —
- (a) by deduction from the salary of the member or cadet on whom it is imposed; or
  - (b) in like manner to a fine imposed by a Justice under this Act,
- or partly in the one way and partly in the other.

*[Section 23 inserted by No. 6 of 1978 s. 7; amended by No. 7 of 2003 s. 5.]*

*[24-25. Repealed by No. 6 of 1978 s. 7.]*

*[26. Repealed by No. 25 of 1954 s. 6.]*

*[27. Repealed by No. 28 of 2003 s. 156.]*

*[28. Repealed by No. 6 of 1978 s. 8.]*

**29. Bankruptcy**

If any member of the Force becomes bankrupt, or by any deed or other writing compound with his creditors, or make an assignment of his salary or wages for their benefit, he shall be deemed to have forfeited his office.

**30. Bankrupt may be reinstated**

When any such member of the Force has so forfeited his office, if he prove to the satisfaction of the Governor that such embarrassment has not been caused or attended by any fraud, extravagance, or dishonourable conduct, the Governor may reinstate such member of the Force in his former position in the service.

**31. Obtaining admission into the Force by fraud**

Any person having been dismissed from the Force who shall, by concealing the fact of such dismissal, or any person who shall by any false or forged certificates or any false representations, obtain admission into the Force, or who by any such means shall receive any pay, gratuity, or pension, shall be liable, on conviction thereof, to a fine not exceeding \$2 500.

*[Section 31 amended by No. 28 of 1964 s. 11; No. 113 of 1965 s. 8; No. 91 of 1975 s. 16; No. 50 of 2003 s. 85(6); No. 59 of 2004 s. 141.]*

**s. 32**

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**32. Members of the Force not to influence voters at elections**

No member of the Force shall in any manner influence any elector in giving his vote for the choice of any person to be a member to serve in the Legislative Council or Legislative Assembly; and if any person being a member of the Force shall offend herein he shall forfeit a sum not less than \$10 nor exceeding \$200, to be recovered by any person who shall first sue for the same by action in the Magistrates Court to be commenced within 6 months after commission of the offence; but nothing herein contained shall subject any member of the Force to any penalty for any act done by him at or concerning any of the said elections in the discharge of his duty.

*[Section 32 amended by No. 113 of 1965 s. 8; No. 59 of 2004 s. 141.]*

**33. Fines and penalties for misconduct payable to Treasurer**

- (1) All fines and penalties imposed on any member of the Police Force by virtue of this part of this Act shall be received, collected and recovered by the Commissioner of Police or other officer appointed by the Governor and, when so received, collected, and recovered shall be paid to the Treasurer of the State for the public uses of the State.
- (2) This section shall have effect and operate and shall be deemed to have had effect and to have been in operation as from and after 29 June 1939.

*[Section 33 inserted by No. 19 of 1940 s. 2.]*



## **Part IIA — Police Appeal Board**

*[Heading inserted by No. 25 of 1954 s. 7.]*

### **33A. Interpretation**

In this Part unless the context requires otherwise —

“**Board**” means the Police Appeal Board constituted under this Part;

“**Chairman**” means the Chairman of the Board;

“**Commissioner**” means the person for the time being holding the office of Commissioner of Police;

“**member**” means a member of the Board.

*[Section 33A inserted by No. 25 of 1954 s. 7.]*

### **33B. Constitution of Board**

- (1) A Police Appeal Board is constituted in accordance with this Part.
- (2) The Board consists of 3 members —
  - (a) a magistrate appointed by the Governor and who shall be Chairman;
  - (b) a person appointed by the Commissioner; and
  - (c) a member of the Police Force elected by the members of the Police Force in manner prescribed.
- (3) Each member of the Board is entitled to such allowances for out of pocket expenses as the Minister may determine.

*[Section 33B inserted by No. 25 of 1954 s. 7; amended by No. 59 of 2004 s. 141.]*

### **33C. Tenure of office**

- (1) Subject to the provisions of subsection (2), every member shall hold office until 30 June in the second year after the year in

**s. 33C**

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which he was appointed or elected and at the expiration of his term is eligible for reappointment.

- (2) If any member —
- (a) dies or resigns his office;
  - (b) becomes incapable of continuing as a member;
  - (c) is guilty of misbehaviour or of incapacity;
  - (d) ceases to hold the required qualifications to be a member;
  - (e) is required to carry out duties the location or nature of which in the opinion of the Minister make it inconvenient or undesirable that he continue as a member,

his office on the Board becomes vacant and a successor shall be appointed who shall hold office for the residue of the term for which his predecessor was appointed.

- (3)
- (a) Where the office of the elective member becomes vacant or the person holding that office is for any reason temporarily unable to act in his office, the member of the Police Force who received the second highest number of votes at the last previous election held under this Part, shall be appointed by the executive of the Police Union of Workers of Western Australia to fill the vacancy for the remainder of the term for which his predecessor was elected, or shall be so appointed to be acting member during the period of inability as the case may be.
  - (b) Where there is only one candidate at the election or if for any reason the person who received the second highest number of votes at the election is unable to act the executive of the union may appoint a member of the Police Force to fill the vacancy or be the acting member.
- (4) Where the office of the Chairman or the member appointed by the Commissioner becomes vacant or the person holding the

office is temporarily unable to act in his office, the Governor may appoint a magistrate or the Commissioner may appoint a person as the case may require, to fill the vacancy for the remainder of the term for which his predecessor was appointed or to be acting Chairman or member during the period of inability as the case may be.

*[Section 33C inserted by No. 25 of 1954 s. 7; amended by No. 59 of 2004 s. 141.]*

**33D. Secretary to Board**

The Minister shall appoint a person to be secretary to the Board, who shall convene all meetings of the Board, keep a record of all its proceedings and decisions and carry out such other duties as may be prescribed.

*[Section 33D inserted by No. 25 of 1954 s. 7.]*

**33E. Right of appeal to Board on disciplinary offences**

Where under the provisions of this Act a member of the Police Force or a police cadet has been convicted upon a summary investigation by the Commissioner or other officer appointed by the Commissioner, of an offence against the discipline of the Police Force, if that member or cadet is punished by the Commissioner or other officer as the case may be, by being discharged or dismissed from the Police Force, suspended from duty, reduced in rank, fined or transferred by way of punishment, he may appeal to the Board in accordance with the provisions of this Act against the punishment and against any decision or finding on which the punishment was based.

*[Section 33E inserted by No. 25 of 1954 s. 7; amended by No. 6 of 1978 s. 9.]*

**33F. Institution of appeal**

- (1) An appeal shall be instituted by a notice of appeal containing the matters prescribed given by the appellant to the secretary of

**s. 33G**

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the Board within 14 days from the date the punishment, decision or finding appealed against is given and the Board shall hear the appeal within 30 days from the date the notice of appeal is so lodged.

- (2) The Chairman shall fix a time and place for the appeal and the secretary shall give the appellant and the Commissioner at least 7 days' notice of the time and place so fixed.
- (3) Where the hearing of the appeal is not commenced within the period of 30 days as prescribed by subsection (1), the punishment, decision or finding appealed against is rescinded and the appellant shall be reimbursed from moneys appropriated by Parliament for the administration of this Act, any loss of salary or expenses he has incurred as a result of the punishment, decision or finding, but if the hearing of the appeal is commenced within the period of 30 days the Board may allow any adjournment it thinks fit.

*[Section 33F inserted by No. 25 of 1954 s. 7.]*

**33G. Witnesses at and evidence taken on appeal**

- (1) Upon the hearing of the appeal the Board may —
  - (a) take evidence on oath or affirmation;
  - (b) admit evidence taken at any summary investigation held under the provisions of sections 23 and 24 and at which the appellant was present and had an opportunity of hearing the evidence and of giving evidence;
  - (c) admit as evidence any statement or document which in its opinion is relevant to the subject matter of the appeal.
- (2) The Board may —
  - (a) issue summonses under the hand of the Chairman or the secretary of the Board requiring any witnesses to attend before the Board and give evidence, or to produce to the Board any books, documents or writings in his

possession or under his control, which are relevant to the subject matter of the appeal;

- (b) require any person before the Board to take an oath or affirmation and answer questions put to him by the Board or by or on behalf of any party to the appeal.

(3) A person who —

- (a) refuses or fails to comply with any requirement of a summons issued by the Board under this section and served on him;
- (b) refuses to take an oath or affirmation when required by the Board;
- (c) without lawful excuse refuses to answer a question which the Board requires him to answer;
- (d) wilfully interrupts the proceedings of the Board or in the course of the proceedings behaves offensively to the Chairman or a member,

is guilty of an offence.

Penalty: \$100.

- (4) In any proceedings before the Board any party to the appeal may respectively be represented by his counsel, solicitor or agent duly appointed in writing for the purpose, who may examine and cross examine witnesses and address the Board.

*[Section 33G inserted by No. 25 of 1954 s. 7; amended by No. 113 of 1965 s. 8.]*

### **33H. Determination of appeal**

- (1)
  - (a) Upon an appeal the Board may confirm, modify or reverse any decision, finding or punishment appealed against or make such other order thereon which the Board deems just and the decision of the Board is final.
  - (b) The Board may fix the costs of any appeal and direct by whom and the proportions in which they are payable but

**s. 33I**

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in every case the Board shall award costs against an appellant whose appeal is considered by the Board to be trivial, frivolous or vexatious.

- (c) Costs awarded against an appellant are recoverable in a court of competent jurisdiction as a debt due to the Crown.
  - (d) Costs awarded to an appellant shall be paid from moneys appropriated by Parliament for the purpose of the administration of this Act.
- (2) The decision of any 2 members is the decision of the Board; but the deliberations of the Board and the individual views of a member except of his own volition shall not be disclosed or published.

*[Section 33H inserted by No. 25 of 1954 s. 7.]*

**33I. Decision to be sent to Commissioner**

The Chairman shall forward to the Commissioner a copy, certified by the Chairman as correct, of the decision of the Board and the Commissioner shall give effect to the decision of the Board.

*[Section 33I inserted by No. 25 of 1954 s. 7.]*

**33J. Regulations**

The Governor may make regulations prescribing any matters necessary or convenient to be prescribed for giving effect to this Part and without limiting the generality of this power, with respect to —

- (a) the nomination and election of members;
- (b) the mode of appealing and the practice and procedure on appeal; and
- (c) the duties to be performed by the secretary of the Board.

*[Section 33J inserted by No. 25 of 1954 s. 7.]*

## **Part IIB — Removal of members**

*[Heading inserted by No. 7 of 2003 s. 6.]*

### **Division 1 — Preliminary**

*[Heading inserted by No. 7 of 2003 s. 6.]*

#### **33K. Interpretation**

In this Part, unless the contrary intention appears —

**“appellant”** means a person who institutes an appeal under section 33P;

**“Chief Commissioner”** has the same meaning as it has in the *Industrial Relations Act 1979*;

**“industrial Commissioner”** has the same meaning as “Commissioner” has in the *Industrial Relations Act 1979*;

**“legal practitioner”** has the same meaning as “practitioner” has in the *Legal Practitioners Act 1893*;

**“member”** means —

- (a) a commissioned officer;
- (b) a non-commissioned officer;
- (c) a constable;
- (d) an aboriginal aide;

**“removal action”** means —

- (a) a recommendation by the Commissioner of Police that the Minister advise the Governor to remove a commissioned officer under section 8;
- (b) a recommendation by the Commissioner of Police that the Minister approve the removal of a non-commissioned officer or constable under section 8;
- (c) the revocation of the appointment of an aboriginal aide under section 38A(1a);

**“removal from office”** means —

- (a) a removal under section 8; or
- (b) a revocation of the appointment of an aboriginal aide under section 38A(1a);

**“Senior Commissioner”** has the same meaning as it has in the *Industrial Relations Act 1979*;

**“WAIRC”** means The Western Australian Industrial Relations Commission continued and constituted under the *Industrial Relations Act 1979*.

*[Section 33K inserted by No. 7 of 2003 s. 6.]*

### **Division 2 — Removal of members**

*[Heading inserted by No. 7 of 2003 s. 6.]*

#### **33L. Notice of loss of confidence to be given before removal action is taken**

- (1) If the Commissioner of Police does not have confidence in a member’s suitability to continue as a member, having regard to the member’s integrity, honesty, competence, performance or conduct, the Commissioner may give the member a written notice setting out the grounds on which the Commissioner does not have confidence in the member’s suitability to continue as a member.
- (2) If a notice is given to a member under subsection (1), the member may, before the expiration of the period of 21 days after the day on which the notice is given or such longer period as is allowed by the Commissioner of Police, make written submissions to the Commissioner of Police in respect of the grounds on which the Commissioner has lost confidence in the member’s suitability to continue as a member.
- (3) After the end of the period referred to in subsection (2), the Commissioner of Police shall —
  - (a) decide whether or not to take removal action; and



- (b) give the member written notice of the decision.
- (4) The Commissioner of Police shall not decide to take removal action unless the Commissioner —
  - (a) has taken into account any written submissions received from the member under subsection (2) during the period referred to in that subsection; and
  - (b) still does not have confidence in a member's suitability to continue as a member, having regard to the member's integrity, honesty, competence, performance or conduct.
- (5) If the Commissioner of Police decides to take removal action —
  - (a) the notice under subsection (3)(b) shall advise the member of the reasons for the decision;
  - (b) except to the extent that the regulations otherwise provide, the Commissioner shall, within 7 days of giving the notice of the decision under subsection (3)(b), provide to the member a copy of any documents and make available to the member for inspection any other materials that were examined and taken into account by the Commissioner in making the decision; and
  - (c) the removal action may be taken when, or at any time after, the notice under subsection (3)(b) is given.

*[Section 33L inserted by No. 7 of 2003 s. 6.]*

**33M. Maintenance payment**

- (1) If removal from office occurs by or as a result of removal action taken in accordance with section 33L, the member is entitled to receive a maintenance payment for the period of 28 days after the day on which the member is removed.
- (2) In relation to a period after the 28 day period referred to in subsection (1), the Minister may, in exceptional circumstances, direct that a maintenance payment shall be paid to the member for a specified period.

- (3) For the purpose of subsection (2), the specified period is such period not exceeding 6 months as is specified by the Minister but in any event ending on the day any appeal instituted under section 33P is determined by the WAIRC.
- (4) Any maintenance payment is to be calculated on the basis of the salary of the member at the time of removal from office.  
*[Section 33M inserted by No. 7 of 2003 s. 6.]*

**33N. Revocation of removal action**

- (1) If removal action has been taken in accordance with section 33L but removal from office has not resulted from it, the Commissioner of Police may, by notice in writing to the Minister, revoke the removal action.
- (2) If removal from office has occurred by or as a result of removal action taken in accordance with section 33L, the Commissioner of Police may, by notice in the *Gazette*, revoke the removal action.
- (3) The Commissioner of Police shall not revoke removal action under subsection (2) in the case of a commissioned officer without the approval of the Minister.
- (4) Subsection (2) applies even if an appeal has been instituted under section 33P in respect of the decision under section 33L to take removal action.
- (5) Despite any other enactment, if removal action is revoked under subsection (2) the removal from office is to be taken to be of no effect and to have never had any effect.
- (6) If the Commissioner of Police revokes removal action in relation to a member under subsection (2), the member is not entitled to be paid his or her salary for any period the member received a maintenance payment under section 33M.

*[Section 33N inserted by No. 7 of 2003 s. 6.]*

**330. Resignation of member who has been removed**

- (1) Even if a member has been removed from office by or as a result of removal action taken in accordance with section 33L, the member may resign at any time before the expiration of the period of 28 days after the day on which the removal occurs.
- (2) Subsection (1) does not apply if an appeal has been instituted under section 33P in respect of the decision to take removal action.
- (3) A resignation under subsection (1) takes effect at the end of the 28 day period referred to in the subsection.
- (4) Despite any other enactment, if a member resigns under subsection (1), the removal from office is to be taken to be of no effect and to have never had any effect.

*[Section 330 inserted by No. 7 of 2003 s. 6.]*

**Division 3 — Appeal in relation to removal**

*[Heading inserted by No. 7 of 2003 s. 6.]*

**33P. Appeal right**

- (1) A member who has been removed from office by or as a result of removal action taken in accordance with section 33L may appeal to the WAIRC on the ground that the decision of the Commissioner of Police to take removal action relating to the member was harsh, oppressive or unfair.
- (2) The appellant shall institute an appeal by a notice to the Commissioner of Police stating —
  - (a) the reasons for the decision the subject of the appeal being harsh, oppressive or unfair; and
  - (b) the nature of the relief sought.

- (3) The appeal shall not be instituted later than 28 days after the day on which the member was removed from office and shall not be instituted if the member has resigned under section 33O(1).
- (4) For the purposes of proceedings relating to an appeal instituted under this section the WAIRC is to be constituted by not less than 3 industrial Commissioners, at least one of whom shall be the Chief Commissioner or the Senior Commissioner.
- (5) The parties to an appeal are the appellant and the Commissioner of Police and no other person may be a party to the appeal.

*[Section 33P inserted by No. 7 of 2003 s. 6.]*

**33Q. Proceedings on appeal**

- (1) On the hearing of an appeal instituted under this Part, the WAIRC shall proceed as follows —
  - (a) first, it shall consider the Commissioner of Police's reasons for deciding to take removal action;
  - (b) secondly, it shall consider the case presented by the appellant as to why that decision was harsh, oppressive or unfair;
  - (c) thirdly, it shall consider the case presented by the Commissioner in answer to the appellant's case.
- (2) The appellant has at all times the burden of establishing that the decision to take removal action was harsh, oppressive or unfair.
- (3) Subsection (2) has effect despite any law or practice to the contrary.
- (4) Without limiting the matters to which the WAIRC is otherwise required or permitted to have regard in determining the appeal, it shall have regard to —
  - (a) the interests of the appellant; and
  - (b) the public interest which is taken to include —

- (i) the importance of maintaining public confidence in the integrity, honesty, conduct and standard of performance of members of the Police Force; and
- (ii) the special nature of the relationship between the Commissioner of Police and members of the Force.

*[Section 33Q inserted by No. 7 of 2003 s. 6.]*

**33R. New evidence on appeal**

- (1) New evidence shall not be tendered to the WAIRC during a hearing of an appeal instituted under this Part unless the Commission grants leave under subsection (2) or (3).
- (2) The WAIRC may grant the Commissioner of Police leave to tender new evidence if —
  - (a) the appellant consents; or
  - (b) it is satisfied that it is in the interests of justice to do so.
- (3) The WAIRC may grant the appellant leave to tender new evidence if —
  - (a) the Commissioner of Police consents; or
  - (b) the Commission is satisfied that —
    - (i) the appellant is likely to be able to show that the Commissioner of Police has acted upon wrong or mistaken information;
    - (ii) the new evidence might materially have affected the Commissioner of Police's decision to take removal action; or
    - (iii) it is in the interests of justice to do so.
- (4) In the exercise of its discretion under subsection (3) the Commission shall have regard to —
  - (a) whether or not the appellant was aware of the substance of the new evidence; and

- (b) whether or not the substance of the new evidence was contained in a document to which the appellant had reasonable access,
- before his or her removal from office.
- (5) If the Commissioner of Police is given leave to tender new evidence under subsection (2), the WAIRC shall give the appellant a reasonable opportunity to consider the new evidence and the appellant may tender new evidence without the leave of the WAIRC under this section in response to the new evidence tendered by the Commissioner.
- (6) If the appellant is given leave to tender new evidence under subsection (3), the WAIRC shall give the Commissioner a reasonable opportunity to consider the new evidence.
- (7) If, having considered any new evidence, the Commissioner of Police revokes the removal action under section 33N(2), the Commissioner shall give the WAIRC notice of the revocation and the hearing of the appeal is discontinued when the WAIRC receives the notice.
- (8) If the Commissioner of Police does not give notice under subsection (7), the hearing of the appeal shall continue but the Commissioner of Police may —
- (a) reformulate his or her reasons for not having confidence in the appellant's suitability to continue as a member, having regard to the appellant's integrity, honesty, competence, performance or conduct; and
  - (b) tender new evidence without the leave of the WAIRC under this section in response to the new evidence tendered by the appellant.
- (9) Reasons reformulated under subsection (8)(a) may differ from, or be additional to, the reasons given to the appellant under section 33L(5)(a).

- (10) If the Commissioner of Police reformulates reasons under subsection (8)(a) —
- (a) the Commissioner shall give the WAIRC and the appellant notice in writing of the reasons before the resumption of the hearing of the appeal; and
  - (b) the WAIRC shall consider the reasons as if they had been reasons given to the appellant under section 33L(5)(a).
- (11) In this section —
- “new evidence”** means evidence other than evidence of —
- (a) any document or other material that was examined and taken into account by the Commissioner of Police in making a decision to take removal action;
  - (b) the notice given under section 33L(1);
  - (c) a written submission made to the Commissioner of Police by the appellant under section 33L(2);
  - (d) the notice given under section 33L(3)(b); and
  - (e) a notification of the removal from office.

*[Section 33R inserted by No. 7 of 2003 s. 6.]*

**33S. Application of *Industrial Relations Act 1979* to appeals**

The provisions of the *Industrial Relations Act 1979* listed in the Table to this section apply, subject to this Part, any necessary modifications, and any specific modifications set out in that Table, to and in relation to an appeal and a determination of an appeal instituted under this Part.

**Table**

- s. 26(1)(a) and (b)
- s. 26(3)

**Police Act 1892**

**Part IIB** Removal of members

**Division 3** Appeal in relation to removal

**s. 33S**

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- s. 27(1)(b), (c),  
(d), (e), (f),  
(h), (ha), (hb),  
(l), (m), (n),  
(o) and (v)      An order under section 27(1)(o) may be made by any one of the industrial Commissioners constituting the WAIRC to hear the appeal.
- s. 27(1a)
- s. 28      But only in relation to powers conferred by section 27 listed in this Table.
- s. 31(1)      Paragraphs (b) and (c) do not apply but the subsection is to be read as if it contained the following paragraphs —
- “ (b) with the leave of the Commission, by an agent; or
- (c) by a legal practitioner. ”.
- s. 31(3)
- s. 31(5)
- s. 31(6)
- s. 32      Section 32(1) is to be read as if a reference to “Where an industrial matter has been referred to the Commission the Commission shall, unless it” were a reference to “Where the Commission is dealing with an appeal instituted under section 33P of the *Police Act 1892*, a member of the Commission may recommend that the parties to the appeal, unless he or she”.
- References to “the matter” and “an industrial matter” are to be read as if they were references to “the appeal”.
- For the purposes of subsections (2) and (3), “Commission” does not include an industrial Commissioner constituting the WAIRC to hear the appeal.
- Subsections (4), (6), (7) and (8) do not apply.



- s. 33      A summons shall not be issued under section 33(1)(a) to the Governor.  
A summons may be issued to the Commissioner of Police or the Minister but only at the direction of a Commissioner appointed under the *Industrial Relations Act 1979* if that Commissioner is satisfied that there are extraordinary grounds for doing so.  
A summons may not be issued to any other person except at the direction of a Commissioner.
- s. 34      A reference in subsection (1) to “an award, order, or declaration” is to be read as if it were a reference to “an order”.  
A reference in subsection (3) to “the President, the Full Bench, or the Commission” is to be read as if it were a reference to “the Commission”.  
A reference in subsection (4) to “no award, order, declaration, finding, or proceeding of the President, the Full Bench, or the Commission” is to be read as if it were a reference to “no decision, order, finding or proceeding of the Commission”.
- s. 35
- s. 36
- s. 86      But not in relation to costs and expenses other than expenses of witnesses.
- s. 90      A reference in subsection (1) to “any decision of the President, the Full Bench, or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under section 33U of the *Police Act 1892*”.

*[Section 33S inserted by No. 7 of 2003 s. 6.]*

**33T. Adjourment of appeal if appellant charged with offence**

- (1) If an appellant has been —
- (a) charged with an offence relating to any matter, act or omission that was taken into account by the Commissioner of Police in deciding that he or she did not have confidence in the appellant's suitability to continue as a member; and
  - (b) the charge has not been finally determined by a court or otherwise disposed of,

the Commissioner or the appellant may apply to the WAIRC for an adjourment of the hearing of the appeal.

- (2) If an application is made by the Commissioner of Police, the WAIRC may adjourn the hearing of the appeal if it considers that it is in the interests of justice to do so.
- (3) If an application for an adjournment is made by the appellant, the WAIRC shall adjourn the hearing of the appeal.
- (4) An adjournment under subsection (3) shall be for such period not exceeding 12 months as is requested by the appellant.
- (5) If the charge is finally determined by a court or otherwise disposed of before the expiration of the period of the adjournment, the Commissioner of Police or the appellant may apply to the WAIRC for the hearing of the appeal to be resumed on a date specified by the Commission.
- (6) Before the expiration of any period of adjournment under this section, the Commissioner of Police or the appellant may apply to the WAIRC for a further adjournment under this section and, if it is in the interests of justice to do so, the WAIRC may grant a further adjournment for a period specified by it.
- (7) Subsections (2) and (6) do not affect any other power of the WAIRC to grant an adjournment.

*[Section 33T inserted by No. 7 of 2003 s. 6.]*

**33U. Decision by the WAIRC**

- (1) This section applies if the WAIRC decides on an appeal that the decision to take removal action relating to the appellant was harsh, oppressive or unfair.
- (2) If this section applies and unless an order is made under subsection (3) the WAIRC may order that the appellant's removal from office is and is to be taken to have always been of no effect.
- (3) If, and only if, the WAIRC considers that it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect, the Commission may instead of making an order under subsection (2), subject to subsections (5) and (6), order the Commissioner of Police to pay the appellant an amount of compensation for loss or injury caused by the removal.
- (4) In considering whether or not it is impracticable for it to be taken that the appellant's removal from office is and has always been of no effect it is relevant to consider —
  - (a) whether the position occupied by the appellant at the time of his or her removal is vacant; and
  - (b) whether there is another suitable vacant position in the Police Force.
- (5) In deciding the amount of compensation for the purpose of making an order under subsection (3), the WAIRC shall have regard to —
  - (a) the efforts, if any, of the Commissioner of Police and the appellant to mitigate the loss suffered by the appellant as a result of the removal;
  - (b) any maintenance payment received by the appellant under section 33M;
  - (c) any redress the appellant has obtained under another enactment where the evidence necessary to establish that

redress is also the evidence necessary to establish on the appeal that the removal was harsh, oppressive or unfair; and

- (d) any other matter that the WAIRC considers relevant.
- (6) The amount ordered to be paid under subsection (3) shall not exceed 12 months' remuneration as a member.
- (7) For the purpose of subsection (5), the WAIRC may calculate the amount on the basis of the average rate of remuneration as a member received by the appellant during any relevant period of service.
- (8) If the WAIRC makes an order under subsection (2), the appellant shall not be entitled to be paid his or her remuneration as a member for any period the appellant received a maintenance payment under section 33M.
- (9) An order under this section may require that it be complied with within a specified time.

*[Section 33U inserted by No. 7 of 2003 s. 6.]*

**33V. Restriction on publication**

- (1) If the WAIRC is satisfied that it is in the public interest, it may direct either or both that —
  - (a) any evidence given before the Commission;
  - (b) the contents of any document produced to the Commission,

on an appeal must not be published or must not be published except in such manner, and to such persons, as the Commission specifies.

- (2) A person must not make a publication in contravention of a direction given under this section.

Penalty: Imprisonment for 12 months and a fine of \$4 000.

*[Section 33V inserted by No. 7 of 2003 s. 6.]*

### **Division 4 — General**

*[Heading inserted by No. 7 of 2003 s. 6.]*

**33W. Effect of charge for an offence or an acquittal**

To avoid doubt, it is declared that if a member —

- (a) has been charged with committing an offence; or
- (b) has been acquitted of an offence,

that charge, the existence of proceedings relating to that charge or the acquittal does not preclude the Commissioner of Police from taking any action under this Part in relation to any matter, act or omission relating to or being an element of the offence.

*[Section 33W inserted by No. 7 of 2003 s. 6.]*

**33X. Failure to comply with procedure**

An act or omission of the Governor, the Minister or the Commissioner of Police shall not be invalid or called in question on the ground of a failure to comply with the procedure prescribed under Division 2 or regulations relating to the removal of members on the ground of a failure to comply with the procedure prescribed under that Division or those regulations if the failure is not substantive.

*[Section 33X inserted by No. 7 of 2003 s. 6.]*

**33Y. Transfer, standing down and leave of member**

- (1) Nothing in this Part derogates from the Commissioner of Police's power to —
  - (a) transfer a member;
  - (b) stand a member down from performing that member's usual duties on full pay until the member is directed by the Commissioner to return to those duties; or
  - (c) allocate duties to a member other than the member's usual duties.

- (2) If the Commissioner stands down a member who is being dealt with under this Part, the Commissioner shall review the decision to stand the member down every 60 days and advise the member in writing of the result of the review.
- (3) The Commissioner shall not direct a member who is being dealt with under this Part to take leave during the period the member is being dealt with under this Part unless the leave is leave that has accrued during any period that the member is stood down from performing the member's usual duties.

*[Section 33Y inserted by No. 7 of 2003 s. 6.]*

**33Z. Review of Part IIB**

- (1) In this section —  
“**commencement day**” means the day on which section 6 of the *Police Amendment Act 2003* comes into operation.
- (2) The Minister is to carry out a review of the operation and effectiveness of this Part as soon as is practicable after the expiration of 24 months after the commencement day and in the course of that review the Minister is to consider and have regard to —
  - (a) the effectiveness of the Part;
  - (b) the need for the retention of the Part; and
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Part.
- (3) Without limiting subsection (2), in carrying out a review under that subsection, the Minister shall consult with and have regard to the views of the Chief Commissioner of The Western Australian Industrial Relations Commission, the Commissioner of Police and the Western Australian Police Union of Workers.
- (4) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any

event not more than 30 months after the commencement day),  
cause it to be laid before each House of Parliament.

*[Section 33Z inserted by No. 7 of 2003 s. 6.]*

## **Part III — As to the appointment and regulation of special constables**

### **34. Appointment of special constables in emergencies**

- (1) In all cases where it shall be made to appear to a magistrate, upon the oath of any credible person, that any tumult, riot, crime or civil emergency has taken place, or may be reasonably apprehended in any place in the said State, and a magistrate shall be of opinion that the ordinary constables or officers appointed for preserving the peace are not sufficient for the preservation thereof, and for the protection of the inhabitants, and the security of the property of such place, or where, without such oath or evidence as aforesaid, a magistrate shall be of opinion that the constables or officers aforesaid are not sufficient for the preservation, protection, or security as aforesaid, or for the apprehension of any offenders, it shall be lawful for a magistrate to appoint, by precept in writing under his hand so many as they may think fit of the persons (not legally exempt from serving the office of constable), residing in such place as aforesaid, to act as special constables for such time and in such manner as to the magistrate shall seem fit and necessary for the public peace, and for the protection of the inhabitants, and the security of property in such place; and any Justice of the Peace is hereby authorised to cause every person so appointed to subscribe the following engagement —

I, A.B., engage and promise that I will well and truly serve Her Majesty The Queen in the office of special constable for the (city, town, or district of) \_\_\_\_\_ without favour or affection, malice, or ill-will, and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects, and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.



Provided always, that whenever it shall be deemed necessary to appoint such special constables as aforesaid, the notice of such appointments, and of the circumstances which have rendered such appointment necessary, shall be forthwith transmitted by the magistrate making such appointment to the Minister.

- (2) In this section, “**civil emergency**” means a natural or man-made disaster which causes or threatens to cause loss of life or property or injury to persons or property or distress to persons.

*[Section 34 amended by No. 71 of 1980 s. 4; No. 59 of 2004 s. 141; No. 70 of 2004 s. 44.]*

**35. Special constables may act in any district although not resident**

All persons willing to act as special constables under the provisions of this Act, shall be capable of being appointed and acting, and may be appointed and act, as such special constables, notwithstanding they may not be resident in such place as aforesaid, or in the neighbourhood thereof; and any person appointed and acting as special constable under the provisions of this section, shall have all the same powers, and be entitled to and enjoy all the same privileges and benefits, and be subject to all the same duties and obligations, as any constable duly appointed under the other provisions of this Act.

**35A. Appointment of special constables by Commissioner**

- (1) The Commissioner of Police may appoint special constables.
- (2) Any person appointed a special constable shall have all the same powers and be entitled to and enjoy all the same privileges and be subject to the same duties and obligations as any constable duly appointed under this Act.
- (3) Any special constable may receive such payment for his services, and may be provided with such equipment and necessaries as may be allowed and provided to a special constable appointed under the provisions of this Act.

**s. 36**

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*[(4) Omitted under the Reprints Act 1984 s. 7(4)(e).]*

*[Section 35A inserted by No. 13 of 1915 s. 2 (as amended by No. 15 of 1952 s. 7).]*

**36. Penalty for refusing to subscribe the engagement**

If any person residing within any place in the said State, being appointed a special constable, shall refuse to subscribe the engagement aforesaid when thereunto required by the magistrate so appointing him, he shall, on conviction thereof, forfeit and pay any sum of money not exceeding \$40 and if any person being appointed a special constable shall neglect or refuse to appear at the time and place for which he shall be summoned for the purpose of subscribing such engagement or having been appointed as special constable and called upon to serve, shall neglect or refuse to serve as such special constable or to obey such lawful orders and directions as may be given to him for the performance of the duties of his office every person so offending shall on conviction thereof, forfeit and pay for any such neglect or refusal any sum of money not exceeding \$40, unless such person shall prove, to the satisfaction of the court, that he was prevented by sickness, or other such unavoidable cause as shall in the judgment of the court be a sufficient cause.

*[Section 36 amended by No. 28 of 1964 s. 12; No. 113 of 1965 s. 8; No. 59 of 2004 s. 141.]*

**37. Commissioner may terminate special constables**

The Commissioner of Police may suspend or determine the services of all or any of the said special constables, as to the Commissioner of Police shall seem meet, and notice of such suspension or determination shall be forthwith transmitted to the Minister, and to the magistrate appointing them.

*[Section 37 amended by No. 59 of 2004 s. 141.]*

**38. Allowances to and costs of special constables**

The Minister may, upon the recommendation of the Commissioner of Police, order from time to time such reasonable allowances for their trouble, loss of time, and expenses, to be paid to such special constables who shall have served or be then serving as he may deem proper; and he may further order the payment of such expenses as may have been incurred in providing arms, equipment, and necessaries for such special constables.

### **Part IIIA — Aboriginal aides**

*[Heading inserted by No. 18 of 1975 s. 3.]*

**38A. Aboriginal aides**

- (1) The Commissioner of Police and any commissioned officer of police authorised in that behalf by the Commissioner may, in writing, appoint an aboriginal person to be an aboriginal aide.
- (1a) Subject to section 33L(5)(c), the Commissioner of Police may, by order, revoke any appointment under subsection (1).
- (2) Any aboriginal aide appointed under subsection (1) —
  - (a) shall, except as specified to the contrary in his instrument of appointment, have all of the powers, privileges, duties and obligations as has any constable duly appointed under this Act; and
  - (b) shall receive such remuneration and allowances as are determined by the Minister.
- (3) A reference in any other law of the State (not being a law relating to condition of service of members of the Police Force) to a member of the Police Force shall be read as including an aboriginal aide appointed under this section.

*[Section 38A inserted by No. 18 of 1975 s. 3; amended by No. 7 of 2003 s. 7.]*

## **Part IV — As to the establishment of Police Districts**

### **39. Police Districts**

- (1) The city, towns, and places in the said State which have already been established or proclaimed as Police Districts, shall continue to be Police Districts within the meaning and for the purposes of this Act; and the Governor may, by notice in the *Government Gazette*, vary the same and establish other Police Districts wherein portions of the Police Force may be stationed; and in every notice establishing any Police District in any part of the said State, the limits of such Police District shall be defined.
- (2) Notwithstanding the provisions of subsection (1), the Commissioner may for the purposes of the administration of the Police Force by order in writing divide the State, or any part of the State, into regions, divisions, sub-divisions, sections, branches, or sub-branches wherein portions of the Police Force may be stationed or carry out duties.

*[Section 39 amended by No. 6 of 1978 s. 10.]*

## Part IVA — Use of police property in relation to advertising

*[Heading inserted by No. 49 of 1995 s. 3.]*

### 39A. Interpretation

In this Part —

**“Account”** means the account established under section 39C(1);

**“contract”** means a contract of a kind provided for under section 39B;

**“Department”** means the department of the Public Service principally assisting the Minister in the administration of this Act;

~~**“Fund”** means the account established under section 39C(1);~~

**“police property”** means property of the State that is under the management or control of the Police Force or the Department;

**“Treasury”** means the Treasury of the State.

*[Section 39A inserted by No. 49 of 1995 s. 33; amended by No. 77 of 2006 s. 17.]*

### 39B. Contracts for advertising using police property

- (1) The Commissioner of Police, with the approval of the Minister may, on behalf of the State, enter into a written contract under which police property specified in the contract can be used for the purposes of advertising in return for money, goods or services.
- (2) The Commissioner shall not enter into a contract if either the Commissioner or the Minister is of the view that the proposed use of the police property or the presence or nature of the proposed advertising would —
  - (a) interfere with; or
  - (b) otherwise be inappropriate having regard to,

any operation or function of the Police Force or the Department.

- (3) Subject to subsections (1) and (2) and to section 39C, a contract shall be on such terms and conditions as are set out in the contract.

*[Section 39B inserted by No. 49 of 1995 s. 3.]*

### 39C. Financial provisions relating to contracts

- (1) ~~There shall be an~~ An agency special purpose account ~~at the Treasury called the "Police Fund" which shall form part of the Trust Fund constituted~~ Account is established under section 916 of the *Financial Administration and Audit Management Act 1985* 2006.
- (2) Moneys received on behalf of the State under a contract shall be credited to the FundAccount.
- (3) ~~Without limiting section 12 of the Financial Administration and Audit Act 1985, moneys~~ Moneys received under a contract and credited to the FundAccount may be applied for the purposes of providing, maintaining or operating the police property that is the subject of the contract but if so applied, shall be applied in a manner not inconsistent with the contract.
- (4) The administration of the FundAccount shall, for the purposes of section 52 of the *Financial Administration and Audit Management Act 1985* 2006, be deemed to be a service of the Department.

*[Section 39C inserted by No. 49 of 1995 s. 33; amended by No. 77 of 2006 s. 17.]*

**Part V — As to the powers of the Police Force and the apprehension of offenders**

**40. Police may board and search vessels**

Any officer of the Police Force or senior constable in charge of a Police Station shall, by virtue of his office, be an Officer of Customs within the meaning of the law relating to the Customs for the time being and shall have power, by virtue of his office, to enter at all times, with such constables as he shall think necessary, as well by night as by day, into or upon every ship, boat, or other vessel (not being then actually employed in Her Majesty's service, and not being a vessel of war, the commanding officer whereof shall hold a commission from any foreign Government or Power) lying or being in any of the waters of the said State, or any dock thereto adjacent, and into every part of such vessel, for the purpose of searching and inspecting the same, and of inspecting and observing the conduct of all persons who shall be employed on board any such ship or vessel in or about the lading or unloading thereof, as the case may be, and for the purpose of taking all such measures as may be necessary for providing against fire and other accidents, and for preserving peace and good order on board of any such ship or vessel and for the effectual prevention or detection of any felonies or misdemeanours.

*[Section 40 amended by No. 24 of 1969 s. 6.]*

**41. Police may detain and board vessels to search for offenders and stolen property and to prevent offences**

- (1) Any officer of the Police Force, or senior constable in charge of a Police Station, having reasonable or probable cause to suspect that any offence has been, or is about to be committed on board of any ship, boat, or other vessel (not being then actually employed in Her Majesty's service, and not being a vessel of war, the commanding officer whereof shall hold a commission from any foreign Government or Power), lying or being in any



of the waters of the said State, or that any person who has committed an offence rendering him liable to apprehension, either with or without warrant, or that any person against whom any warrant shall have been issued by any Justice is harboured, secreted, or concealed on board of any such ship, boat, or vessel, may stop and detain such ship, boat, or vessel, and may enter at all times, with such constables as he shall think necessary, as well by night as by day, into and upon every such ship, boat, or other vessel, and into every part thereof, and may search and inspect the same, and therein take all necessary measures for the effectual prevention and detection of all such suspected offences, and for the apprehension of all such suspected persons as aforesaid, and may and shall take into custody all persons suspected or being concerned in such offences, or liable to apprehension as aforesaid, and shall also take charge of all property suspected to be stolen.

- (2) Any officer or constable of the Police Force who has reasonable cause to believe that any ship, boat or other vessel is being, or is likely to be, used for a voyage the purpose of which is to do or attempt to do any act which if done in the State would constitute an offence may, without warrant other than this Act, enter at all times into and upon and take charge of or secure any such ship, boat or vessel or may otherwise take such steps in relation thereto as may be expedient for the purpose of preventing that voyage, using for that purpose such assistance and reasonable force as he may think necessary, and, subject to subsection (3), may detain the vessel for so long as he has reasonable cause to suspect that any such voyage may be undertaken.
- (3) An officer or constable of the Police Force who has detained any vessel pursuant to the provisions of subsection (2), or any person who is aggrieved by any exercise of the power conferred by that subsection, may apply to the Magistrates Court for an order in the matter, and that court, constituted by a magistrate, may thereupon —
  - (a) order the release of the vessel unconditionally;

**s. 42**

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- (b) order the release of the vessel subject to such conditions as that court may impose;
- (c) order that the vessel be detained for a specified period;
- (d) make an order as to the expenses incurred or to be incurred in relation to the seizure, detention or safe keeping of that vessel; and
- (e) make such order as to costs,

as it may think fit and effect shall be given thereto.

- (4) The terms of any conditions imposed on an order made pursuant to subsection (3) may relate not only to the release of the vessel but also as to the use to which the vessel may be put within the period specified in the order, and the order may also be made subject to the requirement that a person enters into a recognisance with or without sureties conditioned upon the observance of the terms imposed in relation to the release and use of the vessel.

*[(5) repealed]*

- (6) The detention of any vessel, or the exercise of any other power conferred by subsection (2), shall not be taken to be unlawful only by reason that it subsequently appears or is found that the vessel was not to be used in the manner, or the circumstances were not such as, the member of the Police Force believed.

*[Section 41 amended by No. 24 of 1969 s. 7; No. 91 of 1975 s. 17; No. 6 of 1978 s. 11; No. 51 of 1992 s. 16(3); No. 50 of 2003 s. 85(7); No. 59 of 2004 s. 141; No. 70 of 2004 s. 45.]*

**42. Police may enter places of public entertainment and remove certain people**

Any officer or constable of the Police Force may enter into any house, room, premises, or place where any public table, board, or ground is kept for playing billiards, bagatelle, bowls, fives, rackets, quoits, skittles, or ninepins, or any game of the like kind, when and so often as any such member shall think proper;

and may enter into any house, room, or place kept or used in the said State for any theatrical or any public entertainments, or exhibitions, or for any show of any kind whatsoever, whether admission thereto is obtained by payment of money or not, at any time when the same shall be open for the reception of persons resorting thereto and may remove from such house, room, or place any common prostitute, or reputed thief, or other loose, idle, or disorderly person who shall be found therein.

*[Section 42 amended by No. 28 of 1964 s. 13; No. 113 of 1965 s. 8; No. 91 of 1975 s. 18; No. 78 of 1995 s. 147; No. 70 of 2004 s. 46.]*

**43. Police may arrest suspects without warrant**

- (1) Any officer or constable of the Police Force, without any warrant other than this Act, at any hour of the day or night may apprehend any person whom he shall have just cause to suspect of having committed or being about to commit any offence.
- (2) Any officer or constable of the Police Force, without any warrant other than this Act, at any hour of the day or night, may apprehend any person whom he shall have just cause to suspect of having committed an offence in any place other than the State which, if committed in the State, would be an indictable offence (including an indictable offence that may be dealt with summarily) and shall detain any person so apprehended in custody, until he can be dealt with according to law, and the apprehension of a person pursuant to this subsection shall not be taken to be unlawful only by reason that it subsequently appears or is found that the person apprehended did not commit the offence alleged.

*[Section 43 amended by No. 50 of 1977 s. 2; No. 87 of 1982 s. 43; No. 35 of 1989 s. 4; No. 59 of 2004 s. 141; No. 70 of 2004 s. 47.]*

**44. Police may enter vessels and licensed premises**

Any constable, when so ordered by any officer of police, and any officer or constable of the Force whenever called upon by the master or any officer of any ship or vessel (not being then actually employed in Her Majesty's service and not being a vessel of war, the commanding officer whereof shall hold a commission from any foreign Government or Power), lying in any of the waters of the State or any dock thereto adjacent, may enter into and upon such ship or vessel; and any officer or constable of the Force may enter at any hour of the day or night into any house licensed for the sale of fermented or spirituous liquors, or any licensed boarding, eating, or lodging house, and to search therein for offenders and otherwise perform his duty, using as little annoyance to the inmates as possible.

*[Section 44 amended by No. 28 of 1964 s. 14; No. 113 of 1965 s. 8; No. 91 of 1975 s. 19; No. 87 of 1982 s. 44; No. 35 of 1989 s. 5; No. 78 of 1995 s. 147; No. 59 of 2004 s. 141; No. 70 of 2004 s. 48.]*

**45. Police may arrest without warrant a person for whom a warrant is believed to exist or who is believed to have committed an indictable offence**

Any officer or constable of the Police Force may, without a warrant, take into custody any person whom he may have reasonable and probable cause for believing or suspecting to be a person for whose apprehension a warrant shall have been issued and any person who shall be charged by any other person with having committed, or whom he shall have reasonable and probable cause for believing has committed any indictable offence in any case when by reason of the recent commission of the offence a warrant could not have been obtained for the arrest of the offender. And any warrant of arrest under this or any other Act may be executed by any police officer or constable on any day.

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*[Section 45 amended by No. 49 of 1997 s. 5; No. 70 of 2004 s. 49; No. 84 of 2004 s. 80.]*

[46. *Repealed by No. 70 of 2004 s. 50.]*

[47. *Repealed by No. 70 of 2004 s. 51.]*

[48. *Repealed by No. 87 of 1982 s. 45.]*

**49. Police and property owners may apprehend offenders;  
police may search vehicles and people for stolen property**

Any person found committing any offence punishable in a summary manner may be taken into custody without a warrant by any officer or constable of the Police Force, or may be apprehended by the owner of the property on or with respect to which the offence shall be committed, or by his servant, or any person authorised by him, and may be detained until he can be delivered into the custody of a constable, to be dealt with according to law; and every police officer or constable may also stop, search, and detain any cart, carriage, or vehicle, in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained; and any person to whom any property or liquor shall be offered to be sold, pawned, or delivered (if he shall have reasonable cause to suspect that any offence has been committed with respect to such property or liquor, or that the same, or any part thereof, has been stolen, or otherwise unlawfully obtained, or is intended to be used for an unlawful purpose), may apprehend and detain the person offering any such property or liquor as aforesaid, and as soon as may be deliver him into the custody of a constable, together with such property or liquor, to be dealt with according to law; and every person taken into custody without warrant for any offence against the provisions of this Act, or for any offence punishable in a summary manner, shall be detained in custody until he can be dealt with according to law.

**s. 50**

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*[Section 49 amended by No. 59 of 2004 s. 141.]*

**50. Police may order suspects and others to move on**

- (1) A police officer may order a person who is in a public place, or in a vehicle, vessel or aircraft used for public transport, to leave it, or a part of it specified by the officer, if the officer reasonably suspects that the person —
  - (a) is doing an act —
    - (i) that involves the use of violence against a person;
    - (ii) that will cause a person to use violence against another person; or
    - (iii) that will cause a person to fear violence will be used by a person against another person;
  - (b) is just about to do an act that is likely to —
    - (i) involve the use of violence against a person;
    - (ii) cause a person to use violence against another person; or
    - (iii) cause a person to fear violence will be used by a person against another person;
  - (c) is committing any other breach of the peace;
  - (d) is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person;
  - (e) intends to commit an offence; or
  - (f) has just committed or is committing an offence.
- (2) A police officer giving an order under subsection (1) may in addition do either or both of the following —
  - (a) order the person to go beyond a reasonable distance from a place, or the part of a place, set by the officer;

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s. 50AA

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- (b) order the person to obey the order or orders for a period set by the officer; but the period must not be longer than 24 hours.
- (3) For the purpose of giving an order under this section to a person whose personal details (as defined in section 16 of the *Criminal Investigation (Identifying People) Act 2002*) are unknown to the officer, a police officer may request the person to give the officer any or all of the person's personal details.
- (4) If a request is made under subsection (3), section 16 of the *Criminal Investigation (Identifying People) Act 2002* applies to and in relation to the request in the same way as it applies to a request made under subsection (2) of that section.
- (5) Any order given under this section to a person must —
- (a) be in writing in a form approved by the Commissioner of Police; and
  - (b) be served on the person by giving it to the person in person or, if the person refuses to accept it, by leaving it near the person and orally drawing his or her attention to it.
- (6) A person who, without reasonable excuse, does not comply with an order given by a police officer under this section commits an offence.
- Penalty: imprisonment for 12 months and a fine of \$12 000.
- (7) This section does not prevent a police officer charging a person with an offence without having exercised a power in this section.

*[Section 50 inserted by No. 70 of 2004 s. 52.]*

**[50A.]** *Repealed by No. 84 of 2004 s. 78.]*

**s. 50AA**

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**50AA. Police may take identifying particulars from people in custody**

- (1) Where any person is in lawful custody for any offence punishable on indictment or summary conviction, other than an offence that is a serious offence within the meaning of the *Criminal Investigation (Identifying People) Act 2002*, any officer or constable of the Police Force may take or cause to be taken all such particulars as he may think necessary or desirable for the identification of that person, including his photograph, measurements, fingerprints, and palmprints.
- (2) Where the photographs, fingerprints, palmprints or other identification particulars of a person are taken under subsection (1) and that person is found not to be guilty of any offence arising out of the circumstances leading to the taking of those particulars, the original negatives and all other copies available of the photograph, fingerprints, palmprints and other particulars taken shall, if so requested by that person, be destroyed in his presence but not until the time for an appeal from the finding has expired or an appeal from the finding has been resolved in favour of the accused person.

*[Section 50AA inserted by No. 41 of 1974 s. 2; amended by No. 6 of 2002 s. 96.]*

**51. Police may destroy animals that are or may be rabid**

Any officer or constable of the Police Force may destroy any dog or other animal reasonably suspected to be in a rabid state, or which has been bitten by any dog or animal reasonably suspected to be in a rabid state.

*[Section 51 amended by No. 28 of 1964 s. 15; No. 113 of 1965 s. 8; No. 70 of 2004 s. 53.]*

*[52. Repealed by No. 70 of 2004 s. 54.]*



**52A. Detention to be subject to the *Bail Act 1982***

Nothing in this Act shall be read as limiting or affecting —

- (a) the right conferred by section 5 of the *Bail Act 1982* on every person taken into the custody of a police officer or constable for an offence, as provided by this Act, to have his case for bail considered under and in accordance with the *Bail Act 1982* or to be brought before a court as soon as is practicable;
- (b) the duties imposed on police officers by section 6 of that Act.

*[Section 52A inserted by No. 87 of 1982 s. 46.]*

*[Part VA (s. 53-53M) repealed by No. 50 of 2000 s. 30.]*

*[Heading deleted by No. 70 of 2004 s. 55.]*

*[Heading deleted by No. 70 of 2004 s. 56.]*

*[54, 54A. Repealed by No. 70 of 2004 s. 57.]*

*[54B. Repealed by No. 23 of 1984 s. 12.]*

*[55-56. Repealed by 1 and 2 Edw. VII, No. 14 s. 3.]*

*[57. Repealed by No. 70 of 2004 s. 57.]*

*[58. Repealed by No. 85 of 1970 s. 4.]*

*[58A, 59. Repealed by No. 70 of 2004 s. 57.]*

*[60. Repealed by No. 44 of 1963 s. 4.]*

*[61. Repealed by No. 70 of 2004 s. 57.]*

*[62. Repealed by 1 and 2 Edw. VII, No. 14, s. 3.]*

*[62A. Repealed by No. 91 of 1975 s. 28.]*

**s. 68**

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*[63-67A. Repealed by No. 70 of 2004 s. 57.]*

*[67B. Repealed by No. 70 of 2004 s. 58.]*

**68. Police may search premises and property of person in custody charged with a crime**

When any person shall be taken into custody on a charge of a crime, his premises and property may be inspected and searched by any officer or constable of the Police Force.

*[Section 68 amended by No. 91 of 1975 s. 35; No. 59 of 2004 s. 141.]*

*[69. Repealed by No. 70 of 2004 s. 59.]*

**70. Search warrant for stolen or unlawfully obtained property**

If information shall be given on oath to any Justice that there is reasonable cause for suspecting that any thing stolen or unlawfully obtained is concealed or lodged in any place or in any vehicle or package, it shall be lawful for such Justice, by special warrant under his hand directed to any police constable, to cause every such place to be entered, and the same and every such vehicle or package to be searched at any time of the day or by night, and on any day; and the said Justice, if it shall appear to him necessary, may empower such police constable with such assistance as may be found necessary, such police constable having previously made known such his authority, to use force for the effecting of such entry, whether by breaking open doors or otherwise, and if upon search thereupon made any such thing shall be found, then to convey the same before a Justice or to guard the same on the spot until the offenders are dealt with according to law, or otherwise dispose thereof in some place of safety, and moreover to take into custody to be dealt with according to law every person found in such house or place, or whom he shall have reasonable cause to suspect to have been privy to the deposit of any such thing knowing or having

reasonable cause to suspect the same to have been stolen or  
otherwise unlawfully obtained.

*[Section 70 amended by No. 49 of 1997 s. 5; No. 59 of 2004  
s. 141.]*

*[71. Repealed by No. 70 of 2004 s. 60.]*

*[72, 73. Repealed by No. 59 of 2004 s. 141.]*

**Part VI — As to dealing with property connected with offences**

*[Heading inserted by No. 70 of 2004 s. 61.]*

**74. JP may order return of stolen or unlawfully obtained property held by police**

If any goods or money charged to be stolen or unlawfully obtained shall be in the custody of any police officer or constable by virtue of any warrant of a Justice, or in prosecution of any charge of a crime in regard to the obtaining of such goods or money, or pursuant to or by a seizure made under section 25 or 31 of the *Gaming and Wagering Commission Act 1987*, and the person charged shall not be found, or shall have been summarily convicted or discharged, or shall have been tried and acquitted, or if such person shall have been tried and found guilty, but the property so in custody shall not have been included in any charge upon which he shall have been found guilty, it shall be lawful for any Justice to make an order for the delivery of that property to the party who shall appear to be the rightful owner thereof, or in case the owner cannot be ascertained then to make such order with respect to that property as to such Justice shall seem meet: Provided always, that no such order shall be any bar to the right of any person or persons to sue the party to whom that property shall be delivered, and to recover that property from him by action at law, so that such action shall be commenced within 6 calendar months next after such order shall be made.

*[Section 74 amended by No. 108 of 1982 s. 7; No. 74 of 1987 s. 50; No. 35 of 2003 s. 175(2); No. 70 of 2004 s. 62; No. 84 of 2004 s. 80.]*

**75. How unclaimed stolen or unlawfully obtained property is to be dealt with by police**

- (1) Where any goods or money charged to be stolen or unlawfully obtained and of which the owner is unknown are in the custody

of a member of the Police Force then, if no person appears to claim ownership, that member after the expiration of a period of 6 months may and within a period of 12 months shall —

- (a) pay such money in his custody as aforesaid to the Treasurer of the State;
  - (b) sell or dispose of such goods in his custody as aforesaid and pay the net proceeds of such sale or disposition to the Treasurer of the State.
- (2) All moneys paid to the Treasurer of the State under the authority of subsection (1) shall be received by him for the public uses of the State.

*[Section 75 inserted by No. 19 of 1940 s. 3; amended by No. 7 of 1972 s. 4.]*

**76. How other unclaimed property may be dealt with by police**

- (1) Any goods and chattels which have lawfully come to the possession of any member of the Police Force and which are unclaimed shall and may be sold and disposed of by the direction of the Commissioner of Police by public auction (a notice of such sale having been previously published thrice in the *Government Gazette*); and the clear produce of such sale shall be paid to the Treasurer to the use of Her Majesty, her heirs and successors, for the public use of the said State; and every such sale shall be valid against all persons; and no person selling any goods or chattels under the provisions hereof shall be subject or liable to pay any auction or other duty in consequence of such sale.
- (2) Despite subsection (1), if —
  - (a) possession of the goods or chattels is unlawful; or
  - (b) the Commissioner of Police is satisfied that the goods or chattels are valueless,

**s. 90B**

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the Commissioner may dispose of the goods or chattels in such manner as the Commissioner thinks fit.

*[Section 76 amended by No. 47 of 1998 s. 6.]*

*[76A-76G. Repealed by No. 70 of 2004 s. 63.]*

*[76H. Repealed by No. 17 of 1979 s. 4.]*

*[76I. Repealed by No. 70 of 2004 s. 63.]*

*[77. Repealed by No. 91 of 1975 s. 42.]*

*[78. Repealed by No. 59 of 2004 s. 141.]*

*[79. Repealed by No. 33 of 1912 s. 2.]*

*[79A-83. Repealed by No. 70 of 2004 s. 64.]*

*[83A. Repealed by No. 108 of 1982 s. 8.]*

*[84. Repealed by No. 70 of 2004 s. 64.]*

*[Division 2 (s. 84A-84H) repealed by No. 35 of 2003 s. 177.]*

*[Division 3 (s. 84I) repealed by No. 29 of 1985 s. 5.]*

*[Divisions 4-6 (s. 85-89C) repealed by No. 74 of 1987 s. 58, 59 and 60.]*

*[Heading deleted by No. 70 of 2004 s. 65.]*

*[90-90A. Repealed by No. 70 of 2004 s. 66.]*

**90B. Forfeiture of seized property; embargo notices**

- (1) A court shall not order any thing seized under Part V to be forfeited where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

- (2) Where anything liable to be seized under Part V cannot, or cannot readily, be so seized and detained, a Justice, on the application of a police officer or constable and if the Justice is satisfied that there is reasonable cause to believe that the thing may be required as evidence for the purposes of a prosecution or is liable to forfeiture, may grant to that officer or constable an embargo notice and that officer or constable —
- (a) shall, if it is practicable to do so, forthwith serve, or cause to be served, a copy of the embargo notice on —
    - (i) the possessor of the thing to which the embargo notice relates; and
    - (ii) on any other person on whose behalf or for whose benefit he has reason to believe that thing is possessed by the possessor;and
  - (b) may serve or cause to be served a copy of the embargo notice on a person other than a person referred to in paragraph (a).
- (3) Subject to subsections (6) and (7), a possessor of any thing to which an embargo notice relates who sells, leases, moves, transfers or otherwise deals with that thing or any part of it within a period of 21 days from the date of the embargo notice or, if an application in respect of that thing is made to the District Court under section 90C within that period, before that application is finally disposed of is guilty of an offence.  
Penalty: \$2 000.
- (4) The possessor of any thing to which an embargo notice relates may apply to the District Court for leave to sell, lease, move, transfer or otherwise deal with that thing or any part of it.
- (5) The District Court may, on receiving an application under subsection (4), give the applicant leave in writing to sell, lease, move, transfer or otherwise deal with the thing or any part of the thing to which the embargo notice concerned relates on such

**s. 90C**

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conditions, if any, as the District Court thinks fit to attach to that leave.

- (6) A person to whom leave has been given under subsection (5) may sell, lease, move, transfer or otherwise deal with the thing or any part of the thing to which that leave relates in accordance with any conditions attached to that leave.
- (7) A person who is the possessor of the thing to which an embargo notice relates may move that thing or any part of that thing for the purpose of protecting and preserving the same within the period referred to in subsection (3) or before the application referred to in that subsection is finally disposed of, as the case requires, with the prior consent of the officer or constable to whom the embargo notice was granted in accordance with any conditions attached to that consent.
- (8) Notwithstanding anything in any other Act, a sale, lease, movement, transfer or other dealing with any thing which constitutes an offence under subsection (3) is null and void.

*[Section 90B inserted by No. 108 of 1982 s. 23; amended by No. 70 of 2004 s. 67.]*

**90C. Embargo notices, District Court may make orders as to**

- (1) A police officer or constable to whom an embargo notice has been granted may at any time, and a person aggrieved by the embargo notice may within a period of 21 days from the date of the embargo notice, apply on notice of motion to the District Court for an order in respect of the thing to which the embargo notice concerned relates.
- (2) On receiving an application made under subsection (1), the District Court may —
  - (a) before, during or after the consideration of that application adjourn the proceedings on that application for such period or periods as it thinks fit;



- (b) before making any order on that application, require notice to be given to, and hear, a person claiming to have a financial or other interest in the thing to which that application relates or any part of that thing; and
- (c) after considering that application —
  - (i) if it is satisfied that the thing to which that application relates or any part of that thing is likely to be required as evidence for the purposes of proceedings under this Act or to be liable to forfeiture under this Act, order that that thing or part of that thing continue to be subject to the embargo notice until the proceedings concerned are finally disposed of;
  - (ii) if it is not so satisfied, order that that thing or part of that thing be released to the person named in that order or cancel the embargo notice concerned, as the case requires; or
  - (iii) if it is satisfied that the thing or any part of the thing has been ordered to be forfeited to the Crown under this Act, make such order as may be necessary to give effect thereto,

and in any such case make such other order in respect of the thing to which that application relates or any part of that thing as the justice of the case requires, and may make such ancillary orders, including orders as to costs, as it considers necessary or desirable.

- (3) For the purposes of section 90B, an application under this section is finally disposed of when an appeal or further appeal, as the case requires, cannot be made unless an extension of time is granted —
  - (a) where the District Court makes an order under subsection (2)(c)(i), in the proceedings in relation to which the embargo notice was granted; and

**s. 90C**

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(b) in any other case, under this section.

*[Section 90C inserted by No. 108 of 1983 s. 23.]*

*[91, 92. Repealed by No. 108 of 1982 s. 20.]*

*[93. Repealed by 56 Vict. No. 10.]*

*[94. Repealed by No. 108 of 1982 s. 24.]*

*[94A-94E. Repealed by No. 57 of 1981 s. 24.]*

*[94F-94H. Repealed by No. 146 of 1976 s. 13.]*

*[Part VII:*

*s. 95-99 repealed by No. 70 of 2004 s. 68;*

*s. 100 repealed by No. 59 of 2004 s. 141;*

*s. 101-120 repealed by No. 70 of 2004 s. 68;*

*s. 121 repealed by No. 59 of 2004 s. 141.]*

## Part VIII — Miscellaneous provisions

[122. *Repealed by No. 70 of 2004 s. 69.*]

### 123. **Property of offenders may be detained**

Whenever any person having charge of any horse, cart, carriage, or boat, or any other animal or thing, shall be taken into custody of any police constable under the provisions of this Act, it shall be lawful for any police constable to take charge of such horse, cart, carriage, or boat, or such other animal or thing, and to deposit the same in some place of safe custody as a security for payment of any penalty to which the person having had charge thereof may become liable, and for payment of any expenses which may have been necessarily incurred for taking charge of and keeping the same; and it shall be lawful for any court of summary jurisdiction before whom the case shall have been heard, to order such horse, cart, carriage, or boat, or such other animal or thing to be sold, for the purpose of satisfying such penalty and reasonable expenses in default of payment thereof, in like manner as if the same had been subject to be distrained and had been distrained for the payment of such penalty and reasonable expenses.

*[Section 123 amended by No. 59 of 2004 s. 141.]*

### 124. **General penalty**

Every offence against this Act for which no special penalty is appointed shall render the offender liable, on conviction, to a penalty of not more than \$2 500.

*[Section 124 amended by No. 28 of 1964 s. 56; No. 113 of 1965 s. 8; No. 91 of 1975 s. 68; No. 51 of 1992 s. 16(1); No. 78 of 1995 s. 147; No. 50 of 2003 s. 85(23); No. 59 of 2004 s. 141.]*

[125-126. *Repealed by No. 70 of 2004 s. 70.*]

[127. *Repealed by No. 4 of 2004 s. 58.*]

**s. 136**

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[128. Repealed by No. 59 of 2004 s. 141.]

[129. Repealed by No. 78 of 1995 s. 106.]

[130-132. Repealed by 2 Edw. VII. No. 11 s. 2.]

[133, 134. Repealed by No. 70 of 2004 s. 71.]

[135. Repealed by No. 78 of 1995 s. 106.]

**136. Interpretation for s. 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.

[Section 136 inserted by No. 42 of 1999 s. 5.]

**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.

**s. 138**

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- (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.

*[Section 137 inserted by No. 42 of 1999 s. 5.]*

**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.
- (5) In this section —  
“**close relative**”, in relation to a person, includes a de facto partner of the person.

*[Section 138 inserted by No. 42 of 1999 s. 6; amended by No. 28 of 2003 s. 158.]*

### **138A. Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters that by this Act, are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may impose penalties not exceeding in any case \$100, in respect of the contravention of any provision thereof.
- (3) The regulations may prescribe fees that may be charged for the issue of certificates or the provision of services, including the services of escorts or guards.
- (4) Without limiting subsection (1), regulations may be made —
- (a) requiring and regulating the provision of documents or other material by the Commissioner of Police to a member who has been given a notice under section 33L(1);
  - (b) prescribing the procedure to be followed in relation to a removal from office under section 8 or the revocation of an appointment under section 38A;
  - (c) prescribing restrictions in relation to any period during which consideration is being given to a member's

**s. 142**

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suitability to continue as a member of the Police Force on the exercise of any power of the Commissioner of Police or the Governor to suspend the member's pay; and

- (d) prescribing the means of service of documents that are required to be served under Part IIB or regulations relating to that Part.

*[Section 138A inserted by No. 85 of 1970 s. 13; amended by No. 71 of 1980 s. 7; No. 7 of 2003 s. 8.]*

*[139-141. ~~repealed~~ Repealed by 2 Edw. VII. No. 11 s. 2.]*

**142. Commencement of Act**

This Act shall come into force on 1 April 1892.



## **Schedules**

*[The First Schedule omitted under the Reprints Act 1984 s. 7(4)(f).]*

*[The Second Schedule repealed by No. 70 of 2004 s. 72.]*

*[The Third Schedule repealed by No. 30 of 1983 s. 5.]*

### Notes

<sup>1</sup> This reprint is a compilation as at 1 June 2005 of the *Police Act 1892* and includes the amendments made by the other written laws referred to in the following table<sup>1a</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>The Police Act 1892</i> <sup>2</sup>	1892 (55 Vict. No. 27)	18 Mar 1892	1 Apr 1892 (see s. 142)
<i>The Police Act Amendment Act 1893</i> (No. 1)	1893 (56 Vict. No. 10) (as amended by No. 15 of 1952 s. 7(1))	13 Jan 1893	13 Jan 1893
<i>The Police Act 1892 Amendment Act 1894</i> (No. 2)	1894 (58 Vict. No. 26) (as amended by No. 15 of 1952 s. 7(1))	23 Nov 1894	23 Nov 1894
<i>Police Act Amendment Act 1898</i>	1898 (62 Vict. No. 21) (as amended by No. 15 of 1952 s. 7(1))	28 Oct 1898	28 Oct 1898
<i>Criminal Code Act 1902</i> s. 3(2)	1902 (1 & 2 Edw. VII No. 14)	19 Feb 1902	1 May 1902 (see s. 2)
<i>Justices Act 1902</i> s. 2	1902 (2 Edw. VII No. 11)	18 Nov 1902	18 Nov 1902
<i>Police Act Amendment Act 1902</i>	1902 (2 Edw. VII No. 31) (as amended by No. 15 of 1952 s. 7(1))	20 Dec 1902	20 Dec 1902

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Police Act Amendment Act 1907</i>	10 of 1907 (as amended by No. 15 of 1952 s. 7(1))	20 Dec 1907	20 Dec 1907
<i>Prevention of Cruelty to Animals Act 1912 s. 2</i>	33 of 1912	10 Oct 1912	10 Oct 1912
<i>Police Act Amendment Act 1915</i>	13 of 1915 (as amended by No. 15 of 1952 s. 7(1))	18 Feb 1915	18 Feb 1915
<i>Ministers' Titles Act 1925 s. 2</i>	8 of 1925	24 Sep 1925	24 Sep 1925
<i>Police Offences (Drugs) Act 1928 s. 2</i>	11 of 1928 (as amended by No. 15 of 1952 s. 7(1))	23 Nov 1928	23 Nov 1928
<i>Police Act Amendment Act 1933</i>	19 of 1933	13 Nov 1933	13 Nov 1933
<i>Police Act Amendment Act 1940</i>	19 of 1940	29 Nov 1940	29 Nov 1940
<i>Police Act Amendment Act 1945</i>	5 of 1945	27 Nov 1945	27 Nov 1945
<i>Police Act Amendment Act 1902 Amendment Act 1945</i>	6 of 1945 (as amended by No. 15 of 1952 s. 7(1))	27 Nov 1945	27 Nov 1945
<i>Police Act Amendment Act 1952</i>	15 of 1952	7 Nov 1952	19 Jun 1953 (see s. 2 and <i>Gazette</i> 19 Jun 1953 p. 1225)
<b>Reprint of the <i>Police Act 1892</i> approved 23 Mar 1953 in Volume 6 of Reprinted Acts</b> (includes amendments listed above except those in the <i>Police Act Amendment Act 1952</i> )			
<i>Police Act Amendment Act 1953</i>	28 of 1953	18 Dec 1953	1 Jan 1955 (see s. 2 and <i>Gazette</i> 26 Feb 1954 p. 304)
<i>Police Act Amendment Act 1954</i>	6 of 1954	25 Aug 1954	25 Aug 1954
<i>Police Act Amendment Act (No. 2) 1954</i>	25 of 1954	20 Oct 1954	18 Mar 1955 (see s. 2 and <i>Gazette</i> 18 Mar 1955 p. 517)
<i>Betting Control Act 1954 s. 5</i>	63 of 1954	30 Dec 1954	1 Aug 1955 (see s. 2(1) and <i>Gazette</i> 29 Jul 1955 p. 1767)

## Police Act 1892

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Short title	Number and year	Assent	Commencement
<i>Police Act Amendment Act 1955</i>	8 of 1955	19 Oct 1955	19 Oct 1955
<i>Police Act Amendment Act 1956</i>	20 of 1956	19 Nov 1956	19 Nov 1956
<i>Licensing (Police Force Canteen) Act 1958 Pt. III</i>	40 of 1958	11 Dec 1958	18 Jul 1959 (see s. 2 and <i>Gazette</i> 10 Jul 1959 p. 1829)
<i>Police Act Amendment Act 1959</i>	10 of 1959	25 Sep 1959	25 Sep 1959
<i>Totalisator Agency Board Betting Act 1960 s. 20</i>	50 of 1960	28 Nov 1960	31 Dec 1960 (see s. 2 and <i>Gazette</i> 23 Dec 1960 p. 4073)
<i>Police Act Amendment Act 1961</i>	71 of 1961	28 Nov 1961	28 Nov 1961
<b>Reprint of the Police Act 1892 approved 26 Jun 1962 (not in a Volume)</b> (includes amendments listed above)			
<i>Police Act Amendment Act 1962</i>	29 of 1962	4 Oct 1962	4 Oct 1962
<i>Police Act Amendment Act 1963</i>	42 of 1963	25 Nov 1963	25 Nov 1963
<i>Factories and Shops Act 1963 s. 4</i>	44 of 1963	3 Dec 1963	1 Jan 1964 (see s. 2 and <i>Gazette</i> 13 Dec 1963 p. 3836)
<i>Police Act Amendment Act 1964</i>	28 of 1964	4 Nov 1964	4 Nov 1964
<i>Police Act Amendment Act (No. 2) 1964</i>	71 of 1964	11 Dec 1964	1 Jul 1965 (see s. 2 and <i>Gazette</i> 29 Jun 1965 p. 1933)
<i>Police Act Amendment Act 1965</i>	22 of 1965	1 Oct 1965	1 Oct 1965
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Police Act Amendment Act 1967</i>	7 of 1967	5 Oct 1967	5 Oct 1967
<i>Police Act Amendment Act (No. 2) 1967</i>	52 of 1967	5 Dec 1967	5 Dec 1967
<b>Reprint of the Police Act 1892 approved 15 Dec 1967 in Volume 21 of Reprinted Acts</b> (includes amendments listed above)			
<i>Police Act Amendment Act 1968</i>	26 of 1968	25 Oct 1968	25 Oct 1968

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Police Act Amendment Act 1969</i>	24 of 1969	16 May 1969	16 May 1969
<i>Police Act Amendment Act 1970</i>	1 of 1970	29 Apr 1970	29 Apr 1970
<i>Police Act Amendment Act (No. 2) 1970</i>	85 of 1970	30 Nov 1970	1 Jul 1971 (see s. 2 and <i>Gazette</i> 18 Jun 1971 p. 2147)
<i>Police Act Amendment Act 1972</i>	7 of 1972	25 May 1972	25 May 1972
<b>Reprint of the <i>Police Act 1892</i> approved 7 Jun 1972 (not in a Volume)</b> (includes amendments listed above)			
<i>Metric Conversion Act 1972</i>	94 of 1972 (as amended by No. 19 of 1973 s. 3)	4 Dec 1972	Relevant amendments (see First Sch. <sup>3</sup> ) took effect on 1 Jul 1973 (see s. 4(2) and <i>Gazette</i> 18 May 1973 p. 1261)
<i>Police Act Amendment Act 1974</i>	41 of 1974	15 Nov 1974	15 Nov 1974
<i>Police Act Amendment Act 1975</i>	18 of 1975	13 May 1975	13 May 1975
<i>Police Act Amendment Act (No. 2) 1975</i>	91 of 1975	20 Nov 1975	1 Mar 1976 (see s. 2 and <i>Gazette</i> 23 Jan 1976 p. 111)
<i>Police Act Amendment Act 1976</i>	146 of 1976	13 Dec 1976	14 Jan 1977 (see s. 2 and <i>Gazette</i> 14 Jan 1977 p. 49)
<i>Police Act Amendment Act 1977</i>	50 of 1977	18 Nov 1977	18 Nov 1977
<i>Police Act Amendment Act 1978</i>	6 of 1978	11 May 1978	11 May 1978
<b>Reprint of the <i>Police Act 1892</i> approved 11 Jul 1978</b> (includes amendments listed above)			
<i>Sunday Entertainments Act 1979 s. 4</i>	17 of 1979	30 Aug 1979	8 Feb 1980 (see s. 1(2) and <i>Gazette</i> 1 Feb 1980 p. 283)
<i>Police Act Amendment Act 1979</i>	29 of 1979	21 Sep 1979	21 Sep 1979
<i>Police Act Amendment Act (No. 3) 1979</i>	83 of 1979	11 Dec 1979	15 Jul 1980 (see s. 2 and <i>Gazette</i> 4 Jul 1980 p. 2114)
<i>Police Amendment Act 1980</i>	71 of 1980	26 Nov 1980	24 Dec 1980 (see s. 2)

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<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Act Amendment (Misuse of Drugs) Act 1981 Pt. V</i>	57 of 1981 (as amended by No. 8 of 1982)	13 Oct 1981	1 Sep 1982 (see s. 2 and <i>Gazette</i> 20 Aug 1982 p. 3250)
<i>Acts Amendment (Lotto) Act 1981 Pt. III</i>	103 of 1981	2 Dec 1981	18 Dec 1981 (see s. 2 and <i>Gazette</i> 18 Dec 1981 p. 5163)
<i>Police Amendment Act 1981</i>	107 of 1981	4 Dec 1981	4 Dec 1981
<i>Acts Amendment (Bail) Act 1982 Pt. IV</i>	87 of 1982	17 Nov 1982	6 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Acts Amendment (Betting and Gaming) Act 1982 Pt. II</i>	108 of 1982	7 Dec 1982	31 Dec 1982 (see s. 2 and <i>Gazette</i> 31 Dec 1982 p. 4968)
<b>Reprint of the Police Act 1892 approved 18 Apr 1983</b> (includes amendments listed above except those in the <i>Acts Amendment (Bail) Act 1982</i> )			
<i>Acts Amendment (Trade Promotion Lotteries) Act 1983 Pt. III</i>	21 of 1983	22 Nov 1983	22 Nov 1983
<i>Police Amendment Act 1983</i>	30 of 1983	1 Dec 1983	29 Dec 1983 (see s. 2)
<i>Acts Amendment (Soccer Football Pools) Act 1984 Pt. II</i>	22 of 1984	31 May 1984	13 Jul 1984 (see s. 2 and <i>Gazette</i> 6 Jul 1984 p. 2017)
<i>Public Meetings and Processions Act 1984 s. 12</i>	23 of 1984	31 May 1984	1 Dec 1984 (see s. 2 and <i>Gazette</i> 30 Nov 1984 p. 3945)
<i>Acts Amendment and Validation (Casino Control) Act 1985 Pt. II</i>	10 of 1985	25 Mar 1985	19 Feb 1985 (see s. 2)
<i>Acts Amendment (Lotteries) Act 1985 Pt. IV</i>	19 of 1985	19 Apr 1985	19 Apr 1985 (see s. 2(1))
<i>Acts Amendment (Gaming and related provisions) Act 1985 Pt. IV</i>	29 of 1985	24 Apr 1985	1 Jun 1985 (see s. 2 and <i>Gazette</i> 31 May 1985 p. 1877)
<i>Acts Amendment and Repeal (Gaming) Act 1987 Pt. VI</i>	74 of 1987	26 Nov 1987	2 May 1988 (see s. 2 and <i>Gazette</i> 29 Apr 1988 p. 1292)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment (Events on Roads) Act 1988 Pt. 3</i>	64 of 1988	8 Dec 1988	1 Feb 1991 (see s. 2 and <i>Gazette</i> 1 Feb 1991 p. 511)
<i>Acts Amendment (Detention of Drunken Persons) Act 1989 Pt. 2</i>	35 of 1989	21 Dec 1989	27 Apr 1990 (see s. 2 and <i>Gazette</i> 27 Apr 1990 p. 2089)
<i>Lotteries Commission Act 1990 s. 33</i>	16 of 1990	31 Jul 1990	1 Jan 1991 (see s. 2 and <i>Gazette</i> 28 Dec 1990 p. 6369)
<b>Reprint of the Police Act 1892 as at 24 Apr 1992</b> (includes amendments listed above)			
<i>Criminal Law Amendment Act (No. 2) 1992 s. 16(1) and (3)</i>	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Police Amendment (Graffiti) Act 1994</i>	2 of 1994	11 Apr 1994	9 May 1994
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 17</i>	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Hospitals Amendment Act 1994 s. 18</i>	103 of 1994	11 Jan 1995	3 Feb 1995 (see s. 2 and <i>Gazette</i> 3 Feb 1995 p. 333)
<i>Police Amendment Act 1995</i>	49 of 1995	6 Nov 1995	6 Nov 1995 (see s. 2)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 65 and s. 147</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2(1))
<i>Mental Health (Consequential Provisions) Act 1996 Pt. 15</i>	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)
<b>Reprint of the Police Act 1892 as at 31 Jan 1997</b> (includes amendments listed above except those in the <i>Mental Health (Consequential Provisions) Act 1996</i> )			

## Police Act 1892

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Short title	Number and year	Assent	Commencement
<i>Sunday Observance Laws Amendment and Repeal Act 1997 s. 5</i>	49 of 1997	10 Dec 1997	10 Dec 1997 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 96</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 59</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Police Amendment Act 1998 Pt. 2</i>	47 of 1998	19 Nov 1998	5 Dec 1998 (see s. 2 and <i>Gazette</i> 4 Dec 1998 p. 6447)
<i>Weapons Act 1999 s. 21</i>	18 of 1999	16 Jun 1999	1 Mar 2000 (see s. 2(2))
<i>Acts Amendment (Police Immunity) Act 1999 Pt. 2</i>	42 of 1999	25 Nov 1999	25 Nov 1999 (see s. 2)
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999 Pt. 9</i>	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)
<b>Reprint of the <i>Police Act 1892</i> as at 1 Apr 2000</b> (includes amendments listed above)			
<i>Prostitution Act 2000 s. 64</i>	17 of 2000	22 Jun 2000	29 Jul 2000 (see s. 2 and <i>Gazette</i> 28 Jul 2000 p. 3987)
<i>Statutes (Repeals and Minor Amendments) Act 2000 s. 33 and 54</i>	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Protective Custody Act 2000 s. 30</i>	50 of 2000	28 Nov 2000	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7903)
<b>Reprint of the <i>Police Act 1892</i> as at 12 Jan 2001</b> (includes amendments listed above) (Correction to reprint in <i>Gazette</i> 27 Feb 2001 p. 1209)			
<i>Criminal Investigation (Identifying People) Act 2002 s. 96</i>	6 of 2002	4 Jun 2002	Sch. 2 cl. 5(1): 29 Jun 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037); Sch. 2 cl. 5(2): 20 Nov 2002 (see s. 2 and <i>Gazette</i> 19 Nov 2002 p. 5505)
<i>Police Amendment Act 2003</i> <sup>4</sup>	7 of 2003	27 Mar 2003	27 Aug 2003 (see s. 2 and <i>Gazette</i> 26 Aug 2003 p. 3753)



<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 48</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003 s. 175(2) and Pt. 10<sup>5</sup></i>	35 of 2003	26 Jun 2003	30 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Jan 2004 p. 397)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 85</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Criminal Code Amendment Act 2004 s. 58</i>	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<b>Reprint 11: The Police Act 1892 as at 10 Sep 2004</b> (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 109 Subdiv. 2<sup>6</sup></i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Law Amendment (Simple Offences) Act 2004 Pt. 3<sup>7</sup></i>	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78 and 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 12: The Police Act 1892 as at 1 Jun 2005</b> (includes amendments listed above)			
<a href="#"><i>Financial Legislation Amendment and Repeal Act 2006 s. 17</i></a>	<a href="#">77 of 2006</a>	<a href="#">21 Dec 2006</a>	<a href="#">1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)</a>

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

Short title	Number and Year	Assent	Commencement
<i>Criminal Investigation (Consequential Provisions) Act 2006</i> Pt. 12 <sup>8</sup>	59 of 2006	16 Nov 2006	To be proclaimed (see s. 2)

<sup>2</sup> Now known as the *Police Act 1892*; short title changed (see note under s. 3).  
<sup>3</sup> The Schedule to the *Metric Conversion Act 1972* was redesignated as the First Schedule by the *Metric Conversion Act Amendment Act 1973* s. 3.  
<sup>4</sup> The *Police Amendment Act 2003* s. 9 reads as follows:

**9. Transitional provisions**

- (1) In this section —  
 “**commencement day**” means the day on which section 6 of this Act comes into operation;  
 “**member**” has the same meaning as it has in section 33K of the *Police Act 1892* (as inserted by section 6 of the *Police Amendment Act 2003*).
- (2) If on or after 5 July 2002 and before the commencement day —
- (a) a person is removed under section 8 of the *Police Act 1892*; or
  - (b) a person’s appointment is revoked under section 38A(1)(b) of that Act,

because the Commissioner of Police does not have confidence in the person’s suitability to continue as a member, the provisions of Part IIB of the *Police Act 1892*, listed in the Table to this subsection, as inserted by section 6 of the *Police Amendment Act 2003*, apply to that removal or revocation as if the removal or revocation took place on the commencement day but subject to any necessary modifications and any modifications set out in the Table.

**Table**

s. 33K	
s. 33N	The reference to removal action taken under section 33L and removal from office is to be read as if it referred to action referred to in paragraph (a) or (b).

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s. 33P Subsection (1) does not apply but the section is to be read as if it contained the following subsection —

“

(1) A person —

(a) who is removed under section 8 of the *Police Act 1892*; or

(b) whose appointment is revoked under section 38A(1)(b) of that Act,

may appeal to the WAIRC on the ground that the removal or revocation decision of the Commissioner of Police was harsh, oppressive or unfair.

”

s. 33Q

s. 33R In subsections (9) and (10)(b), the references to the “reasons given to the appellant under section 33L(5)(a)” are to be read as a reference to reasons given by the Commissioner of Police to the appellant before the commencement day relating to or arising out of the member’s removal under section 8 of the *Police Act 1892* or revocation of appointment under section 38A(1)(b) of that Act.

In subsection (11), in the definition of “new evidence” —

(a) in paragraph (a), the reference to removal action is to be read as a reference to action referred to in paragraph (a) or (b) of this subsection;

(b) paragraphs (b), (c), (d) and (e) do not apply but the definition is to be read as if it contained the following paragraphs —

“

(b) any notice given to the appellant by the Commissioner of Police before the day on which section 6 of the *Police Amendment Act 2003* comes into operation relating to or arising out of the member’s removal under section 8 or revocation of appointment under section 38A(1)(b) of the *Police Act 1892*;

(c) any written submission made before the day on which section 6 of the *Police Amendment Act 2003* comes into operation by the appellant to the Commissioner of Police

relating to or arising out of the member's removal under section 8 or revocation of appointment under section 38A(1)(b) of the *Police Act 1892*;

- (d) a notification before the day on which section 6 of the *Police Amendment Act 2003* comes into operation by the Commissioner of Police to the appellant that the appellant was removed under section 8 of the *Police Act 1892* or that the appellant's appointment was revoked under section 38A(1)(b) of that Act.

”.

s. 33S-33Y

- (3) If before the commencement day the Commissioner of Police has lost confidence in a member's suitability to continue as a member and has given the member a notice of intention but has not —
  - (a) removed the member under section 8 of the *Police Act 1892*; or
  - (b) revoked the member's appointment under section 38A(1)(b) of that Act,

Part IIB of the *Police Act 1892*, as inserted by section 6 of the *Police Amendment Act 2003*, applies with any necessary modifications as if —

- (c) that notice were a notice given under section 33L(1) of the *Police Act 1892*; and
  - (d) the notice were given to the member on the commencement day.
- (4) Part IIB of the *Police Act 1892*, as inserted by section 6 of the *Police Amendment Act 2003*, does not affect any legal proceedings commenced before, on or after the commencement day relating to —
    - (a) the removal of a person under section 8 of the *Police Act 1892*; or
    - (b) the revocation of a person's appointment under section 38A(1)(b) of that Act,

before the commencement day.

”.

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<sup>5</sup> The *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 178 reads as follows:

“

**178. Savings provision**

Despite section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995* and the repeal by section 177 of a provision of the *Police Act 1892* that creates an offence —

- (a) an investigation or legal proceedings in respect of any such offence alleged to have been committed before the commencement of section 177 may be commenced or continued; and
- (b) a person may be sentenced or otherwise dealt with for the alleged offence as if the provision had not been repealed.

”

<sup>6</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>7</sup> The *Criminal Law Amendment (Simple Offences) Act 2004* Pt. 3 Div. 2 reads as follows:

“

**Division 2 — Transitional provisions**

**73. Repealed offences may be investigated etc.**

Despite section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995* and the repeal by Division 1 of an enactment of the *Police Act 1892* that creates an offence —

- (a) an investigation or legal proceedings in respect of any such offence alleged to have been committed before the commencement of Division 1 may be commenced or continued; and
- (b) a person may be sentenced or otherwise dealt with for the alleged offence as if the enactment had not been repealed.

”

<sup>8</sup> On the date as at which this compilation was prepared, the *Criminal Investigation (Consequential Provisions) Act 2006* Pt. 12 had not come into operation. It reads as follows:

“

## **Part 12 — *Police Act 1892* amended**

### **Division 1 — Amendments**

- 60. The Act amended in this Part**  
The amendments in this Part are to the *Police Act 1892*.
- 61. Section 2 repealed**  
Section 2 is repealed.
- 62. Section 7 amended**  
Section 7(1) is amended by deleting “; and such non-commissioned officers and constables shall have all such powers and privileges, and be liable to all such duties and obligations as any constable duly appointed now or hereafter may have, or be liable to, either by the common law, or by virtue of any statute law now or hereafter to be in force in the said State”.
- 63. Part III replaced**  
Part III is repealed and the following Part is inserted instead —

“

## **Part III — Special constables**

- 34. Interpretation**  
In this Part, unless the contrary intention appears —  
“**Commissioner**” means the Commissioner of Police appointed under section 5;  
“**police officer**” means a person appointed under Part I as an officer or constable of the Police Force, other than as the Commissioner;  
“**special constable**” means a special constable appointed under section 35.
- 35. Appointing and terminating special constables**
- (1) The Commissioner may appoint any person as a special constable.
  - (2) The appointment of a special constable may be for such period and on such terms and conditions as the Commissioner decides.
  - (3) The appointment of a special constable must not include a term that provides for the payment of any remuneration to a special constable unless the Minister has approved the term.

- (4) The Commissioner may at any time cancel the appointment of a special constable.
- (5) The appointment of a special constable, its terms and conditions and any cancellation of it must be in writing and signed by the Commissioner.
- (6) The Commissioner must issue a special constable with a certificate of his or her appointment as a special constable.
- (7) A special constable whose appointment as such ceases must return any certificate issued to him or her under subsection (6) to the Commissioner.  
Penalty: \$500.

**36. Functions of special constables**

- (1) Unless the document appointing a special constable says otherwise —
  - (a) a special constable has all of the powers, duties and obligations that a police officer or a member of the Police Force has under any written law other than this Act; and
  - (b) any authorisation, exemption or exception in any written law other than this Act that applies to a police officer or a member of the Police Force applies to a special constable,unless that written law expressly says otherwise.
- (2) If a provision of a written law other than this Act refers to a police officer or to a member of the Police Force but does not confer a power, duty or obligation on, or create an authorisation, exemption or exception for, a police officer or a member of the Police Force, the provision is to be taken to include a reference to a special constable, unless the contrary intention appears in the provision.
- (3) The document appointing a special constable may limit the powers, duties or obligations of the special constable or the application of any authorisation, exemption or exception to the special constable in any way the Commissioner thinks fit.
- (4) Without limiting subsection (3) or section 35(2), the document appointing a special constable may do any or all of the following —
  - (a) limit the powers that the special constable may exercise;
  - (b) limit when the special constable may exercise his or her powers or any of them;
  - (c) limit where in the State the special constable may exercise his or her powers or any of them;

- (d) limit the circumstances in which the special constable may exercise his or her powers or any of them;
  - (e) limit the offences in respect of which the special constable may exercise his or her powers or any of them;
  - (f) limit the purposes for which the special constable may exercise his or her powers or any of them;
  - (g) limit or prohibit the possession or use of any thing that the special constable would otherwise be authorised under a written law to possess or use, despite the written law.
- (5) The document appointing a special constable may require the special constable to inform the Commissioner about the exercise by the special constable of any power, or the performance of any duty or obligation, that he or she has under the appointment.

**37. Special constables not in the Police Force**

- (1) A special constable is not a member of the Police Force of Western Australia for the purposes of this Act.
- (2) Subsection (1) does not affect the operation of section 36(1) or (2) or 136.

”

**64. Part V repealed**

Part V is repealed.

**65. Part VI repealed**

Part VI is repealed.

**66. Section 123 repealed**

Section 123 is repealed.

**67. Section 124 repealed**

Section 124 is repealed.

**Division 2 — Transitional provisions**

**68. Existing special constables' appointments terminated**

- (1) If immediately before the commencement of section 63 a person holds an appointment as a special constable made under the *Police Act 1892* Part III, then on the commencement of section 63 the person ceases to be a special constable.
- (2) Subsection (1) does not prevent the appointment of a person to whom it applies as a special constable under the *Police Act 1892* Part III as inserted by section 63.



**69. Search warrants and related matters**

- (1) In this section —  
“**repeal day**” means the day on which section 64 comes into operation.
- (2) This section does not limit the operation of the *Interpretation Act 1984* Part V.
- (3) If immediately before repeal day a warrant issued under the *Police Act 1892* section 70 is in force but not executed, then, subject to the terms of the warrant, the warrant may be executed on or after repeal day and, if any thing is seized under it —
  - (a) despite section 70 and the warrant, the thing must not be taken before a Justice; and
  - (b) the *Criminal and Found Property Disposal Act 2006* applies to and in respect of the thing.

**70. Embargo notices**

- (1) In this section —  
“**repeal day**” means the day on which section 65 comes into operation.
- (2) If immediately before repeal day any property is subject to an embargo notice granted under the *Police Act 1892* section 90B, whether the property was seized under Part V of that Act or under an Act that refers to that section, then on and after repeal day sections 90B and 90C of that Act apply to and in respect of the notice as if they had not been repealed.

”