



Western Australia

Police Act 1892

Compare between:

[15 Aug 2019, 14-h0-01] and [30 Nov 2019, 14-i0-00]

Western Australia

Police Act 1892

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

Part IA — Preliminary

[Heading inserted: No. 19 of 2010 s. 43(2).]

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

[2. *Deleted: No. 59 of 2006 s. 61.*]

3. Short title

This Act may be cited as the *Police Act 1892*¹.

[Section 3 amended: No. 15 of 1952 s. 4 and 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.]

**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: 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.
- (2) The Minister, or a person authorised by him, may appoint persons to be police cadets who shall have such powers and

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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: No. 6 of 1978 s. 3; No. 59 of 2006 s. 62.]

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: No. 24 of 1969 s. 3; No. 7 of 2003 s. [4](#); [No. 19 of 2019 s. 4](#).]

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

9. Commissioner may make rules, orders and regulations for members of the Police Force and others and for 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, police auxiliary officers, police cadets and Aboriginal police liaison officers, 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, police auxiliary officers, cadets and Aboriginal police liaison officers, 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: No. 40 of 1958 s. 8; No. 91 of 1975 s. 3; No. 6 of 1978 s. 4; No. 8 of 2008 s. 4; No. 42 of 2009 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

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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 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: 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.

[Section 12 amended: 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 etc. to return uniforms etc.

Every member of the Police Force, whether special or ordinary, and every police auxiliary officer and Aboriginal police liaison officer, 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: 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; No. 8 of 2008 s. 5; No. 42 of 2009 s. 5.]

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 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: No. 6 of 1978 s. 5.]

[15. Deleted: No. 8 of 2008 s. 6.]

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: 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: No. 5 of 1945 s. 2; amended: 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.]

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.

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[18. Deleted: No. 70 of 2004 s. 42.]

[19. Deleted: No. 6 of 1978 s. 6.]

[20. Deleted: 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: 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: No. 30 of 1983 s. 3; No. 47 of 1999 s. 30; No. 59 of 2004 s. 141.]

[Heading deleted: No. 19 of 2010 s. 44(3).]

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, police auxiliary officer, police cadet or Aboriginal police liaison officer upon a charge of an offence against the discipline of the Police Force being made against any member of the Force, police auxiliary officer, cadet or liaison officer.
- (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 auxiliary officer, police cadet or Aboriginal police liaison officer 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, police auxiliary officer, cadet or liaison officer or by order in writing impose on him one or more of the following punishments —
 - (a) a reprimand;
 - (b) a fine of not more than 3% of the annual base rate of pay of the member, police auxiliary officer, cadet or liaison officer;
 - (c) demotion;
 - (d) reduction in salary to a specified rate within the limits of salary fixed in relation to the office held by him;

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- (e) suspension from duty;
 - (f) discharge or dismissal from the Force or, in the case of a police auxiliary officer or Aboriginal police liaison officer, cancellation of his appointment.
- (5) An order made under subsection (4) for demotion or reduction in salary, suspension from duty, discharge or for dismissal or cancellation of appointment, shall not have effect unless or until —
- (a) in the case of a member who is not an officer, or of a police auxiliary officer, cadet or liaison officer, 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 on a person under this section may be recovered —
- (a) by deducting the amount from the salary of the person as a single sum or by instalments, as the Commissioner decides; or
 - (b) as a debt due to the State in a court of competent jurisdiction.

[Section 23 inserted: No. 6 of 1978 s. 7; amended: No. 7 of 2003 s. 5; No. 8 of 2008 s. 7; No. 42 of 2009 s. 6.]

[24-25. Deleted: No. 6 of 1978 s. 7.]

[26. Deleted: No. 25 of 1954 s. 6.]

[27. Deleted: No. 28 of 2003 s. 156.]

[28. Deleted: No. 6 of 1978 s. 8.]

29. Forfeiture of office for financial difficulty

A person who is a member of the Force forfeits the person's office as a member of the Force if the person is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws.

[Section 29 inserted: No. 18 of 2009 s. 68.]

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: 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.]

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

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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: No. 113 of 1965 s. 8; No. 59 of 2004 s. 141.]

33. Fines and penalties to be credited to Consolidated Account

All fines and penalties imposed under this Part on a person appointed under this Act must be credited to the Consolidated Account.

[Section 33 inserted: No. 42 of 2009 s. 7.]

Part IIA — Police Appeal Board

[Heading inserted: No. 25 of 1954 s. 7.]

33A. Terms used

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: 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: No. 25 of 1954 s. 7; amended: 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

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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.

- (3A) 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.
- (3B) 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: No. 25 of 1954 s. 7; amended: No. 59 of 2004 s. 141; No. 19 of 2010 s. 51.]

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: 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, a police auxiliary officer, a police cadet or an Aboriginal police liaison officer 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, cadet, police auxiliary officer, or liaison officer 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, removed from the office of police auxiliary officer or Aboriginal police liaison officer, 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: No. 25 of 1954 s. 7; amended: No. 6 of 1978 s. 9; No. 8 of 2008 s. 8; No. 42 of 2009 s. 8.]

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

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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: 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: No. 25 of 1954 s. 7; amended: No. 113 of 1965 s. 8.]

33H. Determination of appeal

- (1A) 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.
- (1B) The Board may fix the costs of any appeal and direct by whom and the proportions in which they are payable but in every case

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

- (1C) Costs awarded against an appellant are recoverable in a court of competent jurisdiction as a debt due to the Crown.
- (1D) 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: No. 25 of 1954 s. 7; amended: No. 19 of 2010 s. 51.]

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: 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: No. 25 of 1954 s. 7.]

Part IIB — Removal of members

[Heading inserted: No. 7 of 2003 s. 6.]

Division 1 — Preliminary

[Heading inserted: No. 7 of 2003 s. 6.]

33K. Terms used

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*;

member means —

- (a) a commissioned officer;
- (b) a non-commissioned officer;
- (c) a constable;
- (d) an Aboriginal police liaison officer;
- (e) a police auxiliary officer;

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 cancellation of the appointment of an Aboriginal police liaison officer under section 38B(4);
- (d) [the cancellation of the appointment of a police auxiliary officer under section 38G\(4\);](#)

removal from office means —

- (a) a removal under section 8; or
- (b) the cancellation of the appointment of an Aboriginal police liaison officer under section 38B(4);
- (c) the cancellation of the appointment of a police auxiliary officer under section 38G(4);

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: No. 7 of 2003 s. 6; amended: No. 8 of 2008 s. 9; No. 21 of 2008 s. 692; No. 42 of 2009 s. 99; [No. 19 of 2019 s. 5.](#)]

Division 2 — Removal of members

[Heading inserted: 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: 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: 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: No. 7 of 2003 s. 6.]

33O. 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 33O inserted: No. 7 of 2003 s. 6.]

Division 3 — Appeal in relation to removal

[Heading inserted: 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: 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: 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: 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

- 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. 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” were a reference to “If the Commission is dealing with an appeal instituted under the *Police Act 1892* section 33P, the Commission may recommend that the parties to the appeal”.

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 (4) to “no award, order, declaration, finding, or proceeding” is to be read as if it were a reference to “no decision, order, finding or proceeding”.

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 Full Bench, the Commission on an application under section 49(11) or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under the *Police Act 1892* section 33U”.

[Section 33S inserted: No. 7 of 2003 s. 6; amended: No. 39 of 2018 s. 70.]

33T. Adjournment 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 adjournment 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: 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: 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: No. 7 of 2003 s. 6.]

Division 4 — General

[Heading inserted: 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: 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: 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: 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 operation¹.
- (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: No. 7 of 2003 s. 6.]

Part IIC — Medical retirement

[Heading inserted: No. 19 of 2019 s. 6.]

Division 1 — Preliminary

[Heading inserted: No. 19 of 2019 s. 6.]

33ZA. Summary of Part

This Part sets out a scheme under which members who are medically unfit can be retired specifically on medical grounds (rather than being removed under Part IIB).

[Section 33ZA inserted: No. 19 of 2019 s. 6.]

33ZB. Terms used

In this Part —

appellant, in relation to an appeal instituted under section 33ZI, means the person who institutes the appeal;

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

disputed decision has the meaning given in section 33ZI(2);

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

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

medically unfit, in relation to a member, means the member is unfit, on medical grounds (whether physical or mental or both), to perform the functions of the office to which the member is appointed under this Act;

member means —

(a) a commissioned officer;

(b) a non-commissioned officer;

(c) a constable;

(6) The medical board must give a report on the examination to the Police Commissioner.

(7) Regulations under section 138A may (without limitation) make provision about medical boards, including (without limitation) provision about 1 or more of the following matters —

(a) the appointment of medical practitioners, or of other persons in addition to medical practitioners, to them (including how, when or by whom appointments are to be made);

(b) their governance and procedures;

(c) their examinations of members;

(d) their reports to the Police Commissioner;

(e) the payment of their costs or costs otherwise associated with them (including remuneration and expenses of persons appointed to them).

[Section 33ZC inserted: No. 19 of 2019 s. 6.]

33ZD. Notice that Police Commissioner is of opinion that member is medically unfit

(1) This section applies if —

(a) the Police Commissioner receives a report from a medical board under section 33ZC(6); and

(b) having taken into account the report, the Police Commissioner is of the opinion that the member is medically unfit.

(2) The Police Commissioner may give written notice to the member stating that the Police Commissioner —

(a) is of the opinion that the member is medically unfit; and

(b) is in the process of deciding whether the member should be retired on medical grounds.

(3) If notice is given, the member may, during the period referred to in subsection (4) —

(a) make written submissions to the Police Commissioner; and

(b) give the Police Commissioner any written report or other document.

(4) The period is —

(a) the period of 28 days after the day on which the notice is given; or

(b) a longer period allowed by the Police Commissioner.

[Section 33ZD inserted: No. 19 of 2019 s. 6.]

33ZE. Power to retire member on medical grounds

(1) After the period referred to in section 33ZD(4) has ended, the Police Commissioner must —

(a) decide whether the member should be retired on medical grounds; and

(b) give the member written notice of the decision.

(2) The Police Commissioner must not decide that the member should be retired on medical grounds unless the Police Commissioner —

(a) has taken into account everything received from the member under section 33ZD(3) during the period referred to in section 33ZD(4); and

(b) is still of the opinion that the member is medically unfit.

(3) Subsections (4) to (10) apply if the Police Commissioner decides that the member should be retired on medical grounds.

(4) The notice under subsection (1)(b) must give the Police Commissioner's reasons for the decision.

(5) Except to the extent that regulations otherwise provide, the Police Commissioner must, within 7 days of giving the notice

under subsection (1)(b), give 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 Police Commissioner in making the decision.

(6) If the member is a commissioned officer —

(a) the Police Commissioner may recommend to the Minister that the Minister advise the Governor to retire the member on medical grounds; and

(b) the Governor may, on the Minister's advice given in accordance with the Police Commissioner's recommendation, retire the member on medical grounds.

(7) If the member is a non-commissioned officer or a constable, the Police Commissioner may, with the Minister's approval, retire the member on medical grounds.

(8) If the member is an Aboriginal police liaison officer or a police auxiliary officer, the Police Commissioner may retire the member on medical grounds.

(9) A power of the Police Commissioner under subsection (6), (7) or (8) may be exercised when, or at any time after, the notice under subsection (1)(b) is given.

(10) If the member is retired on medical grounds —

(a) the Police Commissioner must give the member written notice that the member has been retired on medical grounds; and

(b) the retirement takes effect, and the member ceases to hold the office to which the member is appointed under this Act accordingly, at the end of the day on which the member receives the Police Commissioner's notice.

(11) Subsections (4) to (10) cease to apply if the Police Commissioner's decision that the member should be retired on medical grounds is revoked under section 33ZG(2).

(12) Regulations under section 138A may (without limitation) make provision for determining when a member is taken to receive a notice for the purposes of subsection (10)(b).

[Section 33ZE inserted: No. 19 of 2019 s. 6.]

33ZF. Maintenance payment

(1) This section applies if a member's retirement on medical grounds has taken effect.

(2) The member is entitled to receive a maintenance payment for the period of 28 days after the retirement day.

(3) In exceptional circumstances, the Minister may direct that a maintenance payment be paid to the member for a further period of up to 6 months specified by the Minister starting when the period referred to in subsection (2) ends.

(4) However, the further period ends (if it has not already ended) on the day on which any appeal instituted under section 33ZI is determined by the WAIRC.

(5) A maintenance payment must be calculated on the basis of the member's salary on the retirement day.

[Section 33ZF inserted: No. 19 of 2019 s. 6.]

33ZG. Revocation of decision that member should be retired

(1) This section applies if the Police Commissioner decides under section 33ZE(1)(a) that a member should be retired on medical grounds.

(2) At any time on or before the retirement day, the Police Commissioner may, by written notice to the Minister, revoke the Police Commissioner's decision.

(3) At any time after the retirement day, the Police Commissioner may, by notice in the *Gazette*, revoke the Police Commissioner's decision.

(4) A notice under subsection (3) requires the Minister's approval if the member was a commissioned officer.

(5) Subsection (3) applies even if an appeal has been instituted under section 33ZI.

(6) Despite any other enactment, if the Police Commissioner's decision is revoked under subsection (3), the member's retirement is taken to be of no effect and to have never had any effect.

(7) If the Police Commissioner's decision is revoked under subsection (3), the member is not entitled to be paid the member's salary for any period for which the member received a maintenance payment under section 33ZF.

[Section 33ZG inserted: No. 19 of 2019 s. 6.]

33ZH. Resignation of member who has been retired on medical grounds

(1) A member may resign at any time during the period of 28 days after the retirement day, despite the member's retirement on medical grounds having taken effect.

(2) The resignation takes effect at the end of that period of 28 days.

(3) However, the member cannot resign if an appeal has been instituted under section 33ZI.

(4) Despite any other enactment, if the member resigns, the member's retirement is taken to be of no effect and to have never had any effect.

[Section 33ZH inserted: No. 19 of 2019 s. 6.]

**Division 3 — Appeal against decision that member should be
retired on medical grounds**

[Heading inserted: No. 19 of 2019 s. 6.]

33ZI. Appeal right

- (1) This section applies if a member's retirement on medical grounds has taken effect.
- (2) The member may appeal to the WAIRC on the ground that the Police Commissioner's decision under section 33ZE(1)(a) that the member should be retired on medical grounds (the *disputed decision*) was harsh, oppressive or unfair.
- (3) The member must institute the appeal by a notice to the Police Commissioner stating —
 - (a) why the disputed decision was harsh, oppressive or unfair; and
 - (b) the nature of the relief sought.
- (4) The appeal cannot be instituted —
 - (a) later than 28 days after the retirement day; or
 - (b) if the member has resigned under section 33ZH.
- (5) For the purposes of proceedings relating to the appeal, the WAIRC is to be constituted by not less than 3 industrial Commissioners, at least 1 of whom is the Chief Commissioner or the Senior Commissioner.
- (6) The parties to the appeal are the appellant and the Police Commissioner.
- (7) No other person may be a party to the appeal.

[Section 33ZI inserted: No. 19 of 2019 s. 6.]

33ZJ. Proceedings on appeal

(1) On the hearing of the appeal, the WAIRC must proceed as follows —

(a) first, it must consider the Police Commissioner's reasons for making the disputed decision;

(b) secondly, it must consider the case presented by the appellant as to why the disputed decision was harsh, oppressive or unfair;

(c) thirdly, it must consider the case presented by the Police Commissioner in answer to the appellant's case.

(2) The appellant has at all times the burden of establishing that the disputed decision 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 must 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 members of the Police Force; and

(ii) the special nature of the relationship between the Police Commissioner and members of the Police Force.

[Section 33ZJ inserted: No. 19 of 2019 s. 6.]

33ZK. New evidence on appeal

(1) 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 Police Commissioner in making the disputed decision; or

(b) the notice given under section 33ZD(2); or

(c) a written submission, report or other document given to the Police Commissioner by the appellant under section 33ZD(3); or

(d) the notice given under section 33ZE(1)(b) or (10)(a).

(2) New evidence must not be tendered to the WAIRC during the hearing of the appeal unless the WAIRC grants leave under subsection (3) or (4).

(3) The WAIRC may grant the Police Commissioner leave to tender new evidence if —

(a) the appellant consents; or

(b) the WAIRC is satisfied that it is in the interests of justice to grant leave.

(4) The WAIRC may grant the appellant leave to tender new evidence if —

(a) the Police Commissioner consents; or

(b) the WAIRC is satisfied that —

(i) the appellant is likely to be able to show that the Police Commissioner has acted upon wrong or mistaken information; or

(ii) the new evidence might materially have affected the Police Commissioner's decision that the member should be retired on medical grounds; or

(iii) it is in the interests of justice to grant leave.

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Part IIC Medical retirement

Division 3 Appeal against decision that member should be retired on medical grounds

s. 33ZK

(5) In the exercise of its discretion under subsection (4), the WAIRC must have regard to the following —

- (a) whether the appellant was aware of the substance of the new evidence before the end of the retirement day;
- (b) whether the new evidence was contained in a document to which the appellant had reasonable access before the end of the retirement day.

(6) If the Police Commissioner is given leave to tender new evidence —

- (a) the WAIRC must give the appellant a reasonable opportunity to consider the new evidence; and
- (b) the appellant may tender new evidence without the leave of the WAIRC in response to the new evidence tendered by the Police Commissioner.

(7) If the appellant is given leave to tender new evidence, the WAIRC must give the Police Commissioner a reasonable opportunity to consider the new evidence.

(8) If, having considered any new evidence, the Police Commissioner revokes the disputed decision under section 33ZG(3) —

- (a) the Police Commissioner must give the WAIRC notice of the revocation; and
- (b) the hearing of the appeal is discontinued when the WAIRC receives the notice.

(9) If the Police Commissioner does not give notice under subsection (8), the hearing of the appeal must continue but the Police Commissioner may —

- (a) reformulate the Police Commissioner's reasons for making the disputed decision; and
- (b) tender new evidence without the leave of the WAIRC in response to the new evidence tendered by the appellant.

(10) Reasons reformulated under subsection (9)(a) may differ from, or be additional to, the reasons given to the appellant under section 33ZE(4).

(11) If the Police Commissioner reformulates reasons under subsection (9)(a) —

(a) the Police Commissioner must give the WAIRC and the appellant written notice of the reasons before the resumption of the hearing of the appeal; and

(b) the WAIRC must consider the reasons as if they had been reasons given to the appellant under section 33ZE(4).

[Section 33ZK inserted: No. 19 of 2019 s. 6.]

33ZL. Application of Industrial Relations Act 1979 to the appeal

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 the appeal and the determination of the appeal.

Table

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

s. 26(3)

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.

Police Act 1892

Part IIC Medical retirement

Division 3 Appeal against decision that member should be retired on medical grounds

s. 33ZL

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. 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” were a reference to “If the Commission is dealing with an appeal instituted under the *Police Act 1892* section 33ZL, the Commission may recommend that the parties to the appeal”.

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 may not be issued under section 33(1)(a) to the Governor.

A summons may be issued to the Police Commissioner or the Minister but only at the direction of an industrial Commissioner if that industrial 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 an industrial 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 (4) to “no award, order, declaration, finding, or proceeding” is to be read as if it were a reference to “no decision, order, finding or proceeding”.

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 Full Bench, the Commission on an application under section 49(11) or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under the Police Act 1892 section 33ZM”.

[Section 33ZL inserted: No. 19 of 2019 s. 6.]

33ZM. Decision by the WAIRC

- (1) This section applies if the WAIRC decides on the appeal that the disputed decision was harsh, oppressive or unfair.
- (2) Unless an order is made under subsection (3), the WAIRC may order that the appellant’s retirement on medical grounds 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 retirement on medical grounds is, and has always been, of no effect, the WAIRC may instead of making an order under subsection (2), subject to subsections (5) and (6), order the Police Commissioner to pay the appellant an amount of compensation for loss or injury caused by the retirement.
- (4) In considering whether it is impracticable for it to be taken that the appellant’s retirement is, and has always been, of no effect it is relevant to consider —
 - (a) whether the position occupied by the appellant on the retirement day is vacant; and
 - (b) whether there is another suitable vacant position.

(5) In deciding the amount of compensation for the purpose of making an order under subsection (3), the WAIRC must have regard to —

(a) the efforts, if any, of the Police Commissioner and the appellant to mitigate the loss suffered by the appellant as a result of the retirement; and

(b) any maintenance payment received by the appellant under section 33ZF; and

(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 disputed decision 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) must 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 is not entitled to be paid the appellant's remuneration as a member for any period the appellant received a maintenance payment under section 33ZF.

(9) An order under this section may require that it be complied with within a specified time.

[Section 33ZM inserted: No. 19 of 2019 s. 6.]

33ZN. Restriction on publication

(1) If the WAIRC is satisfied that it is in the public interest, it may direct that either or both of the following must not be published or must not be published except in the manner, and to the persons, the WAIRC specifies —

(a) any evidence given before the WAIRC on the appeal;

(b) the contents of any document produced to the WAIRC on the appeal.

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

Penalty for this subsection: imprisonment for 12 months and a fine of \$4 000.

[Section 33ZN inserted: No. 19 of 2019 s. 6.]

Division 4 — General

[Heading inserted: No. 19 of 2019 s. 6.]

33ZO. Failure to comply with procedure

An act or omission of the Governor, the Minister or the Police Commissioner is not invalid, and must not be called into question, on the ground of a failure to comply with any procedure prescribed under Division 2, or under regulations relating to Division 2, if the failure is not substantive.

[Section 33ZO inserted: No. 19 of 2019 s. 6.]

33ZP. Transfer, standing down and leave of member

(1) Nothing in this Part derogates from the Police Commissioner's power to —

(a) transfer a member; or

(b) stand a member down from performing that member's usual duties on full pay until the member is directed by the Police Commissioner to return to those duties; or

(c) allocate duties to a member other than the member's usual duties.

(2) If the Police Commissioner stands down a member who is being dealt with under this Part, the Police Commissioner must 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 Police Commissioner must 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 33ZP inserted: No. 19 of 2019 s. 6.]

33ZQ. Transitional provision

(1) In this section —

commencement day means the day on which the *Police Amendment (Medical Retirement) Act 2019* section 6 comes into operation.

(2) This section applies if the Police Commissioner —

(a) gives a direction to a member under the *Police Force Regulations 1979* regulation 1402 before the commencement day; but

(b) as at the time immediately before the commencement day, has not yet decided whether to take removal action (as defined in section 33K) in relation to the member.

(3) The matter is to be continued and completed under this Part instead of regulation 1402, Part IIB and, as the case may be, section 8, 38B(4) or 38G(4).

(4) Without limiting subsection (3) —

(a) the Police Commissioner's direction under regulation 1402 is taken to be a direction under section 33ZC; and

(b) any medical board constituted under regulation 1402 on the Police Commissioner's direction is taken to be a medical board under section 33ZC and anything done by, or in relation to, the board under regulation 1402 is taken to have been done by, or in relation to, the board under this Part or any relevant regulations relating to this Part; and

(c) anything else done in relation to the matter under regulation 1402, or under Part IIB or any other regulation relating to that Part, or under section 8, 38B(4) or 38G(4), is taken to have been done under this Part or any relevant regulations relating to this Part; and

(d) this Part, and any regulations relating to this Part, apply with any necessary modifications.

[Section 33ZQ inserted: No. 19 of 2019 s. 6.]

Part III — Special constables

[Heading inserted: No. 59 of 2006 s. 63.]

34. Terms used

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.

[Section 34 inserted: No. 59 of 2006 s. 63.]

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.

[Section 35 inserted: No. 59 of 2006 s. 63.]

[35A. Deleted: No. 59 of 2006 s. 63.]

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.

[Section 36 inserted: No. 59 of 2006 s. 63.]

[Section 36. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

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.

s. 37

- (2) Subsection (1) does not affect the operation of section 36(1) or (2) or 136.

[Section 37 inserted: No. 59 of 2006 s. 63.]

[38. *Deleted: No. 59 of 2006 s. 63.]*

Part IIIA — Aboriginal police liaison officers

[Heading inserted: No. 8 of 2008 s. 10.]

38A. Terms used

In this Part, unless the contrary intention appears —

APLO means an Aboriginal police liaison officer appointed under section 38B(1);

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.

[Section 38A inserted: No. 8 of 2008 s. 10.]

38B. Appointing and terminating Aboriginal police liaison officers

- (1) The Commissioner may appoint any person of Aboriginal descent as an Aboriginal police liaison officer.
- (2) An APLO's appointment is —
 - (a) for such period as the Commissioner decides; and
 - (b) on such terms and conditions of service, including remuneration, as the Commissioner decides from time to time; but they must not be less favourable than is provided for in —
 - (i) any applicable award, order or agreement under the *Industrial Relations Act 1979*; or
 - (ii) the *Minimum Conditions of Employment Act 1993*.
- (3) The Commissioner may at any time amend those terms of an APLO's appointment referred to in section 38C(3).
- (4) Subject to Part IIB, the Commissioner may at any time cancel the appointment of an APLO.

s. 38C

- (5) The appointment of an APLO, its terms and conditions and any cancellation of it must be in writing and signed by the Commissioner.

[Section 38B inserted: No. 8 of 2008 s. 10.]

38C. Functions of APLOs

- (1) Unless the document appointing an APLO says otherwise —
- (a) an APLO 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 an APLO,

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 an APLO, unless the contrary intention appears in the provision.
- (3) The document appointing an APLO may limit the powers, duties or obligations of the APLO or the application of any authorisation, exemption or exception to the APLO in any way the Commissioner thinks fit.
- (4) Without limiting subsection (3) or section 38B(3), the document appointing an APLO may do any or all of the following —
- (a) limit the powers that the APLO may exercise;
 - (b) limit when the APLO may exercise his or her powers or any of them;
 - (c) limit where in the State the APLO may exercise his or her powers or any of them;

- (d) limit the circumstances in which the APLO may exercise his or her powers or any of them;
- (e) limit the offences in respect of which the APLO may exercise his or her powers or any of them;
- (f) limit the purposes for which the APLO may exercise his or her powers or any of them;
- (g) limit or prohibit the possession or use of any thing that the APLO would otherwise be authorised under a written law to possess or use, despite the written law.

[Section 38C inserted: No. 8 of 2008 s. 10.]

[Section 38C. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

38D. APLOs not in the Police Force

- (1) An APLO 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 38C(1) or (2) or 136.

[Section 38D inserted: No. 8 of 2008 s. 10.]

38E. Transitional

If immediately before the commencement of this Part², a person is an aboriginal aide appointed under this Act as it was before this Part commenced, then on the commencement of this Part —

- (a) the person is to be taken to be an APLO appointed under this Part on the terms and conditions applicable to his or her appointment as an aboriginal aide; and
- (b) the instrument of appointment that appoints him or her to be an aboriginal aide is to be taken to be the document that appoints him or her as an APLO; and

s. 38E

- (c) this Part applies to and in respect of the person as if he or she had been appointed under it to be an APLO.

[Section 38E inserted: No. 8 of 2008 s. 10.]

Part IIIB — Police auxiliary officers

[Heading inserted: No. 42 of 2009 s. 10.]

38F. Terms used

In this Part —

Commissioner means the Commissioner of Police appointed under section 5;

police auxiliary officer means a police auxiliary officer appointed under section 38G;

police officer means a person appointed under Part I as an officer or constable of the Police Force, other than as the Commissioner.

[Section 38F inserted: No. 42 of 2009 s. 10.]

38G. Appointing police auxiliary officers

- (1) The Commissioner may appoint any person as a police auxiliary officer.
- (2) A police auxiliary officer's appointment is —
 - (a) for such period as the Commissioner decides; and
 - (b) on such terms and conditions of service, including remuneration, as the Commissioner decides from time to time; but they must not be less favourable than is provided for in —
 - (i) any applicable award, order or agreement under the *Industrial Relations Act 1979*; or
 - (ii) the *Minimum Conditions of Employment Act 1993*.
- (3) The Commissioner may at any time amend the terms of a police auxiliary officer's appointment referred to in section 38H(3).
- (4) Subject to Part IIB, the Commissioner may at any time cancel the appointment of a police auxiliary officer.

s. 38H

- (5) The appointment of a police auxiliary officer, its terms and conditions and any cancellation of it must be in writing and signed by the Commissioner.
- (6) The Commissioner must issue a police auxiliary officer with a certificate of his or her appointment as a police auxiliary officer.
- (7) A police auxiliary officer whose appointment as such ceases must return any certificate issued to him or her under subsection (6) to the Commissioner.

Penalty: a fine of \$500.

[Section 38G inserted: No. 42 of 2009 s. 10.]

38H. Functions of police auxiliary officers

- (1) Unless the document appointing a police auxiliary officer says otherwise —
 - (a) a police auxiliary officer 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 police auxiliary officer,

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 police auxiliary officer, unless the contrary intention appears in the provision.
- (3) The document appointing a police auxiliary officer may limit the powers, duties or obligations of the officer or the application

of any authorisation, exemption or exception to the officer in any way the Commissioner thinks fit.

- (4) Without limiting subsection (3) or section 38G(3), the document appointing a police auxiliary officer may do any or all of the following —
- (a) limit the powers that the officer may exercise;
 - (b) limit when the officer may exercise his or her powers or any of them;
 - (c) limit where in the State the officer may exercise his or her powers or any of them;
 - (d) limit the circumstances in which the officer may exercise his or her powers or any of them;
 - (e) limit the offences in respect of which the officer may exercise his or her powers or any of them;
 - (f) limit the purposes for which the officer may exercise his or her powers or any of them;
 - (g) limit or prohibit the possession or use of any thing that the officer would otherwise be authorised under a written law to possess or use, despite the written law.

[Section 38H inserted: No. 42 of 2009 s. 10.]

38I. Police auxiliary officers not in the Police Force

- (1) A police auxiliary officer 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 38H(1) or (2) or 136.

[Section 38I inserted: No. 42 of 2009 s. 10.]

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: No. 6 of 1978 s. 10.]

Part IVA — Use of police property in relation to advertising

[Heading inserted: No. 49 of 1995 s. 3.]

39A. Terms used

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;

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: No. 49 of 1995 s. 3; amended: No. 77 of 2006 Sch. 1 cl. 130(1).]

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.

s. 39C

- (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: No. 49 of 1995 s. 3.]

39C. Financial provisions relating to contracts

- (1) An agency special purpose account called the Police Account is established under section 16 of the *Financial Management Act 2006*.
- (2) Moneys received on behalf of the State under a contract shall be credited to the Account.
- (3) Moneys received under a contract and credited to the Account 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 Account shall, for the purposes of section 52 of the *Financial Management Act 2006*, be deemed to be a service of the Department.

[Section 39C inserted: No. 49 of 1995 s. 3; amended: No. 77 of 2006 Sch. 1 cl. 130(2)-(5).]

Part IVB — Charging for services at major events

[Heading inserted: No. 12 of 2011 s. 4.]

39D. Purpose of this Part

The purpose of this Part is to empower the Commissioner of Police to charge on a cost-recovery basis for the attendance of police officers at major sporting or entertainment events where that attendance is requested by the promoter or organiser of the event.

[Section 39D inserted: No. 12 of 2011 s. 4.]

39E. Terms used

In this Part —

charitable organisation means —

- (a) a public benevolent or religious institution;
- (b) a public hospital or a hospital carried on by an association or other body of persons otherwise than for purposes of profit or gain to the individual members of that association or body;
- (c) a university;
- (d) a government college, a government school, or a college or school carried on by an association or other body of persons otherwise than for purposes of profit or gain to the individual members of that association or body;
- (e) a trust the moneys of which may be applied only for charitable purposes;
- (f) an institution established for any other charitable purpose;
- (g) a society, institution or organisation established, and carried on, solely for the purpose of raising money for, or otherwise promoting the interests of, an entity that is a charitable organisation under any of paragraphs (a) to (f);

s. 39E

Department has the same meaning as in section 39A;

event —

- (a) means an event of a sporting or entertainment nature (whether it takes place wholly or partly in a public place or on private property), where —
 - (i) a charge is made for admission to the event or to participate in the event; or
 - (ii) the event is run for commercial gain; or
 - (iii) the event is promoted, advertised or sponsored under a commercial arrangement;

but

- (b) does not include —
 - (i) an event run wholly or mainly for a charitable purpose as defined in the *Charitable Collections Act 1946* section 5; or
 - (ii) an event run by or for the benefit of a charitable organisation; or
 - (iii) a public event that celebrates or commemorates a day of national or local significance (for example, an Australia Day public fireworks display, or an ANZAC Day parade); or
 - (iv) an event run for the benefit of a local community (for example, a street fair); or
 - (v) a government-sponsored event exempted by the Minister under section 39H; or
 - (vi) any other event or class of event exempted from this Part by regulations made under this Act;

government-sponsored event means an event sponsored by a local government or a regional local government or the State or the Commonwealth;

major event has the meaning given in section 39F;

police services, in relation to an event, means the attendance of police officers at the event in order to do any of the following —

- (a) keep order;
- (b) provide an immediate emergency management capability;
- (c) provide traffic management in the immediate vicinity of the event.

[Section 39E inserted: No. 12 of 2011 s. 4.]

39F. Term used: major event

In this Part —

major event means an event —

- (a) that is reasonably expected by the promoter or organiser, or the Commissioner of Police, to attract at least 5 000 attendees or participants; or
- (b) for which the Commissioner of Police reasonably considers it necessary or desirable to assign at least 10 police officers to provide police services.

[Section 39F inserted: No. 12 of 2011 s. 4.]

39G. Providing and charging for services at major events

- (1) If the promoter or organiser of an event requests the Commissioner of Police to provide police services for that event, the Commissioner may charge the promoter or organiser for providing those services if the event is a major event.
- (2) The amount that the Commissioner may charge is to be determined in accordance with regulations made under section 138A.

s. 39H

- (3) For the avoidance of doubt —
- (a) this Part does not impose an obligation on the Commissioner of Police to provide police services for a major event; and
 - (b) the Commissioner is the final judge of the number of police officers required to provide police services for an event, but that does not lessen or limit any obligation that the Commissioner has —
 - (i) to consult on the matter with the promoter or organiser of the event; and
 - (ii) to have regard to the current charging policy published under section 39L;
- and
- (c) the fact that the Commissioner has agreed to provide police services for a major event does not limit the ability of the Commissioner to redeploy any police officer for another purpose that the Commissioner considers has a higher operational priority (of which the Commissioner is the sole judge).
- (4) If the Commissioner decides to charge a person for providing police services for an event, that person may apply to the State Administrative Tribunal for a review of the decision on the ground that what the person is promoting or organising is not an event as defined in section 39E.

[Section 39G inserted: No. 12 of 2011 s. 4.]

39H. Minister may exempt government-sponsored events

- (1) The Minister may, by notice published in the Gazette, exempt a government-sponsored event from the imposition of a charge under this Part if the Minister is satisfied that the event —
- (a) will provide significant economic benefits to the State;
- or

- (b) will provide significant publicity for the State through media coverage of the event; or
 - (c) will contribute significantly to the State's national or international profile as a host of sporting, entertainment or other events.
- (2) The Minister may, by notice published in the Gazette, cancel or vary a notice given under this section.

[Section 39H inserted: No. 12 of 2011 s. 4.]

39I. Regulations prescribing amounts chargeable for police services at major events

- (1) Without limiting section 138A, regulations may be made under that section prescribing the amounts chargeable for the provision of police services under this Part or the method of calculating those amounts.
- (2) The amounts, or the method of calculating the amounts, are to be prescribed on a cost-recovery basis, and (to avoid doubt) both the costs of the Police Force and the costs of the Department may be recovered.
- (3) Without limiting subsection (2), the costs that may be recovered include the following —
- (a) the personnel costs associated with the time spent by a police officer in planning the deployment of police officers for an event;
 - (b) the personnel costs associated with the police officers who attend an event to provide police services;
 - (c) the overhead expenses associated with the provision of police services for an event.
- (4) For the purpose of determining the personnel costs of police officers attending an event, the regulations may prescribe or provide for —
- (a) different hourly rates for police officers of different ranks; or

s. 39J

- (b) a standard hourly rate for a police officer regardless of rank, and (without limitation) the standard hourly rate may be an average of the hourly rates of the police officers of various ranks who would normally be required to attend a major event.
- (5) The regulations may specify or provide for the payment of a minimum amount to recover costs unavoidably incurred by the Police Force or the Department where —
 - (a) an event is cancelled or postponed or runs for a shorter period than expected; or
 - (b) the number of police officers assigned to provide police services for an event is reduced at short notice at the request of the promoter or organiser of the event, and in that case the minimum amount applies even though the number of police officers who attend the event is fewer than the minimum number referred to in paragraph (b) of the definition of *major event* in section 39F.

[Section 39I inserted: No. 12 of 2011 s. 4.]

39J. Recovery of amounts payable

The Commissioner of Police may recover, in any court of competent jurisdiction, as a debt due to the State, any amount due and owing under this Part in respect of the provision of police services.

[Section 39J inserted: No. 12 of 2011 s. 4.]

39K. Power to waive or refund amounts payable

The Commissioner of Police may reduce, waive or refund the whole or any part of any amount payable under this Part where the Commissioner considers it appropriate to do so.

[Section 39K inserted: No. 12 of 2011 s. 4.]

39L. Commissioner of Police to publish charging policy

- (1) The Commissioner of Police must prepare and maintain a document setting out the policy that the Commissioner intends to follow in exercising the Commissioner's functions under this Part.
- (2) The policy must not be inconsistent with this Part or the regulations.
- (3) The policy —
 - (a) must set out the following —
 - (i) the matters that the Commissioner will take into account in determining (after consultation with the promoter or organiser of an event) the number of police officers who will provide police services for the event (which matters may be included in a risk assessment process set out in the policy);
 - (ii) the circumstances in which the Commissioner may consider reducing, refunding or waiving amounts in accordance with section 39K;and
 - (b) may include any other matters the Commissioner considers appropriate.
- (4) The Commissioner may amend or replace the policy from time to time.
- (5) The Commissioner must make the current policy publicly available.

[Section 39L inserted: No. 12 of 2011 s. 4.]

39M. Delegation by Commissioner of Police

- (1) The Commissioner of Police may delegate any power or duty of the Commissioner of Police under this Part to a specified police officer or police officers of a specified class.

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- (2) A delegate must be a police officer who —
 - (a) is, or is acting as, an inspector or an officer of a rank more senior than an inspector; or
 - (b) is the officer in charge of a police station.
- (3) The delegation must be in writing signed by the Commissioner.
- (4) A police officer to whom a power or duty is delegated under this section cannot delegate that power or duty.

[Section 39M inserted: No. 12 of 2011 s. 4.]

39N. Review of Part IVB

- (1) In this section —

commencement day means the day on which the *Police Amendment Act 2011* section 4 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 36 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 this Part; and
 - (b) the need for the retention of this Part; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Part.
- (3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

[Section 39N inserted: No. 12 of 2011 s. 4.]

[Part V heading deleted: No. 59 of 2006 s. 64.]

[40-45. Deleted: No. 59 of 2006 s. 64.]

[46. Deleted: No. 70 of 2004 s. 50.]

- [47. Deleted: No. 70 of 2004 s. 51.]
- [48. Deleted No. 87 of 1982 s. 45.]
- [49-50. Deleted: No. 59 of 2006 s. 64.]
- [50A. Deleted: No. 84 of 2004 s. 78.]
- [50AA-51. Deleted: No. 59 of 2006 s. 64.]
- [52. Deleted: No. 70 of 2004 s. 54.]
- [52A. Deleted: No. 59 of 2006 s. 64.]
- [Part VA (s. 53-53M) deleted: No. 50 of 2000 s. 30.]
- [Heading deleted: No. 70 of 2004 s. 55.]
- [Heading deleted: No. 70 of 2004 s. 56.]
- [54, 54A. Deleted: No. 70 of 2004 s. 57.]
- [54B. Deleted: No. 23 of 1984 s. 12.]
- [55-56. Deleted: 1 and 2 Edw. VII No. 14 s. 3.]
- [57. Deleted: No. 70 of 2004 s. 57.]
- [58. Deleted: No. 85 of 1970 s. 4.]
- [58A, 59. Deleted: No. 70 of 2004 s. 57.]
- [60. Deleted: No. 44 of 1963 s. 4.]
- [61. Deleted: No. 70 of 2004 s. 57.]
- [62. Deleted: 1 and 2 Edw. VII No. 14 s. 3.]
- [62A. Deleted: No. 91 of 1975 s. 28.]
- [63-67A. Deleted: No. 70 of 2004 s. 57.]

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[67B. Deleted: No. 70 of 2004 s. 58.]

[68. Deleted: No. 59 of 2006 s. 64.]

[69. Deleted: No. 70 of 2004 s. 59.]

[70. Deleted: No. 59 of 2006 s. 64.]

[71. Deleted: No. 70 of 2004 s. 60.]

[72, 73. Deleted: No. 59 of 2004 s. 141.]

[Part VI:

s. 74-76 deleted: No. 59 of 2006 s. 65;
s. 76A-76G deleted: No. 70 of 2004 s. 63;
s. 76H deleted: No. 17 of 1979 s. 4;
s. 76I deleted: No. 70 of 2004 s. 63;
s. 77 deleted: No. 91 of 1975 s. 42;
s. 78 deleted: No. 59 of 2004 s. 141;
s. 79 deleted: No. 33 of 1912 s. 2;
s. 79A-83 deleted: No. 70 of 2004 s. 64;
s. 83A deleted: No. 108 of 1982 s. 8;
s. 84 deleted: No. 70 of 2004 s. 64;
s. 84A-84H deleted: No. 35 of 2003 s. 177;
s. 84I deleted: No. 29 of 1985 s. 5;
s. 85-89C deleted: No. 74 of 1987 s. 58, 59 and 60;
heading deleted: No. 70 of 2004 s. 65;
s. 90-90A deleted: No. 70 of 2004 s. 66;
s. 90B-90C deleted: No. 59 of 2006 s. 65;
s. 91-92 deleted: No. 108 of 1982 s. 20;
s. 93 deleted: 56 Vict. No. 10;
s. 94 deleted: No. 108 of 1982 s. 24;
s. 94A-94E deleted: No. 57 of 1981 s. 24;
s. 94F-94H deleted: No. 146 of 1976 s. 13.]

[Part VII:

s. 95-99 deleted: No. 70 of 2004 s. 68;

s. 100 deleted: No. 59 of 2004 s. 141;

s. 101-120 deleted: No. 70 of 2004 s. 68;

s. 121 deleted: No. 59 of 2004 s. 141.]

Part VIII — Miscellaneous provisions

[122. Deleted: No. 70 of 2004 s. 69.]

[123. Deleted: No. 59 of 2006 s. 66.]

[124. Deleted: No. 59 of 2006 s. 67.]

[125-126. Deleted: No. 70 of 2004 s. 70.]

[127. Deleted: No. 4 of 2004 s. 58.]

[128. Deleted: No. 59 of 2004 s. 141.]

[129. Deleted: No. 78 of 1995 s. 106.]

[130-132. Deleted: 2 Edw. VII. No. 11 s. 2.]

[133, 134. Deleted: No. 70 of 2004 s. 71.]

[135. Deleted: No. 78 of 1995 s. 106.]

136. Terms used in s. 137 and 138

(1) In sections 137 and 138 —
member of the Police Force means a person appointed under Part I, III, IIIA or IIIB.

(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: No. 42 of 1999 s. 5; amended: No. 42 of 2009 s. 11.]

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*¹.
- (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.

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

[Section 137 inserted: 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: No. 42 of 1999 s. 6; amended: No. 28 of 2003 s. 158.]

138AA. Application of *Financial Management Act 2006* and *Auditor General Act 2006* to moneys received by Commissioner

- (1) In this section —

Department has the same meaning as in section 39A.
- (2) For the purposes of the *Financial Management Act 2006* and the *Auditor General Act 2006*, moneys received by the

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Commissioner of Police under this Act or another written law are moneys received by the Department.

[Section 138AA inserted: No. 12 of 2011 s. 5.]

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 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.

(5) 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 direction under section 33ZC;

(b) prescribing the procedure to be followed in relation to a retirement on medical grounds under Part IIC;

(c) prescribing restrictions, in relation to any period during which consideration is being given to a member's retirement on medical grounds under Part IIC, 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 IIC or regulations relating to that Part.

[Section 138A inserted: No. 85 of 1970 s. 13; amended: No. 71 of 1980 s. 7; No. 7 of 2003 s. 8; No. 19 of 2019 s. 7.]

[139-141. Deleted: 2 Edw. VII. No. 11 s. 2.]

142. Commencement of Act

This Act shall come into force on 1 April 1892.

[Heading deleted: No. 19 of 2010 s. 42(3).]

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

[The Second Schedule deleted: No. 70 of 2004 s. 72.]

[The Third Schedule deleted: No. 30 of 1983 s. 5.]

Notes

¹ This is a compilation of the *Police Act 1892* and includes the amendments made by the other written laws referred to in the following table ^{1M-1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>The Police Act 1892</i> ³	1892 (55 Vict. No. 27)	18 Mar 1892	1 Apr 1892 (see s. 142)
<i>The Police Act Amendment Act 1893 (No. 1)</i>	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 (No. 2)</i>	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 s. 3(2)</i>	1902 (1 & 2 Edw. VII No. 14)	19 Feb 1902	1 May 1902 (see s. 2)
<i>Justices Act 1902 s. 2</i>	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

Short title	Number and year	Assent	Commencement
<i>Police Act Amendment Act 1907</i>	10 of 1907 (7 Edw. VII No. 10) (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 (3 Geo. V No. 14)	10 Oct 1912	10 Oct 1912
<i>Police Act Amendment Act 1915</i>	13 of 1915 (5 Geo. V No. 40) (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 (16 Geo. V No. 8)	24 Sep 1925	24 Sep 1925
<i>Police Offences (Drugs) Act 1928 s. 2</i>	11 of 1928 (19 Geo. V No. 11) (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 (24 Geo. V No. 19)	13 Nov 1933	13 Nov 1933
<i>Police Act Amendment Act 1940</i>	19 of 1940 (4 Geo. VI No. 19)	29 Nov 1940	29 Nov 1940
<i>Police Act Amendment Act 1945</i>	5 of 1945 (9 Geo. VI No. 5)	27 Nov 1945	27 Nov 1945
<i>Police Act Amendment Act 1902 Amendment Act 1945</i>	6 of 1945 (9 Geo. VI No. 6) (as amended by No. 15 of 1952 s. 7(1))	27 Nov 1945	27 Nov 1945

Short title	Number and year	Assent	Commencement
<i>Police Act Amendment Act 1952</i>	15 of 1952 (1 Eliz. II No. 15)	7 Nov 1952	19 Jun 1953 (see s. 2 and <i>Gazette</i> 19 Jun 1953 p. 1225)
Reprint of the Police Act 1892 approved 23 Mar 1953 in Volume 6 of Reprinted Acts (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 (2 Eliz. II No. 28)	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 (3 Eliz. II No. 6)	25 Aug 1954	25 Aug 1954
<i>Police Act Amendment Act (No. 2) 1954</i>	25 of 1954 (3 Eliz. II No. 25)	20 Oct 1954	18 Mar 1955 (see s. 2 and <i>Gazette</i> 18 Mar 1955 p. 517)
<i>Betting Control Act 1954</i> s. 5	63 of 1954 (3 Eliz. II No. 63)	30 Dec 1954	1 Aug 1955 (see s. 2(1) and <i>Gazette</i> 29 Jul 1955 p. 1767)
<i>Police Act Amendment Act 1955</i>	8 of 1955 (4 Eliz. II No. 8)	19 Oct 1955	19 Oct 1955
<i>Police Act Amendment Act 1956</i>	20 of 1956 (5 Eliz. II No. 20)	19 Nov 1956	19 Nov 1956
<i>Licensing (Police Force Canteen) Act 1958 Pt. III</i>	40 of 1958 (7 Eliz. II No. 40)	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 (8 Eliz. II No. 10)	25 Sep 1959	25 Sep 1959
<i>Totalisator Agency Board Betting Act 1960</i> s. 20	50 of 1960 (9 Eliz. II No. 50)	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 (10 Eliz. II No. 71)	28 Nov 1961	28 Nov 1961
Reprint of the Police Act 1892 approved 26 Jun 1962 (not in a Volume) (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<i>Police Act Amendment Act 1962</i>	29 of 1962 (11 Eliz. II No. 29)	4 Oct 1962	4 Oct 1962
<i>Police Act Amendment Act 1963</i>	42 of 1963 (12 Eliz. II No. 42)	25 Nov 1963	25 Nov 1963
<i>Factories and Shops Act 1963 s. 4</i>	44 of 1963 (12 Eliz. II No. 44)	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 (13 Eliz. II No. 28)	4 Nov 1964	4 Nov 1964
<i>Police Act Amendment Act (No. 2) 1964</i>	71 of 1964 (13 Eliz. II No. 71)	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
Reprint of the Police Act 1892 approved 15 Dec 1967 in Volume 21 of Reprinted Acts (includes amendments listed above)			
<i>Police Act Amendment Act 1968</i>	26 of 1968	25 Oct 1968	25 Oct 1968
<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
Reprint of the Police Act 1892 approved 7 Jun 1972 (not in a Volume) (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<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. ⁴) 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
Reprint of the Police Act 1892 approved 11 Jul 1978 (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)
<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)

Short title	Number and year	Assent	Commencement
Reprint of the Police Act 1892 approved 18 Apr 1983 (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)
<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)
Reprint of the Police Act 1892 as at 24 Apr 1992 (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

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Short title	Number and year	Assent	Commencement
<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)
Reprint of the Police Act 1892 as at 31 Jan 1997 (includes amendments listed above except those in the <i>Mental Health (Consequential Provisions) Act 1996</i>)			
<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)

Short title	Number and year	Assent	Commencement
<i>Court Security and Custodial Services (Consequential Provisions) Act 1999</i> Pt. 9	47 of 1999	8 Dec 1999	18 Dec 1999 (see s. 2 and <i>Gazette</i> 17 Dec 1999 p. 6175-6)
Reprint of the Police Act 1892 as at 1 Apr 2000 (includes amendments listed above)			
<i>Prostitution Act 2000</i> s. 64	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</i> s. 33 and 54	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Protective Custody Act 2000</i> s. 30	50 of 2000	28 Nov 2000	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7903)
Reprint of the Police Act 1892 as at 12 Jan 2001 (includes amendments listed above) (correction in : <i>Gazette</i> 27 Feb 2001 p. 1209)			
<i>Criminal Investigation (Identifying People) Act 2002</i> Sch. 2 cl. 5	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> ⁵	7 of 2003	27 Mar 2003	s. 1 and 2: 27 Mar 2003; Act other than s. 1 and 2: 27 Aug 2003 (see s. 2 and <i>Gazette</i> 26 Aug 2003 p. 3753)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 48	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</i> s. 175(2) and Pt. 10 ⁶	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</i> s. 85	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</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)

Short title	Number and year	Assent	Commencement
Reprint 11: The Police Act 1892 as at 10 Sep 2004 (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	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</i> Pt. 2 Div. 109 Subdiv. 2 ⁷	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</i> Pt. 3 ⁸	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</i> s. 78 and 80	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))
Reprint 12: The Police Act 1892 as at 1 Jun 2005 (includes amendments listed above)			
<i>Criminal Investigation (Consequential Provisions) Act 2006</i> Pt. 12 ⁹	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and <i>Gazette</i> 22 Jun 2007 p. 2838)
<i>Financial Legislation Amendment and Repeal Act 2006</i> Sch. 1 cl. 130	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Reprint 13: The Police Act 1892 as at 23 Nov 2007 (includes amendments listed above)			
<i>Police Amendment Act 2008</i> Pt. 2	8 of 2008	31 Mar 2008	1 Apr 2008 (see s. 2(1))
<i>Legal Profession Act 2008</i> s. 692	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 68	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Police Amendment Act 2009</i> Pt. 2	42 of 2009	3 Dec 2009	13 Mar 2010 (see s. 2(b) and <i>Gazette</i> 12 Mar 2010 p. 941)
Reprint 14: The Police Act 1892 as at 16 Apr 2010 (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 42(3), 43(2), 44(3) and 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

Short title	Number and year	Assent	Commencement
<i>Police Amendment Act 2011</i>	12 of 2011	2 May 2011	s. 1 and 2: 2 May 2011 (see s. 2(a); Act other than s. 1 and 2: 13 Jan 2018 (see s. 2(b) and <i>Gazette</i> 12 Jan 2018 p. 115)
<i>Industrial Relations Amendment Act 2018</i> s. 70	39 of 2018	12 Dec 2018	19 Dec 2018 (see s. 2(b) and <i>Gazette</i> 18 Dec 2018 p. 4835)
<u><i>Police Amendment (Medical Retirement) Act 2019 Pt. 2</i></u>	<u>19 of 2019</u>	<u>15 Aug 2019</u>	<u>30 Nov 2019 (see s. 2(b) and <i>Gazette</i> 29 Nov 2019 p. 4133)</u>

^{1M} Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 14 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

~~^{1a} — 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>Police Amendment (Medical Retirement) Act 2019 Pt. 2</i>¹⁰	19 of 2019	15 Aug 2019	To be proclaimed (see s. 2(b))

² Part IIIA commenced 1 Apr 2008.

³ Now known as the *Police Act 1892*; short title changed (see note under s. 3).

⁴ The Schedule to the *Metric Conversion Act 1972* was redesignated as the First Schedule by the *Metric Conversion Act Amendment Act 1973* s. 3.

- ⁵ The *Police Amendment Act 2003* s. 9 is a transitional provision that is of no further effect.
- ⁶ The *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 178 is a savings provision that is of no further effect.
- ⁷ 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.
- ⁸ The *Criminal Law Amendment (Simple Offences) Act 2004* Pt. 3 Div. 2 is a transitional provision that is of no further effect.
- ⁹ The *Criminal Investigation (Consequential Provisions) Act 2006* Pt. 12 Div. 2 reads as follows:

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.

⁴⁹ ~~On the date as at which this compilation was prepared the *Police Amendment (Medical Retirement) Act 2019* Pt. 2 had not come into operation. It reads as follows:~~

~~**Part 2 — *Police Act 1892* amended**~~

~~**3. — Act amended**~~

~~— This Part amends the *Police Act 1892*.~~

~~**4. — Section 8 amended**~~

~~— In section 8(1):~~

~~— (a) delete “disability,”;~~

~~— (b) delete “removal, disability or” and insert:~~

~~— removal or~~

~~**5. — Section 33K amended**~~

~~— In section 33K in the definition of *removal action* after paragraph (c) insert:~~

~~— (d) the cancellation of the appointment of a police auxiliary officer under section 38G(4);~~

~~**6. — Part II C inserted**~~

~~— After section 33Z insert:~~

~~Part IIC — Medical retirement~~

~~Division 1 — Preliminary~~

~~33ZA. — Summary of Part~~

~~———— This Part sets out a scheme under which members who are medically unfit can be retired specifically on medical grounds (rather than being removed under Part IIB).~~

~~33ZB. — Terms used~~

~~———— In this Part —~~

~~———— *appellant*, in relation to an appeal instituted under section 33ZI, means the person who institutes the appeal;~~

~~———— *Chief Commissioner* has the same meaning as it has in the *Industrial Relations Act 1979*;~~

~~———— *disputed decision* has the meaning given in section 33ZI(2);~~

~~———— *industrial Commissioner* has the same meaning as *commissioner* has in the *Industrial Relations Act 1979*;~~

~~———— *medical practitioner* means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;~~

~~———— *medically unfit*, in relation to a member, means the member is unfit, on medical grounds (whether physical or mental or both), to perform the functions of the office to which the member is appointed under this Act;~~

~~———— *member* means —~~

~~———— (a) a commissioned officer;~~

~~———— (b) a non-commissioned officer;~~

~~———— (c) a constable;~~

~~———— (d) an Aboriginal police liaison officer;~~

~~———— (e) a police auxiliary officer;~~

~~———— *Police Commissioner* means the Commissioner of Police;~~

~~———— *retire*, in relation to a member, means retire from the office to which the member is appointed under this Act;~~

~~———— *retirement day*, in relation to a member, means the day at the end of which the member's retirement on medical grounds takes effect under section 33ZE(10)(b);~~

~~———— *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*.~~

Division 2 — How members can be retired on medical grounds

33ZC. — Examination of member by medical board

- ~~(1) Subsection (2) applies if the Police Commissioner reasonably suspects that a member is medically unfit.~~
- ~~(2) The Police Commissioner may direct the member to submit to an examination by a medical board consisting of at least 3 medical practitioners.~~
- ~~(3) The direction may also impose requirements on the member —
 - ~~(a) in relation to the conduct of the examination; or~~
 - ~~(b) otherwise for the purpose of facilitating the examination.~~~~
- ~~(4) The direction must be given in writing.~~
- ~~(5) The member commits an offence against the discipline of the Police Force if the member, without good and sufficient cause, fails to comply with the direction.~~
- ~~(6) The medical board must give a report on the examination to the Police Commissioner.~~
- ~~(7) Regulations under section 138A may (without limitation) make provision about medical boards, including (without limitation) provision about 1 or more of the following matters —
 - ~~(a) the appointment of medical practitioners, or of other persons in addition to medical practitioners, to them (including how, when or by whom appointments are to be made);~~
 - ~~(b) their governance and procedures;~~
 - ~~(c) their examinations of members;~~
 - ~~(d) their reports to the Police Commissioner;~~
 - ~~(e) the payment of their costs or costs otherwise associated with them (including remuneration and expenses of persons appointed to them).~~~~

33ZD. — Notice that Police Commissioner is of opinion that member is medically unfit

- ~~(1) This section applies if —
 - ~~(a) the Police Commissioner receives a report from a medical board under section 33ZC(6); and~~~~

- ~~—(b) having taken into account the report, the Police Commissioner is of the opinion that the member is medically unfit.~~
- ~~—(2) The Police Commissioner may give written notice to the member stating that the Police Commissioner—~~
 - ~~—(a) is of the opinion that the member is medically unfit; and~~
 - ~~—(b) is in the process of deciding whether the member should be retired on medical grounds.~~
- ~~—(3) If notice is given, the member may, during the period referred to in subsection (4)—~~
 - ~~—(a) make written submissions to the Police Commissioner; and~~
 - ~~—(b) give the Police Commissioner any written report or other document.~~
- ~~—(4) The period is—~~
 - ~~—(a) the period of 28 days after the day on which the notice is given; or~~
 - ~~—(b) a longer period allowed by the Police Commissioner.~~

33ZE. Power to retire member on medical grounds

- ~~—(1) After the period referred to in section 33ZD(4) has ended, the Police Commissioner must—~~
 - ~~—(a) decide whether the member should be retired on medical grounds; and~~
 - ~~—(b) give the member written notice of the decision.~~
- ~~—(2) The Police Commissioner must not decide that the member should be retired on medical grounds unless the Police Commissioner—~~
 - ~~—(a) has taken into account everything received from the member under section 33ZD(3) during the period referred to in section 33ZD(4); and~~
 - ~~—(b) is still of the opinion that the member is medically unfit.~~
- ~~—(3) Subsections (4) to (10) apply if the Police Commissioner decides that the member should be retired on medical grounds.~~
- ~~—(4) The notice under subsection (1)(b) must give the Police Commissioner's reasons for the decision.~~
- ~~—(5) Except to the extent that regulations otherwise provide, the Police Commissioner must, within 7 days of giving the notice under subsection (1)(b), give 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 Police Commissioner in making the decision.~~

- ~~—(6) If the member is a commissioned officer—

 - ~~—(a) the Police Commissioner may recommend to the Minister that the Minister advise the Governor to retire the member on medical grounds; and~~
 - ~~—(b) the Governor may, on the Minister’s advice given in accordance with the Police Commissioner’s recommendation, retire the member on medical grounds.~~~~
- ~~—(7) If the member is a non-commissioned officer or a constable, the Police Commissioner may, with the Minister’s approval, retire the member on medical grounds.~~
- ~~—(8) If the member is an Aboriginal police liaison officer or a police auxiliary officer, the Police Commissioner may retire the member on medical grounds.~~
- ~~—(9) A power of the Police Commissioner under subsection (6), (7) or (8) may be exercised when, or at any time after, the notice under subsection (1)(b) is given.~~
- ~~—(10) If the member is retired on medical grounds—

 - ~~—(a) the Police Commissioner must give the member written notice that the member has been retired on medical grounds; and~~
 - ~~—(b) the retirement takes effect, and the member ceases to hold the office to which the member is appointed under this Act accordingly, at the end of the day on which the member receives the Police Commissioner’s notice.~~~~
- ~~—(11) Subsections (4) to (10) cease to apply if the Police Commissioner’s decision that the member should be retired on medical grounds is revoked under section 33ZG(2).~~
- ~~—(12) Regulations under section 138A may (without limitation) make provision for determining when a member is taken to receive a notice for the purposes of subsection (10)(b).~~

33ZF. — Maintenance payment

- ~~—(1) This section applies if a member’s retirement on medical grounds has taken effect.~~
- ~~—(2) The member is entitled to receive a maintenance payment for the period of 28 days after the retirement day.~~
- ~~—(3) In exceptional circumstances, the Minister may direct that a maintenance payment be paid to the member for a further period of up to 6 months specified by the Minister starting when the period referred to in subsection (2) ends.~~

~~(4) However, the further period ends (if it has not already ended) on the day on which any appeal instituted under section 33ZI is determined by the WAIRC.~~

~~(5) A maintenance payment must be calculated on the basis of the member's salary on the retirement day.~~

33ZG. — Revocation of decision that member should be retired

~~(1) This section applies if the Police Commissioner decides under section 33ZE(1)(a) that a member should be retired on medical grounds.~~

~~(2) At any time on or before the retirement day, the Police Commissioner may, by written notice to the Minister, revoke the Police Commissioner's decision.~~

~~(3) At any time after the retirement day, the Police Commissioner may, by notice in the *Gazette*, revoke the Police Commissioner's decision.~~

~~(4) A notice under subsection (3) requires the Minister's approval if the member was a commissioned officer.~~

~~(5) Subsection (3) applies even if an appeal has been instituted under section 33ZI.~~

~~(6) Despite any other enactment, if the Police Commissioner's decision is revoked under subsection (3), the member's retirement is taken to be of no effect and to have never had any effect.~~

~~(7) If the Police Commissioner's decision is revoked under subsection (3), the member is not entitled to be paid the member's salary for any period for which the member received a maintenance payment under section 33ZF.~~

33ZH. — Resignation of member who has been retired on medical grounds

~~(1) A member may resign at any time during the period of 28 days after the retirement day, despite the member's retirement on medical grounds having taken effect.~~

~~(2) The resignation takes effect at the end of that period of 28 days.~~

~~(3) However, the member cannot resign if an appeal has been instituted under section 33ZI.~~

~~(4) Despite any other enactment, if the member resigns, the member's retirement is taken to be of no effect and to have never had any effect.~~

Division 3 — Appeal against decision that member should be retired on medical grounds

33ZI. — Appeal right

- ~~— (1) This section applies if a member's retirement on medical grounds has taken effect.~~
- ~~— (2) The member may appeal to the WAIRC on the ground that the Police Commissioner's decision under section 33ZE(1)(a) that the member should be retired on medical grounds (the *disputed decision*) was harsh, oppressive or unfair.~~
- ~~— (3) The member must institute the appeal by a notice to the Police Commissioner stating —
 - ~~— (a) why the disputed decision was harsh, oppressive or unfair; and~~
 - ~~— (b) the nature of the relief sought.~~~~
- ~~— (4) The appeal cannot be instituted —
 - ~~— (a) later than 28 days after the retirement day; or~~
 - ~~— (b) if the member has resigned under section 33ZH.~~~~
- ~~— (5) For the purposes of proceedings relating to the appeal, the WAIRC is to be constituted by not less than 3 industrial Commissioners, at least 1 of whom is the Chief Commissioner or the Senior Commissioner.~~
- ~~— (6) The parties to the appeal are the appellant and the Police Commissioner.~~
- ~~— (7) No other person may be a party to the appeal.~~

33ZJ. — Proceedings on appeal

- ~~— (1) On the hearing of the appeal, the WAIRC must proceed as follows —
 - ~~— (a) first, it must consider the Police Commissioner's reasons for making the disputed decision;~~
 - ~~— (b) secondly, it must consider the case presented by the appellant as to why the disputed decision was harsh, oppressive or unfair;~~
 - ~~— (c) thirdly, it must consider the case presented by the Police Commissioner in answer to the appellant's case.~~~~
- ~~— (2) The appellant has at all times the burden of establishing that the disputed decision 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 must 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 members of the Police Force; and~~
 - ~~— (ii) the special nature of the relationship between the Police Commissioner and members of the Police Force.~~

33ZK. New evidence on appeal

- ~~— (1) 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 Police Commissioner in making the disputed decision; or~~
 - ~~— (b) the notice given under section 33ZD(2); or~~
 - ~~— (c) a written submission, report or other document given to the Police Commissioner by the appellant under section 33ZD(3); or~~
 - ~~— (d) the notice given under section 33ZE(1)(b) or (10)(a).~~
- ~~— (2) New evidence must not be tendered to the WAIRC during the hearing of the appeal unless the WAIRC grants leave under subsection (3) or (4).~~
- ~~— (3) The WAIRC may grant the Police Commissioner leave to tender new evidence if —~~
 - ~~— (a) the appellant consents; or~~
 - ~~— (b) the WAIRC is satisfied that it is in the interests of justice to grant leave.~~
- ~~— (4) The WAIRC may grant the appellant leave to tender new evidence if —~~
 - ~~— (a) the Police Commissioner consents; or~~
 - ~~— (b) the WAIRC is satisfied that —~~
 - ~~— (i) the appellant is likely to be able to show that the Police Commissioner has acted upon wrong or mistaken information; or~~
 - ~~— (ii) the new evidence might materially have affected the Police Commissioner's decision that the member should be retired on medical grounds;~~

- ~~— (iii) — it is in the interests of justice to grant leave.~~
- ~~— (5) — In the exercise of its discretion under subsection (4), the WAIRC must have regard to the following —~~
 - ~~— (a) — whether the appellant was aware of the substance of the new evidence before the end of the retirement day;~~
 - ~~— (b) — whether the new evidence was contained in a document to which the appellant had reasonable access before the end of the retirement day.~~
- ~~— (6) — If the Police Commissioner is given leave to tender new evidence —~~
 - ~~— (a) — the WAIRC must give the appellant a reasonable opportunity to consider the new evidence; and~~
 - ~~— (b) — the appellant may tender new evidence without the leave of the WAIRC in response to the new evidence tendered by the Police Commissioner.~~
- ~~— (7) — If the appellant is given leave to tender new evidence, the WAIRC must give the Police Commissioner a reasonable opportunity to consider the new evidence.~~
- ~~— (8) — If, having considered any new evidence, the Police Commissioner revokes the disputed decision under section 33ZG(3) —~~
 - ~~— (a) — the Police Commissioner must give the WAIRC notice of the revocation; and~~
 - ~~— (b) — the hearing of the appeal is discontinued when the WAIRC receives the notice.~~
- ~~— (9) — If the Police Commissioner does not give notice under subsection (8), the hearing of the appeal must continue but the Police Commissioner may —~~
 - ~~— (a) — reformulate the Police Commissioner's reasons for making the disputed decision; and~~
 - ~~— (b) — tender new evidence without the leave of the WAIRC in response to the new evidence tendered by the appellant.~~
- ~~— (10) — Reasons reformulated under subsection (9)(a) may differ from, or be additional to, the reasons given to the appellant under section 33ZE(4).~~
- ~~— (11) — If the Police Commissioner reformulates reasons under subsection (9)(a) —~~
 - ~~— (a) — the Police Commissioner must give the WAIRC and the appellant written notice of the reasons before the resumption of the hearing of the appeal; and~~
 - ~~— (b) — the WAIRC must consider the reasons as if they had been reasons given to the appellant under section 33ZE(4).~~

33ZL. — Application of *Industrial Relations Act 1979* to the appeal

~~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 the appeal and the determination of the appeal.~~

Table

~~s. 26(1)(a) and (b)~~

~~s. 26(3)~~

~~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. 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” were a reference to “If the Commission is dealing with an appeal instituted under the *Police Act 1892* section 33ZL, the Commission may recommend that the parties to the appeal”.

	<p>References to “the matter” and “an industrial matter” are to be read as if they were references to “the appeal”.</p> <p>For the purposes of subsections (2) and (3), <i>Commission</i> does not include an industrial Commissioner constituting the WAIRC to hear the appeal.</p> <p>Subsections (4), (6), (7) and (8) do not apply.</p>
s. 33	<p>A summons may not be issued under section 33(1)(a) to the Governor.</p> <p>A summons may be issued to the Police Commissioner or the Minister but only at the direction of an industrial Commissioner if that industrial Commissioner is satisfied that there are extraordinary grounds for doing so.</p> <p>A summons may not be issued to any other person except at the direction of an industrial Commissioner.</p>
s. 34	<p>A reference in subsection (1) to “an award, order or declaration” is to be read as if it were a reference to “an order”.</p> <p>A reference in subsection (4) to “no award, order, declaration, finding, or proceeding” is to be read as if it were a reference to “no decision, order, finding or proceeding”.</p>
s. 35	
s. 36	
s. 86	<p>But not in relation to costs and expenses other than expenses of witnesses.</p>
s. 90	<p>A reference in subsection (1) to “any decision of the Full Bench, the Commission on an application under section 49(11) or the Commission in Court Session” is to be read as if it were a reference to “a decision of the Commission under the <i>Police Act 1892</i> section 33ZM”.</p>

33ZM. — Decision by the WAIRC

- ~~— (1) — This section applies if the WAIRC decides on the appeal that the disputed decision was harsh, oppressive or unfair.~~
- ~~— (2) — Unless an order is made under subsection (3), the WAIRC may order that the appellant's retirement on medical grounds 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 retirement on medical grounds is, and has always been, of no effect, the WAIRC may instead of making an order under subsection (2), subject to subsections (5) and (6), order the Police Commissioner to pay the appellant an amount of compensation for loss or injury caused by the retirement.~~
- ~~— (4) — In considering whether it is impracticable for it to be taken that the appellant's retirement is, and has always been, of no effect it is relevant to consider —
 - ~~— (a) — whether the position occupied by the appellant on the retirement day is vacant; and~~
 - ~~— (b) — whether there is another suitable vacant position.~~~~
- ~~— (5) — In deciding the amount of compensation for the purpose of making an order under subsection (3), the WAIRC must have regard to —
 - ~~— (a) — the efforts, if any, of the Police Commissioner and the appellant to mitigate the loss suffered by the appellant as a result of the retirement; and~~
 - ~~— (b) — any maintenance payment received by the appellant under section 33ZF; and~~
 - ~~— (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 disputed decision 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) must 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 is not entitled to be paid the appellant's remuneration as a member~~

~~for any period the appellant received a maintenance payment under section 33ZF.~~

- ~~(9) An order under this section may require that it be complied with within a specified time.~~

~~33ZN. Restriction on publication~~

- ~~(1) If the WAIRC is satisfied that it is in the public interest, it may direct that either or both of the following must not be published or must not be published except in the manner, and to the persons, the WAIRC specifies —~~

- ~~(a) any evidence given before the WAIRC on the appeal;~~
~~(b) the contents of any document produced to the WAIRC on the appeal.~~

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

~~Penalty for this subsection: imprisonment for 12 months and a fine of \$4 000.~~

Division 4 — General

~~33ZO. Failure to comply with procedure~~

~~An act or omission of the Governor, the Minister or the Police Commissioner is not invalid, and must not be called into question, on the ground of a failure to comply with any procedure prescribed under Division 2, or under regulations relating to Division 2, if the failure is not substantive.~~

~~33ZP. Transfer, standing down and leave of member~~

- ~~(1) Nothing in this Part derogates from the Police Commissioner's power to —~~

- ~~(a) transfer a member; or~~
~~(b) stand a member down from performing that member's usual duties on full pay until the member is directed by the Police Commissioner to return to those duties; or~~
~~(c) allocate duties to a member other than the member's usual duties.~~

- ~~(2) If the Police Commissioner stands down a member who is being dealt with under this Part, the Police Commissioner must 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 Police Commissioner must 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.

33ZQ. Transitional provision

- ~~(1) In this section —
commencement day means the day on which the *Police Amendment (Medical Retirement) Act 2019* section 6 comes into operation.~~
- ~~(2) This section applies if the Police Commissioner —
 - ~~(a) gives a direction to a member under the *Police Force Regulations 1979* regulation 1402 before the commencement day; but~~
 - ~~(b) as at the time immediately before the commencement day, has not yet decided whether to take removal action (as defined in section 33K) in relation to the member.~~~~
- ~~(3) The matter is to be continued and completed under this Part instead of regulation 1402, Part IIB and, as the case may be, section 8, 38B(4) or 38G(4).~~
- ~~(4) Without limiting subsection (3) —
 - ~~(a) the Police Commissioner's direction under regulation 1402 is taken to be a direction under section 33ZC; and~~
 - ~~(b) any medical board constituted under regulation 1402 on the Police Commissioner's direction is taken to be a medical board under section 33ZC and anything done by, or in relation to, the board under regulation 1402 is taken to have been done by, or in relation to, the board under this Part or any relevant regulations relating to this Part; and~~
 - ~~(c) anything else done in relation to the matter under regulation 1402, or under Part IIB or any other regulation relating to that Part, or under section 8, 38B(4) or 38G(4), is taken to have been done under this Part or any relevant regulations relating to this Part; and~~
 - ~~(d) this Part, and any regulations relating to this Part, apply with any necessary modifications.~~~~

7. Section 138A amended

~~After section 138A(4) insert:~~

- ~~(5) 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 direction under section 33ZC;~~
- ~~—(b) prescribing the procedure to be followed in relation to a retirement on medical grounds under Part IIC;~~
- ~~—(c) prescribing restrictions, in relation to any period during which consideration is being given to a member's retirement on medical grounds under Part IIC, 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 IIC or regulations relating to that Part.~~