

Passed by both Houses



New South Wales

Police Amendment (Police Officer Support Scheme) Bill 2024

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2024



New South Wales

Police Amendment (Police Officer Support Scheme) Bill 2024

Act No _____, 2024

An Act to amend the *Police Act 1990* in relation to the police officer support scheme; and to make consequential amendments to other legislation.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Police Amendment (Police Officer Support Scheme) Act 2024*.

2 Commencement

This Act commences, or is taken to have commenced, on the earlier of the following—

- (a) the date of assent to this Act,
- (b) 1 October 2024.

Schedule 1 Amendment of Police Act 1990 No 47

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

Personal Injury Commission or *Commission*, for Part 9B—see section 199A.
police officer support scheme, for Part 9B—see section 199B.

[2] Part 9B

Omit the part. Insert instead—

Part 9B Police officer support scheme

Division 1 Interpretation

199A Definitions

In this part—

Personal Injury Commission or *Commission* means the Personal Injury Commission established under the *Personal Injury Commission Act 2020*, section 6.

police officer support scheme—see section 199B.

Division 2 Police officer support scheme

199B Police officer support scheme

- (1) The *police officer support scheme* is a scheme that—
 - (a) provides payments to or in relation to police officers who die or become permanently or temporarily incapacitated for work, and
 - (b) is approved by the Minister with the concurrence of the Treasurer.

Note—The police officer support scheme supplements the workers compensation scheme.
- (2) The scheme may include one or more insurance policies or other arrangements.

199C Contribution by police officers to police officer support scheme

- (1) A police officer must make the prescribed contribution to the cost to the State of the police officer support scheme.
- (2) The regulations may provide that a contribution made by a police officer under subsection (1) must be made by way of salary sacrifice or in another way specified in the regulations.
- (3) In this section—

prescribed contribution means the contribution prescribed by the regulations.

199D Regulations about police officer support scheme

- (1) The regulations may provide for matters relating to the police officer support scheme.
- (2) Without limiting subsection (1), the regulations may provide for the following—

- (a) requirements for the structure of the police officer support scheme, including the mechanism for providing benefits under the scheme,
- (b) other matters relating to the police officer support schemes including—
 - (i) persons to whom the scheme applies or does not apply, and
 - (ii) eligibility for, and other matters relating to, payments under the scheme, and
 - (iii) benefits of the scheme, and
 - (iv) contributions to the scheme, including by police officers and the State, and
 - (v) reviews of decisions made in relation to the scheme, and
 - (vi) the determination of disputes about decisions made in relation to the scheme, including the referral of disputes to the Personal Injury Commission, procedural matters relating to the referral and determination of disputes and appeals against determinations of disputes, and
 - (vii) the sharing of information for the purposes of the scheme, including with other agencies for the purposes of workers compensation and with insurers, and
 - (viii) monitoring the scheme, including the structure, costs and sustainability of the scheme, and
 - (ix) reviewing and reporting about the scheme, including by the Auditor-General, and
 - (x) savings and transitional arrangements for persons in relation to payments under the scheme,
- (c) the obligations of the Commissioner, police officers and former police officers in relation to the rehabilitation, retraining and redeployment of incapacitated police officers and former police officers,
- (d) the establishment by the Commissioner of the following programs and the obligation of police officers to participate in the programs—
 - (i) programs for the prevention and management of injuries to police officers,
 - (ii) programs to promote the health and fitness of police officers.

199E Police officers excluded from part

- (1) This part does not apply to or in relation to a police officer who is a contributor to the Police Superannuation Fund under the *Police Regulation (Superannuation) Act 1906* or to the State Superannuation Fund under the *Superannuation Act 1916*.
- (2) This part does not apply to or in relation to a police officer who is not a contributor to the police officer support scheme.

Division 3 Additional functions for ICNSW

199F Additional functions for ICNSW

- (1) The functions of ICNSW under the *State Insurance and Care Governance Act 2015*, section 10 include conducting reviews of decisions made under regulations made under this part.
- (2) The costs of exercising functions referred to in subsection (1) must be met from the Self Insurance Fund established under the *NSW Self Insurance Corporation Act 2004*, section 11.

- (3) In this section—
ICNSW has the same meaning as in the *State Insurance and Care Governance Act 2015*.

Division 4 Additional jurisdiction and functions for Personal Injury Commission, members and medical assessors

199G Terms used in Personal Injury Commission Act 2020

If a term is used in this part or regulations under this part and in the *Personal Injury Commission Act 2020* and is not defined in this part or the regulations, the term has the same meaning as in the *Personal Injury Commission Act 2020* unless the contrary intention appears.

199H Additional jurisdiction or functions conferred or imposed on Personal Injury Commission, members and medical assessors

- (1) The jurisdiction and functions conferred or imposed on the Commission under this part or by regulations under this part include hearing and determining applications regarding disputes about decisions made under regulations made under this part.

Note— The *Personal Injury Commission Act 2020*, section 24 provides that the Personal Injury Commission has the jurisdiction and functions conferred or imposed on the Commission by any legislation.

- (2) A member of the Personal Injury Commission has the functions conferred or imposed on the member under this part or by regulations under this part.

Note— The *Personal Injury Commission Act 2020*, section 11 provides that a member of the Personal Injury Commission has any functions conferred or imposed on the member by any legislation.

- (3) A medical assessor appointed under the *Personal Injury Commission Act 2020*, section 33(1)(b1) has the functions conferred or imposed on the medical assessor by regulations made under this part.

Note— The *Personal Injury Commission Act 2020*, section 33(1)(b1) provides that the President of the Personal Injury Commission may appoint persons to be medical assessors for the purposes of the police officer support scheme.

199I Appeal against decision of Personal Injury Commission constituted by non-presidential member

- (1) This section applies if the regulations provide for the referral of the determination about disputes of decisions made in relation to the police officer support scheme to the Personal Injury Commission.
- (2) A party to a dispute may appeal to the Commission, constituted by a presidential member, against a decision in relation to the dispute by the Commission constituted by a non-presidential member.
- (3) An appeal must be made by application to the President.
- (4) The appeal must not proceed unless the President is satisfied the procedural requirements of this section and any applicable rules of the Commission (the **Commission rules**) about the making of an appeal have been complied with.
- (5) The President is not required to be satisfied about the substance of the appeal.
- (6) There is no appeal under this section against an interlocutory decision except with the leave of the Commission.

- (7) The Commission must not grant leave unless, in the Commission's opinion, determining the appeal is necessary or desirable for the proper and effective determination of the dispute.
- (8) The appeal must be made within—
 - (a) 28 days after the decision appealed against is made, or
 - (b) a longer period determined or allowed, whether generally or for the kind of proceedings, in accordance with the commission rules.
- (9) An appeal under this section is limited to a determination of whether the decision appealed against was or was not affected by an error of fact, law or discretion, and to the correction of the error.
- (10) The appeal is not a review or new hearing.
- (11) An appeal under this section stays the operation of the decision appealed against pending the determination of the appeal.
- (12) However, an appeal does not stay or otherwise affect the operation of a decision about weekly payments and weekly payments remain payable despite any appeal.
- (13) Fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the decision appealed against may not be given on an appeal to the Commission except with the leave of the Commission.
- (14) The Commission must not grant leave unless satisfied the evidence was not available to the party, and could not reasonably have been obtained by the party, before the proceedings or that failure to grant leave would cause substantial injustice in the case.
- (15) On appeal, the decision may be confirmed or may be revoked and a new decision made in its place.
- (16) Alternatively, the matter may be remitted back to the non-presidential member, or to another non-presidential member, for determination in accordance with any decision or directions of the Commission, including, in relation to a decision about the degree of permanent impairment resulting from an injury, a direction to refer the matter for assessment by a medical assessor under the *Workplace Injury Management and Workers Compensation Act 1998*, Chapter 7, Part 7.
- (17) The *Legal Profession Uniform Law Application Act 2014*, Schedule 2, clause 2 applies to and in relation to the provision of legal services in connection with an appeal to the Commission under this section in the same way as it applies to and in relation to the provision of legal services in connection with a claim or defence of a claim for damages referred to in that clause.

Note— The *Legal Profession Uniform Law Application Act 2014*, Schedule 2, clause 2 prohibits a law practice from providing legal services in connection with a claim or defence unless a legal practitioner associate responsible for the provision of the services believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.
- (18) In this section—

decision includes an award, interim award, order, determination, ruling and direction.

199J Appeal against decision of Personal Injury Commission constituted by presidential member

- (1) If a party to proceedings in relation to the police officer support scheme before the Personal Injury Commission constituted by a presidential member is

- aggrieved by a decision of the presidential member on a point of law, the party may appeal to the Court of Appeal.
- (2) The Court of Appeal may, on the hearing of any appeal under this section—
 - (a) remit the matter to the Commission constituted by a presidential member for determination by the Commission in accordance with any decision of the Court, or
 - (b) make another order in relation to the appeal the Court thinks appropriate.
 - (3) A decision of the Court of Appeal on an appeal under this section is binding on the Commission and on all the parties to the proceedings in relation to which the appeal was made.
 - (4) The following appeals under this section may be made only with leave of the Court of Appeal—
 - (a) an appeal from an interlocutory decision,
 - (b) an appeal from a decision as to costs only,
 - (c) an appeal from a decision made with the consent of the parties.
 - (5) In this section—

decision includes an award, interim award, order, determination, ruling and direction.

Division 5 Other matters

199K Application of privacy legislation

- (1) The following Acts, and regulations and other instruments made under the Acts, do not apply in relation to information to the extent the information is necessary for the purposes of the administration or operation of the police officer support scheme and any associated workers compensation claims—
 - (a) the *Health Records and Information Privacy Act 2002*,
 - (b) the *Privacy and Personal Information Protection Act 1998*.
- (2) For subsection (1), the administration or operation of the police officer support scheme includes—
 - (a) the conduct by ICNSW of reviews of decisions made under regulations made under this part, and
 - (b) the hearing and determination by the Personal Injury Commission of applications regarding disputes about decisions made under regulations made under this part, including medical assessments undertaken in relation to a hearing and appeals against decisions made by members of the Personal Injury Commission.

[3] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate part and clause numbering—

Part Provisions consequent on enactment of Police Amendment (Police Officer Support Scheme) Act 2024

Definitions

In this clause—

amendment Act means the *Police Amendment (Police Officer Support Scheme) Act 2024*.

commencement means the commencement of the amendment Act.

former insurance policy means any benefit that formed part of the approved death and disability insurance policy as in force under Part 9B before the commencement.

Police officer to repay amounts under police officer support scheme in certain circumstances

If a police officer receives a payment as a result of the former insurance policy and under the police officer support scheme in relation to the same injury, the police officer must repay the amount of the payment under the police officer support scheme.

Approval of scheme and making of regulations in certain circumstances

- (1) This clause applies if the date of assent to the amendment Act is after 1 October 2024.
- (2) The Minister's approval of, and the Treasurer's concurrence to, a scheme under section 199B(1) may be specified in the approval and concurrence to have taken effect from 1 October 2024.
- (3) The first regulation made under section 199G(1)(a) may provide that the regulation is taken to have commenced on 1 October 2024.

Application of Industrial Relations Act 1996, s 146D

The *Industrial Relations Act 1996*, section 146D(2) applies to proceedings relating to the police officer support scheme as if a reference in that provision to the *Police Amendment (Death and Disability) Act 2011* were a reference to the *Police Amendment (Police Officer Support Scheme) Act 2024*.

Schedule 2 Amendment of Personal Injury Commission Act 2020 No 18

[1] Section 3 Objects of Act

Omit “and motor accidents legislation” from section 3(a).

Insert instead “, motor accidents legislation and legislation providing for the police officer support scheme”.

[2] Section 5 Definitions

Omit section 5(1), definition of *Authority*.

Insert in alphabetical order—

Authority means—

- (a) for the police officer support scheme—the Commissioner of Police, or
- (b) otherwise—the State Insurance Regulatory Authority constituted under the *State Insurance and Care Governance Act 2015*.

police officer support scheme has the same meaning as in the *Police Act 1990*.

Police Officer Support Scheme Division means the Police Officer Support Scheme Division of the Commission.

[3] Section 5(1), definition of “Commission Division”, paragraph (b)

Omit “Accidents Division.”. Insert instead—

Accidents Division, or

- (c) the Police Officer Support Scheme Division.

[4] Section 5(1), definition of “enabling legislation”, paragraph (b)

Omit “accidents legislation.”. Insert instead—

accidents legislation, and

- (c) the *Police Act 1990*, Part 9B and regulations made under that part.

[5] Section 12 Divisions of Commission

Omit section 12(1). Insert instead—

(1) The Divisions of the Commission are—

- (a) the Workers Compensation Division, and
- (b) the Motor Accidents Division, and
- (c) the Police Officer Support Scheme Division.

[6] Section 13 Division Schedule for Commission Division

Insert after section 13(1)(a)—

- (a1) for the Police Officer Support Scheme Division—Schedule 3A, or

[7] Section 19 Rule Committee of Commission

Insert after section 19(3)(c)—

- (c1) 1 person nominated by the Commissioner of Police,

[8] Section 25 Definitions

Insert after the definition of *compensation claim*, paragraph (c)—

(c1) a claim under the police officer support scheme, or

[9] Section 33 Appointment of medical assessors and merit reviewers

Insert after section 33(1)(b)—

(b1) medical assessors for the purposes of the police officer support scheme,
or

[10] Section 56 Effect of decisions of Commission

Insert “or in relation to the police officer support scheme” after “Workers Compensation Acts” in section 56(1).

[11] Section 57 Reconsideration of decisions of Commission

Insert “or Police Officer Support Scheme Division” after “Workers Compensation Division” in section 57(1).

[12] Section 66 Annual reviews

Omit “1998.” from section 66(5), definition of *operational fund*, paragraph (c).

Insert instead—

1998,

(d) the police officer support scheme.

[13] Schedule 3 Workers Compensation Division

Omit “Deputy President” from clause 4(b).

Insert instead “principal member”.

[14] Schedule 3A

Insert after Schedule 3—

Schedule 3A Police Officer Support Scheme Division

section 13(1)(a1)

Part 1 Interpretation

1 Definitions

In this schedule—

Division function means a function of the Commission allocated to the Division by this schedule.

Division Head means the Division Head of the Division.

Division member means a member who is assigned to the Division.

substantive Division function means a Division function other than a Division function exercised by a registrar.

the Division means the Police Officer Support Scheme Division of the Commission.

Part 2 Composition of Division

2 Division members

The Division is composed of the following members—

- (a) the Division Head,
- (b) any other members assigned to the Division by or under this Act.

Part 3 Functions of Division

3 Functions allocated to Division

- (1) The functions of the Commission in relation to the police officer support scheme are allocated to the Division.

Note— Section 5(2) provides that a reference in this Act, however expressed, to the exercise by the Commission of its functions in relation to enabling legislation includes a reference both to its functions under the enabling legislation and its functions under this Act or any other legislation in relation to the enabling legislation.

- (2) Without limiting subclause (1), the functions of the Commission in relation to the police officer support scheme include hearing and determining disputes regarding disputed decisions specified in regulations made under the *Police Act 1990*, Part 9B.

Part 4 Special constitution requirements

4 Constitution generally

Except as provided by this part, the Commission, when exercising its substantive Division functions, must be constituted by—

- (a) 1 Division member who is a non-presidential member, or
- (b) the Division Head but only if the Division Head is a principal member.

Part 5 Special practice and procedure

5 Commission to attempt conciliation

- (1) The Commission constituted by a non-presidential member is not, in the exercise of its substantive Division functions, to make an award or otherwise determine a dispute referred to the Commission for determination without first using the member's best endeavours to bring the parties to the dispute to a settlement acceptable to all of them.
- (2) No objection may be taken to the making of an award or the determination of a dispute by the Commission constituted by a non-presidential member on the ground that the member had previously used the member's best endeavours to bring the parties to the dispute to a settlement.

6 Powers of Commission to require evidence

- (1) The Commission may require any person appearing before the Commission in proceedings allocated to the Division—
 - (a) to give evidence on oath or affirmation and may, for that purpose, administer an oath or affirmation, and
 - (b) to answer any relevant question put to the person.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement duly made under this clause.
Maximum penalty—50 penalty units.
- (3) A person is not required to answer a question under this clause if the answer to the question would tend to incriminate the person of an offence.

Schedule 3 Consequential amendments of other legislation

3.1 Industrial Relations Act 1996 No 17

[1] Section 146D Commission has no jurisdiction in respect of death and disability payments for police officers

Omit section 146D(2).

[2] Section 146D(9), definition of “death and disability payments”

Omit “has the meaning it has in Part 9B of the *Police Act 1990*”.

Insert instead “means payments under the police officer support scheme within the meaning of the *Police Act 1990*, Part 9B”.

3.2 State Authorities Superannuation Act 1987 No 211

[1] Section 46AI Definitions

Omit the definition of *approved death and disability insurance policy*.

Insert instead—

former approved death and disability insurance scheme means the approved death and disability insurance scheme as in force immediately before the commencement of the *Police Amendment (Police Officer Support Scheme) Act 2024*.

police officer support scheme has the same meaning as in the *Police Act 1990*, Part 9B.

[2] Section 46AK Death and disability of police officers

Insert “, police officer support scheme” after “an approved death and disability insurance policy” in section 46AK(1)(c).

3.3 State Authorities Superannuation Regulation 2020

[1] Clause 33 Definition

Omit the clause.

[2] Clause 34 Provision of information

Omit “and an approved death and disability insurance policy”.

Insert instead “, the police officer support scheme or the former approved death and disability insurance scheme”.

3.4 Victims Rights and Support Act 2013 No 37

Section 44 Reasons for not approving the giving of victims support or for reducing amount of financial support or recognition payment

Omit “death and disability payments under Part 9B of the *Police Act 1990*” from section 44(6).

Insert instead “payments under the police officer support scheme under the *Police Act 1990*, Part 9B”.

3.5 Victims Rights and Support Regulation 2019

Clause 5 Authorisation of payments for approved counselling services

Omit “Part 9B of the *Police Act 1990*” from clause 5(8)(a).

Insert instead “the police officer support scheme under the *Police Act 1990*, Part 9B”.