

# Victoria Police Act 2013

No. 81 of 2013

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Victoria

# Victoria Police Act 2013<sup>†</sup>

No. 81 of 2013

[Assented to 17 December 2013]

**The Parliament of Victoria enacts:**

## **PART 1—PRELIMINARY**

### **1 Purposes**

The purposes of this Act are to—

- (a) re-enact and modernise the law relating to the governance and regulation of Victoria Police; and
- (b) retitle and substantially repeal the **Police Regulation Act 1958**.



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## 2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 December 2014, it comes into operation on that day.

## 3 Definitions

- (1) In this Act—

*Assistant Commissioner* means a person employed as an Assistant Commissioner under section 24;

*breach of discipline* has the meaning given in section 125;

*business day* means a day other than a Saturday, a Sunday or a public holiday or half-holiday appointed under the **Public Holidays Act 1993**;

*Chief Commissioner* means the Chief Commissioner of Police appointed under section 17;

*Chief Commissioner's instructions* means any instructions issued under section 60 as in force from time to time;

*commissioned officer* means a police officer certified as a commissioned officer of Victoria Police under section 14;

*country position* means a position in Victoria Police that is located outside the Melbourne metropolitan area;

*Deputy Commissioner* means a person appointed as a Deputy Commissioner under section 21;

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***designated place*** means a place prescribed by the regulations to be a designated place for the purposes of section 52;

***directed transfer*** means—

- (a) the transfer of a police officer under section 35; or
- (b) the transfer of a protective services officer under section 44;

***domestic partner*** of a person means—

- (a) a person who is in a registered relationship with the person; or

**Note**

A registered relationship is defined in subsection (2).

- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

***efficiency***, in relation to the promotion or transfer of police officers or protective services officers, has the meaning given in section 4;

***general duties***, in relation to a police officer, means primary response and general patrol duties;

***IBAC*** means the Independent Broad-based Anti-corruption Commission established under section 12 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

***IBAC Commissioner*** means the Commissioner appointed under section 20 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

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***IBAC Officer*** has the same meaning as in the  
**Independent Broad-based Anti-corruption  
Commission Act 2011;**

***investigative agency*** means—

- (a) Victoria Police, or an equivalent body in another State or the Northern Territory; or
- (b) the IBAC; or
- (c) the Australian Federal Police within the meaning of the Australian Federal Police Act 1979 of the Commonwealth; or
- (d) the Australian Crime Commission within the meaning of the Australian Crime Commission Act 2002 of the Commonwealth; or
- (e) the Chief Examiner and Examiners appointed under Part 3 of the **Major Crime (Investigative Powers) Act 2004**; or
- (f) the Victorian Inspectorate; or
- (g) the Police Integrity Commission constituted by the Police Integrity Commission Act 1996 of New South Wales; or
- (h) the Independent Commission Against Corruption constituted by the Independent Commission Against Corruption Act 1988 of New South Wales; or
- (i) the New South Wales Crime Commission constituted by the Crime Commission Act 2012 of New South Wales; or

- 
- (j) the Crime and Misconduct Commission established under the Crime and Misconduct Act 2001 of Queensland; or
  - (k) the Corruption and Crime Commission established under the Corruption and Crime Commission Act 2003 of Western Australia; or
  - (l) the Australian Commission for Law Enforcement Integrity established under the Law Enforcement Integrity Commissioner Act 2006 of the Commonwealth;

*legal practitioner* means an Australian lawyer within the meaning of the **Legal Profession Act 2004**;

*Melbourne metropolitan area* means the area for the time being determined under section 5;

*member of Victoria Police personnel* means—

- (a) a person referred to in section 7; or
- (b) a special constable, but only in respect of the performance of duties and functions and exercise of powers by the special constable for Victoria Police;

*Ombudsman* means the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**;

*personal leave*, in relation to a police officer or protective services officer, includes absence from duty while receiving compensation under the **Accident Compensation Act 1985**;

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*police force of another jurisdiction* means—

- (a) the Australian Federal Police; or
- (b) the police force or police service of another State or a Territory; or
- (c) the police force or police service of another country or part of a country;

*police officer* means—

- (a) the Chief Commissioner; or
- (b) a Deputy Commissioner; or
- (c) an Assistant Commissioner; or
- (d) a person appointed under Division 5 of Part 3;

**Note**

Police reservists and special constables are taken to be police officers for certain purposes—see sections 45 and 193.

*Police Profession Register* means the register kept under section 121;

*police recruit* means a person employed under Division 6 of Part 3;

*police reservist* means a person who, immediately before the commencement of section 282, held office as a police reservist under the **Police Regulation Act 1958** as in force immediately before that commencement;

*police tort* has the meaning given in section 72;

*police tort claim* has the meaning given in section 73;

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***Professional Standards Division*** means the Professional Standards Division of the PRS Board;

**Note**

See section 203(b).

***professional standards function*** means a function specified in section 202(1)(b);

***protected disclosure complaint*** means a disclosure that is determined to be a protected disclosure complaint by the IBAC under section 26 of the **Protected Disclosure Act 2012**;

***protective services officer*** means a person appointed under Division 7 of Part 3;

***PRS Board*** means the Police Registration and Services Board continued under section 201;

***PRS Board officer*** means—

- (a) a member of the PRS Board; or
- (b) an employee referred to in section 217(1); or
- (c) a member of staff referred to in section 217(2);

***rank*** means—

- (a) in relation to a police officer, a rank specified in section 13;
- (b) in relation to a protective services officer, a rank (if any) prescribed in the regulations;

**Note**

See item 2.10 of Schedule 5.

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**Registration Division** means the Registration Division of the PRS Board;

**Note**

See section 203(a).

**registration function** means a function specified in section 202(1)(a);

**Review Division** means the Review Division of the PRS Board;

**Note**

See section 203(c).

**review function** means a function specified in section 202(1)(c);

**special constable** means a person appointed under Part 11;

**spouse** of a person means a person to whom the person is married;

**testing direction** has the meaning given in section 82;

**Victoria Police** means the body established by section 6;

**Victoria Police employee** means a person employed in Victoria Police under Part 3 of the **Public Administration Act 2004**;

**Victoria Police equipment** means a thing determined under section 60(2)(a) to be Victoria Police equipment;

**Victoria Police identification** means a thing determined under section 60(2)(b) to be Victoria Police identification;

**Victorian Inspectorate** has the same meaning as in the **Victorian Inspectorate Act 2011**.

- (2) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all of the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

#### 4 Meaning of *efficiency*

- (1) For the purposes of the promotion or transfer of police officers to a position or rank referred to in column 2 of an item in the following table, *efficiency* has the meaning given in column 3 of that item.

**TABLE**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Position or rank</i>	<i>Meaning of efficiency</i>
1	All positions	The aptitude and special qualifications necessary for the discharge of the duties of the position in question, together with merit, diligence, good conduct, quality of service, mental capacity and physical fitness
2	Rank of inspector	In addition to item 1, the potential to develop the executive ability and leadership and management skills essential in senior executive positions



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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Position or rank</i>	<i>Meaning of efficiency</i>
3	Rank of commander, chief superintendent, superintendent or chief inspector	In addition to item 1, the executive ability and leadership and management skills essential in senior executive positions

- (2) For the purposes of the promotion or transfer of protective services officers, *efficiency* means the aptitude and special qualifications necessary for the discharge of the duties of the position in question, together with merit, diligence, good conduct, quality of service, mental capacity and physical fitness.

#### **5 Melbourne metropolitan area**

For the purposes of this Act, the Chief Commissioner, by notice published in the Government Gazette, may from time to time determine an area to be the Melbourne metropolitan area.

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**PART 2—VICTORIA POLICE**

**Division 1—Constitution, role and functions**

**6 Victoria Police**

The police force of Victoria is constituted by a body established by this section known as Victoria Police.

**Note**

Victoria Police is a special body under section 6(1) of the **Public Administration Act 2004**.

**7 Who constitutes Victoria Police?**

Victoria Police consists of the following persons—

- (a) the Chief Commissioner;
- (b) Deputy Commissioners;
- (c) Assistant Commissioners;
- (d) other police officers;
- (e) protective services officers;
- (f) police recruits;
- (g) police reservists;
- (h) Victoria Police employees.

**8 Role of Victoria Police**

The role of Victoria Police is to serve the Victorian community and uphold the law so as to promote a safe, secure and orderly society.

**9 General functions of Victoria Police**

- (1) The functions of Victoria Police include the following—
- (a) preserving the peace;
  - (b) protecting life and property;
  - (c) preventing the commission of offences;

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- (d) detecting and apprehending offenders;
  - (e) helping those in need of assistance.
- (2) Nothing in subsection (1)—
- (a) confers on any person any civil right of action; or
  - (b) provides any person with a defence to any civil action; or
  - (c) otherwise affects any civil right of action.

### **Division 2—Relationship with government**

#### **10 Ministerial directions**

- (1) The Minister may from time to time, after consulting the Chief Commissioner, give written directions to the Chief Commissioner in relation to the policy and priorities to be pursued in the performance of the functions of Victoria Police.
  - (2) Subject to subsection (3), a direction under subsection (1) cannot be given in relation to any of the following matters—
    - (a) preservation of the peace and the protection of life and property in relation to any person or group of persons;
    - (b) enforcement of the law in relation to any person or group of persons;
    - (c) the investigation or prosecution of offences in relation to any person or group of persons;
    - (d) decisions about individual members of Victoria Police personnel, including decisions in relation to discipline;
    - (e) the organisational structure of Victoria Police;
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- (f) the allocation or deployment of police officers or protective services officers to or at particular locations;
  - (g) training, education and professional development programs within Victoria Police;
  - (h) the content of any internal grievance-resolution procedures.
- (3) The Minister may give a direction under subsection (1) in relation to a matter specified in subsection (2)(e), (f), (g) or (h) if—
- (a) an entity specified in subsection (4) has made a report or recommendation in relation to the matter; and
  - (b) in the Minister's opinion, the Chief Commissioner has not responded adequately to that report or recommendation.
- (4) The following entities are specified for the purposes of subsection (3)(a)—
- (a) the IBAC;
  - (b) the Auditor-General;
  - (c) the State Services Authority;
  - (d) the Public Sector Standards Commissioner;
  - (e) a coroner;
  - (f) the Commissioner for Law Enforcement Data Security;
  - (g) a Parliamentary Committee;
  - (h) a Commission of Inquiry established under section 88B of the **Constitution Act 1975**;
  - (i) a Board of Inquiry established under section 88C of the **Constitution Act 1975**;
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- (j) a Royal Commission;
  - (k) a prescribed entity.
- (5) The Minister may from time to time, after consulting the Chief Commissioner, in writing vary or revoke a direction given under subsection (1).
  - (6) The Minister must cause a copy of a direction, and of any variation or revocation of a direction, to be published in the Government Gazette.
  - (7) The Chief Commissioner must ensure that a copy of any directions currently in force is available on an Internet site maintained by Victoria Police.

#### **11 Minister's power to obtain information and reports**

- (1) The Minister may from time to time request the Chief Commissioner to give the Minister information or reports of a kind specified by the Minister in relation to the performance of the functions of Victoria Police.
- (2) Subject to this section, the Chief Commissioner must comply with a request under subsection (1).
- (3) The Chief Commissioner may withhold information from the Minister if the Chief Commissioner considers that giving it to the Minister would be reasonably likely to—
  - (a) prejudice any investigation of a contravention or possible contravention of the law; or
  - (b) prejudice the prosecution of any person for an offence; or
  - (c) endanger the life or physical safety of any person.

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## 12 Annual report of Chief Commissioner

- (1) Without limiting section 11, the Chief Commissioner must prepare a report in respect of each financial year on—
  - (a) any action taken by the Chief Commissioner under Division 6 of Part 4 during that year and the outcome of that action (including the result of any review of that action by the PRS Board); and
  - (b) any action taken by the Chief Commissioner or an authorised officer under Part 7 during that year and the outcome of that action (including the result of any review of that action by the PRS Board); and
  - (c) any action taken by the Chief Commissioner under section 195 during that year; and
  - (d) the prescribed information in relation to Part 5.

### Note

See section 69 of the **Protected Disclosure Act 2012** for other matters that must be included in the Chief Commissioner's report.

- (2) The Chief Commissioner must give the report to the Minister within 3 months after the end of the financial year.
  - (3) Within 3 months after giving the report to the Minister, the Chief Commissioner must publish a copy of it on an Internet site maintained by Victoria Police, unless the information in the report is laid before one or both Houses of Parliament (whether in a report of operations under Part 7 of the **Financial Management Act 1994** or otherwise) within that period.
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**PART 3—VICTORIA POLICE PERSONNEL**

**Division 1—Ranks, commissions and numbers**

**13 Rank structure**

The following are the ranks of police officers, in descending order of seniority—

- (a) Chief Commissioner;
- (b) Deputy Commissioner;
- (c) Assistant Commissioner;
- (d) commander;
- (e) chief superintendent;
- (f) superintendent;
- (g) chief inspector;
- (h) inspector;
- (i) senior sergeant;
- (j) sergeant;
- (k) senior constable;
- (l) constable.

**Note**

The regulations may prescribe a rank structure for protective services officers—see item 2.10 of Schedule 5.

**14 Commissioned officers**

- (1) The Governor in Council may certify that a police officer of any of the following ranks is a commissioned officer of Victoria Police—
  - (a) Assistant Commissioner;
  - (b) commander;
  - (c) chief superintendent;
  - (d) superintendent;

- (e) chief inspector;
- (f) inspector.

- (2) Subject to the direction and control of the Chief Commissioner, a commissioned officer is responsible for the management and control of the portion of Victoria Police that is placed under the officer's charge.

### **15 Number of police officers and protective services officers**

- (1) The Governor in Council may from time to time, by Order, determine—
  - (a) the total number of police officers that may be appointed under Division 5; and
  - (b) the total number of police officers that may hold each rank below the rank of Assistant Commissioner; and
  - (c) the total number of protective services officers that may be appointed.
- (2) The Chief Commissioner must comply with an Order made under subsection (1).

#### **Division 2—Chief Commissioner**

### **16 Role of Chief Commissioner**

- (1) The Chief Commissioner—
  - (a) is the chief constable and the chief executive officer of Victoria Police; and
  - (b) subject to the direction of the Minister under section 10, is responsible for the management and control of Victoria Police.
- (2) In particular, and without limiting subsection (1), the Chief Commissioner—
  - (a) is responsible for implementing the policing policy and priorities of the Government; and



- (b) is responsible for providing advice and information to the Minister on the operations of Victoria Police and policing matters generally; and
- (c) is responsible to the Minister for the general conduct, performance and operations of Victoria Police.

**Note**

The Chief Commissioner is also the public service body Head in relation to Victoria Police employees under section 16 of the **Public Administration Act 2004**.

**17 Appointment of Chief Commissioner**

- (1) The Governor in Council may appoint a Chief Commissioner of Police.
- (2) The Chief Commissioner holds office in accordance with Part 1 of Schedule 1.

**18 Appointment of Acting Chief Commissioner**

- (1) A police officer may be appointed under this section to act as Chief Commissioner—
  - (a) during a vacancy in the office of Chief Commissioner; or
  - (b) during a period, or all periods, when the Chief Commissioner is absent from duty or, for any other reason, is unable to perform the duties of office.
- (2) The appointment of an Acting Chief Commissioner may be made by—
  - (a) the Minister for a period not exceeding 4 weeks; or
  - (b) the Governor in Council for any period.
- (3) The Acting Chief Commissioner has all the powers and must perform all the duties of the Chief Commissioner.

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- (4) A person appointed to act as Chief Commissioner is eligible to be reappointed.
  - (5) The Governor in Council may revoke the appointment of an Acting Chief Commissioner at any time (including an appointment made by the Minister).

### **19 Delegation by Chief Commissioner**

- (1) The Chief Commissioner, by instrument, may delegate to a member or class of members of Victoria Police personnel (other than police recruits) any duty, function or power of the Chief Commissioner under this Act or any other Act, other than—
    - (a) the power under section 83 to determine that a work unit within Victoria Police is a designated work unit or that a work function performed by members of Victoria Police personnel in the course of duty is a designated work function; or
    - (b) the power under section 196 to declare an incident to be an incident requiring urgent cross-border assistance; or
    - (c) the power under section 197 to extend a declaration made under section 196; or
    - (d) the power under section 236 to authorise a media organisation; or
    - (e) the power under section 238 to authorise the giving of a photograph to an authorised media organisation; or
    - (f) this power of delegation.
  - (2) The Chief Commissioner, by instrument, may delegate to a police officer of or above the rank of inspector or to a Victoria Police employee at a level of Grade 6 or higher—
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- (a) the power under section 236 to authorise a media organisation; or
  - (b) the power under section 238 to authorise the giving of a photograph to an authorised media organisation.
- (3) A delegation under subsection (1) or (2) may be made to a person or class of persons by name or by reference to the office, offices or employment held.

### **Division 3—Deputy Commissioners**

#### **20 Role of Deputy Commissioners**

Subject to the direction and control of the Chief Commissioner, a Deputy Commissioner is responsible for the management and control of the portion of Victoria Police that is placed under the Deputy Commissioner's charge.

#### **21 Appointment of Deputy Commissioners**

- (1) The Governor in Council, on the recommendation of the Minister, may appoint as many Deputy Commissioners as the Governor in Council considers necessary.
- (2) The Minister must consult the Chief Commissioner before making a recommendation to the Governor in Council for the appointment of a Deputy Commissioner.
- (3) A Deputy Commissioner holds office in accordance with Part 2 of Schedule 1.

#### **22 Appointment of Acting Deputy Commissioner**

- (1) A police officer may be appointed under this section to act as a Deputy Commissioner—
  - (a) during a vacancy in the office of a Deputy Commissioner; or

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- (b) during a period, or all periods, when a Deputy Commissioner is absent from duty or, for any other reason, is unable to perform the duties of office; or
  - (c) during a period when a Deputy Commissioner has been appointed as Acting Chief Commissioner.
- (2) The appointment of an Acting Deputy Commissioner may be made by—
- (a) the Chief Commissioner for a period not exceeding 4 weeks; or
  - (b) the Governor in Council for any period.
- (3) An Acting Deputy Commissioner has all the powers and must perform all the duties of the Deputy Commissioner in whose place he or she is acting.
- (4) A person appointed to act as a Deputy Commissioner is eligible to be reappointed.
- (5) The Governor in Council may revoke an appointment of an Acting Deputy Commissioner at any time (including an appointment made by the Chief Commissioner).

**23 Deputy Commissioner may act temporarily as Chief Commissioner in certain circumstances**

- (1) This section applies at any time—
- (a) during a vacancy in the office of Chief Commissioner; or
  - (b) during a period when the Chief Commissioner is absent from duty or, for any other reason, is unable to perform the duties of office—

other than a time during which the appointment of an Acting Chief Commissioner under section 18 is in effect.

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- (2) If this section applies, a Deputy Commissioner may make a written declaration to the Minister.
  - (3) After making a declaration under subsection (2), the Deputy Commissioner may act as the Chief Commissioner and, for that purpose, has all the powers and must perform all the duties of the Chief Commissioner, until the first of the following occurs—
    - (a) an Acting Chief Commissioner is appointed under section 18; or
    - (b) the Chief Commissioner resumes duty; or
    - (c) the period of 72 hours after the making of the declaration expires.

#### **Division 4—Assistant Commissioners**

#### **24 Employment of Assistant Commissioners**

- (1) The Chief Commissioner, on behalf of the Crown, may employ as many Assistant Commissioners as he or she thinks necessary.
  - (2) Subject to subsection (3), the Chief Commissioner may employ a person as an Assistant Commissioner only if the person—
    - (a) is a police officer; or
    - (b) satisfies the prescribed criteria for appointment as a police officer under section 27.
  - (3) The Chief Commissioner may waive any of the prescribed criteria in any particular case.
  - (4) Part 3 of Schedule 1 applies to the employment of an Assistant Commissioner.
  - (5) Nothing in this Division or Part 3 of Schedule 1 affects or takes away from the application of section 51(a) to an Assistant Commissioner.
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**25 Status of Assistant Commissioner as a police officer**

- (1) A person who was a police officer immediately before the time his or her contract of employment as an Assistant Commissioner comes into force continues to be a police officer on and after the time the contract comes into force.
- (2) A person who was not a police officer immediately before the time his or her contract of employment as an Assistant Commissioner comes into force is taken to have been appointed as a police officer at the time the contract comes into force.

**26 Appointment of Acting Assistant Commissioner**

- (1) The Chief Commissioner may appoint a police officer to act as an Assistant Commissioner—
    - (a) during a vacancy in the office of an Assistant Commissioner; or
    - (b) during a period, or all periods, when an Assistant Commissioner is absent from duty or, for any other reason, is unable to perform the duties of office.
  - (2) An Acting Assistant Commissioner has all the powers and must perform all the duties of the Assistant Commissioner in whose place he or she is acting.
  - (3) An appointment under this section may be made for a period not exceeding 6 months.
  - (4) The Chief Commissioner may revoke the appointment of an Acting Assistant Commissioner at any time.
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## Division 5—Other police officers

### 27 Appointment of police officers

- (1) Subject to section 15, the Chief Commissioner may appoint a person as a police officer below the rank of Assistant Commissioner.

#### Note

Section 15 enables the Governor in Council to determine the total number of police officers and the total number of police officers of each rank.

- (2) Subject to subsection (3), the Chief Commissioner may appoint a person under this section only if the person satisfies the prescribed criteria for appointment.
- (3) The Chief Commissioner, in exceptional circumstances, may waive any of the prescribed criteria for appointment in any particular case.
- (4) Subject to subsection (5), an appointment under this section—
- (a) may be on a full-time or part-time basis; and
  - (b) may be for a fixed term or on an ongoing basis.
- (5) An appointment under this section may be made on a part-time basis or for a fixed term (or both) only if the Chief Commissioner is satisfied that it is necessary to do so for the purposes of—
- (a) a specific project or task force of finite duration; or
  - (b) dealing with an emergency within the meaning of the **Emergency Management Act 1986**.
- (6) The instrument of appointment must specify the rank at which the person is appointed.

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## **28 Probation for appointment**

- (1) The appointment of a person under section 27 is subject to the following initial period of probation—
  - (a) 2 years in the case of an appointment at the rank of constable; or
  - (b) one year in any other case.
- (2) At the end of the initial period of probation, the appointment is confirmed unless, before that time, the Chief Commissioner—
  - (a) terminates the appointment under subsection (4); or
  - (b) extends the probation for a period not exceeding one year.
- (3) At the end of a further period of probation under subsection (2)(b), the appointment is confirmed unless, before that time the Chief Commissioner terminates the appointment under subsection (4).
- (4) The Chief Commissioner may terminate an appointment under section 27 at any time during an initial or further period of probation.
- (5) In determining whether or not a period of probation has ended, any of the following periods of absence from duty must be disregarded—
  - (a) suspension;
  - (b) leave without pay;
  - (c) personal leave of one month or more continuously;
  - (d) maternity leave;
  - (e) long service leave.



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## 29 Appointment of officers from other jurisdictions

- (1) This section applies to the appointment under section 27 of a person who—
  - (a) has never been a police officer; and
  - (b) is or has been an officer or member of a police force of another jurisdiction.
- (2) The Chief Commissioner may request the PRS Board to advise the Chief Commissioner in writing whether the person—
  - (a) either—
    - (i) meets the prescribed criteria for appointment at the proposed rank; or
    - (ii) subject to the satisfactory completion of training specified by the PRS Board, will meet the prescribed criteria for appointment at the proposed rank; and
  - (b) has the aptitude and efficiency to perform the duties of a police officer at the proposed rank.
- (3) Subject to section 222(3), the PRS Board must comply with a request under subsection (2).

### Note

The functions of the PRS Board under this section are performed by the Registration Division. Division 4 of Part 12 gives certain investigatory powers to the PRS Board for the purposes of providing advice under this section. Under section 222(3) the PRS Board may decline to provide advice in certain circumstances.

- (4) The Chief Commissioner must consider the advice of the PRS Board in determining whether to appoint the person under section 27 and in determining the rank at which and position to which he or she is appointed.

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### **30 Appointment of former police officers**

- (1) This section applies to the appointment to Victoria Police of a person who has previously been a police officer.
- (2) The Chief Commissioner may appoint the person under section 27 if the person is registered on the Police Profession Register.
- (3) If the person is not registered on the Police Profession Register, the Chief Commissioner may request the PRS Board to advise the Chief Commissioner in writing whether the person—
  - (a) either—
    - (i) meets the prescribed criteria for appointment at the proposed rank; or
    - (ii) subject to the satisfactory completion of training specified by the PRS Board, will meet the prescribed criteria for appointment at the proposed rank; and
  - (b) has the aptitude and efficiency to perform the duties of a police officer at the proposed rank; and
  - (c) is registered under Part 6.
- (4) Subject to section 222(3), the PRS Board must comply with a request under subsection (3).

#### **Note**

The functions of the PRS Board under this section are performed by the Registration Division. Division 4 of Part 12 gives certain investigatory powers to the PRS Board for the purposes of providing advice under this section. Under section 222(3) the PRS Board may decline to provide advice in certain circumstances.

- (5) If the PRS Board's advice has been requested under this section, the Chief Commissioner must consider the advice in determining whether to appoint the person under section 27 and in
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determining the rank at which and position to which he or she is appointed.

### **31 Promotion of police officers**

- (1) Subject to section 15, the Chief Commissioner may promote a police officer appointed under section 27 to a higher rank.

#### **Note**

Section 15 enables the Governor in Council to determine the total number of police officers of each rank.

- (2) In determining a promotion, the Chief Commissioner—
- (a) must have regard to the efficiency of the candidate for promotion; and
  - (b) if there is more than one candidate for promotion—
    - (i) must have regard to their relative efficiencies; and
    - (ii) subject to subsection (3), must not have regard to their relative seniority.
- (3) The Chief Commissioner must have regard to the relative seniority of candidates for promotion to the rank of senior sergeant, sergeant or senior constable if the Chief Commissioner considers that the candidates are equally efficient.
- (4) Subsection (2) does not apply to—
- (a) a promotion to a position of senior constable (general duties); or
  - (b) a promotion of a constable who holds a position to the rank of senior constable in the same position.
- (5) The Chief Commissioner must cause notice of the selection of a police officer for promotion to be published in the Police Gazette.
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### **32 Probation for promotion**

- (1) A promotion is subject to an initial period of probation of one year.
- (2) At the end of the initial period of probation, the promotion is confirmed unless, before that time, the Chief Commissioner—
  - (a) disallows the probation under subsection (4);  
or
  - (b) extends the probation for a period not exceeding one year.
- (3) At the end of a further period of probation under subsection (2)(b), the promotion is confirmed unless, before that time, the Chief Commissioner disallows the promotion under subsection (4).
- (4) The Chief Commissioner may disallow a promotion at any time during an initial or further period of probation.
- (5) If a promotion is disallowed, from the time of the disallowance the police officer's rank is the rank he or she held immediately before the promotion.
- (6) In determining whether or not a period of probation has ended, any of the following periods of absence from duty must be disregarded—
  - (a) suspension;
  - (b) leave without pay;
  - (c) personal leave of one month or more continuously;
  - (d) maternity leave;
  - (e) long service leave.

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### **33 Transfer of police officers**

- (1) The Chief Commissioner may transfer a police officer in accordance with this Act and the regulations.
- (2) Without limiting the Chief Commissioner's powers to transfer a police officer, the Chief Commissioner may do any of the following—
  - (a) transfer a police officer on application or request under section 34;
  - (b) make a directed transfer under section 35;
  - (c) transfer a police officer under Division 6 of Part 4;
  - (d) transfer a police officer under Division 1 or 2 of Part 7.

### **34 Transfer on application or request**

- (1) The Chief Commissioner may transfer a police officer to another position at the same rank on application or request by the officer.
  - (2) In determining a transfer under this section, the Chief Commissioner—
    - (a) must have regard to the efficiency of the candidate for transfer; and
    - (b) if there is more than one candidate for transfer—
      - (i) must have regard to their relative efficiencies; and
      - (ii) subject to subsection (3), must not have regard to their relative seniority.
  - (3) The Chief Commissioner must have regard to the relative seniority of candidates for transfer to a position in the rank of senior sergeant, sergeant or senior constable if the Chief Commissioner considers that the candidates are equally efficient.
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- (4) Subsection (2) does not apply to—
- (a) a transfer to a position of constable (general duties) or senior constable (general duties);  
or
  - (b) a transfer made under an expression of interest process agreed under an industrial instrument applying to police officers.
- (5) The Chief Commissioner must cause notice of the selection of a police officer for transfer under this section to be published in the Police Gazette.
- (6) This section does not apply to a Deputy Commissioner or an Assistant Commissioner.

### **35 Directed transfer of police officers**

- (1) The Chief Commissioner may immediately transfer a police officer to any part of the State if the Chief Commissioner considers it is reasonably necessary to do so for the provision of policing services.
- (2) This section does not apply to a Deputy Commissioner or an Assistant Commissioner.

## **Division 6—Police recruits**

### **36 Employment of police recruits**

- (1) The Chief Commissioner may employ as many police recruits as the Chief Commissioner considers necessary to meet the needs of Victoria Police.
- (2) Subject to subsection (3), the Chief Commissioner may employ a person as a police recruit only if the person satisfies the prescribed criteria for employment as a police recruit.

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- (3) The Chief Commissioner, in exceptional circumstances, may waive any of the prescribed criteria for employment as a police recruit in any particular case.
  - (4) A police recruit is to be employed on the terms and conditions, and for the period, determined by the Chief Commissioner.
  - (5) The Chief Commissioner may terminate or extend the employment of a police recruit at any time.

#### **Division 7—Protective services officers**

### **37 Functions of protective services officers**

The functions of a protective services officer are to provide services for the protection of—

- (a) persons holding certain official or public offices; and
- (b) the general public in certain places; and
- (c) certain places of public importance.

### **38 Appointment of protective services officers**

- (1) Subject to section 15, the Chief Commissioner may appoint a person as a protective services officer.

#### **Note**

Section 15 enables the Governor in Council to determine the total number of protective services officers.

- (2) Subject to subsection (3), the Chief Commissioner may appoint a person under this section only if the person satisfies the prescribed criteria for appointment.
  - (3) The Chief Commissioner, in exceptional circumstances, may waive any of the prescribed criteria for appointment in any particular case.
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- (4) An appointment under this section—
- (a) may be on a full-time or part-time basis; and
  - (b) may be for a fixed term or on an ongoing basis.
- (5) If there is a rank structure for protective services officers, the instrument of appointment must specify the rank at which the person is appointed.

**Note**

The regulations may prescribe a rank structure for protective services officers—see item 2.10 of Schedule 5.

- (6) The Chief Commissioner may terminate the appointment of a protective services officer at any time before the protective services officer takes an oath or makes an affirmation under section 50.
- (7) Subsection (6) does not limit any other power of the Chief Commissioner under this Act to dismiss or terminate the appointment of a protective services officer.

**39 Probation for appointment**

- (1) The appointment of a person under section 38 is subject to an initial period of probation of 2 years.
- (2) At the end of the initial period of probation, the appointment is confirmed unless, before that time, the Chief Commissioner—
- (a) terminates the appointment under subsection (4); or
  - (b) extends the probation for a period not exceeding one year.
- (3) At the end of a further period of probation under subsection (2)(b), the appointment is confirmed unless, before that time, the Chief Commissioner terminates the appointment under subsection (4).



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- (4) The Chief Commissioner may terminate an appointment under section 38 at any time during an initial or further period of probation.
  - (5) In determining whether or not a period of probation has ended, any of the following periods of absence from duty must be disregarded—
    - (a) suspension;
    - (b) leave without pay;
    - (c) personal leave of one month or more continuously;
    - (d) maternity leave;
    - (e) long service leave.

#### **40 Promotion of protective services officers**

- (1) If there is a rank structure for protective services officers, the Chief Commissioner may promote a protective services officer to a position at a higher rank.

**Note**

The regulations may prescribe a rank structure for protective services officers—see item 2.10 of Schedule 5.

- (2) In determining a promotion, the Chief Commissioner—
  - (a) must have regard to the efficiency of the candidate for promotion; and
  - (b) if there is more than one candidate for promotion—
    - (i) must have regard to their relative efficiencies; and
    - (ii) must have regard to their relative seniority if the Chief Commissioner considers that they are equally efficient.

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- (3) The regulations may provide that subsection (2) does not apply to promotion to positions at a rank specified in the regulations.
  - (4) The Chief Commissioner must cause notice of the selection of a protective services officer for promotion to be published in the Police Gazette.

#### **41 Probation for promotion**

- (1) A promotion is subject to an initial period of probation of one year.
- (2) At the end of the initial period of probation, the promotion is confirmed unless, before that time, the Chief Commissioner—
  - (a) disallows the probation under subsection (4);  
or
  - (b) extends the probation for a period not exceeding one year.
- (3) At the end of a further period of probation under subsection (2)(b), the promotion is confirmed unless, before that time, the Chief Commissioner disallows the promotion under subsection (4).
- (4) The Chief Commissioner may disallow a promotion at any time during an initial or further period of probation.
- (5) If a promotion is disallowed, from the time of the disallowance, the protective services officer's rank is the rank he or she held immediately before the promotion.
- (6) In determining whether or not a period of probation has ended, any of the following periods of absence from duty must be disregarded—
  - (a) suspension;
  - (b) leave without pay;

- (c) personal leave of one month or more continuously;
- (d) maternity leave;
- (e) long service leave.

#### **42 Transfer of protective services officers**

- (1) The Chief Commissioner may transfer a protective services officer in accordance with this Act and the regulations.
- (2) Without limiting the Chief Commissioner's powers to transfer a protective services officer, the Chief Commissioner may do any of the following—
  - (a) transfer a protective services officer on application or request under section 43;
  - (b) make a directed transfer under section 44;
  - (c) transfer a protective services officer under Division 6 of Part 4;
  - (d) transfer a protective services officer under Division 1 or 2 of Part 7.

#### **43 Transfer on application or request**

- (1) The Chief Commissioner may transfer a protective services officer to another position at the same rank on application or request by the officer.
- (2) In determining a transfer under this section, the Chief Commissioner—
  - (a) must have regard to the efficiency of the candidate for transfer; and
  - (b) if there is more than one candidate for transfer—
    - (i) must have regard to their relative efficiencies; and

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- (ii) must have regard to their relative seniority if the Chief Commissioner considers that they are equally efficient.
- (3) Subsection (2) does not apply to—
- (a) a transfer made under an expression of interest process agreed under an industrial instrument applying to protective services officers; or
  - (b) a transfer to a position at a rank specified in the regulations.
- (4) The Chief Commissioner must cause notice of the selection of a protective services officer for transfer under this section to be published in the Police Gazette.

#### **44 Directed transfer of protective services officers**

The Chief Commissioner may immediately transfer a protective services officer to any part of the State if the Chief Commissioner considers it is reasonably necessary to do so for the provision of protective services.

#### **Division 8—Police reservists**

#### **45 Status of police reservists**

A police reservist is taken to be a police officer for the purposes of the following provisions and Acts—

- (a) Division 1 of this Part (Ranks, commissions and numbers);
  - (b) section 19 (Delegation by Chief Commissioner);
  - (c) section 50 (Oath of office);
  - (d) section 51(a) (Duties and powers of police officers at common law);
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- (e) section 53 (Proof of office);
  - (f) section 55 (Permanent cessation of powers);
  - (g) section 56 (Execution of process and warrants);
  - (h) section 62 (Determination of uniforms and other equipment and other standards);
  - (i) section 64 and Schedule 3 (Long service leave);
  - (j) Division 6 of Part 4 (Incapacity for duty);
  - (k) Division 7 of Part 4 (Protections);
  - (l) Division 8 of Part 4 (Liability for tortious conduct by police and protective services officers);
  - (m) Part 5 (Drug and alcohol testing);
  - (n) Part 7 (Discipline);
  - (o) Divisions 2 and 3 of Part 8 (Reviews);
  - (p) Part 9 (Complaints and investigations);
  - (q) Part 10 (Investigation of protected disclosure complaints);
  - (r) section 252 (Bribery and corruption by police or protective services officers);
  - (s) section 254 (Failure to return Victoria Police identification or Victoria Police equipment);
  - (t) section 256 (Impersonating police or protective services officers);
  - (u) items 2.2, 2.11 and 2.13 of Schedule 5 (Subject matter for regulations);
  - (v) the **Independent Broad-based Anti-corruption Commission Act 2011**;
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- (w) the **Protected Disclosure Act 2012**;
- (x) the **Victorian Inspectorate Act 2011**.

**Note**

Section 104 of the **Police Regulation (Pensions) Act 1958** contains certain qualifications for a person to continue as a police reservist.

**46 Duty to act under direction and control**

- (1) A police reservist must perform his or her functions under the direction and control of the Chief Commissioner or of any other police officer or police reservist under whom he or she is placed by the Chief Commissioner.
- (2) Nothing in this section affects or takes away from the application of section 51(a) to a police reservist.

**47 Training**

The Chief Commissioner may require a police reservist to attend a course of instruction and training specified by the Chief Commissioner.

**48 Resignation**

A police reservist may resign from office by giving written notice of not less than 7 days (or a shorter period agreed by the Chief Commissioner) to the Chief Commissioner.

**49 Suspension and termination of appointment**

The Chief Commissioner may suspend or terminate the appointment of a police reservist at any time.

**PART 4—POLICE DUTIES, POWERS, ENTITLEMENTS,  
PROTECTION AND LIABILITY**

**Division 1—Oath of office**

**50 Oath of office**

- (1) Before a police officer or protective services officer performs any duty or exercises any power as a police officer or protective services officer, he or she must take an oath of office or make an affirmation of office and subscribe that oath or affirmation.
  - (2) The oath or affirmation must be—
    - (a) in Form 1 in Schedule 2 for a police officer;  
or
    - (b) in Form 2 in Schedule 2 for a protective services officer.
  - (3) The oath or affirmation is to be administered by—
    - (a) a magistrate, in the case of the Chief Commissioner or a Deputy Commissioner;  
or
    - (b) a magistrate, the Chief Commissioner or a Deputy Commissioner, in the case of an Assistant Commissioner; or
    - (c) a magistrate, the Chief Commissioner, a Deputy Commissioner or an Assistant Commissioner in any other case.
  - (4) If a person other than the Chief Commissioner administers the oath or affirmation, the person must forward the subscribed oath or affirmation to—
    - (a) the Minister, in the case of the oath or affirmation of the Chief Commissioner; or
    - (b) the Chief Commissioner, in any other case.
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**Division 2—General duties and powers**

**51 Duties and powers of police officers**

A police officer who has taken and subscribed the oath or made and subscribed the affirmation under section 50 has—

- (a) the duties and powers of a constable at common law; and
- (b) any duties and powers imposed or conferred on a police officer by or under this or any other Act or by or under any subordinate instrument.

**52 Duties and powers of protective services officers**

- (1) A protective services officer who has taken and subscribed the oath or made and subscribed the affirmation under section 50 has, in the performance of his or her functions, the duties and powers of a constable at common law.

**Note**

The functions of a protective services officer are set out in section 37.

- (2) In addition, a protective services officer on duty at a designated place has all the duties and powers imposed or conferred on the protective services officer under this or any other Act.
- (3) The regulations may prescribe a place to be a designated place for the purposes of this section.

**53 Proof of office**

If a question arises as to a person's identity as a police officer or protective services officer, or to a person's entitlement to perform the duties or exercise the powers of a police officer or protective services officer—



- (a) the common reputation of a person who is a police officer or protective services officer as being a police officer or protective services officer is evidence of that identity and entitlement; and
- (b) the absence of, or failure to produce, any written appointment or other documentary proof to establish that identity or entitlement does not prejudice or otherwise affect the performance of the duties or exercise of the powers by a person who is a police officer or protective services officer.

**54 Temporary cessation of powers during leave or secondment**

- (1) The Chief Commissioner may give a written notice under this subsection to a police officer—
  - (a) who is about to begin, or is on, a period of leave without pay of 28 days or more, other than excluded leave; or
  - (b) who is on secondment to any organisation or body.
- (2) If the Chief Commissioner gives a notice to a police officer under subsection (1), section 51 does not apply to the officer while the notice has effect.
- (3) A notice given to a police officer under subsection (1)—
  - (a) takes effect when the officer is given the notice or at the later time determined by the Chief Commissioner and specified in the notice; and

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- (b) unless cancelled earlier under subsection (5), has effect until the later of—
- (i) the expiry of the period determined by the Chief Commissioner and specified in the notice; or
  - (ii) the registration of the officer on the Police Profession Register.

**Note**

See Part 6 for registration on the Police Profession Register.

- (4) While a notice given to a police officer under subsection (1) has effect—
- (a) neither the Chief Commissioner nor any other police officer has authority to give the officer an instruction in respect of the officer's performance of his or her functions or duties; and
  - (b) the officer does not commit a breach of discipline by failing to comply with the Chief Commissioner's instructions.
- (5) The Chief Commissioner may cancel a notice given to a police officer under subsection (1) at any time by giving written notice of cancellation to the officer.
- (6) Nothing in this section affects the ability of the Chief Commissioner to end a police officer's secondment or leave without pay.
- (7) A police officer who is given a notice under subsection (1) must, as soon as practicable, return any Victoria Police equipment and Victoria Police identification that is required by the Chief Commissioner to be returned under this subsection.
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(8) In this section—

*excluded leave* means—

- (a) maternity, paternity or parental leave;  
or
- (b) compassionate leave; or
- (c) study leave; or
- (d) leave granted for the purposes of  
service with—
  - (i) an investigative agency other than  
Victoria Police; or
  - (ii) a professional association that  
represents police officers.

#### **55 Permanent cessation of powers**

- (1) All powers of a person as a police officer immediately cease when he or she ceases to be a police officer.

**Example**

A person would cease to be a police officer if his or her appointment is terminated during probation under section 28, if he or she resigns or retires under section 65 or 67 or if he or she is dismissed under section 70, 132 or 136.

- (2) All powers of a person as a protective services officer immediately cease when he or she ceases to be a protective services officer.

**Example**

A person would cease to be a protective services officer if his or her appointment is terminated during probation under section 39, if he or she resigns or retires under section 65 or 67 or if he or she is dismissed under section 70, 132 or 136.

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**Division 3—Specific duties and powers**

**56 Execution of process and warrants**

- (1) A police officer has a duty to execute—
  - (a) all process directed to him or her for the recovery of fines and other amounts; and
  - (b) all lawful summonses, warrants, orders and directions directed to him or her by a court or tribunal.
- (2) Despite subsection (1), any process, summons, warrant, order or direction of a court or tribunal directed to a police officer may be executed by any other police officer, who has the same authority as if it had been directed to him or her.
- (3) In this section—

*court or tribunal* includes—

  - (a) a board, commission or other body established by or under an Act; and
  - (b) a coroner; and
  - (c) a member, officer or member of staff of a court or tribunal (including of a person or body referred to in paragraph (a) or (b)).

**57 Disposal of unclaimed property**

- (1) This section applies to any property that has come into the possession of a member of Victoria Police personnel in the performance of duties or exercise of powers as such a member.
- (2) The property may be disposed of as follows—
  - (a) if the property is of a perishable nature, it may be disposed of if it is not claimed after reasonable inquiries as to ownership have been made; or

- (b) if the property was left by a person imprisoned or detained in a police gaol under Part 3 of the **Corrections Act 1986**, it may be disposed of if it is not claimed within 12 months after being left; or
  - (c) in any other case, the property may be disposed of if it is not claimed within 3 months after coming into the possession of the member of Victoria Police personnel.
- (3) Disposal of unclaimed property is, at the direction of an authorised person, to be done by—
- (a) sale by public auction; or
  - (b) destruction; or
  - (c) any other means (including sale not by public auction) that are approved by the Minister either in relation to particular property or generally in relation to particular kinds of property.
- (4) If disposal is by sale by public auction, notice of the auction must be published in the Government Gazette before it takes place.
- (5) The net proceeds of any sale under this section are to be paid into the Consolidated Fund.
- (6) A sale under this section is valid against all persons.
- (7) The Chief Commissioner may, in writing, authorise a person to direct the disposal of unclaimed property under this section.
- (8) In this section—
- authorised person** means—
- (a) a commissioned officer; or
  - (b) a person authorised under subsection (7).
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## **58 Disputed property in possession of police**

- (1) This section applies to property (other than property seized under a warrant to seize property issued under section 73 of the **Magistrates' Court Act 1989**) that has come into the possession of a police officer—
  - (a) in the performance of his or her duties as a police officer; or
  - (b) in the exercise of his or her powers as a police officer.
- (2) A police officer may apply to the Magistrates' Court for an order under this section if one or more persons claim an interest in the property that would entitle them to possession of the property.
- (3) The police officer must give written notice of the application—
  - (a) to any person who claims an interest in the property that would entitle the person to possession of the property; and
  - (b) to any person to whom the Magistrates' Court requires the officer to give notice; and
  - (c) to any other person the officer reasonably believes has an interest in the property that would entitle the person to possession of the property.
- (4) On application under this section, the Magistrates' Court may—
  - (a) decide who is entitled to possession of the property; and
  - (b) if the police officer is not entitled to possession of the property, order the police officer to deliver the property to the person who is entitled to possession of it.

- (5) A person notified under subsection (3) and any other person who claims an interest that would entitle the person to possession of the property may appear and be heard at the hearing of the application.
- (6) If a person who has been given notice under subsection (3) fails to attend the hearing, the hearing may be held in the person's absence.
- (7) If a police officer complies with an order made under this section to deliver property to a person, proceedings cannot be brought against the officer or the State for recovery of the property or recovery of the value of the property.
- (8) Subsection (7) does not affect any other rights or liabilities of any person who has or claims to have an interest in the property.

#### **59 Assistance to coroners**

A police officer may assist a coroner in the investigation of a death or fire under Part 4 of the **Coroners Act 2008**.

##### **Note**

See also section 36 of the **Coroners Act 2008** which requires a police officer to give relevant information to a coroner in an investigation under Part 4 of that Act. In addition, section 60 of that Act provides for assistance by police officers in an inquest.

#### **Division 4—Chief Commissioner's instructions and determinations**

#### **60 Chief Commissioner's instructions**

- (1) The Chief Commissioner may from time to time issue, amend and revoke instructions for the general administration of Victoria Police and for the effective and efficient conduct of the operations of Victoria Police.
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- (2) Without limiting the matters that may be contained in the Chief Commissioner's instructions, they may include—
- (a) the specification of things (including uniforms) to be Victoria Police equipment for the purposes of this Act; and
  - (b) the specification of things to be Victoria Police identification for the purposes of this Act; and
  - (c) any other matters determined by the Chief Commissioner under section 62.
- (3) The Chief Commissioner's instructions may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person, authority or body whether—
- (a) wholly or partially, or as amended by the instructions; or
  - (b) as formulated, issued, prescribed or published at the time the instructions are issued or at any time before the instructions are issued; or
  - (c) as amended from time to time.
- (4) Section 32 of the **Interpretation of Legislation Act 1984** does not apply to the Chief Commissioner's instructions.
- (5) Nothing in this section affects or takes away from the application of section 51(a) or 52(1).



**61 Personnel to comply with the Chief Commissioner's instructions**

All members of Victoria Police personnel must comply with the Chief Commissioner's instructions.

**Note**

Non-compliance can constitute a breach of discipline—see section 125(1)(c).

**62 Determination of uniforms and other equipment and other standards**

- (1) The Chief Commissioner may from time to time determine—
- (a) the type or design of uniforms or other equipment to be worn or carried by police officers, police recruits or protective services officers; and
  - (b) the conditions under which uniforms are to be worn or other equipment is to be carried; and
  - (c) standards of grooming and acceptable clothing accessories for police officers, police recruits or protective services officers, which may—
    - (i) differ based on sex, gender identity, physical features or religious belief or activity; and
    - (ii) provide for exceptions based on genuine medical, cultural or religious grounds.
- (2) In this section—
- acceptable clothing accessories* includes but is not limited to, jewellery, headgear, sunglasses and makeup.
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**Division 5—General employment matters**

**63 Training courses**

- (1) The Chief Commissioner may make an agreement with a police officer or protective services officer for the officer to undertake a training course and may require him or her to give a surety for compliance with the agreement.
- (2) Any agreement made under subsection (1) by the Chief Commissioner with a Deputy Commissioner must be approved by the Governor in Council before it can take effect.

**64 Long service leave**

A police officer or protective services officer is entitled to long service leave in accordance with Schedule 3.

**65 Resignation and retirement**

- (1) A police officer or protective services officer may resign or retire from Victoria Police by giving written notice of not less than 4 weeks (or a shorter period agreed by the Chief Commissioner) to the Chief Commissioner.
- (2) This section does not apply to the Chief Commissioner, a Deputy Commissioner or an Assistant Commissioner.

**Note**

Schedule 1 contains provisions for resignation and retirement by the Chief Commissioner, Deputy Commissioners and Assistant Commissioners.

**66 Abandonment of appointment**

A police officer or protective services officer who is absent from duty without authorisation or lawful reason for more than one calendar month is taken to have abandoned his or her appointment as a police officer or protective services officer.

**Note**

The powers of a police officer or protective services officer immediately cease on abandonment of appointment—see section 55.

**67 Ill-health retirement**

- (1) The Chief Commissioner may at any time on his or her own motion, or at the request of a police officer or protective services officer, inquire into the physical or mental fitness and capacity of the officer to perform his or her duties.
  - (2) For the purposes of an inquiry, the Chief Commissioner may—
    - (a) require the police officer or protective services officer to be examined by—
      - (i) the Police Medical Officer; or
      - (ii) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student) nominated by the Chief Commissioner; and
    - (b) require the person conducting the examination to give a medical report of the examination to the police officer or protective services officer and the Chief Commissioner.
  - (3) If, after considering the medical report (if any) under section (2)(b), the Chief Commissioner considers that the police officer or protective services officer is physically or mentally incapable of performing his or her duties, the Chief Commissioner may give a notice to the officer stating—
    - (a) that the Chief Commissioner is considering taking action to retire the officer; and
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- (b) the grounds on which the Chief Commissioner believes that the officer is physically or mentally incapable of performing his or her duties; and
  - (c) that the officer may make written submissions to the Chief Commissioner on the matter within 21 days after receiving the notice.
- (4) If the police officer or protective services officer makes any written submissions within 21 days after receiving the notice, or within a later period allowed by the Chief Commissioner, the Chief Commissioner must consider those submissions.
- (5) After complying with subsections (3) and (4), if the Chief Commissioner is satisfied that the police officer or protective services officer is physically or mentally incapable of performing his or her duties, the Chief Commissioner, by written notice, may cause the officer to be retired.
- (6) A notice under subsection (5) must state the grounds on which the Chief Commissioner is satisfied that the police officer or protective services officer is physically or mentally incapable of performing his or her duties.

#### **Division 6—Incapacity for duty**

#### **68 Definitions**

- (1) In this Division—

*incapacity* includes—

- (a) lack of aptitude; and
- (b) inefficiency; and
- (c) lack of competence or ability;

*notice of incapacity* means a notice given under section 69;

*remedial action* means any action or process of a remedial nature (other than dismissal) taken or undertaken in relation to the performance of a police officer or protective services officer, including—

- (a) the imposition of a remedial plan; and
  - (b) the amendment of an existing remedial plan; and
  - (c) transfer of the officer to other duties.
- (2) In this Division, a reference to a police officer or protective services officer being incapable of performing his or her duties as a police officer or protective services officer includes—
- (a) the officer displaying a lack of aptitude for the performance of those duties; and
  - (b) the officer being inefficient in the performance of those duties; and
  - (c) the officer displaying a lack of competence or ability to meet the inherent requirements of those duties.

### **69 Notice of incapacity**

- (1) The Chief Commissioner may give a written notice under this section to a police officer or protective services officer if the Chief Commissioner reasonably believes that—
- (a) the officer is incapable of performing his or her duties as a police officer or protective services officer; and
  - (b) the incapacity is not caused by any physical or mental impairment; and
  - (c) the incapacity has been the subject of remedial action which has not resolved the matter.
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- (2) A notice of incapacity must state—
- (a) that the Chief Commissioner is considering taking any of the following actions, as specified in the notice—
    - (i) transferring the police officer or protective services officer to other duties that the Chief Commissioner believes are within the officer's capacity; or
    - (ii) reducing the officer's rank or seniority; or
    - (iii) both actions specified in subparagraphs (i) and (ii); or
    - (iv) dismissing the officer; and
  - (b) the grounds on which the Chief Commissioner believes that the officer is incapable of performing his or her duties; and
  - (c) that the officer may make written submissions to the Chief Commissioner on the matter within 21 days after receiving the notice.

**70 Determination of incapacity**

- (1) This section applies if—
- (a) a notice of incapacity has been given to a police officer or protective services officer; and
  - (b) the Chief Commissioner has considered any written submissions made, within 21 days after receipt of the notice, by the officer; and
  - (c) the Chief Commissioner is satisfied that the officer is incapable of performing his or her duties.

- (2) The Chief Commissioner may, by written notice to the police officer or protective services officer—
- (a) transfer the officer to other duties that the Chief Commissioner believes are within the officer's capacity; or
  - (b) reduce the officer's rank or seniority; or
  - (c) take both actions specified in paragraphs (a) and (b); or
  - (d) dismiss the officer.
- (3) A notice under subsection (2) must state the grounds on which the Chief Commissioner is satisfied that the officer is incapable of performing his or her duties.
- (4) If the Chief Commissioner reduces the officer's rank under subsection (2)(b) or (c), the Chief Commissioner must determine the officer's seniority in relation to other officers of the rank to which the officer has been reduced.

**Note**

This Division does not apply to Assistant Commissioners—see clause 13 of Part 3 of Schedule 1.

**Division 7—Protections**

**71 Protection of people executing warrants**

- (1) This section applies in relation to a warrant issued by—
- (a) the Magistrates' Court; or
  - (b) a magistrate; or
  - (c) a registrar of the Magistrates' Court; or
  - (d) a board, tribunal, commission or other body (whether constituted by one person or more than one person) established by or under an Act; or
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- (e) a member of a board, tribunal, commission or other body referred to in paragraph (d); or
  - (f) an officer of a board, tribunal, commission or other body referred to in paragraph (d).
- (2) Proceedings cannot be brought against a protected person for anything done or purportedly done in the course of executing a warrant until—
- (a) a written demand to inspect and obtain a copy of the warrant, signed by the person intending to bring the action, has been made to the protected person either in person or by being left at the protected person's usual place of residence or work; and
  - (b) the first of the following occurs—
    - (i) the demand is complied with; or
    - (ii) the demand is refused; or
    - (iii) 6 days pass after the day on which the demand was made.
- (3) In proceedings brought against a protected person for anything done or purportedly done in the course of executing a warrant, the protected person is not to be held liable merely because—
- (a) there was an irregularity or defect in the issuing of the warrant; or
  - (b) the person who issued the warrant lacked the jurisdiction to do so.
- (4) The court must dismiss the proceedings with costs if the protected person—
- (a) produces the warrant; and
  - (b) proves that—
    - (i) the signature on the warrant is that of the person whose signature it purports to be (the *issuer*); and
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- (ii) the issuer has the reputation of being, and acts as, a person who has the jurisdiction to issue the warrant; and
  - (iii) the act complained of was done in the course of executing the warrant.
- (5) Subsections (3) and (4) apply whether or not the proceedings are brought jointly against the protected person and the person who issued the warrant.
- (6) In this section—
- protected person* means—
- (a) a police officer or protective services officer; or
  - (b) a person acting at the direction of a police officer or protective services officer; or
  - (c) a person assisting a police officer or protective services officer.

### **Division 8—Liability for tortious conduct by police and protective services officers**

#### **72 What is a police tort?**

- (1) For the purposes of this Act, a *police tort* is a tort committed by a police officer or protective services officer in the performance or purported performance of the officer's duties.
  - (2) For the purposes of subsection (1), a *tort* includes—
    - (a) detrimental action (within the meaning of the **Protected Disclosure Act 2012**) taken by a police officer or protective services officer in reprisal for a protected disclosure within the meaning of that Act; and
    - (b) any other prescribed action or conduct.
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- (3) To avoid doubt, subsection (2) does not limit what is a tort for the purposes of subsection (1).
- (4) For the purposes of subsection (1), it is irrelevant whether the tort is committed by the police officer or protective services officer alone or jointly or severally with any other person.

### **73 What is a police tort claim?**

- (1) For the purposes of this Act, a *police tort claim* is a claim for damages or other relief in respect of an alleged police tort.
- (2) A *police tort claim* includes—
  - (a) an action for damages under Part III of the **Wrongs Act 1958** in respect of an alleged police tort; and
  - (b) a counterclaim for damages or other relief in respect of an alleged police tort committed by a police officer or protective services officer that is made by a person in a legal proceeding brought by the officer against that person; and
  - (c) any other prescribed action, claim or proceeding in respect of an alleged police tort.
- (3) To avoid doubt, subsection (2) does not limit what is a police tort claim.

### **74 Liability of the State for police torts**

- (1) Subject to this section, the State is liable for a police tort.
- (2) The State is not liable for a police tort if the State establishes on a police tort claim that the conduct giving rise to the police tort was serious and wilful misconduct by the police officer or protective services officer who committed the police tort.

- (3) If a police officer or protective services officer commits a police tort for which the State is liable, the officer—
  - (a) is not liable to any person for the police tort; and
  - (b) is not liable to indemnify, or to pay any contribution to, the State in respect of the liability incurred by the State.
- (4) The State is not liable for a tort committed by a police officer or protective services officer that is not a police tort.

**75 How can police tort claims be made?**

- (1) Except as otherwise provided by this Division, if a person wishes to make a police tort claim, the person must make it against the State and not against the police officer or protective services officer who allegedly committed the police tort.
  - (2) A person who makes a police tort claim (other than a counterclaim) against the State may seek to have the police officer or protective services officer who allegedly committed the police tort joined to the proceeding only if the State pleads in its defence to the claim that—
    - (a) the State would not be liable for the alleged tort, if proven, because of section 74(2); or
    - (b) the alleged tort, if proven, would not be a police tort.
  - (3) If the court permits the person to have the police officer or protective services officer joined—
    - (a) the person is not required to file a new originating process, but may instead amend the existing originating process; and
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- (b) the court may make any orders it considers appropriate to enable the existing originating process to be amended.
- (4) Nothing in the **Limitation of Actions Act 1958** prevents the making of a claim in the amended originating process against the police officer or protective services officer in respect of the alleged tort if the amendment to the originating process is made within 2 months after the State's defence is served on the person making the claim.

#### **76 Counterclaims**

- (1) This section applies to a counterclaim for damages or other relief in respect of an alleged police tort committed by a police officer or protective services officer that is made by a person in a legal proceeding brought by the officer against that person.
- (2) The person may seek to have the State joined to the proceeding.
- (3) Nothing in this section prevents the State from pleading in its defence to the counterclaim that—
  - (a) the State would not be liable for the alleged tort, if proven, because of section 74(2); or
  - (b) the alleged tort, if proven, would not be a police tort.

#### **77 Time for serving State's defence**

- (1) For the purposes of serving a defence referred to in section 75(2) or 76(3), if, apart from this section, the State would be required to serve the defence within a specified period other than 60 days, that requirement is to apply as if the specified period were 60 days.
- (2) Despite subsection (1), the court in which the police tort claim is made may extend the time by which the State is required to serve its defence.

### **78 Costs in police tort claims**

If the court finds on a police tort claim that the State is not liable for a police tort because of section 74(2), the State is not entitled to recover any costs from, or to be awarded any costs against, the person who made the claim or the police officer or protective services officer who committed the police tort.

#### **Note**

Section 74(2) provides that the State is not liable if it establishes on a police tort claim that the conduct giving rise to the police tort was serious and wilful misconduct by the police officer or protective services officer who committed the police tort.

### **79 Payments by the State if police or protective services officer liable**

- (1) This section applies if, on a police tort claim, a person (*the claimant*) is awarded damages against a police officer or protective services officer in respect of a police tort committed by the officer.
- (2) The Minister, on behalf of the State, must pay an amount to the claimant, not exceeding the amount of damages and any costs ordered to be paid to the claimant, if the Minister is satisfied that—
  - (a) the claimant is unlikely to recover the amount from the officer who committed the police tort; and
  - (b) the claimant has exhausted all other avenues to recover the amount.

#### **Example**

The amount may be recoverable by the claimant from a co-defendant or an insurer.

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**80 Division does not affect certain claims and proceedings**

Nothing in this Division—

- (a) prevents a person from bringing legal proceedings, or claiming damages or other relief in any legal proceeding, against another person who is not a police officer or protective services officer but who is jointly or severally liable for a police tort; or
- (b) prevents a person from bringing legal proceedings, or claiming damages or other relief in any legal proceeding, against a police officer or protective services officer in respect of an alleged tort that is not a police tort.

**81 Effect of Division on other laws**

- (1) This Division has effect despite any other law or any rule of a court.
  - (2) However, nothing in this Division affects the operation of the **Limitation of Actions Act 1958** except as provided by section 75(4).
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**PART 5—DRUG AND ALCOHOL TESTING**

**Division 1—Introduction**

**82 Definitions**

In this Part—

*approved health professional* has the same meaning as in the **Road Safety Act 1986**;

*critical incident* means—

- (a) an incident involving the discharge of a firearm by a member of Victoria Police personnel while the member is on duty; or
- (b) an incident involving a member of Victoria Police personnel while the member is on duty which—
  - (i) results in the death of, or serious injury to, a person; and
  - (ii) also involves any one or more of the following—
    - (A) the use of force by the member;
    - (B) the use of a motor vehicle by the member (including as a passenger) in the course of the member's duty;
    - (C) the death of, or serious injury to, a person while that person is in the custody of the member;

*designated work function* means a work function determined under section 83(2) to be a designated work function;

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***designated work unit*** means a work unit determined under section 83(1) to be a designated work unit;

***drug of dependence*** has the same meaning as in the **Drugs, Poisons and Controlled Substances Act 1981**;

***random selection*** means the selection of a person from a pool of persons entirely by chance so that each person in the pool has the same probability of being chosen as any other person in the pool;

***registered medical practitioner*** means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

***registered nurse*** means a person registered under the Health Practitioner Regulation National Law—

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student); and
- (b) in the registered nurses division for that profession;

***rostered off*** has the meaning given in section 84;

***rostered on*** has the meaning given in section 84;

***serious injury*** includes an injury that—

- (a) is life threatening; or
- (b) is likely to result in permanent impairment; or
- (c) is likely to require long-term rehabilitation; or



- (d) is, in the opinion of the Chief Commissioner, of such nature, or occurred in such circumstances, that the infliction of it is likely to bring Victoria Police into disrepute or diminish public confidence in Victoria Police;

*testing direction* means a direction to a person to do one or more of the following for the purpose of testing for the presence of alcohol or a drug of dependence—

- (a) give a sample of breath;
- (b) give a sample of urine;
- (c) give a sample of hair;
- (d) give a sample of oral fluid;
- (e) give a buccal swab;
- (f) allow either of the following to take a sample of the person's blood—
  - (i) a registered medical practitioner;
  - (ii) an approved health professional.

**83 Designated work units and designated work functions**

- (1) The Chief Commissioner or a Deputy Commissioner, by instrument, may from time to time determine that a work unit within Victoria Police is a designated work unit for the purposes of this Part.
- (2) The Chief Commissioner or a Deputy Commissioner, by instrument, may from time to time determine that a work function carried out by members of Victoria Police personnel in the course of duty or in the performance of their duties is a designated work function for the purposes of this Part.

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**84 Meaning of *rostered on* and *rostered off***

For the purposes of this Part, a member of Victoria Police personnel—

- (a) is *rostered on* when he or she—
  - (i) has reported, or is required to report, for work in accordance with a roster; or
  - (ii) is working a period of overtime in accordance with an industrial instrument applying to the member; and
- (b) is *rostered off* at all other times.

**Division 2—Critical incident testing**

**85 Persons subject to critical incident testing**

This Division applies to members of Victoria Police personnel whether they are rostered on or rostered off.

**86 Critical incident testing**

- (1) The Chief Commissioner may give a testing direction (other than a direction to give a sample of hair) to a person to whom this Division applies if the conditions in subsection (3) are satisfied.
- (2) The Chief Commissioner may direct a registered medical practitioner or registered nurse to take a sample of blood for analysis for the purpose of testing for the presence of alcohol or a drug of dependence from a person to whom this Division applies if—
  - (a) the person is unconscious or would be otherwise unable to comply with a testing direction given under subsection (1); and
  - (b) the conditions in subsection (3) are satisfied.

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- (3) The conditions are that—
- (a) the Chief Commissioner reasonably believes that the person has been involved in a critical incident (whether or not the person was physically present at the place where the critical incident occurred); and
  - (b) the direction is given—
    - (i) in the case of a critical incident referred to in paragraph (b)(ii)(B) of the definition of *critical incident* in section 82—within 3 hours after the critical incident occurred; or
    - (ii) in the case of any other critical incident—within a reasonable time after the critical incident occurred.

**87 Samples taken where person is unconscious etc.**

- (1) If a sample of the person's blood is taken in the circumstances referred to in section 86(2), the Chief Commissioner must, on the person regaining consciousness or otherwise becoming able to comply with a testing direction that could have been given to him or her under section 86(1), advise the person—
- (a) of the taking of the sample; and
  - (b) that he or she may refuse to consent to the use of any evidence derived from the sample; and
  - (c) that refusal to consent to the use of the evidence—
    - (i) if the person is a police officer or protective services officer—constitutes a breach of discipline; or

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- (ii) if the person is a police recruit—may be taken into account in the management of the person's performance of his or her duties; or
  - (iii) if the person is a Victoria Police employee—may be taken into account in a determination under the **Public Administration Act 2004** or an industrial instrument applying to Victoria Police employees as to whether the employee has engaged in unsatisfactory performance, misconduct or serious misconduct.
- (2) Evidence derived from a sample obtained in accordance with a direction under section 86(2) must be destroyed if the person from whom the sample was taken refused to consent under subsection (1) to the use of the evidence.
  - (3) The Chief Commissioner must cause a sample taken under section 86(2) in respect of which consent is refused under subsection (1) to be destroyed.

### **Division 3—Targeted Testing**

#### **88 Targeted testing—Victoria Police personnel (other than Victoria Police employees)**

- (1) This section applies to members of Victoria Police personnel who are rostered on, other than Victoria Police employees.
- (2) Subject to subsection (4), the Chief Commissioner may give a testing direction to a person specified in subsection (1) if—
  - (a) the Chief Commissioner reasonably suspects that the person has consumed alcohol or a drug of dependence; and

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- (b) because of that suspicion, the Chief Commissioner reasonably believes that the person ought to be tested for the good order and discipline of Victoria Police.
  - (3) Subject to subsection (4), the Chief Commissioner may give a testing direction to a person specified in subsection (1) if the Chief Commissioner reasonably believes that the person appears to be unfit for work because he or she has consumed alcohol or a drug of dependence.
  - (4) The Chief Commissioner may give a person who has been required under section 89 to report for work a testing direction only for the purpose of testing for the presence of a drug of dependence.

**89 Persons may be rostered on for the purposes of section 88(2)**

- (1) The Chief Commissioner may require a person to whom section 88(2) applies who is rostered off to report for work for the purpose of giving that person a testing direction under that section.
- (2) A person who has been required under subsection (1) to report for work is taken to be rostered on for the purposes of this Division.
- (3) A person who has been required under subsection (1) to report for work must be accompanied by a police officer to the place where the person will undergo testing for the presence of a drug of dependence.
- (4) A person who has been required under subsection (1) to report for work must not refuse or fail to accompany the police officer to the place where the person will undergo testing for the presence of a drug of dependence without reasonable excuse.

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- (5) If a person who has been required under subsection (1) to report for work refuses or fails to accompany the police officer to the place where the person will undergo testing for the presence of a drug of dependence because he or she is ill, the person must provide—
- (a) if a form is prescribed for the purposes of this section—a copy of the prescribed form signed by a registered medical practitioner stating the testing would be prejudicial to the person's care and treatment; or
  - (b) if no form is prescribed for the purposes of this section—a certificate signed by a registered medical practitioner stating the testing would be prejudicial to the person's care and treatment.

**90 Targeted testing—certain Victoria Police employees**

- (1) This section applies to Victoria Police employees who are rostered on and who—
- (a) work in a designated work unit; or
  - (b) carry out a designated work function in the course of their duty or in the performance of their duties.
- (2) The Chief Commissioner may give a testing direction to a person specified in subsection (1) if the Chief Commissioner reasonably believes that the person appears to be unfit for work because he or she has consumed alcohol or a drug of dependence.

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**Division 4—Designated work unit testing and designated work function testing**

**91 Persons subject to designated work unit testing or designated work function testing**

This Division applies to members of Victoria Police personnel who are rostered on and who—

- (a) work in a designated work unit; or
- (b) carry out a designated work function in the course of their duty or in the performance of their duties.

**92 Designated work unit testing**

The Chief Commissioner may give a testing direction (other than a direction to give a sample of hair) to a person to whom this Division applies who works in a designated work unit if—

- (a) the Chief Commissioner gives a direction to every person who is rostered on and who works in that designated work unit; or
- (b) two or more persons have been chosen for testing by random selection from the persons who are rostered on and who work in the same designated work unit.

**93 Designated work function testing**

The Chief Commissioner may give a testing direction (other than a direction to give a sample of hair) to a person to whom this Division applies who carries out a designated work function in the course of his or her duty or in the performance of his or her duties if—

- (a) the Chief Commissioner gives a direction to every person who is rostered on and who carries out that designated work function in the course of their duty or in the performance of their duties; or

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- (b) two or more persons have been chosen for testing by random selection from the persons who are rostered on and who carry out the same designated function in the course of their duty or in the performance of their duties.

#### **Division 5—Random testing**

##### **94 Persons subject to random testing**

This Division applies to members of Victoria Police personnel who are rostered on, other than Victoria Police employees.

##### **95 Random testing**

The Chief Commissioner may give a testing direction (other than a direction to give a sample of hair) to one or more persons to whom this Division applies if the person or persons have been chosen by random selection from the persons to whom this Division applies.

#### **Division 6—Use of test results**

##### **96 Chief Commissioner may have regard to evidence in certain circumstances**

- (1) The Chief Commissioner may have regard to evidence derived from a sample obtained from a person in accordance with a testing direction (other than a testing direction given under section 88(2))—
- (a) in managing the person's performance of his or her duties in relation to the consumption of drugs or alcohol; or
  - (b) if the person is a police officer (other than a special constable) or a protective services officer—in conducting an inquiry or investigation under Division 6 of Part 4,



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- Part 7, Part 9 or Part 10 in respect of the person; or
- (c) if the person is a special constable—  
in conducting an investigation under section 195 in respect of the person; or
  - (d) if the person is a Victoria Police employee—  
in relation to the making of a determination under the **Public Administration Act 2004** or an industrial instrument applying to Victoria Police employees as to whether the employee has engaged in unsatisfactory performance, misconduct or serious misconduct; or
  - (e) in a proceeding arising out of, or connected with, an investigation referred to in paragraph (b), (c) or (d).
- (2) The Chief Commissioner may have regard to evidence derived from a sample obtained from a person in accordance with a testing direction given under section 88(2)—
- (a) if the person is a police officer (other than a special constable) or a protective services officer—in conducting an inquiry or investigation under Part 7, Part 9 or Part 10 in respect of the person; or
  - (b) if the person is a special constable—  
in conducting an investigation under section 195 in respect of the person; or
  - (c) in a proceeding arising out of, or connected with, an investigation referred to in paragraph (a) or (b).
- (3) To avoid doubt, subsections (1) and (2) apply to evidence derived from a sample obtained in accordance with a testing direction whether or not that evidence was used in any previous management of the person's performance, inquiry,
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investigation, determination or proceeding of a kind referred to in subsection (1) or (2) (as the case requires).

**97 Admissibility of test results in certain proceedings**

- (1) Evidence derived from a sample obtained in accordance with a testing direction is inadmissible in any proceeding in a court, tribunal or before a person or body authorised to hear and receive evidence.
- (2) Subsection (1) does not apply—
  - (a) in a proceeding under the **Accident Compensation Act 1985** to rebut or support an allegation that the presence of alcohol or a drug of dependence contributed to the injury in respect of which the proceeding was commenced; or
  - (b) in a prosecution under the **Occupational Health and Safety Act 2004** to rebut or support an allegation that the presence of alcohol or a drug of dependence contributed to the occurrence of the act, matter or thing constituting the offence in respect of which the prosecution is brought; or
  - (c) in a proceeding arising out of, or connected with—
    - (i) an inquiry or investigation of a police officer (other than a special constable) or a protective services officer under section 67, Division 6 of Part 4, Part 7, Part 9 or Part 10; or
    - (ii) an investigation of a special constable under section 195; or
    - (iii) a determination under the **Public Administration Act 2004** or an industrial instrument applying to

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Victoria Police employees as to whether a Victoria Police employee has engaged in unsatisfactory performance, misconduct or serious misconduct; or

- (d) in an investigation by the IBAC or a proceeding arising out of, or connected with, an investigation by the IBAC that relates to a member of Victoria Police personnel; or
  - (e) in a proceeding arising out of, or connected with, a critical incident (including a police tort claim).
- (3) Subsection (2) does not apply to evidence derived from a sample obtained in accordance with section 86(2) if the person from whom the sample was taken refuses or has refused to consent to the use of the evidence.
  - (4) To avoid doubt, subsection (2) applies to evidence derived from a sample obtained in accordance with a testing direction whether or not that evidence was used in any previous inquiry, investigation, determination or proceeding of a kind referred to in subsection (2).
  - (5) In this section—  
*proceeding* includes a coronial inquest or inquiry.

### **98 Confidentiality of test results**

The Chief Commissioner must ensure that the result of any test conducted in accordance with a testing direction given under this Part is handled in accordance with the regulations.

#### **Note**

Section 232 provides that it is an offence to disclose identifying information in relation to drug and alcohol testing.

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**Division 7—General**

**99 Requirement to comply with testing direction**

A member of Victoria Police personnel must comply with a testing direction given to him or her by the Chief Commissioner in accordance with this Part.

**100 Offence to tamper with a sample**

- (1) A person must not, without reasonable excuse, do any of the following to a sample obtained in accordance with a testing direction made under this Part—
- (a) interfere or tamper, or attempt to interfere or tamper, with that sample; or
  - (b) substitute, or attempt to substitute, another sample for that sample; or
  - (c) pass off, or attempt to pass off, another sample for that sample.

**Penalty:** In the case of an individual, 60 penalty units or imprisonment for 6 months or both;

In the case of a body corporate,  
300 penalty units.

**Note**

See section 72 of the **Criminal Procedure Act 2009**, which deals with the evidential burden of proof.

- (2) Without limiting the operation of subsection (1), interfering or tampering with a sample includes—
- (a) improperly processing a sample for the purpose of falsifying test results; or
  - (b) diluting or adulterating a sample.

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**101 Limitation of liability for registered medical practitioners etc.**

Neither of the following persons is liable for anything properly and necessarily done in the course of taking any sample which he or she reasonably believes was required or allowed to be taken from any person under this Part—

- (a) a registered medical practitioner;
- (b) an approved health professional.

**102 Operation of the Road Safety Act 1986**

Nothing in this Part affects the operation of Part 5 of the **Road Safety Act 1986**.

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**PART 6—POLICE REGISTRATION**

**Division 1—Registration**

**103 Qualifications for registration**

A person is qualified for registration under this Part if the person—

- (a) is of good character and reputation; and
- (b) has any qualifications and experience prescribed by the regulations for registration at a specified rank; and
- (c) has the aptitude and efficiency required to perform as a police officer at a specified rank.

**104 Application for registration**

- (1) A person may apply to the PRS Board for registration under this Part if the person is—
  - (a) a police officer who is absent on secondment to another body or institution or on leave without pay; or
  - (b) a former police officer, other than a former police officer who has been dismissed from Victoria Police.

**Note**

Applications should be made to the Registration Division of the PRS Board, which performs the PRS Board's registration functions (see sections 202(1)(a) and 203(a)).

- (2) An application must—
  - (a) be made in writing in the form approved by the PRS Board; and
  - (b) contain the information required by the PRS Board; and

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- (c) be accompanied by—
- (i) evidence of the qualifications and experience that the applicant claims qualifies himself or herself to registration at a specified rank; and
  - (ii) the prescribed application fee.
- (3) A function of the PRS Board under subsection (2)(a) and (b) may be performed by the President of the PRS Board or the Deputy President of the Registration Division.

### **105 Registration**

- (1) The PRS Board may register an applicant if satisfied that the applicant is qualified for registration.

**Note**

Section 103 sets out the qualifications for registration.

- (2) The PRS Board may register an applicant subject to any conditions that the PRS Board considers appropriate.
- (3) The PRS Board cannot refuse to register an applicant, or register an applicant subject to conditions, unless the PRS Board has—
- (a) informed the applicant of the PRS Board's intention to do so; and
  - (b) given the applicant a reasonable opportunity to make submissions to the PRS Board; and
  - (c) taken any submissions made by the applicant into account.
- (4) If the PRS Board registers an applicant, the PRS Board must—
- (a) enter details of the registration in the Police Profession Register; and

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- (b) give the applicant a certificate of registration that includes—
- (i) the applicant's name; and
  - (ii) the date on which the applicant was registered; and
  - (iii) the rank at which the applicant is registered; and
  - (iv) any conditions to which the registration is subject; and
  - (v) any prescribed information.
- (5) The PRS Board must notify the applicant in writing of its decision on the application.
- (6) If the PRS Board refuses to register an applicant, or registers an applicant subject to conditions, the notification under subsection (5) must include the reasons for the PRS Board's decision.
- (7) A function of the PRS Board under this section may be performed by the President of the PRS Board or the Deputy President of the Registration Division.

#### **106 Commencement and duration of registration**

- (1) Registration of a person under this Part takes effect when the PRS Board enters the details of the registration in the Police Profession Register.
- (2) Registration of a person under this Part remains in force until the earlier of—
- (a) the expiry of the period determined by the PRS Board and specified in the certificate of registration; or
  - (b) the appointment of the person as a police officer or the person's return to duty as a police officer (as the case requires); or
  - (c) the cancellation of the person's registration.
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**Division 2—Renewal of registration**

**107 Board must notify person when registration about to expire**

- (1) The PRS Board must notify a person who is registered under this Part, in writing at least 2 months before the day on which the person's registration is due to expire—
  - (a) that the person's registration is due to expire; and
  - (b) that the person may apply to have their registration renewed; and
  - (c) of the date on which the person's registration will expire.
- (2) A function of the PRS Board under this section may be performed by the President of the PRS Board or the Deputy President of the Registration Division.

**108 Application for renewal of registration**

- (1) A person who is registered under this Part may apply to the PRS Board for renewal of registration.

**Note**

Applications are to be made to the Registration Division of the PRS Board, which performs the PRS Board's registration functions (see sections 202(1)(a) and 203(a)).

- (2) An application for renewal must—
  - (a) be in writing in the form approved by the PRS Board; and
  - (b) contain the information required by the PRS Board; and

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- (c) be accompanied by satisfactory evidence of—
- (i) the applicant's good character and reputation; and
  - (ii) the applicant's qualifications and experience prescribed by the regulations for registration at a specified rank; and
  - (iii) the applicant's aptitude and efficiency required to perform as a police officer at a specified rank; and
- (d) be accompanied by the prescribed fee.
- (3) If the PRS Board has not decided a person's application for renewal of registration before the date that the registration would expire (but for this subsection), the registration continues until the later of—
- (a) the time when the PRS Board renews the person's registration; or
  - (b) the time when the PRS Board gives the person a notice of its refusal to renew the person's registration.
- (4) A function of the PRS Board under subsection (2)(a) and (b) may be performed by the President of the PRS Board or the Deputy President of the Registration Division.

### **109 Renewal of registration**

- (1) The PRS Board may renew a person's registration under this Part if it is satisfied that the applicant continues to be qualified for registration.

**Note**

Section 103 sets out the qualifications for registration.

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- (2) The PRS Board may renew an applicant's registration subject to any conditions the PRS Board considers appropriate.
  - (3) The PRS Board cannot refuse to renew a person's registration, or renew a person's registration subject to conditions, unless the PRS Board has—
    - (a) informed the person of the PRS Board's intention to do so; and
    - (b) given the person a reasonable opportunity to make submissions to the PRS Board; and
    - (c) taken any submissions made by the applicant into account.
  - (4) The PRS Board must notify, in writing, a person who has applied for renewal of registration of its decision on the application.
  - (5) If the PRS Board refuses to renew a person's registration, or renews the person's registration subject to conditions, the notification under subsection (4) must include the reasons for the PRS Board's decision.
  - (6) A function of the PRS Board under this section may be performed by the President of the PRS Board or the Deputy President of the Registration Division.

### **Division 3—Suspension and cancellation of registration**

#### **110 Mandatory suspension of registration**

- (1) If the PRS Board receives a declaration by the Chief Commissioner that a person who is registered has been suspended from duty or directed to take leave from Victoria Police, the PRS Board must, by written notice, suspend the registration of the person under this Part.

**Note**

The Chief Commissioner may suspend a police officer or direct a police officer to take leave under section 127 or 135.

- (2) A suspension of registration under this section takes effect when notice of the suspension is given to the person by the PRS Board.
- (3) A suspension under this section remains in force until the earlier of—
  - (a) the person's return to duty; or
  - (b) the cancellation of the person's registration.

**Note**

If a police officer is dismissed, his or her registration under this Part must be cancelled under section 113.

- (4) The function of the PRS Board under subsection (1) may be performed by the President of the PRS Board or the Deputy President of the Registration Division.

**111 Discretionary suspension of registration**

- (1) The PRS Board, by written notice, may suspend the registration of a person under this Part on any of the following grounds—
  - (a) the PRS Board has received information indicating that the person is not qualified for registration; or
  - (b) the PRS Board reasonably believes that the person's application for registration or renewal of registration contained information that was false or misleading; or
  - (c) the Chief Commissioner notifies the PRS Board that an inquiry into a breach of discipline by the police officer has commenced.

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- (2) A suspension of registration under this section takes effect when notice of the suspension is given to the person by the PRS Board.
  - (3) A suspension of registration under this section lasts until—
    - (a) the PRS Board revokes the suspension; or
    - (b) the PRS Board cancels the person's registration.

**Note**

Section 202(2) requires the PRS Board to have regard to the advice of the Chief Commissioner when performing its registration functions.

- (4) The function of the PRS Board under subsection (1) may be performed by the President of the PRS Board or the Deputy President of the Registration Division.

**112 Effect of suspension**

A person whose registration under this Part has been suspended is taken, during the period of suspension, not to be registered under this Part.

**113 Mandatory cancellation of registration**

- (1) The PRS Board must, by written notice, cancel the registration of a person under this Part on receiving a declaration by the Chief Commissioner that the person has been dismissed from Victoria Police.
- (2) A cancellation of registration under this section takes effect when notice of the cancellation is given to the person by the PRS Board.
- (3) The function of the PRS Board under subsection (1) may be performed by the President of the PRS Board or the Deputy President of the Registration Division.

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## 114 Notice of intention to cancel

- (1) The PRS Board may give a person who is registered under this Part a written notice (*notice of intention to cancel*) requiring the person to show cause, within the time specified in the notice, why the person's registration should not be cancelled if the PRS Board considers that—
  - (a) the person is not qualified for registration; or
  - (b) the person's application for registration or renewal of registration contained information that was false or misleading.

### Note

Section 103 sets out the qualifications for registration.

- (2) The time specified in the notice of intention to cancel must be at least 21 days after the day on which the notice is given to the person.
- (3) If the person responds to the notice of intention to cancel within the time specified by the notice, or within any further time allowed by the PRS Board, the PRS Board must consider the person's response before cancelling the person's registration under this Part.

### Note

Section 202(2) requires the PRS Board to have regard to the advice of the Chief Commissioner when performing its registration functions.

- (4) The function of the PRS Board under subsection (1) may be performed by the President of the PRS Board or the Deputy President of the Registration Division.

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### **115 Cancellation following notice**

- (1) Subject to this Part, the PRS Board may cancel the registration of a person to whom a notice of intention to cancel has been given under section 114.

**Note**

If a person responds to a notice of intention to cancel within the time specified by the notice, or within any further time allowed by the PRS Board, the PRS Board must consider the person's response before cancelling the person's registration under this Part (see section 114(3)).

- (2) If the PRS Board cancels the registration of a person under subsection (1), it must give written notice as soon as practicable to the person whose registration is cancelled.
- (3) Cancellation of registration takes effect from the day on which notice under subsection (2) is given to the person or on a later day specified in the notice.

**Note**

Section 202(2) requires the PRS Board to have regard to the advice of the Chief Commissioner when performing its registration functions.

- (4) Any function of the PRS Board under this section may be performed by the President of the PRS Board or the Deputy President of the Registration Division.

### **116 Return of certificate on cancellation**

A person whose registration is cancelled under this Part must return his or her certificate of registration to the PRS Board within 28 days after the day on which the person receives notice of the cancellation.

Penalty: 60 penalty units.

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## **Division 4—Hearings**

### **117 Hearings**

- (1) The PRS Board may conduct a hearing if the President of the PRS Board or the Deputy President of the Registration Division determines that it is necessary to do so for the purposes of determining whether to—
  - (a) grant or refuse an application for registration or renewal of registration; or
  - (b) cancel the registration of a person to whom a notice of intention to cancel has been given.
- (2) The PRS Board must give written notice to an applicant for registration or renewal of registration or a person to whom a notice of intention to cancel was given (as the case requires) of the day, time and venue for the hearing.
- (3) For the purpose of conducting a hearing, the PRS Board is to be constituted by 3 members of the Registration Division, of whom—
  - (a) at least one is the President or the Deputy President of the Registration Division; and
  - (b) at least one is a legal practitioner of at least 5 years standing.
- (4) The President of the PRS Board or the Deputy President of the Registration Division must preside at the hearing.

### **118 Procedure at hearings**

- (1) An applicant for registration or renewal of registration, or a person to whom a notice of intention to cancel was given—
  - (a) may appear at a hearing under section 117; and



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- (b) may be represented at the hearing by any person other than a legal practitioner.
- (2) The PRS Board is not bound by the rules of evidence or any practices or procedures applicable to courts of record and may inform itself on any matter as it sees fit.
- (3) The PRS Board may require evidence to be given on oath and, for that purpose, a member of the PRS Board may administer an oath or cause an oath to be administered.
- (4) If a person has been given notice under section 117(2) and fails to attend at the time and venue specified in the notice, the hearing may be held in the person's absence.
- (5) A question before the PRS Board at a hearing under this section must be decided according to the opinion of the majority of the members present.

**119 Application for registration or renewal of registration hearings—Private unless otherwise ordered**

- (1) Subject to this section, all hearings of the PRS Board to decide whether to refuse an application for registration or renewal of registration must be held in private.
- (2) The PRS Board, at the request of an applicant, may conduct a hearing in public.
- (3) The PRS Board, on its own initiative, may conduct a hearing in public if the PRS Board is satisfied that the holding of the hearing in public would facilitate the conduct of the proceedings or would otherwise be in the public interest.

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**120 Cancellation of registration hearings—Public unless otherwise ordered**

- (1) Subject to this section, all hearings of the PRS Board to decide whether to cancel the registration of a person must be held in public.
- (2) The PRS Board, on the application of the person to whom a notice of intention to cancel was given, may direct that a hearing or any part of it be held in private.
- (3) The PRS Board, on its own initiative, may direct that a hearing or any part of it be held in private, if the PRS Board is satisfied that the holding of the hearing or part in private would facilitate the conduct of the proceedings or would otherwise be in the public interest.
- (4) If the PRS Board considers it necessary to do so in the public interest, it may make an order prohibiting the reporting or other publication or disclosure of any hearing or part of a hearing or of any information derived from the hearing or part, except by, or with the leave of, the PRS Board.
- (5) If an order is made under subsection (4), the PRS Board must cause a copy of the order to be displayed in a conspicuous place where the hearing is held.
- (6) A person must not contravene an order made under subsection (4) that has been displayed in accordance with subsection (5).

Penalty: In the case of an individual, 60 penalty units;

In the case of a body corporate,  
300 penalty units.

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**Division 5—Police Profession Register**

**121 PRS Board to keep Police Profession Register**

- (1) The PRS Board must keep a register (called the Police Profession Register) of persons registered under this Part.
  - (2) The following particulars must be included on the Police Profession Register against the name of the person to whom they apply—
    - (a) the person's Victoria Police registered number or former registered number (if any); and
    - (b) the date the person was first registered; and
    - (c) the person's contact address and particulars; and
    - (d) any conditions to which the registration is subject; and
    - (e) the date on which the registration expires.
  - (3) The Police Profession Register may contain any other information the PRS Board considers appropriate.
  - (4) The PRS Board must keep in a separate part of the Police Profession Register particulars of a person whose registration has been suspended or cancelled.
  - (5) The Police Profession Register is to be kept in the form and manner determined by the PRS Board.
  - (6) A function of the PRS Board under subsection (5) may be performed by the President of the PRS Board or the Deputy President of the Registration Division.
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**122 Chief Commissioner to notify PRS Board of appointments and dismissals**

The Chief Commissioner must give written notice to the PRS Board as soon as practicable after a person registered under this Part—

- (a) is appointed as a police officer; or
- (b) returns from a period of absence on secondment or leave without pay; or
- (c) is dismissed from Victoria Police.

**Division 6—General**

**123 Natural justice**

The PRS Board is bound by the rules of natural justice in the performance of its functions under this Part.

**124 Service of notices under this Part**

- (1) A notice or other document required or permitted to be given to or served on a person under this Part may be given or served—
    - (a) by delivering it personally to the person; or
    - (b) by sending it by post, fax or email to the person at his or her usual or last known postal, fax or email address; or
    - (c) by leaving it at the person's usual or last known residential or business address with a person on the premises apparently at least 16 years old and apparently residing or employed there.
  - (2) If a fax or email is received after 4.00 p.m. on any day, it is to be taken to have been received on the next business day.
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**PART 7—DISCIPLINE**

**Division 1—Breaches of discipline**

**125 Breaches of discipline**

- (1) A police officer or protective services officer commits a *breach of discipline* if he or she—
- (a) contravenes a provision of this Act or the regulations; or
  - (b) fails to comply with a direction given under section 84 of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
  - (c) fails to comply with the Chief Commissioner's instructions; or
  - (d) fails to comply with a direction given under Part 5; or
  - (e) refuses to consent to the use of evidence derived from a sample in the circumstances referred to in section 87; or
  - (f) fails to comply with a direction given under Division 1 of Part 9 of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
  - (g) refuses to consent to the use of evidence derived from a sample in the circumstances referred to in section 174 of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
  - (h) engages in conduct that is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
  - (i) fails to comply with a lawful instruction given by the Chief Commissioner, a police officer of or above the rank of senior

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- sergeant or a person having the authority to give the instruction; or
- (j) is guilty of disgraceful or improper conduct (whether in his or her official capacity or otherwise); or
  - (k) is negligent or careless in the discharge of his or her duty; or
  - (l) without the approval of the Chief Commissioner—
    - (i) applies for or holds a licence or permit to conduct any trade, business or profession; or
    - (ii) conducts any trade, business or profession; or
    - (iii) accepts any other employment; or
  - (m) acts in a manner prejudicial to the good order or discipline of Victoria Police; or
  - (n) has been charged with an offence (whether under a Victorian law or under a law of another place) and the offence has been found proven.
- (2) A police officer or protective services officer who aids, abets, counsels or procures, or who, by any act or omission, is directly or indirectly knowingly concerned in or a party to the commission of a breach of discipline, also commits a ***breach of discipline***.

### **126 Preliminary investigation**

- (1) If the Chief Commissioner reasonably believes that a police officer or protective services officer may have committed a breach of discipline, the Chief Commissioner may begin an investigation of the matter.

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- (2) At any time during an investigation into a matter the Chief Commissioner may—
    - (a) transfer the police officer or protective services officer to other duties; or
    - (b) direct the officer to take any leave which has accrued to him or her; or
    - (c) suspend the officer with pay.
  - (3) If a police officer or protective services officer has not been charged under section 127 within 3 months after action has been taken against him or her under subsection (2), the Chief Commissioner must withdraw the transfer, direction or suspension.
  - (4) The Chief Commissioner may apply to the PRS Board for an extension of the time specified in subsection (3).
  - (5) The President of the PRS Board or the Deputy President of the Review Division may give the extension if he or she reasonably believes it is necessary for the investigation.

### **127 Charging**

- (1) If, after conducting a preliminary investigation, the Chief Commissioner or a person authorised by the Chief Commissioner under section 130(1)(a) reasonably believes that a police officer or protective services officer has committed a breach of discipline, the Chief Commissioner or authorised person may charge the officer with the commission of that breach of discipline.
  - (2) If the Chief Commissioner or authorised person reasonably believes that the police officer or protective services officer has committed an offence referred to in Schedule 4, the Chief Commissioner or authorised person must not charge the officer with the commission of a
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breach of discipline until the Chief Commissioner or authorised person has consulted the Director of Public Prosecutions.

- (3) If the Chief Commissioner or authorised person reasonably believes that the police officer or protective services officer has committed any other offence, the Chief Commissioner or authorised person may consult the Director of Public Prosecutions before charging the officer with the commission of a breach of discipline.
- (4) On charging a police officer or protective services officer, the Chief Commissioner or authorised person may—
  - (a) transfer the officer to other duties; or
  - (b) direct the officer to take any leave which has accrued to him or her; or
  - (c) suspend the officer with or without pay.
- (5) Any action taken under subsection (4) remains in force until the charge has been finally determined.

### **128 Form of charge**

- (1) A charge must—
    - (a) be in writing; and
    - (b) contain particulars of the alleged breach of discipline; and
    - (c) specify when and where an inquiry into the charge is to be conducted; and
    - (d) specify that the police officer or protective services officer must state in writing whether or not he or she admits or denies the truth of the charge; and
    - (e) specify the time within which the officer must make the statement under paragraph (d).
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- (2) If a police officer or protective services officer has not made the statement required under subsection (1)(d) within the time specified under subsection (1)(e), the Chief Commissioner may proceed without the statement.

**129 Inquiry into a charge**

The Chief Commissioner or a person authorised by the Chief Commissioner under section 130(1)(b) must inquire into and determine a charge.

**130 Authorisation of persons to charge or inquire into and determine charges**

- (1) The Chief Commissioner may authorise any police officer or any person employed under the **Public Administration Act 2004** to—
- (a) charge a police officer or protective services officer under section 127; or
  - (b) inquire into and determine a charge under section 129.
- (2) A person can be authorised under subsection (1)(a) or (b) or both, but the same authorised person cannot inquire into and determine a charge that he or she has laid.

**131 Procedure on an inquiry**

- (1) A police officer or protective services officer who is charged with a breach of discipline may appear at the inquiry into the charge or may be represented by any person other than a legal practitioner.
- (2) If a police officer or protective services officer who is the subject of an inquiry does not attend in person or by representative at the time and place fixed for the inquiry, the person conducting the inquiry may proceed in the officer's absence.

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- (3) At an inquiry—
- (a) subject to this section, the procedure of the inquiry is at the discretion of the person conducting it; and
  - (b) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit; and
  - (c) the person conducting the inquiry is not bound by the rules of evidence but may inform himself or herself in any way he or she sees fit; and
  - (d) the person conducting the inquiry is bound by the rules of natural justice.
- (4) Sections 14, 15, 16 and 21A of the **Evidence (Miscellaneous Provisions) Act 1958** apply to the conduct of an inquiry as if the person conducting the inquiry were a board or the chairman of a board appointed by the Governor in Council.

### **132 Determination of the inquiry**

- (1) If, after considering all the submissions made at an inquiry, the person conducting the inquiry finds that the charge has been proved, the person conducting the inquiry may make one or more of the following determinations—
- (a) to reprimand the police officer or protective services officer;
  - (b) to adjourn the hearing of the inquiry into the charge on the condition that the officer be of good behaviour for a period not exceeding 12 months or on any other condition specified in the determination;

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- (c) to impose a fine not exceeding an amount that is 40 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004**;
  - (d) to impose a period, not exceeding 2 years, during which the officer will not be eligible for promotion or transfer;
  - (e) to reduce the officer's rank or seniority;
  - (f) to reduce the officer's remuneration;
  - (g) to transfer the officer to other duties;
  - (h) to dismiss the officer.
- (2) The person conducting the inquiry may also determine that the officer make any restitution or pay any compensation or costs that are appropriate for that matter.
- (3) If the person conducting the inquiry reduces the officer's rank, the Chief Commissioner must determine the officer's seniority in relation to other officers of the rank to which the officer has been reduced.
- (4) If the person conducting the inquiry finds that the charge has not been proved—
- (a) any suspension against the officer relating to the charge expires; and
  - (b) if the officer has been suspended without pay, an amount equal to the pay the officer would have received during that period of suspension must be paid to the officer; and
  - (c) if the officer has been directed to take leave, the officer must be credited with any leave taken at that direction.
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**133 Enforcement of the determination**

- (1) The Chief Commissioner and, if the Chief Commissioner has not conducted the inquiry, the person conducting the inquiry must take all action necessary to give effect to a determination made on an inquiry.
- (2) A fine or requirement to pay compensation or costs or make restitution may be recovered in the Magistrates' Court as a civil debt or by deducting the amount from the officer's pay or from any other amount payable to him or her by the State.

**134 Adjournment of charge**

- (1) If the hearing of an inquiry into a charge has been adjourned under section 132(1)(b), the time and place of the further hearing must be fixed at the time of the adjournment.
- (2) If, at the further hearing of the inquiry into the charge, the person conducting the hearing is satisfied that the police officer or protective services officer has been of good behaviour, he or she must dismiss the charge, but in any other case the hearing must be continued in the same manner as if it had not been adjourned.

**Division 2—Offences punishable by imprisonment**

**135 Officer believed to have committed an offence punishable by imprisonment**

- (1) If the Chief Commissioner reasonably believes that a police officer or protective services officer has committed an offence punishable by imprisonment, the Chief Commissioner may cause an investigation into the matter under the criminal law to be commenced and may, at any time during that investigation—

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- (a) transfer the officer to other duties; or
  - (b) direct the officer to take any leave which has accrued to him or her; or
  - (c) suspend the officer with pay.
- (2) If a police officer or protective services officer has been charged under the criminal law with an offence punishable by imprisonment (whether in Victoria or elsewhere) the Chief Commissioner may—
- (a) transfer the officer to other duties; or
  - (b) direct the officer to take any leave which has accrued to him or her; or
  - (c) suspend the officer with or without pay.

**136 Charge found proven against officer**

- (1) If a police officer or protective services officer has been charged under the criminal law with an offence punishable by imprisonment (whether in Victoria or elsewhere) and the offence has been found proven, the Chief Commissioner may—
- (a) do one or more of the following—
    - (i) reprimand the officer;
    - (ii) reduce the officer's rank or seniority;
    - (iii) reduce the officer's remuneration; or
  - (b) require the officer to be of good behaviour for a period not exceeding 12 months or on any other condition specified by the Chief Commissioner; or
  - (c) impose a fine not exceeding an amount that is 40 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004**; or
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- (d) impose a period, not exceeding 2 years, during which the officer will not be eligible for promotion or transfer; or
  - (e) transfer the officer to other duties; or
  - (f) dismiss the officer.
- (2) If the Chief Commissioner reduces the officer's rank, the Chief Commissioner must determine the officer's seniority in relation to other officers of the rank to which the officer has been reduced.
- (3) If a police officer or protective services officer who has been dismissed under this section is subsequently pardoned or his or her conviction is subsequently set aside, the officer may be reappointed to Victoria Police at the rank and seniority he or she held before dismissal.
- (4) On a reappointment under subsection (3), the officer is taken—
- (a) to have continued in Victoria Police as if he or she had not been not dismissed; and
  - (b) to have been on leave without pay during the period during which the officer was not performing his or her duties because of the dismissal.
- (5) A police officer or protective services officer is not entitled to any other leave credits for any period during which he or she is taken under subsection (4)(b) to have been on leave without pay.
- (6) A fine imposed under this section may be recovered in the Magistrates' Court as a civil debt or by deducting the amount from the officer's pay or from any other amount payable to him or her by the State.
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**137 Action not to be taken against an officer twice**

The Chief Commissioner must not take action against a police officer or protective services officer under Division 1 in respect of an act for which that officer has had action taken against him or her under section 136(1).

**Division 3—Effect of suspension, dismissal or reduction of rank**

**138 Suspension**

- (1) Despite anything to the contrary in this or any other Act or regulation, a police officer or protective services officer who has been suspended without pay under section 127(4)(c) or 135(2)(c), may, with the approval of the Chief Commissioner, undertake paid employment during the period of that suspension.
- (2) A police officer or protective services officer who has been suspended must immediately return his or her Victoria Police equipment and Victoria Police identification.  
Penalty: 50 penalty units.
- (3) A police officer or protective services officer who has been suspended must comply with an order from a superior officer to temporarily return to work.  
Penalty: 5 penalty units.
- (4) A police officer or protective services officer who has been suspended must not, while on suspension, enter any police premises, other than those areas available to the public, unless under a direction to do so.  
Penalty: 5 penalty units.

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**139 Forfeiture of salary**

- (1) This section applies if a police officer or protective services officer has been suspended and—
  - (a) a charge is found proven against the officer under Division 2; or
  - (b) the officer has been charged with an offence referred to in section 136; or
  - (c) the officer resigns from Victoria Police before any charge under Division 2 or any criminal charge referred to in section 136 is finalised.
- (2) The officer—
  - (a) forfeits all salary that accrued to him or her during the suspension; and
  - (b) must repay any salary that has been paid to him or her during the suspension.
- (3) Any salary not repaid under subsection (2) may be recovered by the Chief Commissioner, as a debt due to the State, in a court of competent jurisdiction.
- (4) The Chief Commissioner may, on application to him or her in writing, determine that subsection (1) does not apply to a police officer or protective services officer.

**140 No compensation for dismissal or reduction in rank**

- (1) A police officer or protective services officer is not entitled to any compensation for a reduction in his or her salary because of a reduction in his or her rank or dismissal under this Part.



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- (2) Subsection (1) does not apply to any arrangement made with the employer of police officers or protective services officers about the termination of employment of police officers or protective services officers.
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**PART 8—APPEALS AND REVIEWS**

**Division 1—Appeals**

**141 Promotion and transfer appeals—police officers**

- (1) Subject to this section and the regulations, a police officer may appeal to the PRS Board against the selection of another police officer for promotion under section 31 or transfer under section 34 if—
- (a) the officer applied for promotion or transfer to the position; and
  - (b) the officer considers, on the grounds referred to in subsection (4), that he or she has a better claim to promotion or transfer than the officer selected.

**Note**

The functions of the PRS Board in relation to appeals are performed by the Review Division.

- (2) A police officer cannot appeal in relation to—
- (a) a promotion or transfer to a position at the rank of superintendent, chief superintendent or commander; or
  - (b) a transfer to a position of constable (general duties); or
  - (c) a promotion or transfer to a position of senior constable (general duties); or
  - (d) the promotion of a constable who holds a position to the rank of senior constable in the same position; or
  - (e) a transfer made under an expression of interest process agreed under an industrial instrument applying to police officers.

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- (3) A police officer cannot appeal under this section if he or she has lodged an appeal under this section on 4 or more occasions in the current financial year—
- (a) whether or not in relation to the same position; and
  - (b) whether or not any of those appeals were successful, unsuccessful or withdrawn.
- (4) The only grounds for appeal are—
- (a) in relation to the rank of senior sergeant, sergeant or senior constable—
    - (i) superior efficiency; or
    - (ii) equal efficiency and greater seniority;
  - (b) in relation to the rank of inspector or chief inspector—superior efficiency.
- (5) An appeal must be lodged within 3 days after the day on which notice of the selection is published under section 31(5) or 34(5).

**142 Promotion and transfer appeals—protective services officers**

- (1) Subject to this section and the regulations, a protective services officer may appeal to the PRS Board against the selection of another protective services officer for promotion under section 40 or transfer under section 43 if—
- (a) the officer applied for promotion or transfer to the position; and
  - (b) the officer considers, on the grounds referred to in subsection (4), that he or she has a better claim to promotion than the officer selected.

**Note**

The functions of the PRS Board in relation to appeals are performed by the Review Division.

- (2) A protective services officer cannot appeal in relation to—
  - (a) a promotion to a position at a rank specified by the regulations for the purposes of this section; or
  - (b) a transfer made under an expression of interest process agreed under an industrial instrument applying to protective services officers.
- (3) A protective services officer cannot appeal under this section if he or she has lodged an appeal under this section on 4 or more occasions in the current financial year—
  - (a) whether or not in relation to the same position; and
  - (b) whether or not any of those appeals were successful, unsuccessful or withdrawn.
- (4) The only grounds for appeal are—
  - (a) superior efficiency; or
  - (b) equal efficiency and greater seniority.
- (5) An appeal must be lodged within 3 days after the day on which notice of the selection is published under section 40(4) or 43(4).

**143 Constitution of PRS Board for appeal**

- (1) For the purpose of an appeal, the PRS Board is to be constituted by—
  - (a) a member of the Review Division sitting alone; or

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- (b) 2 members of the Review Division of whom at least one is the President or the Deputy President.
- (2) The President is to determine the constitution of the PRS Board to hear an appeal.
- (3) If the PRS Board is constituted as referred to in subsection (1)(b) and the members are divided in opinion on any question arising on the appeal, the question is to be decided according to the opinion of the President or Deputy President or, if both are sitting, the President.

#### **144 Appeal to be re-hearing**

An appeal under this Division is to be by way of a re-hearing.

#### **145 Procedure on appeal**

- (1) If an appeal is lodged, the Chief Commissioner must lodge the selection file in relation to the promotion or transfer with the PRS Board within 2 business days after the day on which he or she is notified under section 156(2) of the lodging of an appeal.
- (2) Neither the Chief Commissioner nor the appellant may lodge any other document with the PRS Board concerning the appeal unless the PRS Board, being of the opinion that there are exceptional circumstances, gives leave.
- (3) The PRS Board must hear and determine the appeal within 5 business days after the selection file is lodged under subsection (1).
- (4) If the appellant cannot be present at a hearing of the PRS Board on the appeal of which reasonable notice has been given, the appellant may—

- (a) elect to have the appeal heard and determined in his or her absence; or
  - (b) withdraw the appeal.
- (5) If the appellant makes an election under subsection (4)(a) or fails to make an election or withdraw the appeal before the date of the hearing, the PRS Board may hear and determine the appeal in the absence of the appellant.

### **Division 2—Reviews**

#### **146 What decisions are reviewable?**

- (1) Subject to subsection (3), a police officer may apply to the PRS Board for review of a decision by the Chief Commissioner, or a person authorised by the Chief Commissioner—
- (a) not to confirm the officer's promotion; or
  - (b) to disallow the officer's promotion; or
  - (c) that the officer is unsuitable for promotion to a position of senior constable (general duties); or
  - (d) not to promote the officer, being a constable, to the rank of senior constable in the same position; or
  - (e) to reduce the officer's rank or seniority under section 70(2)(b) or (c), 132(1)(e) or 136(1)(a)(ii); or
  - (f) to reduce the officer's remuneration under section 132(1)(f) or 136(1)(a)(iii); or
  - (g) to transfer the officer under section 70(2)(a) or (c), 132(1)(g) or 136(1)(e); or
  - (h) to make a directed transfer of the officer under section 35; or

- (i) to otherwise compulsorily transfer the officer; or
- (j) to impose a fine on the officer under section 132(1)(c) or 136(1)(c) of an amount exceeding the amount that is 5 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004**; or
- (k) to impose a period of ineligibility in respect of the officer under section 132(1)(d) or 136(1)(d); or
- (l) to terminate the officer's appointment; or
- (m) to dismiss the officer under section 70(2)(d), 132(1)(h) or 136(1)(f).

**Note**

The functions of the PRS Board in relation to reviews are performed by the Review Division.

- (2) A protective services officer may apply to the PRS Board for review of a decision by the Chief Commissioner, or a person authorised by the Chief Commissioner—
  - (a) not to confirm the officer's promotion; or
  - (b) to disallow the officer's promotion; or
  - (c) to reduce the officer's rank or seniority under section 70(2)(b) or (c), 132(1)(e) or 136(1)(a)(ii); or
  - (d) to reduce the officer's remuneration under section 132(1)(f) or 136(1)(a)(iii); or
  - (e) to transfer the officer under section 70(2)(a) or (c), 132(1)(g) or 136(1)(e); or
  - (f) to make a directed transfer of the officer under section 44; or

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- (g) to otherwise compulsorily transfer the officer; or
  - (h) to impose a fine on the officer under section 132(1)(c) or 136(1)(c) of an amount exceeding the amount that is 5 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004**; or
  - (i) to impose a period of ineligibility in respect of the officer under section 132(1)(d) or 136(1)(d); or
  - (j) to terminate the officer's appointment; or
  - (k) to dismiss the officer under section 70(2)(d), 132(1)(h) or 136(1)(f).

**Note**

The functions of the PRS Board in relation to reviews are performed by the Review Division.

- (3) Subsection (1)(i) does not apply to the compulsory transfer of—
  - (a) a superintendent, chief superintendent or commander; or
  - (b) an inspector or chief inspector except where the transfer is to or from a country position for a period of more than 6 months.

- (4) In this section—

***general duties*** means primary response and general patrol duties;

***police officer*** includes a person who was a police officer immediately before his or her dismissal or the termination of his or her appointment;



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*protective services officer* includes a person who was a protective services officer immediately before his or her dismissal or the termination of his or her appointment.

**147 Form and time limits for applying for review**

- (1) An application for review must be made in a form approved by the PRS Board.
- (2) An application for review must be lodged with the PRS Board—
  - (a) in the case of a decision to make a directed transfer—within 3 days after the day on which the police officer or protective services officer is notified of the decision; or
  - (b) in any other case—within 14 days after the day on which the officer is notified of the decision.

**148 Constitution of PRS Board for review**

- (1) For the purpose of conducting a review of a decision to terminate the appointment of a police officer or protective services officer or to dismiss a police officer or protective services officer, the PRS Board is to be constituted by 3 members of the Review Division, of whom—
    - (a) at least one is the President or the Deputy President of the Review Division; and
    - (b) at least one is a legal practitioner of at least 5 years' standing.
  - (2) For the purpose of conducting any other review, the PRS Board is to be constituted by—
    - (a) a member of the Review Division sitting alone; or
    - (b) 2 members of the Review Division of whom at least one is the President or the Deputy President.
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- (3) The President is to determine the constitution of the PRS Board to conduct a review.
  - (4) If the PRS Board is constituted as referred to in subsection (1), any question arising on the review is to be decided according to the opinion of the majority of the members.
  - (5) If the PRS Board is constituted as referred to in subsection (2)(b) and the members are divided in opinion on any question arising on the review, the question is to be decided according to the opinion of the President or Deputy President or, if both are sitting, the President.

**149 Special procedure for review of directed transfers**

- (1) If an application for review of a decision to make a directed transfer is lodged, the Chief Commissioner must lodge the file relating to the decision with the PRS Board within 2 business days after the day on which he or she is notified under section 156(2) of the lodging of the application.
  - (2) Neither the Chief Commissioner nor the applicant may lodge any other document with the PRS Board concerning the review unless the PRS Board, being of the opinion that there are exceptional circumstances, gives leave.
  - (3) The PRS Board must hear and determine the review within 5 business days after the file is lodged under subsection (1).
  - (4) If the applicant cannot be present at a hearing of the PRS Board on the review of which reasonable notice has been given, the applicant may—
    - (a) elect to have the review heard and determined in his or her absence; or
    - (b) withdraw the application.
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- (5) If the applicant makes an election under subsection (4)(a), or fails to make an election or withdraw the application before the date of the hearing, the PRS Board may hear and determine the review in the absence of the applicant.

**150 Chief Commissioner to lodge file in review of incapacity decisions**

- (1) This section applies if an application for review is lodged in respect of a decision—
- (a) to transfer a police officer or protective services officer under section 70(2)(a) or (c); or
  - (b) to reduce the rank or seniority of a police officer or protective services officer under section 70(2)(b) or (c); or
  - (c) to dismiss a police officer or protective services officer under section 70(2)(d).
- (2) If an application for review is lodged, the Chief Commissioner must lodge the file relating to the decision with the PRS Board within 2 business days after the day on which he or she is notified under section 156(2) of the lodging of the application.

**151 PRS Board must have regard to public interest and interests of applicant**

- (1) In a review, the PRS Board must have regard to—
- (a) the public interest; and
  - (b) the interests of the applicant for review.
- (2) Subsection (1) does not limit the matters to which the PRS Board is otherwise required or permitted to have regard in a review.

(3) In this section—

*public interest* includes the interest of maintaining the integrity of, and community confidence in, Victoria Police.

**152 Powers of PRS Board on review of termination or dismissal decisions**

(1) This section applies to a review of a decision—

- (a) to terminate the appointment of a police officer or protective services officer; or
- (b) to dismiss a police officer or protective services officer.

(2) On the review, the PRS Board must affirm the decision unless the PRS Board is satisfied that the decision is harsh, unjust or unreasonable.

(3) If the PRS Board is satisfied that the decision is harsh, unjust or unreasonable, the PRS Board may—

(a) in the case of a review of a decision to dismiss a police officer or protective services officer under section 136(1)(f)—

- (i) set aside the decision and, in substitution for it, make any other decision or determination that the person who made the decision could have made; or
- (ii) set aside the decision and refer the matter for determination by the Chief Commissioner in accordance with any directions or recommendations of the PRS Board; and

(b) in any other case—

- (i) set aside the decision and, in substitution for it, make any other decision or determination that the

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- person who made the decision could have made; or
- (ii) set aside the decision and refer the matter for determination by the Chief Commissioner in accordance with any directions or recommendations of the PRS Board; or
  - (iii) order the Chief Commissioner to reinstate the applicant as a police officer or protective services officer; or
  - (iv) if the PRS Board considers that it would be impracticable to reinstate the applicant, order the Chief Commissioner to pay to the applicant an amount of compensation not exceeding the amount of remuneration of the applicant during the period of 12 months immediately before the termination or dismissal.
- (4) If the applicant was on leave without full pay during any part of the period of 12 months immediately before the termination or dismissal, the maximum amount of compensation that may be ordered under subsection (3)(b)(iv) to be paid is to be determined as if the applicant had received full pay while on leave.
- (5) When assessing any compensation payable, the PRS Board must take into account—
- (a) whether the applicant made a reasonable attempt to find alternative employment; and
  - (b) the remuneration received in any alternative employment or that would have been payable if the applicant had succeeded in obtaining alternative employment.
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**153 Powers of PRS Board on review of certain demotion and transfer decisions**

- (1) This section applies to a review of—
    - (a) a decision to reduce the rank or seniority of a police officer or protective services officer under section 70(2)(b) or (c), 132(1)(e) or 136(1)(a)(ii); or
    - (b) a decision to reduce the remuneration of a police officer or protective services officer under section 132(1)(f) or 136(1)(a)(iii); or
    - (c) a decision to transfer a police officer or protective services officer under section 70(2)(a) or (c); or
    - (d) a decision to make a directed transfer of a police officer or protective services officer; or
    - (e) a decision (other than one specified in paragraph (a), (b), (c) or (d)) that has the effect of significantly changing the duties of a police officer or protective services officer.
  - (2) On the review, the PRS Board must affirm the decision unless the PRS Board is satisfied that the decision is harsh, unjust or unreasonable.
  - (3) If the PRS Board is satisfied that the decision is harsh, unjust or unreasonable, the PRS Board may—
    - (a) set aside the decision and, in substitution for it, make any other decision or determination that the person who made the decision could have made; or
    - (b) set aside the decision and refer the matter for determination by the Chief Commissioner in accordance with any directions or recommendations of the PRS Board.
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**154 Powers of PRS Board on review of other decisions**

- (1) This section applies to any review other than a review to which section 152 or 153 applies.
- (2) On the review, the PRS Board may—
  - (a) affirm the decision under review; or
  - (b) set aside the decision and, in substitution for it, make any other decision or determination that the person who made the decision could have made; or
  - (c) set aside the decision and refer the matter for determination by the Chief Commissioner in accordance with any directions or recommendations of the PRS Board.

**Division 3—General provisions for appeals and reviews**

**155 Natural justice**

The PRS Board is bound by the rules of natural justice in all appeals and reviews.

**156 General procedure**

- (1) The PRS Board must conduct all appeals and reviews with as little formality and technicality, and as much speed, as the requirements of this Act and the proper consideration of the subject-matter permit.
- (2) As soon as practicable after an appeal or an application for review is lodged, the PRS Board must notify the Chief Commissioner.
- (3) Subject to this Act, the PRS Board may regulate its own procedure on an appeal or a review.

**157 Hearings to be public unless otherwise ordered**

- (1) Subject to this section, all hearings of the PRS Board on an appeal or a review must be held in public.

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- (2) The PRS Board, on its own initiative or on the application of a party, may direct that a hearing or any part of it be held in private, if the PRS Board is satisfied that the holding of the hearing or part in private would facilitate the conduct of the appeal or review or would otherwise be in the public interest.
  - (3) If the PRS Board considers it necessary to do so in the public interest, it may make an order prohibiting the reporting or other publication or disclosure of any hearing or part of a hearing or of any information derived from the hearing or part, except by, or with the leave of, the PRS Board.
  - (4) If an order is made under subsection (3), the PRS Board must cause a copy of the order to be displayed in a conspicuous place where the hearing is held.

### **158 Appearance and representation**

- (1) On an appeal—
  - (a) the appellant and the person selected for promotion or transfer may appear; and
  - (b) the Chief Commissioner may appear, and may be represented by any person other than a legal practitioner.
- (2) On a review, the applicant and the Chief Commissioner may appear, and may be represented by any person other than a legal practitioner.

### **159 Evidence**

- (1) On an appeal or a review the PRS Board is not bound by the rules of evidence or any practices or procedures applicable to courts of record and may inform itself on any matter as it sees fit.



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- (2) On an appeal or a review the PRS Board may require evidence to be given on oath or affirmation and, for that purpose, a member of the PRS Board may administer an oath or affirmation or cause an oath or affirmation to be administered.

**160 Witness summons**

- (1) On an appeal or a review the President or the Deputy President assigned to the Review Division may issue a summons to a person to attend the PRS Board to give evidence and produce any documents that are referred to in the summons.
- (2) A summons may be served on a person—
- (a) by delivering it personally to the person; or
  - (b) by sending it by post, fax or email to the person at his or her usual or last known postal, fax or email address; or
  - (c) by leaving it at the person's usual or last known residential or business address with a person on the premises apparently at least 16 years old and apparently residing or employed there.
- (3) A summons is to be taken to have been served on a person—
- (a) in the case of delivery in person—at the time of delivery; or
  - (b) in the case of posting—2 business days after the day on which the document was posted; or
  - (c) in the case of fax or email—at the time the fax or email is received.
- (4) If a fax or email is received after 4.00 p.m. on any day, it is to be taken to have been received on the next business day.
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**161 Witness summons offences**

- (1) A person who has been properly served with a summons under section 160 must not, without reasonable excuse, refuse or fail to attend as required by the summons until he or she has been excused or released from attendance by the PRS Board.

Penalty: 120 penalty units or imprisonment for 1 year or both.

- (2) A person who has been properly served with a summons under section 160 must not, without reasonable excuse, refuse or fail to answer a question that he or she is required to answer by the PRS Board.

Penalty: 120 penalty units or imprisonment for 1 year or both.

- (3) A person who has been properly served with a summons under section 160 must not, without reasonable excuse, refuse or fail to produce a document or thing that he or she was required to produce by the summons.

Penalty: 120 penalty units or imprisonment for 1 year or both.

- (4) A person who has been properly served with a summons under section 160 must not, without reasonable excuse, refuse or fail to take an oath or make an affirmation when required to do so by the PRS Board.

Penalty: 120 penalty units or imprisonment for 1 year or both.

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## 162 Contempt of PRS Board

A person must not—

- (a) insult a member or officer of the PRS Board while that member or officer is performing functions as a member or officer on an appeal or a review; or
- (b) insult, harass, intimidate, obstruct or hinder another person attending a hearing of the PRS Board on an appeal or a review; or
- (c) misbehave at or interrupt a hearing of the PRS Board on an appeal or a review; or
- (d) contravene an order made under section 157(3) that has been displayed in accordance with section 157(4); or
- (e) obstruct or hinder another person from complying with a summons properly served on that other person under section 160; or
- (f) do any other act in relation to an appeal or a review that would, if the PRS Board were the Supreme Court, constitute contempt of that Court.

Penalty: 120 penalty units or imprisonment for 1 year or both.

## 163 Protection of participants

- (1) A member of the PRS Board has, in the performance of the functions of member on an appeal or a review, the same protection and immunity as a judge of the Supreme Court has in the performance of his or her duties as a judge.
- (2) A person representing a party on an appeal or a review has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Supreme Court.

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- (3) A party to an appeal or review has the same protection and immunity as a party to proceedings in the Supreme Court.
  - (4) A person appearing as a witness in a hearing on an appeal or review has the same protection and immunity as a witness has in proceedings in the Supreme Court.

**164 Extension of time**

- (1) On application by any person, the PRS Board, if it considers that exceptional circumstances exist, may extend any time limit fixed—
  - (a) by or under this Act for the lodging of an appeal or the making of an application for a review; or
  - (b) by or under this Act or the regulations for the doing of any other thing in, or in relation to, an appeal or a review.
- (2) The PRS Board may—
  - (a) extend a time limit even if the time has expired before an application for extension is made; and
  - (b) impose conditions on the extension of a time limit.

**165 Chief Commissioner to give effect to PRS Board orders and decisions**

The Chief Commissioner must give effect to an order or a decision of the PRS Board on an appeal or a review.

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**PART 9—COMPLAINTS AND INVESTIGATIONS**

**Division 1—Preliminary**

**166 Definitions**

In this Part—

***conduct***, in relation to a police officer or protective services officer, means—

- (a) an act or decision or the failure or refusal by the officer to act or make a decision in the exercise, performance or discharge, or purported exercise, performance or discharge, whether within or outside Victoria, of a power, function or duty which the officer has as, or by virtue of being, a police officer or protective services officer; or
- (b) conduct which constitutes an offence punishable by imprisonment; or
- (c) conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
- (d) disgraceful or improper conduct (whether in the officer's official capacity or otherwise);

***misconduct***, in relation to a police officer or protective services officer, means—

- (a) conduct which constitutes an offence punishable by imprisonment; or
- (b) conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
- (c) disgraceful or improper conduct (whether in the officer's official capacity or otherwise).

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**Division 2—Complaints and investigations**

**167 Making of complaints**

- (1) A complaint about the conduct of a police officer or protective services officer may be made—
- (a) to another police officer or protective service officer; or
  - (b) to the IBAC.

**Note**

Complaints made to the IBAC are investigated under Part 3 of the **Independent Broad-based Anti-corruption Commission Act 2011**.

- (2) A complaint about the conduct of a police officer or protective services officer—
- (a) may not be made to the IBAC by a police officer or protective services officer except as set out in subsection (3); and
  - (b) may be made by a person or a body of persons, whether corporate or unincorporated; and
  - (c) may be made by a person on that person's own behalf or on behalf of another person.

**Note**

Under Part 3 of the **Independent Broad-based Anti-corruption Commission Act 2011**, complaints to the IBAC must be in writing unless the IBAC determines that there are exceptional circumstances.

- (3) A police officer or protective services officer must make a complaint to a police officer or protective services officer of a more senior rank to that officer, or to the IBAC, about the conduct of another police officer or protective services officer if he or she has reason to believe that the other officer is guilty of misconduct.

**Note**

A complaint made in accordance with subsection (3) is a protected disclosure under the **Protected Disclosure Act 2012**—see the definition of *protected disclosure* in section 3 of that Act.

- (4) If a police officer or protective services officer is required to make a complaint under subsection (3) about the conduct of another police officer or protective services officer, it is sufficient compliance for the purposes of that subsection if the officer makes a disclosure in accordance with Part 2 of the **Protected Disclosure Act 2012**.
- (5) If a complaint is made to a police officer or a protective services officer by a person who is not a police officer or a protective services officer, the officer must advise the complainant that the complainant may make the complaint to the IBAC.
- (6) A person may make a complaint to the IBAC even if the complaint has already been made to a police officer or protective services officer.

**168 Certain complaints to be referred to the Chief Commissioner**

If a police officer or protective services officer makes a complaint to a police officer or protective services officer of a more senior rank about an officer other than the Chief Commissioner, the officer receiving the complaint must refer the complaint to the Chief Commissioner if that officer considers the complaint may be a complaint under section 167(3).

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**169 Complaints made to a police officer or protective services officer**

- (1) The Chief Commissioner must investigate a complaint made to a police officer or protective services officer about the misconduct of a police officer or protective services officer unless the subject-matter of the complaint could constitute a protected disclosure complaint.
- (2) The Chief Commissioner must as soon as practicable after a complaint of misconduct is made give to the IBAC in writing the prescribed details of the complaint.
- (3) The Chief Commissioner must as soon as practicable after commencing an investigation into any alleged misconduct by a police officer or protective services officer give to the IBAC in writing the prescribed details of the investigation.

**170 Investigations by the Chief Commissioner**

- (1) The Chief Commissioner must as often as requested by the IBAC report in writing to the IBAC on the progress of an investigation.
  - (2) The Chief Commissioner may attempt to resolve a complaint by conciliation and must—
    - (a) before commencing to conciliate, notify the IBAC of the proposed attempt; and
    - (b) notify the IBAC of the results of the attempt.
  - (3) After completing an investigation the Chief Commissioner must in writing report to the IBAC on the results of the investigation and the action (if any) taken or proposed to be taken.
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**171 Power to require answers etc.**

- (1) For the purposes of an investigation into a complaint concerning a possible breach of discipline, the Chief Commissioner may direct any police officer or protective services officer to give any relevant information, produce any relevant document or answer any relevant question.
- (2) A police officer or protective services officer who does not comply with a direction commits a breach of discipline and is liable to be dealt with as for a breach of discipline.
- (3) Except in proceedings for perjury, for a breach of discipline or for failure to comply with a direction, or a review under Part 8, any information, document or answer given in response to a direction is not admissible in evidence before any court or person acting judicially.

**172 Advice to complainant**

- (1) In the case of a complaint made to a police officer or protective services officer, the Chief Commissioner must in writing advise the complainant of the results of the investigation and of the action taken or proposed to be taken.

**Note**

See the **Independent Broad-based Anti-corruption Commission Act 2011** for the equivalent provision applicable in the case of complaints made to the IBAC.

- (2) Subsection (1) does not apply if the Chief Commissioner is of the opinion that it would be contrary to the public interest to advise the complainant of the results of the investigation or of the action taken or proposed to be taken.

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**Division 3—General**

**173 Prohibition of victimisation**

- (1) A person must not take detrimental action, or cause, incite or permit detrimental action to be taken, against a member of Victoria Police personnel—
- (a) because the member has made a complaint under section 167 about the conduct of a police officer or protective services officer; or
  - (b) because the member has given information or evidence to the Chief Commissioner or Director in the course of an investigation or further investigation under this Part or Part 3 of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
  - (c) because the person believes that the member has made, or intends to make, a complaint referred to in paragraph (a) or has given, or intends to give, information or evidence referred to in paragraph (b).

Penalty: 120 penalty units or imprisonment for 1 year or both.

- (2) In determining whether a person takes detrimental action against a member of Victoria Police personnel it is irrelevant—
- (a) whether or not a factor in subsection (1) is the only or dominant reason for the action; or
  - (b) whether the person acts alone or in association with any other person.

- (3) A person does not commit an offence against subsection (1) in relation to a complaint if—
- (a) the person presents or points to evidence that suggests a reasonable possibility that the complaint was made frivolously, vexatiously or in bad faith; and
  - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.

- (4) In this section—

***detrimental action*** means action causing, comprising or involving any of the following—

- (a) injury, damage or loss;
- (b) intimidation or harassment;
- (c) ostracism;
- (d) discrimination, disadvantage or adverse treatment in relation to employment;
- (e) dismissal from, or prejudice in, employment;
- (f) disciplinary proceedings.

#### **174 Other offences**

- (1) A person must not, without reasonable excuse, hinder or obstruct a person who is performing a function or exercising a power under this Part.

Penalty: 120 penalty units or imprisonment for 1 year or both.

**Note**

See also section 72 of the **Criminal Procedure Act 2009**, which deals with the evidential burden of proof.

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- (2) A person must not, without reasonable excuse, refuse or fail to comply with a direction or requirement made of the person in the exercise of a power by another person under this Part.

Penalty: 120 penalty units or imprisonment for 1 year or both.

**Note**

See also section 72 of the **Criminal Procedure Act 2009**, which deals with the evidential burden of proof.

- (3) A person must not wilfully make a statement that the person knows to be false or misleading in a material particular or mislead or attempt to mislead another person in the exercise of that other person's powers under this Part.

Penalty: 120 penalty units or imprisonment for 1 year or both.

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**PART 10—INVESTIGATION OF PROTECTED DISCLOSURE COMPLAINTS**

**Division 1—Investigations**

**175 Duty to investigate**

The Chief Commissioner must investigate, in accordance with this Part, every protected disclosure complaint that the IBAC has referred to the Chief Commissioner under Division 4 of Part 3 of the **Independent Broad-based Anti-corruption Commission Act 2011**.

**176 Power to require answers etc. of specified members of police personnel in certain investigations**

- (1) For the purposes of an investigation of a protected disclosure complaint relating to a police officer or protective services officer, the Chief Commissioner may direct any police officer or protective services officer to—
  - (a) give the Chief Commissioner any relevant information; or
  - (b) produce any relevant document to the Chief Commissioner; or
  - (c) answer any relevant question.

**Note**

Failure to comply with a direction of the Chief Commissioner under this subsection is a breach of discipline. See section 125.

- (2) Before directing a police officer or protective services officer under subsection (1), the Chief Commissioner must—
  - (a) advise the officer that additional obligations under the **Protected Disclosure Act 2012** relating to confidentiality may apply to the officer; and

- (b) inform the officer of the nature of those obligations.
- (3) Any information, document or answer given or produced in accordance with a direction under subsection (1) is not admissible in evidence before any court or person acting judicially, except in proceedings for—
  - (a) perjury or giving false information; or
  - (b) a breach of discipline by a police officer or protective services officer; or
  - (c) a failure to comply with a direction of the Chief Commissioner.
- (4) To avoid doubt, nothing in this section authorises the giving of a direction to the Chief Commissioner.

**177 Person who made disclosure may request information about investigation**

- (1) During an investigation under this Part, the person who made the protected disclosure complaint may request information about that investigation from the Chief Commissioner.
- (2) Subject to section 182, on receiving a request under subsection (1), the Chief Commissioner may give the person the requested information.

**Division 2—Action on investigation**

**178 Chief Commissioner must take action**

- (1) If, on completing an investigation under this Part, the Chief Commissioner finds that the conduct that was the subject of the investigation has occurred, the Chief Commissioner—

- (a) must take all reasonable steps to prevent the conduct from continuing or occurring in the future; and
  - (b) may take action to remedy any harm or loss arising from the conduct.
- (2) The steps to be taken under subsection (1)(a) may include the bringing of disciplinary proceedings against the person responsible for the conduct that was the subject of the investigation.

**179 Chief Commissioner must report to the IBAC and may give Premier and Minister information**

- (1) Subject to this section, on completing an investigation under this Part, the Chief Commissioner—
- (a) must report to the IBAC, in writing—
    - (i) the findings of the investigation; and
    - (ii) the steps (if any) taken or proposed to be taken under section 178(1)(a); and
  - (b) may, if he or she considers it necessary to do so, give the Premier or the Minister information, in writing, about a matter relating to or arising out of the investigation.
- (2) The Chief Commissioner must not give the Premier or the Minister information under subsection (1)(b)—
- (a) that the Chief Commissioner considers would cause unreasonable damage to a person's reputation; or
  - (b) that is likely to lead to the identification of a person who has made an assessable disclosure.
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- (3) However, the Chief Commissioner may give the Premier or the Minister information under subsection (1)(b) that is information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.
- (4) The Chief Commissioner must notify the IBAC, in writing, of any information given to the Premier or the Minister under subsection (1)(b).

**180 Premier and Minister may disclose information for purpose of obtaining advice**

The Premier or Minister may disclose any information given to him or her under section 179(1)(b) for the purpose of obtaining advice on the matter or matters to which the information relates.

**181 Chief Commissioner must inform person who made disclosure of outcome of investigation**

Subject to section 182, on completing an investigation under this Part, the Chief Commissioner must inform the person who made the protected disclosure complaint of the outcome of the investigation.

**182 Chief Commissioner must not disclose information in certain cases**

The Chief Commissioner must not disclose any information under section 177 or 181 if the Chief Commissioner considers that disclosure of the information would—

- (a) not be in the public interest or in the interests of justice; or
- (b) put a person's safety at risk; or



- (c) cause unreasonable damage to a person's reputation; or
- (d) prejudice—
  - (i) an investigation under this Part; or
  - (ii) an investigation under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
  - (iii) an investigation by Victoria Police; or
- (e) be likely to lead to the disclosure of any secret investigative method used by the Chief Commissioner or other members of Victoria Police personnel; or
- (f) otherwise contravene any applicable statutory secrecy obligations; or
- (g) involve the unreasonable disclosure of information relating to the personal affairs of any person.

### Division 3—Disclosure of information

#### 183 Definitions

- (1) In this Division—

*applicable law* means—

- (a) the **Protected Disclosure Act 2012**; or
- (b) a provision of another Act that confers a function or power or imposes a duty on the Chief Commissioner in relation to a protected disclosure complaint;

*Australian legal practitioner* has the same meaning as it has in the **Legal Profession Act 2004**;

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*investigating entity* means—

- (a) the IBAC; or
- (b) the Ombudsman; or
- (c) the Victorian Inspectorate;

*investigation request* means a request from the Chief Commissioner for a person to give any information, produce any document or thing, answer any question, or otherwise participate in an investigation under this Part;

*law enforcement agency* has the meaning given in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** but does not include the Chief Commissioner;

*prosecutorial body* has the same meaning as in the **Independent Broad-based Anti-corruption Commission Act 2011**;

*restricted matter* means—

- (a) any information given to the Chief Commissioner under a direction under section 176 or in response to an investigation request; or
- (b) the contents of any document, or a description of any thing, produced to the Chief Commissioner under a direction under section 176 or in response to an investigation request; or
- (c) the existence of, or any information about, a direction under section 176 or an investigation request; or
- (d) the subject matter of a protected disclosure complaint being investigated under this Part; or

- (e) any information that could enable any of the following persons to be identified or located—
    - (i) a person who has been, or is proposed to be, interviewed by, or has produced, or may produce, any document or thing to, the Chief Commissioner under this Part; or
    - (ii) a person who has otherwise participated, or will participate, in an investigation under this Part; or
  - (f) the fact that a person—
    - (i) has been, or is proposed to be, interviewed by, or has produced, or may produce, any document or thing to, the Chief Commissioner under this Part; or
    - (ii) has otherwise participated, or will participate, in an investigation under this Part.
- (2) For the purposes of this Division, a reference to the Chief Commissioner in the definition of *restricted matter* is to be read as including a reference to a member of Victoria Police personnel acting on behalf of the Chief Commissioner under this Part.

**184 Disclosure of information by the Chief Commissioner and other police personnel**

- (1) A person who—
    - (a) is or was a member of Victoria Police personnel; and
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- (b) acquires or acquired information by reason of, or in the course of, the performance of duties or functions or the exercise of powers under this Part—

must not directly or indirectly disclose that information.

Penalty: 120 penalty units or imprisonment for 1 year or both.

**Note**

The person may be subject to further confidentiality obligations under Part 7 of the **Protected Disclosure Act 2012**.

- (2) Subsection (1) does not apply to a disclosure of information—
- (a) made for the purpose of performing duties or functions or exercising powers under this Part or an applicable law; or
  - (b) that is otherwise authorised or required to be made by or under this Part or an applicable law; or
  - (c) made for the purposes of—
    - (i) proceedings for an offence against this Part or the **Protected Disclosure Act 2012**; or
    - (ii) a disciplinary process or action instituted in respect of conduct that could also constitute an offence against this Part or the **Protected Disclosure Act 2012**; or
    - (iii) proceedings for an offence or a disciplinary process or action instituted as a result of an investigation under this Part; or

- (d) made by—
- (i) the Chief Commissioner in the circumstances provided under subsection (3); or
  - (ii) a member of Victoria Police personnel under the authority of the Chief Commissioner in the circumstances provided under subsection (3).
- (3) Subject to subsection (4), if the Chief Commissioner considers it appropriate, he or she may disclose or authorise the disclosure of any information acquired by a member of Victoria Police personnel by reason of, or in the course of, the performance of duties or functions or the exercise of powers under this Part to—
- (a) an investigating entity; or
  - (b) a law enforcement agency; or
  - (c) a prosecutorial body.
- (4) The Chief Commissioner may only disclose or authorise a disclosure of information under subsection (3) if he or she considers that the information is relevant to the performance of a duty or function or the exercise of a power by the investigating entity, law enforcement agency or prosecutorial body to which the information is proposed to be disclosed.
- (5) Subsection (3) applies subject to any restriction on the provision or disclosure of information under this Act or any other Act (including any Act of the Commonwealth).
- (6) Nothing in this section affects the operation of section 176.

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## 185 Disclosure of restricted matter prohibited

- (1) A person must not disclose a restricted matter.

Penalty: 120 penalty units or imprisonment for 1 year or both.

### Note

See also Part 7 of the **Protected Disclosure Act 2012** which imposes additional obligations in relation to confidentiality.

- (2) Subsection (1) does not apply to the disclosure of a restricted matter—
- (a) by the person in accordance with an authorisation under section 186; or
  - (b) for the purpose of obtaining legal advice or representation in relation to—
    - (i) a direction given to the person under section 176; or
    - (ii) an investigation request made to the person; or
    - (iii) the rights, liabilities, obligations and privileges of the person under this Part or the **Protected Disclosure Act 2012**; or
  - (c) by an Australian legal practitioner to whom a restricted matter has been disclosed in the circumstances specified in paragraph (b), for the purpose of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with his or her client; or
  - (d) by the person to his or her spouse or domestic partner if the restricted matter disclosed is the fact that the person—
    - (i) has been, or is proposed to be, interviewed by, or has produced, or may produce, any document or thing to,
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- the Chief Commissioner under this Part; or
- (ii) has otherwise participated, or will participate, in an investigation under this Part; or
- (e) by the person to his or her employer or manager or both in the circumstances specified under subsection (3); or
- (f) to the IBAC for the purpose of making a complaint under the **Independent Broad-based Anti-corruption Commission Act 2011** about the conduct of a member of Victoria Police personnel in the course of the person's performance of duties or functions or exercise of powers under this Part or an applicable law; or
- (g) to an interpreter, for the purpose of enabling a person who does not have a sufficient knowledge of the English language to comply with this Part; or
- (h) to a parent or guardian of a person or to an independent person, for the purpose of enabling a person who is under the age of 18 years to comply with this Part; or
- (i) to an independent person, for the purpose of enabling a person who is illiterate or has a mental or physical impairment that prevents the person from understanding an obligation imposed under this Part to comply with this Part; or
- (j) that is otherwise authorised or required by or under—
- (i) this Part; or
- (ii) the **Protected Disclosure Act 2012**; or
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- (iii) the **Independent Broad-based Anti-corruption Commission Act 2011**; or
  - (iv) the **Victorian Inspectorate Act 2011**;  
or
  - (v) the **Ombudsman Act 1973**.
- (3) For the purposes of subsection (2)(e), the specified circumstances are—
- (a) the restricted matter is the fact that the person—
    - (i) has been, or is proposed to be, interviewed by, or has produced, or may produce, any document or thing to, the Chief Commissioner under this Part; or
    - (ii) has otherwise participated, or will participate, in an investigation under this Part; and
  - (b) the disclosure is for the purpose of enabling the person to take the appropriate leave from his or her employment in order to—
    - (i) be interviewed by, or produce any document or thing to, the Chief Commissioner under this Part; or
    - (ii) otherwise participate in an investigation under this Part.
- (4) Nothing in this section affects the operation of section 176.

**186 Chief Commissioner may authorise disclosure of restricted matter**

- (1) Subject to this section, the Chief Commissioner may authorise a person to disclose a restricted matter to a person specified in the authorisation.



- (2) The Chief Commissioner must not authorise a person to disclose a restricted matter under subsection (1) if—
- (a) the Chief Commissioner considers that the disclosure of the restricted matter would be likely to prejudice—
    - (i) an investigation under this Part; or
    - (ii) the safety or reputation of any person; or
    - (iii) the fair trial of a person who has been charged with an offence; or
  - (b) the restricted matter is or contains information that is likely to lead to the identification of a person who has made an assessable disclosure.
- (3) However, the Chief Commissioner may authorise a person to disclose a restricted matter under subsection (1) that is or contains information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.
- (4) An authorisation under subsection (1) must be in writing.

#### **Division 4—Investigation procedures**

#### **187 Chief Commissioner must establish investigation procedures**

- (1) The Chief Commissioner must establish procedures for or with respect to the investigation of protected disclosure complaints under this Part.
  - (2) Without limiting subsection (1), the procedures referred to in that subsection must provide for the following—
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- (a) information about who may perform a duty or function or exercise a power of the Chief Commissioner under this Part or an applicable law and how they may be authorised to do so; and
  - (b) how investigations under this Part will be conducted, including explaining—
    - (i) how procedural fairness will be accorded under Divisions 2 and 3; and
    - (ii) how arrangements for legal representation and other support and assistance for witnesses will be managed.
  - (3) The procedures referred to in subsection (1) must be consistent with—
    - (a) the **Protected Disclosure Act 2012**; and
    - (b) the guidelines in force for the time being under section 57 of that Act.
  - (4) The Chief Commissioner must ensure that the procedures referred to in subsection (1) are readily available to the public and to each member of Victoria Police personnel.

**188 IBAC may review investigation procedures**

- (1) The IBAC may review the procedures established under section 187, or the implementation of those procedures, at any time to ensure that the procedures are, or their implementation is, consistent with—
  - (a) the **Protected Disclosure Act 2012**; and
  - (b) the guidelines in force for the time being under section 57 of that Act.

- (2) The IBAC may make any recommendation to the Chief Commissioner relating to the procedures or the implementation of the procedures that the IBAC thinks fit arising from a review under this section.

**189 Chief Commissioner must adopt recommendation or give the IBAC reasons for not doing so**

- (1) On receiving a recommendation under section 188(2), the Chief Commissioner must—
- (a) adopt the recommendation; or
  - (b) report to the IBAC, in writing, stating his or her reasons for not adopting the recommendation.
- (2) The IBAC may send a copy of a recommendation under section 188(2) to the relevant Minister if—
- (a) it appears to the IBAC that insufficient steps have been taken by the Chief Commissioner to adopt a recommendation under subsection (1)(a) within a reasonable time after the making of the recommendation; or
  - (b) the IBAC is not satisfied with any of the reasons given by the Chief Commissioner under subsection (1)(b).

**Division 5—Other matters**

**190 Chief Commissioner may request the IBAC to withdraw protected disclosure complaint**

The Chief Commissioner may request the IBAC to withdraw the referral of a protected disclosure complaint under section 79 of the **Independent Broad-based Anti-corruption Commission Act 2011**—

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- (a) if he or she considers that the investigation of the protected disclosure complaint under this Part is being obstructed; or
  - (b) for any other reason.
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**PART 11—SPECIAL CONSTABLES**

**Division 1—Appointment of special constables generally**

**191 Appointment of special constables**

- (1) The Chief Commissioner may appoint special constables in accordance with this Part and the regulations.
- (2) A special constable must be a person who is an officer or member of the police force of another jurisdiction.
- (3) The Chief Commissioner may appoint as special constables—
  - (a) named persons; or
  - (b) persons identified by reference to a particular work location; or
  - (c) persons identified by reference to a particular operational unit or work group; or
  - (d) persons by reference to any other identifiable designation.

**Example**

The Chief Commissioner could appoint as special constables—

- (a) A.B. and C.D. of the police force of New South Wales; or
  - (b) all members of the police force of New South Wales who are for the time being stationed at the Albury Police Station; or
  - (c) all members of the police force of South Australia who are for the time being in the South Australian Police Star Group.
- (4) The appointment of one or more special constables must be in writing.

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## 192 Oath of office

- (1) A person is not capable of acting in the office of special constable until he or she has taken and subscribed an oath of office or made and subscribed an affirmation of office.

### Note

See section 199 for an exception to this requirement in the case of incidents requiring urgent cross-border assistance.

- (2) The oath or affirmation must be in Form 3 in Schedule 2.
- (3) The oath or affirmation may be administered—
  - (a) in Victoria by the Chief Commissioner, a Deputy Commissioner, an Assistant Commissioner or a magistrate; or
  - (b) in the jurisdiction in which the special constable is permanently appointed by a person who is authorised under the law of that jurisdiction to administer an oath or affirmation of appointment to an officer or member of the police force of that jurisdiction.
- (4) If the oath or affirmation is administered in Victoria by a person other than the Chief Commissioner, the person must forward a copy of the oath or affirmation as subscribed by the special constable to the Chief Commissioner within 14 days.
- (5) If the oath or affirmation is administered outside Victoria, the person who administers it must forward to the Chief Commissioner, within 14 days—
  - (a) a copy of the oath or affirmation as subscribed by the special constable; and

(b) a written statement, signed by the person, of the person's name and authority to administer the oath or affirmation.

(6) Failure to comply with subsection (4) or (5) does not invalidate the appointment of a special constable.

### **193 Status and powers of special constable**

(1) Subject to this section, for the purposes of this or any other Act or any subordinate instrument a special constable is taken to be a police officer.

(2) Without limiting subsection (1), a special constable has—

(a) the duties and powers of a constable at common law; and

(b) any duties and powers imposed or conferred on a police officer by or under this or any other Act or by or under any subordinate instrument.

#### **Note**

As police officers, special constables are not required to produce proof of their appointment (see section 53).

(3) The following provisions of this Act do not apply in relation to a special constable—

(a) section 7 (Who constitutes Victoria Police?);

(b) Part 3 (Victoria Police Personnel) other than section 19 (Delegation by Chief Commissioner);

(c) Division 1 of Part 4 (Oath of office);

(d) section 63 (Training courses);

(e) section 64 (Long service leave);

(f) section 65 (Resignation and retirement);

(g) section 67 (Ill-health retirement);

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- (h) Division 6 of Part 4 (Incapacity for duty);
  - (i) Part 6 (Police Registration);
  - (j) Part 7 (Discipline) other than section 125 (Breaches of discipline);
  - (k) Part 8 (Appeals and Reviews);
  - (l) regulations made under item 2.1, 2.3, 2.4 or 2.5 of Schedule 5.
- (4) A special constable is not entitled to receive any remuneration or allowances from Victoria Police unless he or she is acting as an agent of the police force to which he or she is permanently appointed.

#### **194 Termination of appointment**

- (1) The Chief Commissioner may, orally or in writing, terminate the appointment of a special constable at any time.

##### **Note**

Section 55 provides that all powers and authorities of a police officer cease when he or she ceases to be an officer and section 254 requires the officer to hand back his or her Victoria Police identification and equipment.

- (2) The power of termination under subsection (1) may be exercised in respect of—
- (a) named special constables; or
  - (b) special constables identified by reference to a particular work location; or
  - (c) special constables identified by reference to a particular operational unit or work group; or
  - (d) special constables by reference to any other identifiable designation.



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- (3) If the Chief Commissioner terminates the appointment of a special constable orally, the Chief Commissioner must, within 14 days, send written confirmation of the termination to—
    - (a) the chief officer of the police force to which the special constable is permanently appointed; and
    - (b) if the special constable is terminated by name—the person whose appointment has been terminated.
  - (4) Failure to comply with subsection (3) does not invalidate the termination of appointment.
  - (5) All powers of a special constable as a police officer immediately cease when he or she ceases to be a special constable.

#### **195 Discipline**

- (1) If the Chief Commissioner reasonably believes that a special constable may have committed a breach of discipline, the Chief Commissioner may conduct or cause to be conducted an investigation of the matter.
  - (2) If the Chief Commissioner reasonably believes that a special constable has committed an offence punishable by imprisonment, the Chief Commissioner may conduct or cause to be conducted an investigation of the matter under the criminal law.
  - (3) At any time during or after an investigation under subsection (1) or (2), the Chief Commissioner may forward details or the results of the investigation to the chief officer of the police force to which the special constable is permanently appointed.
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- (4) If a special constable has been charged under the criminal law with an offence punishable by imprisonment, the Chief Commissioner may forward details or the results of the charge to the chief officer of the police force to which the special constable is permanently appointed.
  - (5) This section applies whether or not the Chief Commissioner has terminated the appointment of the special constable.

**Division 2—Incidents requiring urgent cross-border assistance**

**196 Declaration of incident**

- (1) The Chief Commissioner or a Deputy Commissioner may, orally or in writing, declare an incident to be an incident requiring urgent cross-border assistance for the purposes of this Act.
  - (2) In determining whether to make a declaration, the Chief Commissioner or Deputy Commissioner must have regard to—
    - (a) the nature, urgency and seriousness of the incident; and
    - (b) the adequacy of the resources and capabilities of Victoria Police to deal with the incident without the assistance of other jurisdictions; and
    - (c) the expertise and assistance that could be expected to be provided by other jurisdictions.
  - (3) A person who has made a declaration under this section must forward a copy of the declaration, or written confirmation of the declaration, to the Minister as soon as practicable, and in any event within 14 days, after making the declaration.
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- (4) If a Deputy Commissioner makes a declaration under this section, he or she must forward a copy of the declaration, or written confirmation of the declaration, to the Chief Commissioner as soon as practicable.
- (5) Failure to comply with subsection (3) or (4) does not invalidate the declaration.

### **197 Period of declaration**

- (1) A declaration made under section 196 remains in force for the period (not exceeding 14 days inclusive of the day of making) specified in the declaration.
- (2) A declaration may be extended once only, for a maximum period of 14 days inclusive of the day of making, if the extension is made while the declaration is still in force.
- (3) Section 196 applies to the making of an extension of a declaration in the same way as it applies to the making of a declaration.

### **198 Appointment of special constables during declared incident**

- (1) During the period in which a declaration under this Division is in force, special constables may be appointed under section 191 orally or in writing.
- (2) If any special constables are appointed during the period in which a declaration under this Division is in force, the person who appointed them must, as soon as practicable after the end of that period—
  - (a) forward written confirmation of the appointment to the Minister, specifying—
    - (i) the name of each person appointed; and
    - (ii) the police force to which each such person is permanently appointed; and

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- (iii) the rank of each such person in that police force; and
  - (b) forward written confirmation of the appointment to each person appointed that he or she was appointed as a special constable and specifying the period of the appointment.
  - (3) Subsection (2) applies whether a special constable was appointed individually or by reference to a work location, operational unit, work group or other designation.
  - (4) Failure to comply with subsection (2) does not invalidate the appointment of a special constable.

#### **199 Oath or affirmation**

- (1) Despite section 192(1), it is not necessary for a special constable appointed during the period in which a declaration under this Division is in force to take an oath or make an affirmation before acting in the office of special constable.
- (2) However, a special constable appointed during the period in which a declaration under this Division is in force must take and subscribe an oath or make and subscribe an affirmation in accordance with section 192 as soon as practicable after his or her appointment.

#### **200 Termination of appointment**

Unless terminated earlier under section 194, a special constable who is appointed during the period in which a declaration under this Division is in force ceases to be a special constable at the end of that period.

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**PART 12—POLICE REGISTRATION AND SERVICES  
BOARD**

**Division 1—Establishment and functions**

**201 Establishment of PRS Board**

- (1) There continues to be a Police Registration and Services Board.
- (2) The PRS Board—
  - (a) is a body corporate with perpetual succession; and
  - (b) must have a common seal; and
  - (c) may sue and be sued; and
  - (d) may acquire, hold or dispose of real and personal property; and
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of the PRS Board must be kept as directed by the Board and may only be used as authorised by the Board.
- (4) All courts must take judicial notice of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.
- (5) The PRS Board is the same body as that established by section 87 of the **Police Regulation Act 1958** as in force immediately before the commencement of section 278 of this Act.

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## 202 Functions of the PRS Board

- (1) The PRS Board has the following functions—
  - (a) registration functions, being—
    - (i) to keep the Police Profession Register;
    - (ii) to register persons on the Police Profession Register;
    - (iii) to advise the Chief Commissioner on proposed appointments to Victoria Police;
  - (b) professional standards functions, being—
    - (i) to advise the Chief Commissioner about competency standards, practice standards, educational courses and supervised training arrangements for police officers, protective services officers and police reservists;
    - (ii) to support and promote the continuing education and professional development of police officers, protective services officers and police reservists;
  - (c) review functions, being—
    - (i) to hear and determine appeals under this Act;
    - (ii) to conduct reviews under this Act;
  - (d) general functions, being—
    - (i) to advise the Minister and the Chief Commissioner about any matters related to its functions;
    - (ii) to inquire into and report on any matter referred to the PRS Board by the Chief Commissioner or the Minister;

(iii) any other functions conferred on it by or under this or any other Act.

(2) In performing its registration functions and professional standards functions, the PRS Board must have regard to the advice of the Chief Commissioner.

### **203 Divisions of the PRS Board**

The following Divisions of the PRS Board are established for the purposes of performing the PRS Board's registration functions, professional standards functions and review functions—

- (a) the Registration Division, which is to perform the PRS Board's registration functions;
- (b) the Professional Standards Division, which is to perform the PRS Board's professional standards functions;
- (c) the Review Division, which is to perform the PRS Board's review functions.

#### **Note**

The PRS Board's registration functions are set out in section 202(1)(a), its professional standards functions are set out in section 202(1)(b) and its review functions are set out in section 202(1)(c).

### **204 Powers of the PRS Board**

The PRS Board has all the powers necessary to perform its functions, including the powers conferred on it by or under this or any other Act.

#### **Division 2—Membership**

### **205 Membership of the PRS Board**

(1) The PRS Board consists of the following members, appointed by the Governor in Council on the recommendation of the Minister—

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- (a) a President; and
  - (b) 3 Deputy Presidents, of whom—
    - (i) one must be a police officer or a former police officer; and
    - (ii) one must have experience as a member of the academic staff of a tertiary institution; and
    - (iii) one must be—
      - (A) a former police officer; or
      - (B) a legal practitioner of at least 5 years standing; and
  - (c) 3 police officers nominated by a professional association that represents police officers; and
  - (d) 2 police officers nominated by the Chief Commissioner; and
  - (e) as many other members as are required for the proper functioning of the PRS Board.
- (2) The Minister must not recommend a person for appointment to the PRS Board unless the Minister is satisfied that the person is capable of performing the duties of a member of the PRS Board.
- (3) A member of the PRS Board holds office, subject to this Act, for the term specified in his or her instrument of appointment, not exceeding 5 years from the date of appointment, and is eligible for reappointment.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of the PRS Board in respect of the office of member.
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### **206 Membership of Registration Division**

The Registration Division of the PRS Board consists of—

- (a) the President of the PRS Board; and
- (b) the Deputy President appointed under section 205(1)(b)(i); and
- (c) the members appointed under section 205(1)(c); and
- (d) the members appointed under section 205(1)(d); and
- (e) a member of the PRS Board who is a member of the academic staff of a tertiary institution; and
- (f) a member of the PRS Board who is a legal practitioner of at least 5 years standing.

### **207 Membership of Professional Standards Division**

The Professional Standards Division of the PRS Board consists of—

- (a) the President of the PRS Board; and
- (b) the Deputy President appointed under section 205(1)(b)(ii); and
- (c) as many other members as are required for the proper functioning of the Division, each of whom must be—
  - (i) a member of the academic staff of a tertiary institution; or
  - (ii) a legal practitioner of at least 5 years standing; or
  - (iii) a police officer or former police officer.

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## **208 Membership of Review Division**

The Review Division of the PRS Board consists of—

- (a) the President of the PRS Board; and
- (b) the Deputy President appointed under section 205(1)(b)(iii); and
- (c) as many other members as are required for the proper functioning of the Division, none of whom may be a police officer but at least one of whom must be—
  - (i) a legal practitioner of at least 5 years standing; or
  - (ii) a former police officer.

## **209 Allocation of members to Divisions of PRS Board**

The President allocates members of the PRS Board to Divisions of the Board in accordance with sections 206, 207 and 208, and may allocate a member to more than one Division.

## **210 Remuneration**

A member of the PRS Board is entitled to be paid the remuneration and allowances (if any) fixed from time to time by the Governor in Council.

## **211 Accountability of the President**

The President of the PRS Board is accountable to the Minister for the performance of the functions of the PRS Board.

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**212 Vacancies, resignation and removal from office**

- (1) The office of a member of the PRS Board becomes vacant if he or she—
  - (a) becomes an insolvent under administration; or
  - (b) is convicted of an offence punishable by imprisonment or an offence that, if committed in Victoria, would be punishable by imprisonment; or
  - (c) resigns from office by delivering a signed letter of resignation to the Governor in Council; or
  - (d) is removed from office under subsection (2).
- (2) The Governor in Council, on the recommendation of the Minister, may remove a member from office if—
  - (a) the member becomes incapable of performing his or her duties; or
  - (b) the member is negligent in the performance of those duties; or
  - (c) the member engages in improper conduct; or
  - (d) the member is absent, without leave first being granted by the President, from 3 consecutive meetings of which reasonable notice has been given to the member; or
  - (e) for any other reason, the Minister is satisfied that the member is unfit to hold office.

**213 Acting President, Deputy Presidents and other members**

- (1) The Governor in Council may appoint a Deputy President of the PRS Board to act as President of the PRS Board—
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- (a) during a vacancy in the office of President;  
or
- (b) if the President is absent or, for any other reason, is unable to perform the duties of office.
- (2) The Governor in Council may appoint a person to act as a Deputy President of the PRS Board—
- (a) during a vacancy in the office of a Deputy President; or
- (b) if a Deputy President is absent or, for any other reason, is unable to perform the duties of office.
- (3) The Governor in Council may—
- (a) determine the terms and conditions of appointment of an acting President or Deputy President; and
- (b) at any time terminate the appointment of an acting President or Deputy President.
- (4) The Minister may appoint a person to act as a member of the PRS Board (other than as President or Deputy President)—
- (a) during a vacancy in the office of a member of the PRS Board; or
- (b) if a member is absent or, for any other reason, is unable to perform the member's duties.
- (5) The Minister may—
- (a) determine the terms and conditions of appointment of an acting member (other than an acting President or Deputy President); and
- (b) at any time terminate the appointment of an acting member (other than an acting President or Deputy President).
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**Division 3—General provisions for the PRS Board**

**214 Meetings of the PRS Board**

- (1) Meetings of the PRS Board must be held at least every 3 months and at any other time at the request of a Deputy President.
- (2) The President, or in his or her absence, a Deputy President, is to preside at a meeting of the PRS Board.
- (3) The quorum for a meeting of the PRS Board is 25% of the members for the time being of the PRS Board, at least one of whom must be the President or a Deputy President.
- (4) A question arising at a meeting is to be decided by a majority of votes of the members present and voting on that question and, if the votes are equal, the person presiding at the meeting has a casting vote.
- (5) The PRS Board must keep a record of the decisions and full and accurate minutes of its meetings.
- (6) Subject to this Act, the PRS Board may regulate its own procedure.

**215 Effect of vacancy or defect**

An act or decision of the PRS Board is not invalid only because of—

- (a) a vacancy in its membership; or
- (b) a defect or irregularity in the appointment of any of its members.

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## 216 Immunity

- (1) A PRS Board officer is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the performance of a function under this Act; or
  - (b) in the reasonable belief that the act or omission was in the performance of a function under this Act.
- (2) Any liability arising from an act or omission that would, but for subsection (1), attach to a PRS Board officer, attaches instead to the PRS Board.
- (3) This section does not apply to the performance of a review function.

### Note

See section 163(1) for protection of members performing review functions.

## 217 Staffing

- (1) Any employees that are necessary for the purposes of the functions of the PRS Board under this Act or any other Act may be employed under Part 3 of the **Public Administration Act 2004**.
- (2) The PRS Board may enter into agreements or arrangements for the use of the services of any staff of a government department, statutory authority or other public body.

## 218 Confidentiality

- (1) A PRS Board officer must not, directly or indirectly, make a record of or disclose to someone else, any information acquired by the officer in the performance of functions under this Act, except as provided under this section.

Penalty: 60 penalty units.

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- (2) A PRS Board officer may make a record of or disclose information if—
- (a) the record or disclosure is necessary for the officer to perform his or her functions under this Act; or
  - (b) the record or disclosure is necessary for the purposes of obtaining of legal advice in relation to the performance of the functions of the officer or the PRS Board under this Act; or
  - (c) the officer is required to do so under the **Independent Broad-based Anti-corruption Commission Act 2011** or any other law; or
  - (d) the information relates to a person and the person to whom the information relates consents to the creation of the record or the disclosure; or
  - (e) the record or disclosure is necessary for the PRS Board to complete its report of operations under the **Financial Management Act 1994** and the information does not identify a person or their personal affairs.

### 219 Delegation

- (1) The PRS Board, by instrument, may delegate to a person specified in subsection (2) any function or power of the PRS Board under this Act, other than—
- (a) the power under sections 104(2) and 108(2) to approve forms; or
  - (b) the power under section 111 to suspend a person's registration; or
  - (c) the power under section 115 to cancel a person's registration; or
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- (d) any power or function under Part 8; or
  - (e) this power of delegation.
- (2) The following persons are specified for the purposes of subsection (1)—
- (a) a member of the PRS Board;
  - (b) an employee or a member of the staff of a government department, statutory authority or other public body referred to in section 217.

#### **Division 4—Checks and investigations by the PRS Board**

##### **220 Checks and investigations for registration and provision of advice**

The powers in this Division may be exercised by the PRS Board for the purposes of—

- (a) determining whether to register an applicant under section 105 or renew registration under section 109; or
- (b) providing advice to the Chief Commissioner under section 29 or 30 in respect of a proposed appointment to Victoria Police.

##### **221 Criminal record and other checks**

For the purposes set out in section 220, the PRS Board may require an applicant or proposed appointee to do any of the following—

- (a) obtain a check of the applicant's or proposed appointee's criminal record and provide the result of the check to the PRS Board;
- (b) submit to any tests required by the PRS Board;
- (c) provide the PRS Board with any references or reports;



- (d) provide the PRS Board with satisfactory evidence of previous service as a police officer or as an officer or member of the police force of another jurisdiction;
- (e) provide written consent for the PRS Board to obtain information about the applicant's or proposed appointee's previous service with Victoria Police or the police force of another jurisdiction.

## **222 Investigations and further information**

- (1) For the purposes set out in section 220, the PRS Board may—
    - (a) conduct any investigations and make any enquiries it considers necessary; and
    - (b) by written notice, require an applicant or proposed appointee to appear before the PRS Board, at the day, time and venue specified in the notice (being at least 21 days after the day on which the notice is given to the applicant or proposed appointee) to—
      - (i) answer any questions; and
      - (ii) produce any documents specified in the notice; and
      - (iii) provide any other information required by the PRS Board.
  - (2) An applicant or proposed appointee may appear before the PRS Board by video link or any other means that the PRS Board considers appropriate.
  - (3) The PRS Board may refuse to consider an application for registration or renewal of registration or to provide advice to the Chief Commissioner under section 29 or 30 if the applicant or proposed appointee fails to—
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- (a) appear before the PRS Board at the day and time specified in a notice under subsection (1); or
  - (b) answer questions asked by the PRS Board; or
  - (c) produce documents specified in a notice under subsection (1) to the PRS Board; or
  - (d) provide information required by the PRS Board.

### **223 Witness summons**

- (1) For the purposes set out in section 220, the President or Deputy President of the Registration Division may issue a summons to a person to attend the PRS Board to give evidence and produce any documents that are referred to in the summons.

#### **Note**

Section 224 sets out how a summons may be served.

- (2) A person who has been properly served with a summons must not, without reasonable excuse, fail to—
  - (a) attend as required by the summons until he or she has been excused or released from attendance by the PRS Board; or
  - (b) produce any document referred to in the summons that is in his or her possession.

Penalty: 10 penalty units.

### **224 Service of notices and summonses under this Division**

- (1) A notice or summons required or permitted to be given to or served on a person under this Division may be given or served—
  - (a) by delivering it personally to the person; or

- (b) by sending it by post, fax or email to the person at his or her usual or last known postal, fax or email address; or
  - (c) by leaving it at the person's usual or last known residential or business address with a person on the premises apparently at least 16 years old and apparently residing or employed there.
- (2) A summons is to be taken to have been served on a person—
- (a) in the case of delivery in person—at the time of delivery; or
  - (b) in the case of posting—2 business days after the day on which the document was posted; or
  - (c) in the case of fax or email—at the time the fax or email is received.
- (3) If a fax or email is received after 4.00 p.m. on any day, it is to be taken to have been received on the next business day.
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**PART 13—CONFIDENTIALITY AND PRIVILEGE**

**Division 1—Confidentiality of police information**

**225 Definitions**

In this Division—

*police information* means—

- (a) in relation to a member or former member of Victoria Police personnel, any information that has come to the knowledge or into the possession of the member—
  - (i) in the performance of functions or duties or the exercise of powers as a member of Victoria Police personnel; or
  - (ii) otherwise as a result of being a member of Victoria Police personnel; or
- (b) in relation to a service provider, any information given or made available to the service provider by Victoria Police or a member of Victoria Police personnel for the purposes of the provision of services by the service provider;

*service provider* means—

- (a) a contractor, consultant or other person who is or has been engaged to provide services to Victoria Police or to the Chief Commissioner; or
- (b) a person who is or has been employed by or engaged to provide services to a contractor, consultant or other person referred to in paragraph (a).

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**226 Victoria Police personnel duty not to access, use or disclose police information**

- (1) In determining for the purposes of this Division whether it is the duty of a member or former member of Victoria Police personnel not to access, make use of or disclose police information, regard must be had to the Chief Commissioner's instructions.
- (2) Subsection (1) does not limit the matters to which regard may be had in determining for the purposes of this Division whether it is the duty of a member or former member of Victoria Police personnel not to access, make use of or disclose police information.
- (3) For the avoidance of doubt, if the access, use or disclosure of police information is authorised under section 230 or 231, then sections 227, 228 and 229 do not apply to that access, use or disclosure.

**227 Unauthorised access to, use of or disclosure of police information by members or former members of Victoria Police personnel—summary offence**

- (1) A member or former member of Victoria Police personnel must not, without reasonable excuse, access, use or disclose any police information if it is the duty of the member or former member not to access, make use of or disclose the information.

Penalty: 240 penalty units or imprisonment for 2 years or both.

- (2) Without limiting what may be a reasonable excuse, it is a reasonable excuse if the member or former member took reasonable steps not to access, use or disclose the police information.

**Note**

See also section 72 of the **Criminal Procedure Act 2009**, which deals with the evidential burden of proof.

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**228 Unauthorised access to, use of or disclosure of police information by members or former members of Victoria Police personnel—indictable offence**

- (1) A member or former member of Victoria Police personnel must not access, use or disclose any police information if—
- (a) it is the duty of the member or former member not to access, use or disclose the information; and
  - (b) the member or former member knows or is reckless as to whether the information may be used (whether by the member or former member or any other person) to—
    - (i) endanger the life or safety of any person; or
    - (ii) commit, or assist in the commission of, an indictable offence; or
    - (iii) impede or interfere with the administration of justice.

Penalty: 600 penalty units or imprisonment for 5 years or both.

- (2) An offence against subsection (1) is an indictable offence.

**229 Unauthorised access to, use of or disclosure of police information by service providers**

- (1) A service provider must not, without reasonable excuse, access, use or disclose any police information other than for a purpose for which the information was given or made available to the service provider.

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**Penalty:** In the case of an individual, 240 penalty units or imprisonment for 2 years or both;

In the case of a body corporate, 1200 penalty units.

- (2) Without limiting what may be a reasonable excuse, it is a reasonable excuse if the service provider took reasonable steps not to access, use or disclose the police information.

**Note**

See also section 72 of the **Criminal Procedure Act 2009**, which deals with the evidential burden of proof.

- (3) In determining the purposes for which police information given or made available to a service provider may be accessed, used or disclosed by the service provider, regard must be had to the Chief Commissioner's instructions.
- (4) Subsection (3) does not limit the matters to which regard may be had in determining the purposes for which police information given or made available to a service provider may be accessed, used or disclosed by the service provider.

**230 Access to, use of or disclosure of information on a computerised database**

- (1) A person authorised, or who is in a class of persons authorised, under subsection (2) may access, use or disclose information in the performance of official duties in accordance with the terms of the authorisation.
- (2) The Chief Commissioner may, by instrument in writing, authorise police officers or classes of police officers to access, use or disclose information of a class specified in the instrument in the performance of their official duties, being information on a computerised database that is able to be accessed by—

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- (a) police officers; or
  - (b) a relevant person within the meaning of section 104ZX of the **Corrections Act 1986**, other than an independent prison visitor.
- (3) This section does not apply to any information that is—
- (a) acquired by a member of Victoria Police personnel by reason of, or in the course of, the performance of duties or functions or the exercise of powers under Part 10; or
  - (b) a restricted matter within the meaning of section 183.

**231 Other authorised access to, use of or disclosure of police information**

- (1) For the purposes of this Division, each of the following is authorised—
- (a) the accessing, use or disclosure, in accordance with the **Health Records Act 2001**, of police information that is health information within the meaning of that Act;
  - (b) the disclosure, in accordance with Division 4, of police information that is vehicle accident information within the meaning of section 246;
  - (c) the disclosure to the operator or driver of a tow truck or a person who manages a depot, in connection with the authorisation under the **Accident Towing Services Act 2007** by a police officer of the towing of a vehicle by a tow truck, of police information that is information disclosed to the police officer under section 90K(a)(iv) of the **Road Safety Act 1986**;



(d) the accessing, or disclosure to the Registrar, by a member of Victoria Police personnel acting on behalf of the Chief Commissioner of police information required to apply for registration of a financing statement or a financing charge statement under the PPS Act in the performance of duties of the Chief Commissioner under Part 6A of the **Road Safety Act 1986**.

(2) In this section—

*depot* has the same meaning as in the **Accident Towing Services Act 2007**;

*PPS Act* means the Personal Property Securities Act 2009 of the Commonwealth;

*Registrar* means the Registrar of Personal Property Securities appointed under the PPS Act;

*tow truck* has the same meaning as in the **Accident Towing Services Act 2007**.

## 232 Offence to disclose information in relation to drug and alcohol testing

(1) A person must not, other than as required or authorised by this Act or the regulations, disclose to any other person the identity of a person to whom or in respect of whom a testing direction is given under Part 5 or the results of any test taken as a result of a testing direction.

Penalty: In the case of an individual, 60 penalty units or imprisonment for 6 months or both;

In the case of a body corporate, 300 penalty units.

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- (2) Subsection (1) does not apply to disclosure by—
- (a) the person to whom or in respect of whom the testing direction is given; or
  - (b) the Chief Commissioner, being a disclosure made to the IBAC or an IBAC Officer in the performance of the Chief Commissioner's functions or duties; or
  - (c) the IBAC or an IBAC Officer, if the disclosure is necessary for the performance of the functions or duties of the IBAC or an IBAC Officer.
- (3) Subsection (1) does not apply to the disclosure of information in a proceeding of a kind referred to in section 97.

**Division 2—Other confidentiality and privilege provisions**

**233 Deliberations of Ministers and Parliamentary committees not to be disclosed**

- (1) A person cannot be required or authorised by virtue of this Act—
- (a) to provide any information or answer any question; or
  - (b) to produce or inspect so much of any document—

that relates to the deliberations of Ministers or any committee consisting of members of Parliament where the committee is formed for the purpose of advising the Ministers in respect of their deliberations.

- (2) The Attorney-General may issue a certificate certifying that any information or question or document or part of a document relates to the deliberations of Ministers or of a committee referred to in subsection (1).

- (3) A certificate issued under subsection (2) is conclusive of the facts certified.

### **234 Certain crime reports privileged**

- (1) This section applies to any document issued for publication by the Chief Commissioner or on his or her behalf by a police officer of or above the rank of inspector for the purpose of protecting the public or gaining information that may be of assistance in the investigation of an alleged offence.
- (2) The publication—
- (a) in any public newspaper or other periodical publication; or
  - (b) by transmission to the general public in a radio or television program; or
  - (c) by any other form of electronic communication within the meaning of the **Defamation Act 2005**—

of a copy, or a fair and accurate report or summary, of the document is privileged unless the publication is proved to be made with malice.

- (3) In a proceeding, if the plaintiff proves that the defendant was requested by the plaintiff to publish a reasonable letter or statement by way of contradiction or explanation of the copy, document, report or summary published by the defendant, then subsection (2) is not available as a defence unless the defendant proves that the defendant published the letter or statement—
- (a) within a reasonable time after the request; and
  - (b) in such a manner that it was likely to come to the notice of the same general audience as that for the copy, document, report or summary.

- (4) This section does not limit or abridge any privilege existing by law.

### **Division 3—Agency photographs**

#### **235 Definitions**

- (1) In this Division—

***agency photograph*** means a photograph of the face of a person who has been found guilty of an offence that was taken by an investigative agency or an officer of an investigative agency when—

- (a) the person was arrested by the agency or an officer of the agency on suspicion of an offence; or
- (b) the person was interviewed by the agency or an officer of the agency in respect of an offence; or
- (c) another investigative procedure into the person was carried out by the agency or an officer of the agency in respect of an offence;

***authorised media organisation*** means a media organisation authorised under section 236;

***journalism*** means the practice of collecting, preparing for dissemination or disseminating any of the following material for the purpose of making it available to the public—

- (a) material having the character of news or current affairs;
- (b) material consisting of commentary or opinion on or analysis of news or current affairs;

***media organisation*** means a person or body that engages in journalism.

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- (2) For the purposes of this Division, a person is taken to have been found guilty of an offence if—
- (a) either—
    - (i) a court has made a formal finding that he or she is guilty of the offence; or
    - (ii) a similar finding has been made under equivalent provisions of the laws of a another jurisdiction; and
  - (b) either—
    - (i) the finding has not been appealed against in the period within which the finding may be appealed against; or
    - (ii) if there has been an appeal against the finding—the appeal is concluded and the finding has not been overturned on the appeal.

**236 Authorisation of media organisations**

- (1) The Chief Commissioner may, on application by a media organisation under section 237, authorise the media organisation to be given agency photographs.
- (2) An authorisation under subsection (1) remains in force until revoked by the Chief Commissioner or surrendered by the media organisation to whom it is given.
- (3) An authorisation under subsection (1)—
  - (a) must be in writing; and
  - (b) is subject to any conditions specified in the authorisation.

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**237 Application for authorisation under section 236**

- (1) A media organisation may apply to the Chief Commissioner for authorisation under section 236.
- (2) An application under subsection (1) must be in the form approved by the Chief Commissioner and accompanied by the prescribed fee.

**238 Chief Commissioner may authorise the giving of agency photographs to media organisations**

- (1) If an agency photograph of a person who has been found guilty of an offence is in the possession of Victoria Police, the Chief Commissioner may, on application by an authorised media organisation under section 239, authorise that the photograph be given to the authorised media organisation for use in the course of journalism carried out by that organisation.
  - (2) The Chief Commissioner must not give an authorisation under subsection (1) on an application made more than 6 months after the person photographed was found guilty of the offence referred to in subsection (1).
  - (3) An authorisation under subsection (1)—
    - (a) must be in writing; and
    - (b) is subject to the conditions specified in the authorisation.
  - (4) Subsection (1) has effect despite anything to the contrary in the **Information Privacy Act 2000**, the **Freedom of Information Act 1982** or any other Act (other than the **Charter of Human Rights and Responsibilities Act 2006**).
  - (5) Despite anything to the contrary in the **Freedom of Information Act 1982**, that Act is not to be construed as empowering an application to be made by a media organisation under that Act for
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access to an agency photograph, if the application is made within 6 months after the person photographed has been found guilty of an offence.

**Note**

See section 234 which makes certain provisions as to documents issued for publication by the Chief Commissioner.

**239 Application for giving of agency photograph**

- (1) An authorised media organisation may apply to the Chief Commissioner for authorisation, under section 238, for the giving of an agency photograph that is in the possession of Victoria Police.
- (2) An application under subsection (1) must—
  - (a) be in writing in the form approved by the Chief Commissioner and be accompanied by the prescribed fee; and
  - (b) set out the reasons why the authority should be given, and in doing so, address the matters set out in section 240.

**240 Considerations to be taken into account in authorising the giving of agency photographs**

Before authorising the giving of an agency photograph under section 238, the Chief Commissioner must have regard to the following matters, to the extent that the matters can be ascertained at the time the Chief Commissioner makes the decision to give the authorisation—

- (a) the public interest, including but not limited to the following—
  - (i) the nature and seriousness of the offence referred to in section 238(1);
  - (ii) the age of the person photographed;
  - (iii) the sentence given to the person photographed;

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- (iv) any suppression orders involving the person photographed or involving any other person who might be affected by the giving of the photograph to the media organisation;
  - (v) any effect that might result from the giving of the photograph on any other court proceedings;
  - (vi) any deterrent effect that might result from the giving of the photograph;
  - (vii) any other possible legal constraint on the giving of the photograph, including, but not limited to any constraint under the **Sex Offenders Registration Act 2004**, the **Victims' Charter Act 2006**, the **Children, Youth and Families Act 2005** and the **Judicial Proceedings Reports Act 1958**;
  - (viii) any information known to the Chief Commissioner, as to the person photographed being suspected, on reasonable grounds, of having committed other offences that are similar to the offence referred to in section 238(1);
  - (ix) any other relevant matter; and
- (b) the interests of the victim and of any witness to the offence referred to in section 238(1), including but not limited to the following—
- (i) whether or not any victim of or witness to the offence referred to in section 238(1) could be identified by the giving of the photograph;
  - (ii) the likely impact on any such victim or witness of the giving of the photograph; and
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- (c) the interests of the person photographed, including but not limited to the following—
- (i) any special circumstances of the person photographed, including, physical or mental health issues;
  - (ii) any risk to the person photographed or his or her family that might occur as a result of the giving of the photograph.

**241 Notification of authorisation under section 238**

- (1) On deciding to authorise the giving of an agency photograph to a media organisation under section 238, the Chief Commissioner must, without delay, notify the person photographed that the decision to authorise the giving of the photograph has been made.
- (2) A notice under subsection (1)—
  - (a) must be given by posting the notice, by ordinary mail, to the last known address of the person photographed; and
  - (b) must set out the media organisation to whom the photograph is to be given.

**242 Offences as to authorisation and use of agency photographs**

- (1) A media organisation that has been authorised under section 236(1) must comply with the authorisation.  

Penalty: In the case of an individual, 10 penalty units;  
In the case of a body corporate, 50 penalty units.
  - (2) A media organisation must not use an agency photograph that has been authorised to be given to the media organisation under section 238 except—
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- (a) in the course of journalism carried out by that organisation; and
  - (b) in accordance with the authorisation under section 238 under which the photograph is given to the media organisation; and
  - (c) in accordance with—
    - (i) any applicable privacy standard published or determined by the Australian Press Council; or
    - (ii) any applicable code published or determined by, or registered with or notified to the Australian Communications and Media Authority, established under the Australian Communications and Media Authority Act 2005 of the Commonwealth.

**Penalty:** In the case of an individual, 60 penalty units or imprisonment for 6 months or both;

In the case of a body corporate,  
300 penalty units.

- (3) If an authorised media organisation is found guilty of an offence under this section, the Chief Commissioner may revoke the authorisation of that media organisation.

### **243 Protection against actions for defamation or breach of confidence**

If an authorisation has been given under section 238 to give an agency photograph to an authorised media organisation an action for defamation or breach of confidence does not lie—

- (a) against the Chief Commissioner, a police officer, the Crown, a Minister or an officer because of the giving of the authorisation; or

- (b) against a media organisation who publishes the agency photograph in accordance with this Act and the authorisation.

**244 Protection in respect of offences**

If an authorisation has been given under section 238 to give an agency photograph to an authorised media organisation, neither the person authorising the giving of the agency photograph nor any other person concerned in authorising the giving of the agency photograph, is guilty of an offence by reason only of the authorising of the giving of the agency photograph.

**245 Procedure under section 234 not affected**

Nothing in this Division affects or limits the operation of section 234.

**Division 4—Disclosure of vehicle accident information**

**246 Definitions**

In this Division—

*authorised purpose* means, in relation to the disclosure or use of vehicle accident information relating to a vehicle accident, any one or more of the following purposes—

- (a) to obtain legal advice in relation to the vehicle accident; or
- (b) to recover any loss or damage incurred or suffered, or costs incurred, as a result of the vehicle accident, whether by way of legal proceedings or otherwise; or
- (c) to assess and determine a claim under a contract of insurance made in relation to—
  - (i) the death or injury of a person as a result of the vehicle accident; or

- (ii) the damage to, or destruction of, property as a result of the vehicle accident; or
- (d) to assess and determine a claim for compensation under a statutory insurance scheme law in respect of the death of or injury to a person as a result of the vehicle accident; or
- (e) to investigate the vehicle accident for a purpose set out in paragraph (a), (b), (c) or (d);

***authorised representative*** means—

- (a) a relevant insurer; or
- (b) a person authorised, in writing, by a person referred to in section 248(1)(a) to (c) to request vehicle accident information on that person's behalf in accordance with that section;

***injury*** means personal or bodily injury and includes psychological or psychiatric injury;

***non-Victorian statutory insurance scheme law*** means a law of another State or a Territory or the Commonwealth declared under section 247 to be a non-Victorian statutory insurance scheme law;

***personal representative***, in relation to a person who dies or is injured, or whose property has been damaged or destroyed, as a result of a vehicle accident, means—

- (a) if the person is a child, the parent or guardian of the child; or
- (b) if the person is a person with a disability and an administrator or guardian has been appointed under the **Guardianship and Administration**

**Act 1986** in respect of that person, that administrator or guardian; or

- (c) if the person does not have legal capacity and the person has appointed an attorney under an enduring power of attorney, that attorney; or
- (d) if the person dies as a result of the vehicle accident, the administrator or executor of that person's estate;

*registered operator* has the same meaning as in the **Road Safety Act 1986**;

*relevant insurer* means—

- (a) a statutory scheme insurer if that insurer must assess and determine a claim for compensation by a person referred to in section 248(1)(a) or (b), or the personal representative of a person who dies or is injured as a result of a vehicle accident, under a statutory insurance scheme law; or
- (b) an insurer against whom a claim has been made under a contract of insurance by a person referred to in section 248(1)(a) or (b), or the personal representative of a person who dies or is injured as a result of a vehicle accident or whose property is damaged or destroyed as a result of a vehicle accident;

*statutory insurance scheme law* means—

- (a) the **Accident Compensation Act 1985**;  
or
- (b) the **Transport Accident Act 1986**; or
- (c) a non-Victorian statutory insurance scheme law;

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*statutory scheme insurer* means—

- (a) the Victorian WorkCover Authority established under the **Accident Compensation Act 1985** or an authorised agent or self-insurer within the meaning of that Act; or
- (b) the Transport Accident Commission established under the **Transport Accident Act 1986**; or
- (c) a person established under a non-Victorian statutory insurance scheme law, or a person who assesses and determines claims for compensation under a non-Victorian statutory insurance scheme law, declared under section 247 to be a statutory scheme insurer;

*vehicle* has the same meaning as in the **Road Safety Act 1986**;

*vehicle accident* means an incident involving a vehicle that results in—

- (a) the death or injury of a person; or
- (b) damage to, or the destruction of, property;

*vehicle accident information* means any of the following information relating to a vehicle accident held by the Chief Commissioner of Police that has been recorded, collected or obtained by a police officer in the course of his or her duty—

- (a) information that identifies—
  - (i) the driver or registered operator or passenger of any vehicle involved in the vehicle accident;

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- (ii) a person who witnessed the vehicle accident;
  - (iii) a person who dies or is injured as a result of the vehicle accident;
- (b) a statement of—
- (i) the driver or a passenger of any vehicle involved in the vehicle accident;
  - (ii) a person who witnessed the vehicle accident;
  - (iii) a person injured as a result of the vehicle accident;
- (c) information that identifies any vehicle involved in the vehicle accident;
- (d) the full particulars of the vehicle accident.

**247 Declaration of non-Victorian statutory insurance scheme laws and persons as statutory scheme insurers**

The Minister, by notice published in the Government Gazette, may for the purpose of this Division declare—

- (a) a law of another State or a Territory or the Commonwealth to be a non-Victorian statutory scheme law; and
- (b) a person established under a non-Victorian statutory scheme law, or a person who assesses and determines claims for compensation under a non-Victorian statutory scheme law, to be a statutory scheme insurer.

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**248 Certain persons may request disclosure of vehicle accident information**

- (1) A person may request a police officer or a Victoria Police employee to disclose to the person vehicle accident information relating to an accident if—
  - (a) the person was injured as a result of the vehicle accident; or
  - (b) the person's property was damaged or destroyed as a result of the vehicle accident; or
  - (c) the person is a personal representative of a person who died or was injured, or whose property was damaged or destroyed, as a result of the vehicle accident; or
  - (d) the person is an authorised representative of a person referred to in paragraph (a) or (b), or a personal representative referred to in paragraph (c).
- (2) A request may only be for an authorised purpose.
- (3) A request must be made in accordance with section 249.

**249 Form and content of application for vehicle accident information**

- (1) A request under section 248 must be in writing.
- (2) A request from a person (other than an authorised representative) must also be accompanied by—
  - (a) if the person is a natural person—
    - (i) a statutory declaration by the person stating that he or she is a person to whom section 248(1) applies and the purpose of the request; and



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- (ii) proof, to the satisfaction of the Chief Commissioner, of the person's identity;  
or
    - (b) if the person is a body corporate, a statutory declaration by an officer or employee of the body corporate stating that the body corporate is a person to whom section 248(1) applies and the purpose of the request.
  - (3) A request from an authorised representative must also be accompanied by the relevant written authority (if required) and—
    - (a) if the authorised representative is a natural person, a statutory declaration by the person stating the purpose of the request; or
    - (b) if the authorised representative is a body corporate, a statutory declaration by an officer or employee of the body corporate stating the purpose of the request.
  - (4) A request from a person who is a personal representative must also be accompanied by proof, to the satisfaction of the Chief Commissioner, that the person is a personal representative for the purposes of this Division.

#### **250 Disclosure of vehicle accident information**

On receipt of a request under section 248, a police officer or a Victoria Police employee may disclose vehicle accident information to the person requesting the information if the officer or employee is satisfied that the requirements set out in section 249 have been met.

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**251 Disclosure or use of vehicle accident information for a purpose other than an authorised purpose prohibited**

- (1) A person referred to in section 248(1)(a) to (d) must not disclose or use vehicle accident information disclosed to that person by a police officer, or a Victoria police employee, except for an authorised purpose.

Penalty: 60 penalty units.

- (2) A person who obtains vehicle accident information from a person referred to in section 248(1)(a) to (d) must not disclose or use vehicle accident information except for an authorised purpose.

Penalty: In the case of an individual, 60 penalty units;

In the case of a body corporate,  
300 penalty units.

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**PART 14—COMPLIANCE AND ENFORCEMENT**

**Division 1—General offences in relation to Victoria Police**

**252 Bribery and corruption by police or protective services officers**

- (1) This section applies to each of the following (a *regulated person*)—
    - (a) a police officer;
    - (b) a protective services officer;
    - (c) a police recruit.
  - (2) A regulated person must not take or solicit a bribe, pecuniary or otherwise.  
Penalty: 240 penalty units or imprisonment for 2 years or both.
  - (3) A regulated person must not take or solicit a payment or other benefit from, or make an agreement with, another person to neglect the regulated person's duty.  
Penalty: 240 penalty units or imprisonment for 2 years or both.
  - (4) A regulated person must not take or solicit a payment or other benefit from, or make an agreement with, another person to improperly take advantage of the regulated person's position.  
Penalty: 240 penalty units or imprisonment for 2 years or both.
  - (5) Subsections (3) and (4) apply whether or not the other person is also a regulated person.
  - (6) A proceeding for an offence against subsection (2), (3) or (4) may be commenced within the period of 3 years after the alleged commission of the offence.
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**253 Bribery and corruption towards police or protective services officers**

- (1) A person (including a regulated person) must not give, offer or promise a bribe, pecuniary or otherwise, to a regulated person.

Penalty: In the case of an individual, 240 penalty units or imprisonment for 2 years or both;

In the case of a body corporate,  
1200 penalty units.

- (2) A person (including a regulated person) must not give, offer or promise a payment or other benefit to, or make an agreement with, a regulated person to neglect the regulated person's duty.

Penalty: In the case of an individual, 240 penalty units or imprisonment for 2 years or both;

In the case of a body corporate,  
1200 penalty units.

- (3) A person (including a regulated person) must not give, offer or promise a payment or other benefit to, or make an agreement with, a regulated person to improperly take advantage of the regulated person's position.

Penalty: In the case of an individual, 240 penalty units or imprisonment for 2 years or both;

In the case of a body corporate,  
1200 penalty units.

- (4) A proceeding for an offence against subsection (1), (2) or (3) may be commenced within the period of 3 years after the commission of the alleged offence.

(5) In this section—

*regulated person* means a person referred to in section 252(1).

**254 Failure to return Victoria Police identification or Victoria Police equipment**

(1) A police officer or protective services officer who ceases to hold office must return his or her Victoria Police identification and Victoria Police equipment on or before his or her last day of service unless the officer has a reasonable excuse for not doing so.

Penalty: 60 penalty units or imprisonment for 6 months or both.

(2) A police recruit whose employment is terminated must return his or her Victoria Police identification and Victoria Police equipment on or before his or her last day of employment unless the police recruit has a reasonable excuse for not doing so.

Penalty: 60 penalty units or imprisonment for 6 months or both.

(3) Without limiting what may be a reasonable excuse, it is a reasonable excuse if the person has the written permission of the Chief Commissioner to retain the identification or equipment.

**Note**

See also section 72 of the **Criminal Procedure Act 2009**, which deals with the evidential burden of proof.

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**255 Unauthorised manufacture, possession, use or supply of Victoria Police identification or Victoria Police equipment**

- (1) A person must not manufacture, possess, use or supply any Victoria Police identification or Victoria Police equipment unless—
- (a) the person manufactures, possesses, uses or supplies the identification or equipment in accordance with the approval of the Chief Commissioner under subsection (2); or
  - (b) the person possesses or uses the identification or equipment for the purposes of, or in the course of, performing his or her duties as a member of Victoria Police personnel; or
  - (c) the person otherwise has a reasonable excuse.

**Penalty:** In the case of an individual, 120 penalty units or imprisonment for 1 year or both;

In the case of a body corporate, 600 penalty units.

**Note**

See also section 72 of the **Criminal Procedure Act 2009**, which deals with the evidential burden of proof.

- (2) The Chief Commissioner may give written approval for a person or class of persons to manufacture, possess, use or supply Victoria Police identification or Victoria Police equipment specified in the approval.
- (3) An approval under subsection (2)—
- (a) may be given for a fixed period or indefinitely; and

- (b) may be made subject to any conditions the Chief Commissioner considers appropriate; and
  - (c) may be revoked at any time by written notice given by the Commissioner to the person to whom the approval relates.
- (4) In this section—
- supply* includes—
- (a) sell, including by auction; and
  - (b) hire out; and
  - (c) exchange; and
  - (d) give away or otherwise dispose of; and
  - (e) offer to supply; and
  - (f) advertise, display or expose for supply.

**256 Impersonating police or protective services officers**

- (1) A person who is not a police officer must not, in any way, hold himself or herself out to be a police officer.
- Penalty: 120 penalty units or imprisonment for 1 year or both.
- (2) A person who is not a protective services officer must not, in any way, hold himself or herself out to be a protective services officer.
- Penalty: 120 penalty units or imprisonment for 1 year or both.
- (3) A person who is not a police recruit must not, in any way, hold himself or herself out to be a police recruit.
- Penalty: 120 penalty units or imprisonment for 1 year or both.

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**257 Obtaining appointment as police officer or protective services officer by false representations or documents**

A person must not obtain or attempt to obtain appointment as a police officer or protective services officer by making a false representation or using a false document.

Penalty: 60 penalty units or imprisonment for 6 months or both.

**258 Causing disaffection**

(1) A person (including a regulated person) must not cause, attempt to cause or do any act calculated to cause disaffection among police officers or protective services officers.

Penalty: 10 penalty units.

(2) A person (including a regulated person) must not induce or attempt to induce a police officer or protective services officer to withhold the officer's services or to commit a breach of discipline.

Penalty: 10 penalty units.

(3) Subsection (1) or (2) does not apply to a person who, in good faith—

(a) points out or attempts to point out errors or defects in or desirable alterations or improvements to laws, regulations or working conditions governing police officers or protective services officers; or

(b) induces police officers or protective services officers to attempt to procure by lawful means the alteration of any laws, regulations or working conditions governing them.

(4) In this section—

***regulated person*** means a person referred to in section 252(1).



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**Division 2—Ancillary provisions for offences**

**259 Definitions**

In this Division—

*body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;

*officer* in relation to a body corporate means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

**260 Criminal liability of officers of bodies corporate—accessorial liability**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer—
  - (a) authorised or permitted the commission of the offence by the body corporate; or
  - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified—
  - (a) section 100(1);
  - (b) section 232(1);
  - (c) section 242(1);

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- (d) section 242(2);
  - (e) section 251(1);
  - (f) section 251(2).
- (3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
  - (4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
  - (5) This section does not affect the operation of section 323 or 324 of the **Crimes Act 1958** or section 52 of the **Magistrates' Court Act 1989**.

**261 Criminal liability of officers of bodies corporate—  
failure to exercise due diligence**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
  - (2) For the purposes of subsection (1), the following provisions are specified—
    - (a) section 229(1);
    - (b) section 253(1);
    - (c) section 253(2);
    - (d) section 253(3);
    - (e) section 255(1).
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- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
  - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
  - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
  - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

**262 Conduct by officers, employees or agents**

- (1) For the purpose of a criminal proceeding, any conduct engaged in on behalf of a body corporate is taken to have been engaged in also by the body corporate, if the conduct was engaged in by an employee, agent or officer of the body corporate within the scope of the employee, agent or officer's actual or apparent authority.

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- (2) For the purpose of a criminal proceeding, any conduct engaged in on behalf of a person other than a body corporate (the *principal*) is taken to have been engaged in also by the principal, if the conduct was engaged in by an employee of the principal within the scope of the employee's actual or apparent authority.
- (3) If, in any criminal proceeding, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—
- (a) that the conduct was engaged in by an officer of the body corporate within the scope of the officer's actual or apparent authority and the officer had that state of mind; or
  - (b) that the conduct was engaged in by an agent of the body corporate and—
    - (i) the agent acted at the specific direction or with the specific consent or agreement of the body corporate; or
    - (ii) the agent had that state of mind; or
    - (iii) the body corporate was aware of the agent's state of mind when the conduct was engaged in.
- (4) If, in any criminal proceeding, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show—
- (a) that the conduct was engaged in by an employee of the person within the scope of the employee's actual or apparent authority and the employee had that state of mind; or
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- (b) that the conduct was engaged in by an agent of the person and—
- (i) the agent acted at the specific direction or with the specific consent or agreement of the person; or
  - (ii) the agent had that state of mind; or
  - (iii) the person was aware of the agent's state of mind when the conduct was engaged in.
- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.
- (6) In this section—
- criminal proceeding*** means a proceeding for an offence against a provision of this Act.

### **Division 3—Search and seizure powers**

#### **263 Definitions**

In this Division—

***aircraft*** means a machine or structure used or intended to be used for navigation of the air;

***motor vehicle*** has the same meaning as in the **Road Safety Act 1986**;

***public place*** has the same meaning as in the **Summary Offences Act 1966**;

***relevant offence*** means an offence against any of the following—

- (a) section 138(2) (failure of suspended officer to return Victoria Police equipment or identification);

- (b) section 227 (unauthorised access to, use of or disclosure of police information by members or former members of Victoria Police personnel—summary offence);
- (c) section 228 (unauthorised access to, use of or disclosure of police information by members or former members of Victoria Police personnel—indictable offence);
- (d) section 229 (unauthorised access to, use of or disclosure of police information by service providers);
- (e) section 252 (bribery and corruption by police or protective services officers);
- (f) section 253 (bribery and corruption towards police or protective services officers);
- (g) section 254 (failure to return Victoria Police identification or Victoria Police equipment);
- (h) section 255 (unauthorised manufacture, possession, use or supply of Victoria Police identification or Victoria Police equipment);
- (i) section 256 (impersonating police or protective services officers);
- (j) section 257 (obtaining appointment as a police officer or protective services officer by false representations or documents);

*vehicle* includes, aircraft, motor vehicle and vessel;

*vessel* has the same meaning as in the **Marine Safety Act 2010**.

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## **264 Entry and search with consent**

- (1) If a police officer believes on reasonable grounds that a person has committed or is committing a relevant offence, the police officer, with the consent of the occupier of premises, may—
  - (a) enter and search the premises (including any vehicle on the premises); and
  - (b) exercise a power referred to in subsection (2) and (3) at the premises.
- (2) The police officer may—
  - (a) seize any thing the officer finds on the premises if he or she believes on reasonable grounds the thing is connected with the alleged offence; and
  - (b) examine, take and keep samples of any things the officer finds on the premises if he or she believes on reasonable grounds the things are connected with the alleged offence; and
  - (c) in the case of any document on the premises, do any of the following in relation to the document, if the officer believes on reasonable grounds the document is connected with the alleged offence—
    - (i) require the document to be produced for examination; and
    - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts; and
    - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document.

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- (3) The police officer may make any still or moving image or audio-visual recording if he or she believes on reasonable grounds it is necessary to do so for the purpose of establishing the alleged offence.

### **265 Notice before entry and search**

A police officer must not enter and search any premises under section 264 unless, before the occupier consents to the entry and search, the officer has—

- (a) produced his or her Victoria Police identification for inspection; and
- (b) informed the occupier—
  - (i) of the purpose of the search; and
  - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
  - (iii) that the occupier may refuse to give consent to the taking of any sample of things or any copy or extract from a document found on the premises during the search; and
  - (iv) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.

### **266 Acknowledgement of consent to entry and search**

- (1) If an occupier of premises consents to the entry and search of the premises by a police officer under section 264, the officer must, before entering the premises, ask the occupier to sign an acknowledgment.



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- (2) For the purpose of subsection (1), the acknowledgment must state—
- (a) that the occupier has been informed—
    - (i) of the purpose of the search; and
    - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
    - (iii) that the occupier may refuse to give consent to the taking of any sample of things or any copy or extract from a document found on the premises during the search; and
    - (iv) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings; and
  - (b) that the occupier has consented to the entry and search; and
  - (c) the date and time that the occupier consented.
- (3) If an occupier of premises consents to the seizure or taking of any thing during a search of the premises by the police officer, the officer must, before seizing or taking the thing, ask the occupier to sign an acknowledgement.
- (4) For the purpose of subsection (3), the acknowledgment must state—
- (a) that the occupier has consented to the seizure or taking of the thing; and
  - (b) the date and time that the occupier consented.
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- (5) A police officer must give a copy of a signed acknowledgement to the occupier before leaving the premises.
  - (6) If, in any proceeding, a signed acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.

### **267 Search warrants**

- (1) A police officer may apply to a magistrate for the issue of a search warrant in relation to particular premises or a vehicle located in a public place, if the officer believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises or in the vehicle evidence that a person has committed a relevant offence.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, that there are reasonable grounds to believe that there is, or may be within the next 72 hours, a thing, or thing of a particular kind, connected with a relevant offence on the premises or in the vehicle, the magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989**.

### **268 Form and content of search warrant**

- (1) A search warrant issued under section 267(2) may authorise the police officer named in the warrant to enter premises or the vehicle specified in the warrant, if necessary by force, and do any of the following—
  - (a) if the officer believes on reasonable grounds that a thing, or thing of a particular kind, named or described in the warrant is connected with the alleged offence—

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- (i) search for the thing;
  - (ii) seize the thing;
  - (iii) secure the thing against interference;
  - (iv) examine, inspect and take and keep samples of the thing;
- (b) in the case of any document, or document of a particular kind, named or described in the warrant, if the officer believes on reasonable grounds that the document is connected with the alleged offence—
- (i) require the document to be produced for inspection;
  - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
  - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
- (c) make any still or moving image or audio-visual recording of any thing of a particular kind named or described in the warrant, if the officer believes on reasonable grounds that it is connected with the alleged offence.
- (2) A search warrant issued under section 267(2) must state—
- (a) the purpose for which the search is required and the nature of the alleged offence; and
  - (b) any conditions to which the warrant is subject; and
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- (c) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (3) For the avoidance of doubt, a power referred to in subsection (1) to enter and search premises includes a power to enter and search a vehicle on the premises.
  - (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants issued under section 267(2).

#### **269 Announcement before entry**

- (1) On executing a search warrant issued under section 267(2), the police officer named in the warrant—
  - (a) must announce that he or she is authorised by the warrant to enter the premises; and
  - (b) if the officer has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) A police officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
  - (a) the safety of any person; or
  - (b) that the effective execution of the search warrant is not frustrated.

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**270 Details of warrant to be given to occupier**

- (1) If the occupier is present at premises where a search warrant is being executed, the police officer must—
  - (a) identify himself or herself to the occupier; and
  - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the police officer must—
  - (a) identify himself or herself to a person at the premises; and
  - (b) give to the person a copy of the warrant.

**271 Seizure of things not mentioned in the warrant**

A search warrant issued under section 267(2) authorises a police officer named in the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize or take a sample of any thing which is not of the kind described in the warrant if—

- (a) the officer believes on reasonable grounds that the thing—
    - (i) is of a kind which could have been included in a search warrant issued under this Division; or
    - (ii) will afford evidence about the commission of any offence (whether or not a relevant offence); and
  - (b) in the case of the seizure of a thing, the officer believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the commission of an offence (whether or not a relevant offence).
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**272 Retention and return of seized things**

- (1) If a police officer seizes a thing under this Division (other than a thing that is the property of the State), the officer must take reasonable steps to return it to the person from whom it was seized if—
  - (a) the reason for its seizure no longer exists;  
and
  - (b) the thing is not required, or likely to be required, in connection with any investigation or proposed investigation under Part 7, 9 or 10.
- (2) If the thing seized has not been returned within 6 months after it was seized, the police officer must take reasonable steps to return it unless—
  - (a) a proceeding for the purpose for which the thing was retained has commenced within that 6 month period and that proceeding (including any appeal) has not been completed; or
  - (b) an investigation under Part 7, 9 or 10 to which the thing is relevant has commenced within that 6 month period and that investigation has not been completed; or
  - (c) the Magistrates' Court makes an order under section 273 extending the period during which the thing may be retained.

**273 Magistrates' Court may extend 6 month period**

- (1) A police officer may apply to the Magistrates' Court within 6 months after seizing a thing under this Division for an extension of the period for which the officer may retain the thing.
  - (2) The Magistrates' Court may order such an extension if satisfied that retention of the thing is necessary—
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- (a) for the purposes of an investigation into whether a relevant offence has occurred; or
- (b) to enable evidence of the commission of a relevant offence to be obtained for the purposes of a prosecution; or
- (c) for the purposes of an investigation or proposed investigation under Part 7, 9 or 10.

**274 Things seized may be used in connection with investigations into conduct**

A thing seized (whether under this or any other Act) in relation to a relevant offence or an offence punishable by imprisonment may be used in connection with an investigation into the conduct of a police officer under Part 7, 9 or 10.

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**PART 15—GENERAL**

**275 Judicial notice**

- (1) All courts—
  - (a) must take judicial notice of the seal of a person specified in subsection (2) affixed to a document and, until the contrary is proved, must presume that it was duly affixed; and
  - (b) must take judicial notice of the signature of a person specified in subsection (2) on a document and, until the contrary is proved, must presume that the document was duly signed by the person.
- (2) The following persons are specified for the purposes of subsection (1)—
  - (a) the Chief Commissioner;
  - (b) an Acting Chief Commissioner;
  - (c) a Deputy Commissioner;
  - (d) an Acting Deputy Commissioner;
  - (e) an Assistant Commissioner;
  - (f) an Acting Assistant Commissioner.

**276 Voluntary DNA samples for elimination purposes**

- (1) The Chief Commissioner may request a member of Victoria Police personnel to volunteer, under section 464ZGFA of the **Crimes Act 1958**, to give a sample of material from which a DNA profile may be derived.
- (2) If a member of Victoria Police personnel volunteers, under section 464ZGFA of the **Crimes Act 1958**, to give a sample of material from which a DNA profile may be derived, the Chief Commissioner must comply with the requirements of sections 464ZGFA and 464ZGFB of that Act.



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## 277 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing that is required or permitted to be prescribed or necessary to be to give effect to this Act including, but not limited to, the matters and things specified in Schedule 5.
- (2) Regulations made under this Act—
  - (a) may be of general or limited application; and
  - (b) may differ according to differences in time, place or circumstances; and
  - (c) may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method, formulated, issued, prescribed or published by any person whether—
    - (i) wholly or partially or as amended by the regulations; or
    - (ii) formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
    - (iii) as formulated, issued, prescribed or published from time to time; and
  - (d) may leave anything for the approval or satisfaction of a specified person; and
  - (e) may provide in a specified case or class of case for the exemption of persons or things or a specified class of persons or things any of the provisions of the regulations, whether unconditionally or on specified conditions, and either wholly or to such an extent as specified; and

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- (f) may impose penalties not exceeding 20 penalty units for contravention of the regulations.
- (3) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
  - (b) maximum fees;
  - (c) minimum fees;
  - (d) fees that vary according to value and time;
  - (e) the waiver or reduction of fees.
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**PART 16—REPEALS, AMENDMENTS AND TRANSITIONAL PROVISIONS**

**Division 1—Police Regulation Act 1958**

**278 Change of short title**

In section 1 of the **Police Regulation Act 1958**, after "**Regulation**" insert "(Pensions)".

**279 Definitions**

- (1) In section 3(1) of the **Police Regulation Act 1958** insert the following definition—

*"Chief Commissioner* means the Chief Commissioner of Police appointed under section 17 of the **Victoria Police Act 2013**;"

- (2) In section 3(1) of the **Police Regulation Act 1958**, for the definition of *police reservist substitute*—

*"police reservist* means a person who held office as a police reservist under Part VI immediately before the commencement of section 282 of the **Victoria Police Act 2013**;"

- (3) In section 3(1) of the **Police Regulation Act 1958**, the definitions of *agency photograph, authorised media organisation, chief executive, directed transfer, former member of police personnel, IBAC, IBAC Officer, journalism, law enforcement agency, legal practitioner, media organisation, member of police personnel, Ombudsman, police force of another jurisdiction, police gaol, Police Profession Register, prison, Professional Standards Division, professional standards function, protected disclosure complaint, protective services officer, PRS Board, PRS Board officer, public authority, public officer, Registration Division, registration function, Review Division,*
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*review function* and *Victorian Inspectorate* are repealed.

- (4) Section 3(4) of the **Police Regulation Act 1958** is repealed.

**280 Repeals in Part I (Appointments and Retirements)**

Sections 4, 4AA, 4AB, 5, 6, 6A, 8, 8AB, 8AC, 8A, 9, 9A, 10, 11, 13, 14, 15, 16, 16A(1), 16B and 16C of the **Police Regulation Act 1958** are repealed.

**281 Repeal of Parts II, IV, IVAA, IVA, IVB, V, VAA, VA and VC**

Parts II, IV, IVAA, IVA, IVB, V, VAA, VA and VC of the **Police Regulation Act 1958** are repealed.

**282 Repeals and amendments in Part VI (Retired Police Reserve)**

In the **Police Regulation Act 1958**—

- (a) section 103 is **repealed**;
- (b) in section 104, **omit** "for appointment as or";
- (c) sections 105, 106, 107, 108, 109, 110, 111, 112, 113, 115B, 116, 117 and 118 are **repealed**.

**283 Repeal of Parts VIA, VIB and VIC**

Parts VIA, VIB and VIC of the **Police Regulation Act 1958** are repealed.

**284 Repeals in Part VII**

Sections 120, 120A, 120B, 121, 122, 123, 124, 124A, 125, 126, 127, 127A, 128, 129, 129A, 130(1)(d), (da), (db), (dc), (dd), (de), (dea), (df), (dg), (dh), (f), (g), (ga), (h), (i), (ia), (ib) and (ic), 131, 134 and 135 of the **Police Regulation Act 1958** are repealed.

**285 Repeal of First Schedule and Second Schedule**

The First Schedule and Second Schedule to the **Police Regulation Act 1958** are **repealed**.

**286 Repeal of Division**

This Division is **repealed** on 1 December 2015.

**Note**

The repeal of this Division does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

**Division 2—Transitional provisions**

**287 Transitional provisions**

Schedule 6 has effect.

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**SCHEDULES**

**SCHEDULE 1**

Sections 17(2), 21(3) and 24(4) and (5).

**CHIEF COMMISSIONER, DEPUTY CHIEF  
COMMISSIONERS AND ASSISTANT COMMISSIONERS**

**PART 1—CHIEF COMMISSIONER**

**1 Terms and conditions of appointment of Chief  
Commissioner**

- (1) The Chief Commissioner holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment.
- (2) The Chief Commissioner is eligible to be reappointed.
- (3) The Chief Commissioner is appointed on the terms and conditions (including remuneration and allowances) that are specified in his or her instrument of appointment.

**2 When does the Chief Commissioner's office become  
vacant?**

The office of Chief Commissioner becomes vacant if the Chief Commissioner—

- (a) becomes an insolvent under administration;  
or
- (b) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
- (c) resigns or retires in accordance with clause 3; or
- (d) is removed from office under clause 4.

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### **3 Resignation or retirement of Chief Commissioner**

- (1) The Chief Commissioner may resign or retire by giving written notice of not less than 3 months to the Governor in Council.
- (2) Despite subclause (1), the Governor in Council may accept the resignation or retirement of the Chief Commissioner on less than 3 months notice.

### **4 Removal of Chief Commissioner**

- (1) The Governor in Council may remove the Chief Commissioner from office on the recommendation of the Minister on any of the grounds specified in subclause (2).
- (2) The grounds for removal are that the Chief Commissioner—
  - (a) has engaged in misconduct; or
  - (b) is found guilty in Victoria of an indictable offence or elsewhere of an offence that, if committed in Victoria, would be an indictable offence; or
  - (c) has engaged in paid employment outside the office of Chief Commissioner without the prior consent of the Minister; or
  - (d) has brought Victoria Police into disrepute; or
  - (e) has neglected his or her duties; or
  - (f) is incapable of, or inefficient in, performing his or her duties.

### **5 Suspension of Chief Commissioner**

- (1) The Governor in Council may suspend the Chief Commissioner from office on the recommendation of the Minister.

- 
- (2) The Minister may recommend suspension under subclause (1) only if he or she believes that grounds may exist for the removal of the Chief Commissioner from office under clause 4.
  - (3) The Governor in Council may lift the suspension and restore the Chief Commissioner to office at any time.
  - (4) The Governor in Council must lift the suspension and restore the Chief Commissioner to office at the expiry of the period of 30 days after the date of the suspension unless—
    - (a) the suspension has been lifted earlier under subclause (3); or
    - (b) the Chief Commissioner has been removed from office under clause 4.

## **PART 2—DEPUTY COMMISSIONERS**

### **6 Terms and conditions of appointment of Deputy Commissioners**

- (1) A Deputy Commissioner holds office for the period, not exceeding 5 years, specified in his or her instrument of appointment.
- (2) A Deputy Commissioner is eligible to be reappointed.
- (3) A Deputy Commissioner is appointed on the terms and conditions (including remuneration and allowances) that are specified in his or her instrument of appointment.

### **7 When does a Deputy Commissioner's office become vacant?**

The office of a Deputy Commissioner becomes vacant if the Deputy Commissioner—

- (a) becomes an insolvent under administration;  
or



- 
- (b) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
  - (c) resigns or retires in accordance with clause 8; or
  - (d) is removed from office under clause 9.

#### **8 Resignation or retirement of Deputy Commissioners**

- (1) A Deputy Commissioner may resign or retire by giving written notice of not less than 3 months to the Governor in Council.
- (2) Despite subclause (1), the Governor in Council may accept the resignation or retirement of a Deputy Commissioner on less than 3 months notice.

#### **9 Removal of Deputy Commissioners**

- (1) The Governor in Council may remove a Deputy Commissioner from office on the recommendation of the Minister on any of the grounds specified in subclause (2).
  - (2) The grounds for removal are that the Deputy Commissioner—
    - (a) has engaged in misconduct; or
    - (b) is found guilty in Victoria of an indictable offence or elsewhere of an offence that, if committed in Victoria, would be an indictable offence; or
    - (c) has engaged in paid employment outside the office of Deputy Commissioner without the prior consent of the Chief Commissioner; or
    - (d) has brought Victoria Police into disrepute; or
    - (e) has neglected his or her duties; or
    - (f) is incapable of, or inefficient in, performing his or her duties.
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- (3) The Minister must consult the Chief Commissioner before recommending that a Deputy Commissioner be removed from office.

**10 Suspension of Deputy Commissioner**

- (1) The Governor in Council may suspend a Deputy Commissioner from office on the recommendation of the Minister.
- (2) The Minister may recommend suspension under subclause (1) only if he or she believes that grounds may exist for the removal of the Deputy Commissioner from office under clause 9.
- (3) The Governor in Council may lift the suspension and restore the Deputy Commissioner to office at any time.
- (4) The Governor in Council must lift the suspension and restore the Deputy Commissioner to office at the expiry of the period of 30 days after the date of the suspension unless—
- (a) the suspension has been lifted earlier under subclause (3); or
  - (b) the Deputy Commissioner has been removed from office under clause 9.

**PART 3—ASSISTANT COMMISSIONERS**

**11 Employment of Assistant Commissioners governed by contract**

- (1) The employment of an Assistant Commissioner is to be governed by a contract of employment between the Assistant Commissioner and the Chief Commissioner.
- (2) The contract must be in writing and be signed by or on behalf of the Assistant Commissioner and the Chief Commissioner.

- (3) The contract must specify the date on which it expires which must not be more than 5 years after the date on which it comes into force.
- (4) Performance criteria contained in the contract must relate to management matters only.
- (5) The contract may be varied at any time by a further contract between the Assistant Commissioner and the Chief Commissioner but its term cannot be increased beyond 5 years.

## **12 Disciplinary standards**

- (1) The contract of employment of an Assistant Commissioner must hold the Assistant Commissioner to standards of discipline that are at least as high as those generally applicable to police officers under this Act.
- (2) In particular, the contract must provide that the Chief Commissioner may terminate the contract if satisfied that the Assistant Commissioner has committed a breach of discipline.
- (3) Subclause (2) does not limit the grounds that may be specified in the contract for termination of the contract by the Chief Commissioner.
- (4) Part 7 of this Act (other than section 125) does not apply to an Assistant Commissioner.

## **13 Ill-health retirement**

- (1) The contract of employment of an Assistant Commissioner must provide for the Chief Commissioner to cause the Assistant Commissioner to be retired in similar circumstances to those in which a police officer may be retired under section 67.
  - (2) Section 67 does not apply to an Assistant Commissioner.
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**14 Incapacity for duty**

Division 6 of Part 4 of this Act does not apply to an Assistant Commissioner.

**15 Reduction in remuneration**

The Chief Commissioner may reduce the remuneration of an Assistant Commissioner in any manner that is consistent with the terms and conditions of the contract of employment.

**16 Termination of employment by Chief Commissioner**

The Chief Commissioner may terminate the employment of an Assistant Commissioner for any reason consistent with the terms and conditions of the contract of employment.

**17 No compensation**

- (1) An Assistant Commissioner is not entitled to any compensation as a result of—
  - (a) the termination of his or her employment as an Assistant Commissioner; or
  - (b) his or her remuneration being reduced.
- (2) Subclause (1) is subject to the Assistant Commissioner's contract of employment.

**18 Resignation or retirement of Assistant Commissioners**

- (1) An Assistant Commissioner may resign or retire by giving written notice of not less than 3 months to the Chief Commissioner.
- (2) Despite subclause (1), the Chief Commissioner may accept the resignation or retirement of an Assistant Commissioner on less than 3 months notice.

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**19 Right of reversion to former rank on termination or expiry of contract**

- (1) This clause applies if—
- (a) a person was a police officer immediately before his or her first employment as an Assistant Commissioner; and
  - (b) since that first employment the person has been continuously employed as an Assistant Commissioner; and
  - (c) the person ceases to be employed as an Assistant Commissioner—
    - (i) for any reason on the initiative of the Chief Commissioner (other than where the employment is terminated for breach of discipline or for any other disciplinary reason, or where the Assistant Commissioner is retired on the ground of ill-health); or
    - (ii) because of the expiry of his or her contract of employment.
- (2) The person is entitled to revert to his or her appointment as a police officer at the rank he or she held immediately before his or her first employment as an Assistant Commissioner.
- (3) The regulations may specify how the remuneration to which the person is entitled on his or her reversion under this clause is to be determined.
- (4) A person who exercises his or her entitlement under this clause is not entitled to any payment in lieu of notice on the termination of his or her contract of employment as an Assistant Commissioner despite anything to the contrary in the contract.
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- (5) A person may exercise an entitlement under this clause even if that would result in non-compliance with an Order in effect under section 15(1).
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**SCHEDULE 2**

Sections 50(2) and 192(2)

**OATHS AND AFFIRMATIONS**

**FORM 1**

**OATH OR AFFIRMATION FOR POLICE OFFICERS**

I [*insert name*] [*swear by Almighty God/do solemnly and sincerely affirm*] that I will well and truly serve our Sovereign Lady the Queen as a police officer in Victoria in any capacity in which I may be appointed, promoted, or reduced to, without favour or affection, malice or ill-will for the period of [*insert period*] from this date, and until I am legally discharged, that I will see and cause Her Majesty's peace to be kept and preserved, and that I will prevent to the best of my power all offences, and that while I continue to be a police officer I will to the best of my skill and knowledge discharge all the duties legally imposed on me faithfully and according to law.

**FORM 2**

**OATH OR AFFIRMATION FOR PROTECTIVE SERVICES OFFICERS**

I [*insert name*] [*swear by Almighty God/do solemnly and sincerely affirm*] that I will well and truly serve our Sovereign Lady the Queen as a protective services officer in Victoria, without favour or affection, malice or ill-will, that I will see and cause Her Majesty's peace to be kept and preserved, and that I will prevent to the best of my power all offences, and that while I continue to be a protective services officer I will to the best of my skill and knowledge discharge all the duties legally imposed on me faithfully and according to law.

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**FORM 3**

**OATH OR AFFIRMATION FOR SPECIAL CONSTABLES**

I [*insert name*] [*swear by Almighty God/do solemnly and sincerely affirm*] that I will well and truly serve our Sovereign Lady the Queen as a special constable in Victoria, without favour or affection, malice or ill-will, that I will see and cause Her Majesty's peace to be kept and preserved, and that I will prevent to the best of my power all offences, and that while I continue to be a special constable I will to the best of my skill and knowledge discharge all the duties legally imposed on me faithfully and according to law.

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**SCHEDULE 3**

Section 64

**LONG SERVICE LEAVE**

**1 Application of Schedule**

This Schedule applies to—

- (a) all police officers other than the Chief Commissioner or a Deputy Commissioner; and
- (b) all protective services officers.

**2 Basic entitlement to long service leave**

- (1) A police officer or protective services officer who has 10 years of service is entitled to 3 months' long service leave with pay in accordance with the regulations.
- (2) For each additional period of 5 years service, the officer is entitled to 1.5 months' long service leave with pay in accordance with the regulations.

**3 Leave on half pay**

At the request of a police officer or protective services officer, the Chief Commissioner may allow the officer to take the whole or any part of long service leave at half pay for a period equal to twice the period to which he or she would otherwise be entitled.

**4 Time of taking leave**

The Chief Commissioner may determine the time for granting long service leave so that Victoria Police will not be unduly affected by the granting of long service leave to numbers of police officers or protective services officers at or about the same time.

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**5 Payment in place of long service leave—retirement or death**

- (1) A police officer or protective services officer who has at least 4 years service is entitled, or in the case of death is taken to have been entitled, to an amount of long service leave with pay equalling  $\frac{1}{40}$  of the officer's eligible period of service if—
  - (a) the officer retires or is retired under section 67; or
  - (b) the officer dies.
- (2) For the purposes of subsection (1), *eligible period of service* means—
  - (a) if the period of service is less than 10 years—that period of service; or
  - (b) if the period of service is 10 years or more—the period of service that does not give rise to an entitlement to long service leave under clause 2.
- (3) A police officer or protective services officer who retires or is retired on account of age or ill health may elect, by written notice given to the Minister, to take pay in lieu of the whole or any part of his or her long service leave entitlement under this clause and clause 2.
- (4) If a police officer or protective services officer who is entitled to long service leave dies before or while taking the leave, or before being paid in lieu of the leave, the outstanding amount in respect of the leave entitlement is to be paid to his or her personal representative.

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**6 Payment in place of long service leave—resignation or other termination**

- (1) A police officer or protective services officer who has at least 10 years service is entitled to be paid in lieu of long service leave an amount determined by the Chief Commissioner not exceeding an amount representing pay for services for  $\frac{1}{40}$  of the officer's period of service if—
- (a) the officer resigns; or
  - (b) the officer's appointment is terminated in any other way, other than retirement on account of age or ill health.
- (2) Subclause (1) does not entitle a police officer or protective services officer to payment of an amount in respect of any part of his or her service for which long service leave with pay, or pay in lieu of long service leave, has been taken by the officer.
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**SCHEDULE 4**

Section 127(2)

**REPORTABLE OFFENCES**

**PART 1—LEVEL 1, 2, 3 OR 4 OFFENCES OR THEIR  
EQUIVALENT**

- 1.1 Any level 1, 2, 3 or 4 offence.
- 1.2 Any indictable offence that is punishable by—
- (a) level 1, 2, 3 or 4 imprisonment; or
  - (b) a level 1, 2, 3 or 4 fine; or
  - (c) both level 1, 2, 3 or 4 imprisonment and a level 1, 2, 3 or 4 fine.
- 1.3 Any indictable offence (other than an offence referred to in item 1.1 or 1.2) that is punishable by a maximum term of imprisonment of 15 years or more or a maximum fine of 1800 penalty units or more, or both.

**PART 2—OTHER CRIMES ACT OFFENCES**

- 2.1 Offences against the person
- An offence under section 18, 19(1), 20, 21, 21A(1), 22, 23, 24, 26, 28, 29(1), 30, 31(1) or 31A(1) of the **Crimes Act 1958**.
- 2.2 Sexual offences
- An offence under section 39(1), 40(1), 44(3) or (4), 45(1), 47(1), 48(1), 49(1), 51, 52, 53, 54, 55, 56, 57, 58, 59(1), 60A(1), 68, 69 or 70(1) of the **Crimes Act 1958**.
- 2.3 Child stealing
- An offence under section 63 of the **Crimes Act 1958**.
- 2.4 Theft
- An offence under section 74 of the **Crimes Act 1958**.

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2.5 Burglary

An offence under section 76 of the **Crimes Act 1958**.

2.6 Fraud

An offence under section 81, 82, 83, 83A or 86 of the **Crimes Act 1958**.

2.7 Secret commissions

An offence under section 176, 178 or 181 of the **Crimes Act 1958**.

2.8 Destroying or damaging property

An offence under section 197(1) or (3), 198 or 199 of the **Crimes Act 1958** if the Chief Commissioner reasonably believes that the amount or value of the property alleged to be destroyed or damaged exceeds \$500.

2.9 False statements

An offence under section 247 of the **Crimes Act 1958**.

2.10 Contamination of Goods

An offence under section 249, 250 or 251 of the **Crimes Act 1958**.

2.11 Offences connected with explosive substances

An offence under section 317(3) or (4) or 317A of the **Crimes Act 1958**.

2.12 Conspiracy to commit an offence

An offence under section 321(1) of the **Crimes Act 1958**.

2.13 Incitement

An offence under section 321G(1) of the **Crimes Act 1958** in relation to an indictable offence referred to elsewhere in this Schedule or an offence that, if committed in Victoria, would be an indictable offence referred to elsewhere in this Schedule.

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2.14 Attempts

An offence—

- (a) under section 321M or 321O(2) of the **Crimes Act 1958** of attempting to commit an indictable offence referred to elsewhere in this Schedule; or
- (b) an offence under section 321O(1) of the **Crimes Act 1958** of attempting to commit in another State or in a Territory an offence which, if committed in whole or in part in Victoria, would be an indictable offence referred to elsewhere in this Schedule.

2.15 Accessories

An offence under section 325(1) of the **Crimes Act 1958** in relation to a serious indictable offence (within the meaning of that section) referred to elsewhere in this Schedule.

2.16 Concealing offences for benefit

An offence under section 326 of the **Crimes Act 1958** in relation to a serious indictable offence (within the meaning of that section) referred to elsewhere in this Schedule.

2.17 Escapes

An offence under section 479A, 479B or 479C of the **Crimes Act 1958**.

**PART 3—OTHER STATUTORY OFFENCES**

3.1 Any indictable offence under any of the following Acts (not being an offence referred to in Part 1)—

- (a) **Drugs, Poisons and Controlled Substances Act 1981**;
- (b) **Firearms Act 1996**;
- (c) **Sex Work Act 1994**;
- (d) **Road Safety Act 1986**.

**Sch. 4**

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- 3.2 An offence under section 100 of the **Personal Safety Intervention Orders Act 2010**.
- 3.3 An offence under section 227, 228, 252 or 253 of this Act.
- 3.4 An offence under section 37, 37A, 123, 123A or 125A of the **Family Violence Protection Act 2008**.

**PART 4—COMMON LAW OFFENCES**

- 4. The following offences at common law (not being an offence referred to in Part 1)—
    - (a) common assault involving an allegation of—
      - (i) any physical injury; or
      - (ii) the use of an offensive weapon within the meaning of section 77(1A) of the **Crimes Act 1958** (regardless of whether or not there is any alleged physical injury);
    - (b) false imprisonment;
    - (c) affray;
    - (d) bribery of public official;
    - (e) misconduct in public office.
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**SCHEDULE 5**

**SUBJECT MATTER FOR REGULATIONS**

Section 277

**PART 1—VICTORIA POLICE**

- 1.1 Prescribing any person or body for the purposes of section 10(4)(k).

**PART 2—DUTIES, POWERS, ENTITLEMENTS AND PROTECTION**

- 2.1 Authorising the Chief Commissioner to determine procedures, qualifications, skills, attributes, medical requirements and physical requirements for appointment as—
- (a) a police recruit; or
  - (b) a police officer; or
  - (c) a protective services officer.
- 2.2 The government of police officers, protective services officers and police recruits.
- 2.3 Permitting police officers to accept appointment as officers or members of the police force of another jurisdiction.
- 2.4 Regulating the conduct of—
- (a) police officers while serving as officers or members of the police force of another jurisdiction;  
or
  - (b) officers or members of the police force of another jurisdiction while serving as police officers.
- 2.5 Requiring police officers to reside in the district or sub-district to which they are attached to reside in any particular premises within the district or sub-district which are provided for the use of and allocated to those officers.
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**Sch. 5**

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- 2.6 Specifying the remuneration to which Assistant Commissioners exercising their right to return are entitled, including any method for calculating the increment.
- 2.7 Authorising the Chief Commissioner to grant leave with or without pay to a Deputy Commissioner or an Assistant Commissioner and the effect of that leave on any other entitlement that Deputy Commissioner or Assistant Commissioner may have or may come to have under the Act or regulations.
- 2.8 Prescribing places to be designated places for the purposes of section 52(3).
- 2.9 The criteria and procedures for promotion and transfer of protective services officers.
- 2.10 A rank structure for protective services officers.
- 2.11 Long service leave for police officers and protective services officers.
- 2.12 Any matter relating to the efficiency of protective services officers in the performance of their duties.
- 2.13 Any matter necessary or expedient to promote the efficiency of Victoria Police or to promote the efficient discharge of duties by any police officer or protective services officer or class of police officers or protective services officers.
- 2.14 Prescribing actions or conduct to be police torts and actions, claims or proceedings to be police tort claims for the purposes of Division 8 of Part 4.

**PART 3—EDUCATION AND TRAINING**

- 3.1 Prescribing minimum education or training standards for various positions within Victoria Police or for re-entry of former police officers into Victoria Police.
  - 3.2 Prescribing minimum education and training standards for the professional development of police officers.
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- 3.3 Prescribing requirements for appointment or reappointment to Victoria Police in addition to any requirements specified in this Act.

**PART 4—EMPLOYMENT AND DISCIPLINE PROCEEDINGS**

- 4.1 Any proceedings under—
- (a) Division 6 of Part 4; or
  - (b) Part 7.
- 4.2 Prescribing scales of fees or expenses to be paid to witnesses appearing before the PRS Board and the classes of cases in which any prescribed fees or expenses may be paid.

**PART 5—DRUG AND ALCOHOL TESTING**

- 5.1 The persons authorised—
- (a) to administer breath tests or to conduct breath analyses or other tests for the purpose of detecting the presence of alcohol or a drug of dependence; and
  - (b) to operate equipment for that purpose.
- 5.2 The circumstances in which a breath sample, urine sample, blood sample, oral fluid sample, buccal swab or hair sample may be taken.
- 5.3 The procedure for the taking of samples of breath, urine, blood, oral fluid and hair and buccal swabs.
- 5.4 The devices used in carrying out breath tests, breath analyses and other tests, including calibration, inspection and testing of those devices.
- 5.5 The accreditation of persons conducting analyses for the presence of a drug of dependence.
- 5.6 The procedure for handling and analysis of samples of urine, blood, oral fluid and hair and buccal swabs.
- 5.7 Offences relating to interference with test results or the testing procedure.
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- 5.8 The handing and confidentiality of test results.
- 5.9 Information to be included in the annual report of the Chief Commissioner under section 12 in relation to Part 5.

**PART 6—COMPLAINTS AND INVESTIGATIONS ABOUT  
POLICE**

- 6.1 The investigation of complaints about the conduct of police officers.

**PART 7—FEES AND CHARGES**

- 7.1 Prescribing fees or charges that may be imposed for the provision of services by police officers or Victoria Police employees.
  - 7.2 Prescribing fees for applications by media organisations for authorisation to be given agency photographs.
  - 7.3 Prescribing fees for applications by authorised media organisations for the giving of agency photographs.
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**SCHEDULE 6**

**TRANSITIONAL PROVISIONS**

Section 287

**PART 1—PRELIMINARY**

**1 Definitions**

In this Schedule—

*commencement day* means the day on which section 278 of this Act comes into operation;

*old Act* means the **Police Regulation Act 1958** as in force immediately before the commencement day;

*the force* has the same meaning as in section 3(1) of the old Act.

**2 General transitional provisions**

- (1) Except where the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If a repealed provision of the old Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to that provision—
  - (a) any other repealed provisions of the old Act necessary to give effect to that provision; and
  - (b) any regulations made under the old Act for the purposes of that provision.

**3 Transitional regulations**

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act.

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- (2) Regulations under this clause may have a retrospective effect to the commencement day or a day after the commencement day.
  - (3) Regulations under this clause have effect despite anything to the contrary—
    - (a) in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**); or
    - (b) in any subordinate instrument.
  - (4) This clause is **repealed** on the second anniversary of its commencement.

#### **4 Change of name of old Act**

A reference to the **Police Regulation Act 1958** in any Act (other than this Act), subordinate instrument, agreement, deed or other document must be construed as a reference to the **Police Regulation (Pensions) Act 1958**—

- (a) so far as the reference relates to any period on or after the commencement day; and
- (b) if not inconsistent with the subject matter.

### **PART 2—VICTORIA POLICE**

#### **5 Victoria Police succeeds the force**

On the commencement day, Victoria Police succeeds the force.

#### **6 Superseded references to the force and members of the force**

- (1) A reference in any Act (other than this Act), subordinate instrument, agreement, deed or other document to the force or the police force (in relation to Victoria) must be construed as a reference to Victoria Police—

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- (a) so far as the reference relates to any period on or after the commencement day; and
  - (b) if not inconsistent with the subject matter.
- (2) A reference in any Act (other than this Act), subordinate instrument, agreement, deed or other document to a member of the force or a member of the police force (in relation to Victoria) must be construed as a reference to a police officer—
- (a) so far as the reference relates to any period on or after the commencement day; and
  - (b) if not inconsistent with the subject matter.

### **PART 3—VICTORIA POLICE PERSONNEL**

#### **7 Chief Commissioner**

The person who held office as Chief Commissioner under section 4(1) of the old Act immediately before the commencement day continues to be the Chief Commissioner on and after that day, on the same terms and conditions, as if he or she had been appointed under section 17 of this Act and is eligible for reappointment.

#### **8 Deputy Commissioners**

A person who held office as a Deputy Commissioner under section 4(2) of the old Act immediately before the commencement day continues to be a Deputy Commissioner on and after that day, on the same terms and conditions, as if he or she had been appointed under section 21 of this Act and is eligible for reappointment.

#### **9 Assistant Commissioners**

- (1) A person who held employment under Part 3 of the **Public Administration Act 2004** as an Assistant Commissioner immediately before the commencement day continues to be an Assistant Commissioner on and after that day, in

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accordance with his or her current contract of employment under that Act, for the remainder of that contract, as if he or she had been employed under section 24 of this Act.

- (2) A person referred to in subclause (1) may subsequently be employed as an Assistant Commissioner under section 24 of this Act before, on or after the expiry or termination of his or her contract of employment under Part 3 of the **Public Administration Act 2004**.

#### **10 Other members of the force**

A person appointed under section 8 of the old Act who held office as a member of the force immediately before the commencement day continues to hold office as a police officer on and after that day, at the rank, position and seniority which he or she held immediately before the commencement day, and on the same terms and conditions, as if he or she had been appointed under section 27 of this Act.

#### **11 Police recruits**

A person appointed under section 8A of the old Act who held office as a police recruit immediately before the commencement day continues to be a police recruit on and after that day on the same terms and conditions, as if he or she had been employed under section 36 of this Act.

#### **12 Protective services officers**

A person appointed under section 118B of the old Act who held office as a protective services officer immediately before the commencement day continues to hold office as a protective services officer on and after that day, at the rank, position and seniority which he or she held immediately before the commencement day, and

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on the same terms and conditions, as if he or she had been appointed under section 38 of this Act.

**13 Special constables**

A person appointed under section 102L of the old Act who held office as a special constable immediately before the commencement day continues to hold office as a special constable on and after that day, at the rank, position and seniority which he or she held immediately before the commencement day, and on the same terms and conditions, as if he or she had been appointed under section 191 of this Act.

**14 Commissioned officers**

A certification of a person referred to in this Part as an officer of the force that was in force under section 8(2) of the old Act immediately before the commencement day is taken on and after that day to be the certification of the person as a commissioned officer of Victoria Police under section 14 of this Act.

**15 Probation**

The provisions of the old Act and the regulations made under the old Act for probation continue to apply, on and after the commencement day, in relation to an appointment or promotion made under the old Act before that day and any period of probation being served by a person referred to in this Part immediately before the commencement day continues to run on and after that day.

**16 Former members of police personnel and members of the force**

- (1) A person who, immediately before the commencement day, was a former member of police personnel is taken, on and after that day, to be a former member of Victoria Police personnel.



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- (2) A person who, immediately before the commencement day, was a former member of the force is taken, on and after that day, to be a former police officer.
- (3) A reference in section 30 of this Act to a person who has previously been a police officer includes a reference to a person referred to in subclause (2).
- (4) In this clause—
- member of police personnel* has the meaning given in section 3(1) of the old Act;
- member of the force* has the meaning given in section 3(1) of the old Act.

#### **PART 4—POLICE DUTIES, POWERS, ENTITLEMENTS AND PROTECTION**

##### **17 Oath or affirmation**

A person referred to in Part 3 of this Schedule or a police reservist who took and subscribed an oath or made and subscribed an affirmation under section 13, 102M, 105 or 118C of the old Act (as the case may be) is not required to take and subscribe an oath or make and subscribe an affirmation under section 50 or 192 of this Act and is to be taken, for all purposes, to have taken and subscribed the oath or made and subscribed the affirmation required by whichever of those sections applies to the person.

##### **18 Determination of uniforms, equipment and other standards**

A determination in force under section 5(2) of the old Act immediately before the commencement day is taken on and after that day to be a determination under section 62 of this Act.

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**19 Chief Commissioner's instructions**

An order or instruction in force under section 17 of the old Act immediately before the commencement day is taken on and after that day to be a Chief Commissioner's instruction issued under section 60 of this Act.

**20 Training agreements and sureties**

An agreement or surety in force immediately before the commencement day in accordance with an Order made under section 129 of the old Act continues in force on and after that day in accordance with its tenor despite the repeal of that section.

**21 Long service leave**

In determining the entitlements of a person referred to in Part 3 of this Schedule to long service leave under this Act, regard must be had to—

- (a) any period of service of the person under the old Act before the commencement day; and
- (b) any long service leave taken by the person under the old Act before the commencement day.

**22 Resignation**

- (1) A person referred to in Part 3 of this Schedule (other than an Assistant Commissioner) or a police reservist who gave notice of resignation under the old Act before the commencement day is entitled to resign at the conclusion of the period of notice required under that Act.
- (2) An Assistant Commissioner referred to in Part 3 of this Schedule who gave notice of resignation before the commencement day in accordance with his or her contract of employment under Part 3 of

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the **Public Administration Act 2004** is entitled to resign in accordance with the contract.

**23 Ill-health retirement**

Section 16B of the old Act continues to apply on and after the commencement day in relation to an inquiry begun but not completed under that section before that day.

**24 Incapacity for duty**

Division 4 of Part IV of the old Act continues to apply on and after the commencement day in relation to a notice of incapacity given to a person under section 83 of the old Act before that day.

**25 Police tort claims**

Division 8 of Part 4 of this Act applies to a police tort in respect of which a police tort claim is made on or after the commencement day whether the tort was alleged to have been committed before, on or after that day.

**PART 5—DRUG AND ALCOHOL TESTING**

**26 Critical incident testing**

The Chief Commissioner may give a testing direction under Division 2 of Part 5 of this Act in relation to a critical incident that occurred before, on or after the commencement day.

**27 Use of samples and testing results obtained under the old Act**

- (1) Sections 85C and 85E of the old Act continue to apply on and after the commencement day as if a reference in those sections to an investigation under Part IV, IVA or IVB included a reference to an investigation under Division 6 of Part 4, Part 7, Part 9 or Part 10 of this Act.

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- (2) A reference in section 98 of this Act to the result of any test includes the result of any test conducted in accordance with a direction given under Division 4A of Part IV of the old Act.

## **28 Offence to disclose identifying information**

- (1) A person must not, other than as required or authorised by the old Act or the regulations made under the old Act, or as required or authorised by this Act or the regulations, disclose to any other person the identity of a person to whom or in respect of whom a direction was given under Division 4A of Part IV of the old Act.

Penalty: 60 penalty units.

- (2) Subclause (1) does not apply to a disclosure by—
- (a) the person to whom or in respect of whom a direction was given under Division 4A of Part IV of the old Act; or
  - (b) the IBAC or an IBAC Officer.
- (3) Subclause (1) does not apply to the disclosure of information in a proceeding of a kind referred to in section 85E(2) of the old Act as continued by clause 27.
- (4) To avoid doubt, section 232 of this Act does not apply in relation to a person to whom a direction was given under Division 4A of Part IV of the old Act.

## **PART 6—POLICE REGISTRATION**

### **29 Registration**

A person who was registered on the Police Profession Register under Part VAA of the old Act immediately before the commencement day is taken, on and after that day, to be registered on the Police Profession Register under Part 6 of this Act until his or her registration would have expired

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under the old Act, and may apply for renewal of registration under Part 6 of this Act.

### **30 PRS Board**

A person who was a member of the PRS Board under the old Act immediately before the commencement day continues to be a member of the PRS Board on and after that day under this Act on the same terms and conditions of appointment for the balance of his or her term, and is eligible for reappointment.

## **PART 7—DISCIPLINE**

### **31 Disciplinary action commenced under old Act**

- (1) Division 2 of Part IV of the old Act continues to apply on and after the commencement day to a disciplinary matter that was commenced under that Division but not determined before that day.
- (2) For the purposes of subclause (1) a disciplinary matter was commenced under Division 2 of Part IV of the old Act when an investigation of it began under section 70 of that Act.
- (3) Division 3 of Part IV of the old Act continues to apply on and after the commencement day in relation to a person believed to have committed or charged with an offence if the matter was commenced under that Division but not determined before that day.
- (4) For the purposes of subclause (3) a matter was commenced under Division 3 of Part IV of the old Act when an investigation of it began under section 79(1) of that Act.

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### **32 Disciplinary action under this Act**

- (1) Subject to subclause (2), Division 1 of Part 7 of this Act applies on and after the commencement day whether the conduct giving rise to the breach of discipline occurred before, on or after that day.
- (2) Division 1 of Part 7 of this Act does not apply in relation to conduct occurring before the commencement day that was or is the subject of an investigation under section 70 of the old Act held or commenced before that day.
- (3) Subject to subclause (4), Division 2 of Part 7 of this Act applies on and after the commencement day in relation to a person believed to have committed an offence before, on or after that day, or who was charged with an offence alleged to have been committed before, on or after that day.
- (4) Division 2 of Part 7 of this Act does not apply in relation to a person believed to have committed or charged with an offence if the person is the subject of an investigation under section 79 of the old Act held or commenced before that day.

### **PART 8—APPEALS AND REVIEWS**

### **33 Appeals and reviews under old Act**

- (1) Part IVAA of the old Act continues to apply on and after the commencement day to an appeal or review that was commenced but not determined under that Part before that day.
- (2) For the purposes of subclause (1)—
  - (a) an appeal was commenced when it was lodged under section 86AC or 86AD of the old Act; and
  - (b) a review was commenced when the application for review was lodged under section 86AI of the old Act.

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### **34 Appeals and reviews under this Act**

- (1) A person may appeal or apply for review under Part 8 of this Act in respect of a decision made under the old Act if—
  - (a) the person could appeal or apply for review of the decision under Part 8 if it were made under this Act; and
  - (b) in the case of a decision made before the commencement day, the person had not appealed or applied for review under the old Act in respect of the decision before the commencement day.
- (2) To avoid doubt, subsection (1) applies whether the decision was made before the commencement day or, because of the operation of clause 24 or 31, on or after the commencement day.
- (3) A reference in section 141(3) of this Act to an appeal lodged under that section includes a reference to an appeal lodged under section 86AC of the old Act before the commencement day.
- (4) A reference in section 141(3) of this Act to an appeal lodged under that section includes a reference to an appeal lodged under section 86AD of the old Act before the commencement day.

### **PART 9—POLICE COMPLAINTS AND PROTECTED DISCLOSURE COMPLAINTS**

#### **35 Complaints made before the commencement day**

- (1) A complaint that was made under section 86L of the old Act before the commencement day is taken, on and after that day, to be a complaint made under section 167 of this Act and may be investigated, or continued to be investigated, under Part 9 of this Act accordingly.

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- (2) Subclause (1) does not apply if an investigation of the complaint had been completed under the old Act before the commencement day.

**36 Protected disclosure complaints**

- (1) Part IVB of the old Act, as in force immediately before the commencement day, continues to apply on and after that day to the investigation of a protected disclosure complaint that was commenced before that day.
- (2) Part 10 of this Act applies to a protected disclosure complaint referred to the Chief Commissioner by the IBAC before, on or after the commencement day other than a protected disclosure complaint to which subclause (1) applies.

**PART 10—CONFIDENTIALITY AND PRIVILEGE**

**37 Declaration of non-Victorian statutory insurance scheme laws and persons as statutory insurance scheme insurers**

A declaration in force under section 118M of the old Act immediately before the commencement day is taken on and after that day to be declaration in force under section 247 of this Act.

**38 Requests for vehicle accident information made before commencement day**

A request for vehicle accident information made under section 118N of the old Act that is outstanding on the commencement day is taken to be a request made under section 248 of this Act.



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**39 Offences in relation to vehicle accident information**

Section 251 of this Act applies to vehicle accident information disclosed to a person under section 118P of the old Act before the commencement day as if it were vehicle accident information disclosed to the under this Act.

**40 Authorisation of media organisations**

An authorisation in force under section 118W(1) of the old Act immediately before the commencement day is taken on and after that day to be an authorisation under section 236(1) of this Act.

**41 Applications for and use of agency photographs**

- (1) An application for the giving of an agency photograph made under section 118S of the old Act that is outstanding on the commencement day is taken to be an application made under section 237 of this Act.
- (2) An authorisation to give an agency photograph to an authorised media organisation that was in force under section 118R of the old Act immediately before the commencement day is taken on and after that day to be an authorisation under section 236 of this Act to give an agency photograph to that authorised media organisation.

**PART 11—GENERAL**

**42 Declaration of incidents requiring urgent cross-border assistance**

A declaration in force under section 102Q of the old Act immediately before the commencement day is taken on and after that day to be a declaration under section 196 of this Act.

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**43 Disputed property in possession of police**

Section 125 of the old Act continues to apply on and after the commencement day in relation to an application made but not determined under that section before that day.

## ENDNOTES

† *Minister's second reading speech—*

*Legislative Assembly: 16 October 2013*

*Legislative Council: 28 November 2013*

The long title for the Bill for this Act was "A Bill for an Act to re-enact and modernise the law relating to the governance and regulation of Victoria Police, to retitle and substantially repeal the **Police Regulation Act 1958** and for other purposes."