

# EXPLANATORY MEMORANDUM

## Police Amendment Bill 2009

### Part 1 – Preliminary matters

#### 1. Short title

When the Parliament passes the Bill its title will be the *Police Amendment Act 2009*.

#### 2. Commencement

Part I of the Bill will come into operation after it has completed its passage through Parliament and upon the Act receiving Royal Assent.

The remainder of the Bill will come into operation upon proclamation. The Bill has been drafted so that it is possible for different provisions to come into operation at different times.

### Part 2 - Police Act 1892 amended

#### 3. Act amended

Clause 3 specifies that Part 2 of the Bill amends the *Police Act 1892*.

#### 4. Section 9 amended

Section 9 of the *Police Act 1892* provides the Commissioner of Police with the power to make rules, orders and regulations for the “Police Force”. At present those rules, orders and regulations apply to Police Officers, Aboriginal Police Liaison Officers and Police Cadets (although there are presently no such cadets appointed via the *Police Act 1892*).

Clause 4 amends section 9 of the *Police Act 1892* by inserting the words “police auxiliary officer” in each place after the word “Force,” is contained in that section. The amendment means that the Police Auxiliary Officers will be subject to the rules, orders and regulations made by the Commissioner of Police.

**5. Section 13 amended**

Section 13 of the *Police Act 1892* deals with the return of property where a Police Officer or Aboriginal Police Liaison Officer either ceases to hold office or has been dismissed from office. It creates an obligation to return all clothing, equipment and other property to the Western Australia Police upon such occurrence.

Clause 5 will impose a similar obligation for Police Auxiliary Officers.

**6. Section 23 amended**

Section 23 of the *Police Act 1892* provides the basis by which the Commissioner of Police can inquire into and, where appropriate upon completion of the inquiry, impose a penalty upon Police Officers, Aboriginal Police Liaison Officers and Police Cadets in respect to disciplinary breaches. The disciplinary breaches relate to the rules, orders and regulations made by the Commissioner of Police under section 9.

Clause 5 amends the *Police Act 1892* so that the Police Auxiliary Officers will come within the gambit of section 23.

**7. Section 33 amended**

Clause 7 of the Bill amends section 33 of the *Police Act 1892* so that any fines and penalties received as the result of a disciplinary proceeding are paid into the Consolidated Account.

**8. Section 33E amended**

Section 33E of the *Police Act 1892* provides the process by which a Police Officer, Aboriginal Police Liaison Officer and Police Cadet can appeal to the Police Appeal Board in respect to any penalty imposed as the result of an inquiry conducted under section 23 on disciplinary offences.

Clause 8 of the Bill amends section 33E so that this right of appeal to the Police Appeal Board applies in respect to the Police Auxiliary Officers.

**9. Section 33K amended**

Division 2 of Part IIB of the *Police Act 1892* provides the process by which the Commissioner of Police can take action to remove Police Officers or Aboriginal Police Liaison Officers, where there is a loss of confidence in their sustainability to continue in the performance of their duties. In doing this, the Commissioner will have regard to their integrity, honesty, competence, performance or conduct.

Division 3 of Part IIB provides the basis by which any such officer can appeal to the Western Australian Industrial Relations Commission in respect to any loss of confidence finding.

The application of the Part IIB to Police Officers and Aboriginal Police Liaison Officers is provided via section 33K of the *Police Act 1892*. Clause 9 of the Bill amends section 33K so that Part IIB will similarly apply to the Police Auxiliary Officers.

**10. Clause IIIB inserted**

Clause 10 of the Bill will insert Part IIIB into the *Police Act 1892*. Part IIIB creates the appointment processes for the Police Auxiliary Officers and the police powers they have by virtue of their appointment.

The clause provides that the Commissioner will set out in a written appointment the terms and conditions of service that will apply to the appointment of a Police Auxiliary Officer. These terms and conditions cannot be less than any relevant industrial award that may be in place under the *Industrial Relations Act 1979* or the provisions set out in the *Minimum Conditions of Employment Act 1993*.

It clarifies that the Police Auxiliary Officers will have all of the powers, duties, obligations, authorisations, exceptions and exemptions that a Police Officer has under any other written law, unless this is specifically limited by the Commissioner of Police in their written appointment.

The clause clarifies that the Commissioner is empowered to cancel or vary the written appointment at any time.

**11 Section 136 amended**

Clause 11 amends section 136 of the *Police Act 1892* to provide the Police Auxiliary Officers with protection from personal civil liability when performing the functions of their position without corruption and malice. This is the same protection currently afforded to Police Officers, Special Constables and Aboriginal Police Liaison Officers.

### **Part 3 – Other Acts amended**

#### **12. *Bail Act 1892* amended**

Clause 12 of the Bill amends section 3(1) of the *Bail Act 1892* to change the definition of an “authorised police officer” to include a Police Auxiliary Officer, where the particular officer is ‘for the time being’ in charge of a Lock-up or Watch-house. The main function of an authorised police officer is to grant bail in specified circumstances contained within that Act.

The clause also removes the definition of “police officer” from the *Bail Act 1892*. This is as the term is adequately covered by its definition in section 5 of the *Interpretation Act 1981*, which states:

“**police officer** means a person appointed under Part I of the *Police Act 1892* to be a member of the Police Force of Western Australia”.

#### **13. *Civil Judgements and Enforcement Act 2004* amended**

Clause 13 amends section 106 of the *Civil Judgements and Enforcement Act 2004* to clarify that the reference to Police Officer includes a Police Auxiliary Officer. The main purpose that this pertains to is in respect to the appointment of a bailiff, which can only be done with the agreement of the Commissioner of Police.

#### **14. *The Criminal Code* amended**

Clause 14 removes the definition of police officer from section 70A(1) of the *Criminal Code* as the term is adequately covered by its definition in section 5 of the *Interpretation Act 1981* (refer also to explanatory clause 12 above).

#### **15. *Criminal Investigation Act 2006* amended**

This clause removes the definition of police officer from section 3(1) of *Criminal Investigation Act 2006* as the term is adequately covered by its definition in section 5 of the *Interpretation Act 1981* (refer also to explanatory clause 12 above).

**16. Criminal Investigation (Identifying People) Act 2002**

Clause 16 removes the definition of police officer from section 3(1) of *Criminal Investigation (Identifying People) Act 2006* as the term is adequately covered by its definition in section 5 of the *Interpretation Act 1981* (refer also to explanatory clause 12 above).

The clause also amends section 22(1) to include Police Auxiliary Officers in the category of officers from whom identifying particulars for forensic purposes can be taken (which currently are Police Officers, Special Constables and Aboriginal Police Liaison Officers).

**17. Cross-border Justice Act 2008 amended**

This clause amends the definition of “police officer” in section 7(1) of the *Cross-border Justice Act 2008* to include a Police Auxiliary Officer. Presently the term refers to a Police Officer, Special Constable and Aboriginal Police Liaison Officer.

**18. Food Act 2008 amended**

Clause 18 removes the definition of police officer from section 8 of the *Food Act 2008* as the term is adequately covered by its definition in section 5 of the *Interpretation Act 1981* (refer also to explanatory clause 12 above).

**19. Industrial Relations Act 1979 amended**

Clause 19 amends Schedule 3 clause 2(3) of the *Industrial Relations Act 1979* to include a Police Auxiliary Officer within the application of the provision, which presently applies to Police Officers, Aboriginal Police Liaison Officers and Special Constables.

Consistent with the current provisions in respect to Police Officers, Aboriginal Police Liaison Officers and Special Constables the amendments will not give the public service arbitrator the power to regulate or deal with any matter relating to the exercise by the commissioner of any disciplinary power under section 8 of the *Police Act 1892* in respect to Police Auxiliary Officers.

**20. Juries Act 1957 amended**

Clause 20 removes the definition of police officer from section 3(1) of the *Juries Act 1957* as the term is adequately covered by its definition in section 5 of the *Interpretation Act 1981* (refer also to explanatory clause 12 above).

**21. *Misuse of Drugs Act 1981* amended**

Clause 21 removes the definition of police officer from section 3(1) of the *Misuse of Drugs Act 1981* as the term is adequately covered by its definition in section 5 of the *Interpretation Act 1981* (refer also to explanatory clause 12 above).

**22. *Public Interest Disclosure Act 2003* amended**

Clause 22 removes the definition of “police officer” in section 3 of the *Public Interest Disclosure Act 2003* as the term is adequately covered by its definition in section 5 of the *Interpretation Act 1981* (refer also to explanatory clause 12 above).

The clause also removes the reference to “police officer” contained in section 5(3)(d) and replaces it with reference to persons appointed under Parts I, III, IIIA or IIIB of the *Police Act 1892*. Those Parts relate to Police Officers, Special Constables, Aboriginal Police Liaison Officers and the proposed Police Auxiliary Officers respectively. It ensures that these officers are persons about whom a disclosure of public interest information can be made in respect of to either the Commissioner of Police or the Corruption and Crime Commission.

**23. *Spent Convictions Act 1988* amended**

This clause inserts into item 3 of the Table in Schedule 3 clause 1(1) of the *Spent Convictions Act 1988* the term Police Auxiliary Officer. This is in addition to the existing references that apply in respect to a Police Officer and Aboriginal Police Liaison Officer.

The practical effect of this is to enable consideration of spent convictions to occur prior to appointing a person as a Police Auxiliary Officer, as is presently the case in respect to Police Officers and Aboriginal Police Liaison Officers.

**24. *Stock (Identification and Movement) Act 1970* amended**

Clause 24 removes the definition of police officer from section 5 of the *Stock (Identification and Movement) Act 1970* as the term is adequately covered by its definition in section 5 of the *Interpretation Act 1981* (refer also to explanatory clause 12 above).

The clause also makes a minor drafting change in sections 37(3), 38, 40, 43(3), 47, 48, 50(2), 50(3) and 54(2) by changing the present upper-case reference to the word "Police" to lower-case "police" in those provisions.

**25. *Workers' Compensation and Injury Management Act 1981* amended**

This clause amends the term "worker" in section 5 of the *Workers' Compensation and Injury Management Act 1981*. It removes the term "member of the police force" where it occurs and replaces it with the term "police officer or Aboriginal Police liaison officer appointed under the *Police Act 1892*".

This is to ensure that workers' compensation will fully apply to the Police Auxiliary Officers.