

No. 39 of 1972

AN ORDINANCE

To make provision for the Discipline of the Police Force of the Australian Capital Territory.

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1972*.

Dated this seventeenth day of November, 1972.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

RALPH J. HUNT
Minister of State for the Interior.

POLICE (DISCIPLINARY PROVISIONS) ORDINANCE 1972

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Police (Disciplinary Provisions) Ordinance 1972*.^{*} Short title.

2. This Ordinance is divided into Parts, as follows:— Parts.

Part I.—Preliminary (Sections 1-3).

Part II.—The Police Appeal Board (Sections 4-17).

Part III.—Discipline.

Division 1.—Duties and Obligations of Members (Sections 18-28).

Division 2.—Disciplinary Offences (Section 29).

Division 3.—Disciplinary Powers of the Commissioner (Sections 30-33).

Part IV.—Appeals (Sections 34-42).

Part V.—Miscellaneous (Sections 43-48).

3. In this Ordinance, unless the contrary intention appears— Definitions.

“member” means a member of the Police Force, and includes an officer;

“Police Force” means Police Force of the Territory;

“the Association” means the Police Association of the Australian Capital Territory;

^{*} Notified in the *Commonwealth Gazette* on 23 November 1972.

“the Board” means the Police Appeal Board established by section 5 of this Ordinance;

“the Commissioner” means the Commissioner of Police appointed under the *Police Ordinance 1927-1972*;

“the Territory” includes the Jervis Bay Territory.

PART II.—THE POLICE APPEAL BOARD.

Police Appeal Board.

4. For the purposes of this Ordinance there shall be an appeal board to be known as the Police Appeal Board.

Constitution of the Board.

5.—(1.) The Board shall consist of a Chairman and two other members who shall be appointed by the Minister.

(2.) The Chairman of the Board shall be a person who is a stipendiary magistrate, or a special magistrate, holding office under the *Court of Petty Sessions Ordinance 1930-1972* or a person whose name is on, and has appeared for at least five years on, a roll of barristers and solicitors referred to in sub-section (1.) of section 55D of the *Judiciary Act 1903-1969*.

(3.) Of the members of the Board other than the Chairman, one shall be an officer of the Police Force nominated by the Commissioner and the other shall be a person, whether a member of the Police Force or not, elected by the members of the Association.

(4.) There shall be a Secretary to the Board who shall be appointed by the Minister.

Term of office of members.

6. Each member of the Board holds office for such term as is specified in the instrument of appointment, not being a term exceeding three years, and, on the expiration of his term of office, is, subject to this Ordinance, eligible for re-appointment.

Vacation of office by members.

7.—(1.) The office of a member of the Board becomes vacant if—

- (a) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupts or insolvent debtors or compounds with his creditors;
- (b) the member, by writing under his hand addressed to the Minister, resigns his office;
- (c) the member is guilty of misbehaviour or becomes, in the opinion of the Minister, incapable of performing the duties of his office; or
- (d) in the case of the person elected by the members of the Association—the Association elects another person in his stead and the Secretary to the Association notifies the Minister in writing accordingly.

(2.) Where the office of Chairman of the Board becomes vacant, the Minister shall appoint a person having the qualifications referred to in sub-section (2.) of section 5 of this Ordinance to the office of Chairman.

(3.) Where an office of a member of the Board other than the Chairman becomes vacant, the Minister shall appoint as a member of the Board a person nominated or elected, as the case may be, in the same manner as the member whose office has become vacant.

8. Where, for any reason, the Chairman or another member of the Board is unable to act as the Chairman or as a member, as the case may be, the Minister may— Acting appointments.

- (a) appoint a person having the qualifications specified in subsection (2.) of section 5 of this Ordinance to act as Chairman of the Board in place of the Chairman; or
- (b) appoint a person nominated or elected, as the case may be, in the same manner as that member to act as a member of the Board in place of that member.

9.—(1.) An action or proceeding, civil or criminal, does not lie against a member of the Board for or in respect of any act or thing done in good faith by the member in his capacity as a member. Protection of members

(2.) An act or thing shall be deemed to have been done in good faith if the member of the Board by whom the act or thing was done was not actuated by ill-will to the person affected or by any other improper motive.

10. Meetings of the Board shall be called by the Chairman, or by the Secretary to the Board on the direction of the Chairman, and shall be held at such times and places as are specified by the Chairman. Meetings of the Board.

11.—(1.) The Secretary to the Board shall cause notice of the time and place fixed for the hearing of proceedings before the Board to be given to the persons entitled to be heard by the Board. Hearings by the Tribunal or the Appeal Board.

(2.) The Board may adjourn the hearing of proceedings before it from time to time.

(3.) The Board may take evidence on oath or affirmation and, for that purpose, the Chairman of the Board may administer an oath or affirmation.

(4.) Subject to this Ordinance and to the regulations, the procedure on the hearing of proceedings before the Board is within the discretion of the Board.

12.—(1.) The Board may, of its own motion or on the application of any party to an appeal before it, by writing under the hand of the Chairman, summon a person to attend before the Board at a time and place specified in the summons to give evidence in relation to the appeal and to produce any books, documents or writings in his custody or under his control relating to the appeal that are specified or referred to in the summons. Witnesses.

(2.) A witness appearing before the Board may be examined by the Chairman or a member of the Board and by a person representing a party to the proceedings before the Board.

Service of
summons.

13. A summons to a witness under this section may be served personally or by sending it by pre-paid post as a letter to the person to whom it is directed at his last known place of residence or business.

Offences by
witnesses.

14. A person summoned to attend as a witness before the Board shall not—

- (a) without reasonable excuse, refuse or fail to attend, or to produce documents, books or writings, in accordance with the summons; or
- (b) refuse to be sworn or to make an affirmation or, except as provided by section 57 of the *Evidence Ordinance* 1971, to answer a question relevant to the proceedings before the Board.

Penalty: Two hundred dollars.

Obstruction.

15. A person who obstructs the Chairman or a member of the Board in the exercise of the powers conferred on him under this Ordinance is guilty of an offence and is liable, on conviction, to a fine not exceeding Two hundred dollars.

Communica-
tions by
members of
information
relating to
appeals.

16. A member of the Police Force who communicates any information which he has received in the performance of any duties connected with the exercise of the powers or functions of the Board to a person other than a member of the Board or to a person to whom the Board has authorized him to communicate the information is guilty of an offence and is liable, on conviction, to a penalty not exceeding Two hundred dollars.

Protection of
witnesses, &c.

17.—(1.) A person who, in pursuance of sub-section (2.) of section 36 of this Ordinance, represents the appellant or the Commissioner at the hearing of an appeal under Part IV. of this Ordinance has the same protection and immunity as a barrister and solicitor has in appearing for a party in proceedings in the Supreme Court.

(2.) A witness who gives evidence at the hearing of an appeal under Part IV. of this Ordinance has the same protection as a witness in proceedings in the Supreme Court.

PART III.—DISCIPLINE.

Division 1.—Duties and Obligations of Members.

General orders
and
instructions.

18.—(1.) The Commissioner may, from time to time, in writing, issue such general orders and instructions as are necessary to secure the good government and efficient working of the Police Force.

(2.) The general orders and instructions issued by the Commissioner before the commencement of this Ordinance as in force immediately before that commencement shall be deemed to have been issued under the last preceding sub-section.

19. A member—

Performance of duties.

- (a) shall, during his hours of duty, devote himself exclusively and zealously to the discharge of his duties;
- (b) shall behave at all times with courtesy to the public;
- (c) shall give prompt attention to all matters that come within the scope of his duties;
- (d) shall promptly carry out all his duties; and
- (e) shall comply with and give effect to such of the provisions of the laws in force in the Territory and of the general orders and instructions as are applicable to him in the performance of his duties.

20. A member shall not, without the permission of the member under whose control, direction or supervision he performs his duties, absent himself from duty during his hours of duty.

Absence from duty.

21. A member shall promptly obey all lawful instructions given to him by the member under whose control, direction or supervision he performs his duties.

Obedience to lawful instructions.

22. A member shall not seek the influence or interest of any person for the purpose of obtaining promotion, transfer or any other benefit or advantage.

Influence not to be sought.

23. A member shall not, either directly or indirectly, solicit or accept a gift or present from any person concerned directly or indirectly with any matter in which the member in the performance of his duties, or the Police Force, is interested or concerned.

Solicitation of gifts.

24.—(1.) Except with the express permission in writing of the Commissioner, a member of the Police Force shall not, whether within or outside the Territory—

Performance of work outside the Police Force.

- (a) accept or continue to hold, discharge the duties of, or be employed in, a paid office in connexion with any business, whether carried on by a body corporate, partnership or an individual;
- (b) engage in business, whether as a principal or agent;
- (c) engage, or continue in the private practice of, a profession, occupation or trade or enter into employment, whether remunerative or not, in a profession, occupation or trade with a body corporate, partnership or individual; or
- (d) accept or engage in any remunerative employment other than in connexion with his duties as a member of the Police Force.

(2.) The last preceding sub-section does not prevent a member of the Police Force from becoming a member or shareholder of an incorporated company or of a company or society of persons registered under the law of a State or Territory of the Commonwealth but, except as provided by the next succeeding sub-section, a member of the Police Force shall not take any part in the conduct of the business of the company or society otherwise than in the exercise of his rights as a member or shareholder of the company or society.

(3.) A member of the Police Force may, with the written approval of the Commissioner, act as a director of a co-operative society that is registered under the law of a State or Territory of the Commonwealth and does not enter into contracts for the supply of goods or services to the Commonwealth.

(4.) The Commissioner may, at any time, withdraw a permission granted under this section.

Bankrupt
members.

25. A member who becomes a bankrupt—

- (a) shall forthwith give notice to the Commissioner of the fact that he has become a bankrupt; and
- (b) shall, as and when required to do so by the Commissioner, furnish such information in relation to his bankruptcy as the Commissioner requires.

False or
misleading or
inaccurate
statements in
the course of
duty.

26. A member shall not wilfully make in the course of his duty a false, misleading or inaccurate statement.

Improper use of
his position.

27. A member shall not use the fact that he is a member of the Force for the purpose of obtaining any personal advantage.

Use of
firearms.

28. A member who is issued with a firearm shall not use the firearm except as authorized by the general orders and instructions.

Division 2.—Disciplinary Offences.

Disciplinary
offences.

29. A member who—

- (a) contravenes or fails to comply with a provision of the last preceding Division;
- (b) contravenes or fails to comply with the general orders and instructions;
- (c) is guilty of disgraceful or improper conduct, either in his official capacity or otherwise;
- (d) is negligent or careless in the discharge of his duties;
- (e) acts in a disorderly manner or in a manner unbecoming a member of the Police Force;
- (f) acts in a manner that is prejudicial to the good order and discipline of the Police Force;
- (g) acts in a manner that brings discredit to the reputation of the Police Force; or
- (h) is, while on duty, under the influence of intoxicating liquor or drugs,

is guilty of a disciplinary offence and is subject to punishment in accordance with the next succeeding Division.

Division 3.—Disciplinary Powers of the Commissioner.

30.—(1.) Where it appears to the Commissioner that a member of the Police Force may have committed a disciplinary offence, the Commissioner may cause to be served personally on that member a written notice—

Commissioner may call on member to show cause.

- (a) stating particulars of the disciplinary offence;
- (b) stating that the member may, within seven days of the service of the notice, deliver to the Commissioner a written statement in connexion with the alleged disciplinary offence; and
- (c) stating that the member is entitled to appear before the Commissioner at the hearing of the matter.

(2.) When the time specified in a notice given under the last preceding sub-section has expired, the Commissioner shall, by notice in writing served personally on the member, inform the member of the time at which the Commissioner will hear and determine the matter.

31.—(1.) After the expiration of the time specified in the notice given under sub-section (2.) of the last preceding section, the Commissioner shall determine whether the member has committed the disciplinary offence specified in the notice.

Commissioner to determine charge.

(2.) For the purpose of determining whether a member of the Police Force has committed the disciplinary offence, the Commissioner shall take into account the contents of any written statement delivered to him by the member, and, if the member appears before the Commissioner on the hearing, any oral statements made before him by the member, in relation to the question whether the member has committed that disciplinary offence.

32.—(1.) Where the Commissioner has determined, under the last preceding section, that a member of the Police Force has committed a disciplinary offence, the Commissioner shall record his determination in writing and, subject to the next succeeding sub-section, may, as a punishment—

Penalties.

- (a) reprimand the member;
- (b) impose on the member a fine not exceeding Forty dollars;
- (c) reduce the member to a lower rank;
- (d) reduce the rate of salary of the member to a rate of salary within the limits of salary fixed for the rank held by the member; or
- (e) dismiss the member.

(2.) Where the Commissioner has determined that a member who is an officer has committed a disciplinary offence and it is not appropriate to reprimand the officer or impose on the officer a fine not exceeding Forty dollars, the Commissioner may recommend to the Minister that the Minister—

- (a) reduce the officer to a lower rank; or
- (b) dismiss the officer.

(3.) The Commissioner shall cause to be served personally on the member to whom the determination relates notice of the determination and of the punishment imposed or the recommendation made, as the case requires.

(4.) Where the Commissioner has determined that a member has not committed the disciplinary offence with which he was charged, the Commissioner shall dismiss the charge and notify the member in writing accordingly.

(5.) A determination made by the Commissioner in which he exercises the powers conferred by sub-section (1.) of the last preceding section has, unless an appeal is instituted under the next succeeding Part, full force and effect.

Minister may
dismiss on
Commissioner's
recommendation.

33. Where—

- (a) the Commissioner has made a recommendation under sub-section (2.) of the last preceding section; and
- (b) the officer has not, within fourteen days after the date on which notice of the determination was served on him, instituted an appeal under the next succeeding Part,

the Minister may give effect to the recommendation or impose any other punishment referred to in the last preceding section.

PART IV.—APPEALS.

Institution of
appeal.

34.—(1.) An appeal under this Part shall be instituted by lodging with the Secretary to the Board a notice of appeal.

(2.) For the purposes of this Part, a notice of appeal shall—

- (a) state the ground or grounds on which the appeal is made;
- (b) be signed by the appellant; and
- (c) be lodged with the Secretary to the Board before the expiration of fourteen days after the date on which a copy of the determination is delivered to the appellant under section 32 of this Ordinance, or within such further time as the Board, on an application made by the member either before or after the expiration of that period of fourteen days, allows.

(3.) An appeal under this Part may be made—

- (a) on the ground that the Commissioner's determination that the appellant committed a breach of discipline was wrong; or

(b) on the ground that the punishment is unduly severe, or on both of those grounds.

Chairman of
Board to fix
date for
hearing.

35. Where a notice of appeal under this Part is lodged with the Secretary to the Board, the Chairman of the Board shall fix the date on which, and the time and place at which, the hearing of the appeal will commence.

Representation
of appellant and
Commissioner.

36.—(1.) On an appeal under this Part, the appellant and the Commissioner are each entitled to be heard and may examine witnesses and address the Board.

(2.) A person who is entitled to be heard on an appeal under this Part may be represented by a barrister and solicitor or by a member of the Police Force, and the barrister and solicitor or member may examine witnesses and address the Board on behalf of the person.

37. An appeal under this Part shall be by way of a re-hearing.

Appeal to be re-hearing.

38. The Board shall cause a record to be made of the evidence of a witness at the hearing of an appeal under this Part.

Record of proceedings.

39.—(1.) A question of law arising in an appeal under this Part (including the question whether a particular question is one of law) shall be determined in accordance with the opinion of the Chairman of the Board.

Decision of questions.

(2.) Subject to the last preceding sub-section, a question arising in an appeal under this Part shall be determined in accordance with the opinion of a majority of the Board.

40. The hearing of an appeal under this Part shall not be open to the public except to the extent that the Board, in its discretion, directs.

Appeal not to be open to public except where Board so directs.

41. On an appeal under this Part, the Board may—

Powers of Board.

- (a) affirm or set aside the determination of the Commissioner that the appellant had committed the disciplinary offence; and
- (b) where the Board affirms the Commissioner's determination that the appellant had committed the disciplinary offence—impose on the member any of the punishments referred to in sub-section (1.) of section 32 of this Ordinance, and, subject to the next succeeding sub-section, the Commissioner shall give effect to the Board's decision.

42. Where, in the case of an appeal by a member who is an officer, the Board has affirmed the determination of the Commissioner that the officer had committed the disciplinary offence and has imposed on the officer the punishment referred to in paragraph (c) or (e) of sub-section (1.) of section 32 of this Ordinance, the Minister shall cause such action to be taken as is necessary to give effect to the Board's decision.

In case of appeal by the officer, Minister to cause effect to be given to Board's decision.

PART V.—MISCELLANEOUS.

43. A member may, within twenty-one days after the Board's decision, or within such further time as the Supreme Court, on an application made by the member either before or after the expiration of that period of twenty-one days, allows, appeal to the Supreme Court from that decision and the Court may confirm, vary or reverse the decision and may make such further order in the matter as it thinks just.

Appeal to Court.

44.—(1.) Where—

- (a) the Commissioner serves on a member of the Police Force a notice under sub-section (1.) of section 30 of this Ordinance; and

Suspension of member charged with misconduct.

- (b) the Commissioner considers that the breach of discipline specified in the notice is of such a serious nature that the member should not continue to perform his duties until the question whether the member has committed a breach of discipline has been determined,

the Commissioner may—

- (c) in the case of a member who is an officer—recommend to the Minister that the officer be suspended from duty; or
(d) in the case of a member other than an officer—suspend the member from duty.

(2.) Where the Commissioner has recommended that the Minister suspend an officer from duty, the Minister may suspend the officer accordingly.

(3.) The Minister, in the case of an officer, or the Commissioner, in the case of a member, may, at any time, cancel the suspension of the officer or the member from duty and shall cancel the suspension of the officer or member where the Commissioner determines that the officer or member has not committed a breach of discipline or the Board sets aside a determination of the Commissioner that the officer or member had committed a breach of discipline.

(4.) An officer or a member who has been suspended from duty under this section shall be paid his salary during the period of the suspension.

Conviction
for criminal
charge.

45.—(1.) Where an officer or a member is charged with having committed an offence against the law of the Commonwealth or of a State or Territory of the Commonwealth, punishable either on indictment or on summary conviction—

- (a) the Minister may suspend the officer from duty; or
(b) the Commissioner may suspend the member from duty.

(2.) If, upon the hearing of the charge by a court, the officer or member is found guilty of the offence, the Minister may, in the case of an officer, or the Commissioner may, in the case of a member—

- (a) dismiss the officer or member from the Police Force;
(b) reduce the officer or member to a lower rank; or
(c) reduce the salary of the member.

(3.) The Minister may at any time revoke the suspension of an officer, and the Commissioner may at any time revoke the suspension of a member, suspended under this section, whether before or after the conviction of the officer or member.

(4.) A person who is suspended under this section shall, unless the Minister otherwise directs, be paid salary during the period of the suspension.

(5.) Where a person has been dismissed under sub-section (2.) of this section but—

- (a) the conviction or finding has subsequently been quashed;
- (b) the person has received a pardon;
- (c) the conviction or finding has otherwise been nullified; or
- (d) the person has been released from prison as a result of an inquiry into the conviction,

the Minister may re-appoint the person as an officer, or the Commissioner may re-appoint the person as a member, of the Police Force.

(6.) Unless the Minister directs otherwise, where a person is re-appointed as an officer or member of the Police Force under the last preceding sub-section—

- (a) the person shall be deemed to have been, during the period which commenced on the date of his dismissal and ended on the date of his re-appointment, on leave of absence without pay; and
- (b) that period shall, for all purposes other than the payment of salary, be counted as a period of service as a member.

46.—(1.) A fine imposed on a member of the Police Force under Part III. of this Ordinance is payable— Payment of fines.

- (a) at the expiration of fourteen days after the date on which the Commissioner makes the determination under section 31 of this Ordinance; or
- (b) where, on an appeal under the last preceding Part, the fine is imposed by the Board or the imposition of the fine by the Commissioner is affirmed by the Board—at the expiration of fourteen days after a date determined by the Board.

(2.) Where—

- (a) a fine imposed under Part III. or Part IV. of this Ordinance is payable by a member of the Police Force; and
- (b) the fine has remained unpaid for not less than fourteen days,

the Commissioner may cause the amount of the fine to be deducted from salary due to the member either in a lump sum or by such instalments as the Commissioner thinks proper.

47. Where, because a member's whereabouts are unknown, it is not possible for a notice under section 30 or 33 of this Ordinance to be served on the member personally, service of the notice may be effected by posting the notice to the member's last known place of residence. Service of notice where member's whereabouts unknown.

48. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance. Regulations.