

# **Independent Police Complaints Authority Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill—

- changes the name of the Police Complaints Authority to the Independent Police Complaints Authority (the **Authority**); and
- increases the Authority's membership to 3 persons, which includes a chairperson. The chairperson will be a current or former Judge, and he or she will be supported by 2 other members. As with the existing Authority, the members will be appointed by the Governor-General on the recommendation of the House of Representatives.

The amendments made to the Police Complaints Authority Act 1988 ("the principal Act") by this Bill arise primarily out of a review of the Police Complaints Authority conducted by the Honourable Sir Rodney Gallen in 2000. The purpose of the review was to examine the role of the Police Complaints Authority in investigating and resolving complaints and incidents involving the police.

The major decision arising out of the review was that the Police Complaints Authority should have an enhanced investigative capacity of its own, independent of the police. While no legislative amendment was needed to implement that decision, the change in the Police Complaints Authority's name and the increase in its membership recognises the Authority's enhanced independence.

The Bill also—

- establishes the Authority as a separate legal entity, which recognises its change of status from a single-person office to a 3-person body:
- makes it clear that the Authority may delay taking action on a complaint if a criminal investigation, disciplinary investigation, or both is being conducted by the police in relation to a matter:
- allows the Authority, when deciding whether to hold a hearing, to have regard to whether proceedings are pending or in reasonable contemplation:
- confers on the Authority appropriate powers under the Commissions of Inquiry Act 1908 for the purposes of holding a hearing:
- sets out a procedure for the disclosure of certain information that has come to the Authority's knowledge through the exercise of its functions in 2 limited situations:
- provides for a number of matters relating to the appointment of members and the administration of the Authority that are consistent with the Government's Crown entity reforms.

### Clause by clause analysis

*Clause 1* is the Title clause. The Title of the Bill is the Independent Police Complaints Authority Amendment Act 2002. The Bill amends the principal Act.

### Part 1

#### Preliminary provisions

*Clause 2* is the commencement clause. It provides that the Bill will come into force on a date to be appointed by Order in Council. The reason for commencement by Order in Council is to allow time for decisions to be made about the appointment of members of the Authority. The existing Police Complaints Authority will become the chairperson of the Authority under *new section 41*. However, 2 other members need to be appointed by the Governor-General on the recommendation of the House of Representatives, as there is currently no Deputy Authority to become a member under *new section 42*. Commencement by Order in Council will also allow time for new administrative systems to be put in place to deal with the

Authority's change in structure from an individual office holder to a body corporate with 3 members.

*Clause 3* amends the Long Title of the principal Act to reflect the amendment made to the Authority's name.

*Clause 4* amends the name of the principal Act. After the commencement of the Bill, the principal Act will be called the Independent Police Complaints Authority Act 1988.

## Part 2

### Amendments to principal Act

*Clause 5* amends section 2 of the principal Act, which is the interpretation section. The following definitions are amended for the following reasons:

- the definition of **Authority** is repealed and a new definition substituted. The new definition refers to the Authority's new name:
- **chairperson** is defined as the person appointed under *new section 4C(1)*. The 3-person membership of the Authority requires the appointment of a chairperson:
- the definition of **Deputy Authority** is repealed. When the Bill commences, there will no longer be a Deputy Authority:
- **member** is defined as a member of the Authority appointed under *new section 4A(1)*; and includes the chairperson.

*Clause 6* amends the principal Act by substituting *new sections 4 to 7*. *New section 4(1)* provides for the establishment of the Independent Police Complaints Authority. *New section 4(2)* establishes the Authority as a body corporate and provides that the Authority has the capacity, rights, powers, and privileges of a natural person as well as any powers conferred on it by any enactment, including the principal Act. *New section 4(3)* provides that the Authority may only exercise its powers for the purpose of carrying out its functions.

*New section 4A* sets out the Authority's new membership structure. The Authority is no longer an individual office holder. Instead, there will be 3 members. Each member is appointed by the Governor-General on the recommendation of the House of Representatives. *New section 4A(2)* provides that a vacancy in the Authority's membership does not affect the Authority's powers. *New section 4A(3)* clarifies that no person is deemed to be employed in the service of

the Crown for the purpose of the State Sector Act 1988 and the Government Superannuation Fund Act 1956 just because that person is a member of the Authority.

*New section 4B* describes the method by which members are appointed to the Authority. Under *new section 4B(1)*, a person must give written consent to his or her appointment as a member of the Authority. Under *new section 4B(2)*, an appointment by the Governor-General must be made in writing, state the date of appointment, and be published in the *Gazette* as soon as possible after it is made.

*New section 4C* describes the process of appointment of the chairperson of the Authority. Under *new section 4C(1)*, the Governor-General, on the recommendation of the House of Representatives, must appoint 1 member as the chairperson. Under *new section 4C(2)*, the chairperson must be a Judge or retired Judge of the District Court, High Court, or Court of Appeal. Currently, the Police Complaints Authority can be a barrister or solicitor of the High Court who has suitable legal experience.

*New section 4D* is similar to existing section 4(4) and provides that a Judge's appointment as a member of the Authority does not affect his or her judicial rank and status. *New section 4D(2)* provides that time served by a Judge as a member of the Authority (whether or not as the chairperson) is taken as time served as a Judge.

*New section 5* sets out the term of office for members of the Authority. The term may not be less than 2 years nor longer than 5 years (the same as the Police Complaints Authority) and is determined by the Governor-General on the recommendation of the House of Representatives. The existing grounds for vacation of office by the Police Complaints Authority under section 5(2) and (3) apply to vacation of office by a member of the Authority under *new section 5(2) and (3)*. However, the existing requirement in section 5(3)(b) that the Police Complaints Authority retire on attaining the age of 72 years has been removed. Under *new section 5(4)*, there is now a requirement that a person who resigns as a member of the Authority state, in his or her notice of resignation, a date on which the resignation will take effect.

*New section 6* is similar to existing section 6 and relates to the removal and suspension of members of the Authority. The grounds for removal or suspension remain the same as those for the Police

Complaints Authority, but the section has been recast to refer to members of the Authority.

*New section 6A* provides that, if a member of the Authority is removed from office, no compensation will be paid in respect of that removal.

*New section 7* relates to filling vacancies in the Authority's membership. It is similar to existing section 7, but is recast to relate to the Authority's new structure.

*Clause 7* repeals section 8 of the principal Act. Section 8 is no longer necessary under the Authority's new structure, because there will not be a Deputy Authority. However, any existing Deputy Authority will become a member of the Authority under *new section 42*.

*Clause 8* repeals sections 9 and 10 of the principal Act, and substitutes *new sections 9 to 10B*. *New section 9* relates to the salaries and allowances of members of the Authority. The provision is similar to existing section 9, but it has been recast to provide for members of the Authority rather than the Police Complaints Authority and a Deputy Authority.

*New section 10* relates to staff of the Authority. Under *new section 10(1)*, the Authority may appoint any employees and officers that it considers necessary for the efficient carrying out of the functions, powers, and duties of the Authority. Under *new section 10(2)*, the Authority determines the terms and conditions of employment of any officer or employee appointed under the section. *New section 10(3)* clarifies that no person appointed under the section is deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 just because of that appointment. *New section 10(4)(a)* provides that, if a chief executive is appointed, the Authority must consult with the State Services Commissioner in order to obtain guidance on determining or modifying the chief executive's remuneration or terms and conditions of appointment. Under *new section 10(4)(b)*, if the Authority does not follow the guidance provided by the State Services Commissioner, the Authority must consult the Minister of Justice on the determination and modification of the chief executive's terms and conditions of employment.

*New section 10A* provides for the Authority to operate a personnel policy that complies with the principle of being a good employer. The provision provides for a personnel policy that includes matters

such as good and safe working conditions, equal employment opportunities programmes, impartial selection, and recognition of the employment requirements of women and persons with disabilities.

*New section 10B(1)* provides for the appointment of experts to undertake any inquiries and research that may be necessary for the efficient performance of the functions of the Authority. *New section 10B(2)* describes how experts are to be paid and reimbursed. *New section 10B(3)* clarifies that a person appointed as an expert is not in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 just because of that appointment. *New section 10B(4)* provides, for the avoidance of doubt, that a person appointed as an expert is not an employee for the purposes of the principal Act.

*Clause 9* makes a consequential amendment to section 11 of the principal Act based on the Authority's change in structure.

*Clause 10* amends section 11B(2) of the principal Act, which relates to the Authority's bank accounts. The provision is amended to include a reference to members of the Authority.

*Clause 11* amends a reference in section 11D of the principal Act so that it refers to section 25 of the Public Finance Act 1989.

*Clause 12* inserts *new sections 12A and 12B* into the principal Act. *New section 12A* requires the Authority to act independently in the exercise of its functions. *New section 12B* provides that the meeting procedure for the Authority is set out in the *new Schedule* of the principal Act. The *new Schedule* provides for the following aspects of meeting procedure:

- notice of meetings:
- methods of holding meetings:
- quorum:
- presiding at meetings:
- voting at meetings:
- unanimous written resolutions.

*Clause 13* makes a consequential amendment to section 13 of the principal Act, which arises out of the new definition of **member**. The amendment clarifies that section 13 relates to members of the police and not to members of the Authority.

*Clause 14* amends a reference in section 14(5)(b) of the principal Act so that it refers to the Mental Health (Compulsory Assessment and Treatment) Act 1992.

*Clause 15* amends section 17 of the principal Act, which relates to the action taken by the Authority on receipt of a complaint. Section 17(1)(b) of the principal Act is amended to clarify that the Authority may defer action until receipt of a report from the Commissioner on a police investigation of the complaint if that investigation is undertaken on behalf of the Authority. *Clause 15* also inserts *new section 17(1)(ca)* into the principal Act. *New section 17(1)(ca)* clarifies that the Authority may defer action until the receipt of a report from the Commissioner following a criminal investigation, disciplinary investigation, or both that is initiated and undertaken by the police.

*Clause 16* amends section 23 of the principal Act, which relates to proceedings of the Authority. A *new section 23(3)(ba)* provides that the Authority may consider whether other types of proceedings are pending or are reasonably in contemplation before deciding whether to hold a hearing. *New section 23(5) and (6)* gives the Authority the same powers as are conferred on a Commission of Inquiry under certain specified provisions of the Commissions of Inquiry Act 1908.

*Clause 17* amends section 32 of the principal Act by substituting a *new subsection (3)*, which refers to members of the Authority.

*Clause 18* amends section 33(1) of the principal Act, which relates to privileged proceedings, to clarify that the immunities provided in that section apply to the Authority, members of the Authority, and any person holding office or appointment under the Authority.

*Clause 19* inserts *new sections 33A to 33G* into the principal Act. *New sections 33A to 33G* set out a procedure for the disclosure of certain information that has come to the Authority's knowledge through the exercise of its functions in 2 limited situations (despite the restrictions in existing section 32(1) of the principal Act). The first situation is when a defendant who is charged with an offence punishable by imprisonment has reasonable grounds to believe that the Authority holds information that may point to his or her innocence in relation to the offence for which he or she has been charged, and he or she makes a request for that information (*new section 33A*). If the Authority considers that it holds the type of information requested by the defendant, then it must disclose it to a court and not to the person requesting the information (*new section 33B*). The

second situation allows for the disclosure of information by the Authority on its own initiative if certain circumstances apply (*new section 33C*). Again, the information is disclosed to a court and not to the defendant.

*New section 33D* allows the court to ask the Authority for other information mentioned in the information disclosed under *new sections 33B and 33C* in certain limited circumstances. *New section 33E(1)* provides that the Authority may not disclose to a court information that would prejudice the interests in section 26(1) of the principal Act. Under *new section 33E(2)*, the Authority may advise the court of matters it thinks may assist the court in deciding whether to make an order, under *new section 33F(3)*, requiring the Authority to disclose all or part of the information disclosed to the court and what conditions, if any, might apply to the disclosure of the information.

*New section 33F* provides that the court must not disclose information disclosed to it by the Authority, but may make an order under *new section 33F(3)* requiring the Authority to disclose all or part of the information to the defendant or the prosecutor, or both, in order to protect the defendant's right to a fair trial. *New section 33G* provides that a defendant or a prosecutor, or both, may request that the Authority issue a certificate relating to the information disclosed as a consequence of an order made under *new section 33F(3)*. The certificate may be used in evidence at a defendant's hearing or trial. *New section 33G(4)* provides that if a certificate is issued under *new section 33G* the information disclosed by the Authority as a consequence of an order made under *new section 33F(3)* is admissible in evidence.

*Clause 20* inserts a *new subsection (1A)* in section 35 of the principal Act, which relates to the Authority's annual report. *New section 35(1A)* requires the reporting of the following 3 matters in the annual report:

- in \$10,000 bands, the remuneration of employees and officers of the Authority who receive more than \$100,000 remuneration:
- the total remuneration and benefits received by each member of the Authority:



- the total value of compensation payments made in respect of a person who ceases to be a member, employee, or officer of the Authority.

*Clause 21* repeals section 36 of the principal Act and substitutes *new sections 36 and 36A*. *New section 36* relates to the delegation of powers of the Authority to members and persons holding office under the Authority. The existing restriction on delegating the Authority's power to delegate remains in place in *new section 36(4)(a)*. However, under *new section 36(4)(b)*, the restriction on delegating the power to make reports or recommendations under the principal Act will apply only to persons holding office under the Authority. This means that members can be delegated the power to make reports or recommendations.

*New section 36A* relates to the actions of a delegate. *New section 36A(1)* provides that the Authority is responsible for the actions of a delegate. A delegate is restricted to the exercise of the powers delegated to him or her under *new section 36A(2)*. Members and persons holding office under the Authority are treated differently as regards the presumption of whether or not they are acting under a delegation. Under *new section 36A(3)*, a member is presumed to be acting in accordance with the terms of a delegation unless the contrary is proved. However, a person holding office must, if required to do so, provide evidence of his or her authority to exercise delegated powers under *new section 36A(4)*.

*Clause 22* makes a consequential amendment to section 37 of the principal Act. The amendment arises out of the new 3-person membership of the Authority.

*Clause 23* repeals section 39(2) of the principal Act, which is no longer required because of an amendment made by the Bill to the Fourth Schedule of the Higher Salaries Commission Act 1977.

*Clause 24* repeals section 40 and substitutes *new sections 40 to 47*, which are transitional provisions. *New section 40* provides that a complaint made to the Police Complaints Authority before the commencement of the Bill must be dealt with by the Authority under the principal Act as amended, whether or not any action was taken in relation to the complaint before *new section 40* commenced.

*New section 41* provides that the existing Police Complaints Authority is to be taken to be appointed to the office of chairperson of the new Authority on the Bill's commencement. The appointment as

chairperson is on the same terms and conditions as when he or she was appointed as Police Complaints Authority and for the remainder of the term for which he or she was appointed as Police Complaints Authority.

*New section 42* provides that the Deputy Police Complaints Authority is to be taken to be appointed as a member of the Authority on the Bill's commencement. The appointment as a member is on the same terms and conditions as when he or she was appointed as Deputy Police Complaints Authority and for the remainder of the term of his or her appointment as Deputy Police Complaints Authority.

*New section 43* provides that employees and officers appointed by the Police Complaints Authority before the commencement of the Bill are transferred to the Authority after the commencement of the Bill. Under *new section 43(2)*, employees' and officers' employment contracts are treated as unbroken and their period of service treated as continuous. *New section 43(3)* clarifies that ceasing to be an employee or officer of the Police Complaints Authority on the Bill's commencement does not make an officer or employee eligible for compensation.

*New section 44* provides that every reference in any contract or other instrument, document, or notice to the Police Complaints Authority is to be read as a reference to the Authority.

*New section 45* provides that any proceedings to which the Police Complaints Authority was a party or that the Police Complaints Authority was considering bringing before the commencement of the Bill may be brought, continued, completed, and enforced by the Authority.

*New section 46* vests the Police Complaints Authority's assets and liabilities in the Authority.

*New section 47* provides that the Authority must arrange the annual report and audited accounts of the Police Complaints Authority for the period beginning 1 July 2002 and ending immediately before the commencement of this Act.

*Clause 25* provides that the principal Act is amended by adding a *Schedule* to the principal Act. The *new Schedule* sets out the meeting procedure to be followed by the Authority.

### **Part 3**

#### **Consequential amendments and repeals**

*Clause 26(1)* provides that consequential amendments are made to other Acts as set out in *Schedule 2*. *Clause 26(2)* provides for a consequential amendment to the Penal Institutions Regulations 2000.

*Clause 27* provides for the repeal of part of the Schedule of the Higher Salaries Commission Amendment Act (No 2) 1992. The repealed part of the Schedule is no longer needed, because it amends a provision repealed by this Bill.

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*Hon Phil Goff*

# **Independent Police Complaints Authority Amendment Bill**

## **Government Bill**

### **Contents**

1	Title	12	New sections 12A and 12B inserted
	<b>Part 1</b>		12A Duty to act independently
	<b>Preliminary provisions</b>		12B Meeting procedure
2	Commencement	13	Duty of Commissioner to notify Authority of certain incidents involving death or serious bodily harm
3	Long Title amended		
4	Name of principal Act changed	14	Mode of complaint
	<b>Part 2</b>	15	Action upon receipt of complaint
	<b>Amendments to principal Act</b>	16	Proceedings of Authority
5	Interpretation	17	Authority and staff to maintain secrecy
6	New sections 4 to 7 and heading substituted	18	Proceedings privileged
	<i>Independent Police Complaints Authority</i>	19	New sections 33A to 33G inserted
4	Independent Police Com- plaints Authority established	33A	Request to Authority regard- ing information that may point to defendant's innocence
4A	Membership of Authority	33B	Authority to disclose informa- tion to court if it considers that it holds information requested by defendant
4B	Method of appointment	33C	Authority may, on own initia- tive, disclose information to court in limited circumstances
4C	Chairperson of Authority	33D	Court may make request to Authority for other information
4D	Appointment of Judge as member of Authority	33E	Authority may not disclose certain information but may advise court on certain matters
5	Term of office of member of Authority	33F	Court may not disclose infor- mation but may make order for Authority to disclose
6	Power to remove or suspend member of Authority	33G	Certificate for use in evidence
6A	No compensation if member removed from office		
7	Filling of vacancy	20	Annual report
7	Section 8 repealed		
8	New sections 9 to 10B substituted		
9	Salaries and allowances		
10	Staff		
10A	Personnel policy		
10B	Appointment of experts		
9	Superannuation or retiring allowances		
10	Bank accounts		
11	Investment of money		

**Independent Police Complaints  
Authority Amendment**

<p>21 New sections 36 and 36A substituted</p> <p>36 Delegation of powers by Authority</p> <p>36A Actions of delegate</p> <p>22 Offences</p> <p>23 Amendments to other Acts</p> <p>24 New sections 40 to 47 and heading substituted</p> <p style="padding-left: 40px;"><i>Transitional provisions</i></p> <p>40 Complaints made to Police Complaints Authority</p> <p>41 Police Complaints Authority is chairperson</p> <p>42 Deputy Police Complaints Authority is member of Authority</p> <p>43 Employees and officers transferred to Authority</p> <p>44 References to Police Complaints Authority</p>	<p>45 Proceedings to which Police Complaints Authority party</p> <p>46 Assets and liabilities vest in Authority</p> <p>47 Authority must arrange annual report and accounts</p> <p>25 Schedule added</p> <p style="text-align: center;"><b>Part 3</b></p> <p style="text-align: center;"><b>Consequential amendments and repeals</b></p> <p>26 Consequential amendments to other Acts and regulations</p> <p>27 Repeals</p> <hr style="width: 10%; margin: 10px auto;"/> <p style="text-align: center;"><b>Schedule 1</b></p> <p style="text-align: center;"><b>New Schedule added to principal Act</b></p> <p style="text-align: center;"><b>Schedule 2</b></p> <p style="text-align: center;"><b>Consequential amendments to other Acts</b></p>
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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Independent Police Complaints Authority Amendment Act **2002**.
- (2) In this Act, the Act that was previously called the Police Complaints Authority Act 1988<sup>1</sup> is called “the principal Act”. 5

<sup>1</sup> 1988 No 2

**Part 1**

**Preliminary provisions**

**2 Commencement**

This Act comes into force on a date to be appointed by the Governor-General by Order in Council. 10

**3 Long Title amended**

The Long Title of the principal Act is amended by omitting the words “**an independent**”, and substituting the words “**the Independent**”.

**4 Name of principal Act changed**

- (1) After the commencement of this section, the principal Act is called the **Independent Police Complaints Authority Act 1988**.
- (2) Section 1(1) of the principal Act is consequentially amended by inserting, before the word “Police”, the word “Independent”.

**Part 2  
Amendments to principal Act**

**5 Interpretation**

- (1) Section 2 of the principal Act is amended by repealing the definition of **Authority**, and substituting the following definitions: 10

“**Authority** means the Independent Police Complaints Authority established under **section 4**

“**chairperson** means the chairperson of the Authority appointed under **section 4C(1)**”.

- (2) Section 2 of the principal Act is amended by repealing the definition of **Deputy Authority**.
- (3) Section 2 of the principal Act is amended by adding the following definition: 20

“**member** means a member of the Authority appointed under **section 4A(1)**; and includes the chairperson.”

**6 New sections 4 to 7 and heading substituted**

The principal Act is amended by repealing sections 4 to 7 and the heading before section 4, and substituting the following sections and heading: 25

*“Independent Police Complaints Authority*

**“4 Independent Police Complaints Authority established**

“(1) There is an authority known as the Independent Police Complaints Authority. 30

“(2) The Authority is a body corporate that has—

“(a) the capacity, rights, powers, and privileges of a natural person; and

“(b) any additional powers conferred on it by this Act or any other enactment. 35

- “(3) The Authority may exercise its powers only for the purpose of carrying out its functions.
- “4A **Membership of Authority**
- “(1) The Authority consists of 3 members appointed by the Governor-General on the recommendation of the House of Representatives. 5
- “(2) The powers of the Authority are not affected by any vacancy in its membership.
- “(3) No person is deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 just because the person is appointed as a member of the Authority. 10
- “4B **Method of appointment**
- “(1) Before a person is appointed as a member of the Authority under **section 4A(1)**, the person must give written consent to being appointed. 15
- “(2) An appointment under **section 4A(1)** must—
- “(a) be in the form of a written notice; and
- “(b) state the date on which the appointment takes effect; and 20
- “(c) be published by the Governor-General in the *Gazette* as soon as practicable after it is made.
- “4C **Chairperson of Authority**
- “(1) The Governor-General, on the recommendation of the House of Representatives, must appoint 1 member as the chairperson of the Authority. 25
- “(2) A person appointed as the chairperson of the Authority must be—
- “(a) a Judge of the District Court, High Court, or Court of Appeal; or 30
- “(b) a retired Judge of the District Court, High Court, or Court of Appeal.
- “4D **Appointment of Judge as member of Authority**
- “(1) The appointment of a Judge as a member of the Authority does not affect his or her judicial office, rank, title, status, precedence, salary, annual or other allowances, or other rights 35

or privileges that he or she has as a Judge (including matters relating to superannuation).

“(2) The time a Judge serves as a member of the Authority must be taken as service as a Judge.

“5 **Term of office of member of Authority** 5

“(1) A member of the Authority—

“(a) holds the office for the term (of not less than 2 years and not longer than 5 years) that the Governor-General, on the recommendation of the House of Representatives, specifies in the person’s appointment; and 10

“(b) may be reappointed.

“(2) A member of the Authority, unless vacating the office as a result of death, resignation, removal, or failure to be confirmed in office under **section 7(3)**, continues to hold the office (even though the term for which he or she was appointed has expired) until 1 of the following occurs: 15

“(a) the member is reappointed; or

“(b) a successor is appointed; or

“(c) the Minister of Justice informs the member, in writing, that a successor has not been appointed, but that the member cannot continue to hold office. 20

“(3) A member of the Authority may resign the office at any time by written notice given to the Governor-General.

“(4) A notice of resignation under **subsection (3)** must state the date on which the resignation takes effect. 25

“6 **Power to remove or suspend member of Authority**

The Governor-General, on an address from the House of Representatives, may remove or suspend any member of the Authority for any of the following reasons:

“(a) inability to perform the functions of the office: 30

“(b) bankruptcy:

“(c) neglect of duty:

“(d) misconduct.

“6A **No compensation if member removed from office** 35  
If a member of the Authority is removed from office, he or she is not entitled to any compensation, payment, or benefit on any basis in respect of that removal.



- “7 **Filling of vacancy**
- “(1) If a vacancy arises in the membership of the Authority, the Governor-General, on the recommendation of the House of Representatives, must appoint a successor.
- “(2) Despite **subsection (1)**, if the vacancy exists at the close of a session, or the vacancy arises while Parliament is not in session, and the House of Representatives has not recommended an appointment to fill the vacancy, the Governor-General in Council may appoint a successor at any time before the commencement of the next ensuing session of Parliament. 5
- “(3) An appointment made under **subsection (2)** lapses and the office again becomes vacant unless the appointment is confirmed by the House of Representatives before the end of the 24th sitting day following the date of the appointment.” 10
- 7 Section 8 repealed** 15  
The principal Act is amended by repealing section 8.
- 8 New sections 9 to 10B substituted**  
The principal Act is amended by repealing sections 9 and 10, and substituting the following sections:
- “9 **Salaries and allowances** 20
- “(1) Every member of the Authority must be paid the remuneration and allowances that the Higher Salaries Commission determines.
- “(2) Every member of the Authority is entitled to receive from the funds of the Authority actual and reasonable costs for travelling and other expenses that relate to the performance of his or her duties and responsibilities as a member. 25
- “10 **Staff**
- “(1) The Authority may, in accordance with this section, appoint any employees and officers that it considers necessary for the efficient carrying out of the functions, powers, and duties of the Authority under this Act. 30
- “(2) Employees and officers appointed under this section are employed on any terms and conditions of employment that the Authority determines. 35

- “(3) No person is deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 just because the person is appointed under this section.
- “(4) If the Authority appoints a chief executive, the Authority— 5
- “(a) must not determine or modify the chief executive’s remuneration or other terms and conditions of appointment without having consulted the State Services Commissioner; and
- “(b) if the remuneration or other terms and conditions of appointment proposed to be determined or modified by the Authority are not in accordance with the guidance given by the State Services Commissioner during consultation under **paragraph (a)**, must not determine or modify it or them without having consulted the Minister of Justice. 10 15
- “10A **Personnel policy**
- “(1) The Authority must operate a personnel policy that complies with the principle of being a good employer.
- “(2) For the purposes of this section, a **good employer** is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring— 20
- “(a) good and safe working conditions; and 25
- “(b) an equal employment opportunities programme; and
- “(c) impartial selection of suitably qualified persons for appointment; and
- “(d) recognition of— 30
- “(i) the aims and aspirations of Māori; and
- “(ii) the employment requirements of Māori; and
- “(iii) the need for involvement of Māori as employees of the Authority; and
- “(e) opportunities for the enhancement of the abilities of individual employees; and 35
- “(f) recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
- “(g) recognition of the employment requirements of women; and

- “(h) recognition of the employment requirements of persons with disabilities.
- “(3) For the purposes of this section, an **equal employment opportunities programme** means a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any person or group of persons. 5
- “10B **Appointment of experts**
- “(1) The Authority may, as and when the need arises, appoint any person who, in the Authority’s opinion, possesses expert knowledge or is otherwise able to assist in connection with the exercise of the functions of the Authority to make inquiries, conduct research, make reports, or to provide any other services that may be necessary for the efficient performance by the Authority of the functions of the Authority. 10 15
- “(2) The Authority—
- “(a) must pay persons appointed under **subsection (1)**, for services provided by them, fees or commission or both at the rates the Authority thinks fit; and 20
- “(b) may separately reimburse the persons appointed for expenses reasonably incurred in providing services for the Authority.
- “(3) No person is deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 just because the person is appointed under this section. 25
- “(4) To avoid doubt, a person appointed as an expert under **subsection (1)** is not an employee for the purposes of this Act.”
- 9 Superannuation or retiring allowances** 30
- Section 11 of the principal Act is amended by omitting the words “the Authority, the Deputy Authority,”, and substituting the words “members of the Authority”.
- 10 Bank accounts** 35
- Section 11B(2) of the principal Act is amended by omitting the words “by any officer”, and substituting the words “by any member, officer,”.

- 11 Investment of money**  
Section 11D of the principal Act is amended by omitting the words “section 50 of the Public Finance Act 1977”, and substituting the words “section 25 of the Public Finance Act 1989”. 5
- 12 New sections 12A and 12B inserted**  
The principal Act is amended by inserting, after section 12, the following sections:
- “12A **Duty to act independently**  
The Authority must act independently in the exercise of its functions. 10
- “12B **Meeting procedure**  
The meeting procedure described in the **Schedule** applies to any meeting relating to the exercise of any functions of the Authority.” 15
- 13 Duty of Commissioner to notify Authority of certain incidents involving death or serious bodily harm**  
Section 13 of the principal Act is amended by omitting the words “the member’s”, and substituting the words “his or her”. 20
- 14 Mode of complaint**  
Section 14(5)(b) of the principal Act is amended by omitting the expression “Mental Health Act 1969”, and substituting the expression “Mental Health (Compulsory Assessment and Treatment) Act 1992”. 25
- 15 Action upon receipt of complaint**
- (1) Section 17(1)(b) of the principal Act is amended by adding the words “undertaken on behalf of the Authority”. 30
- (2) Section 17(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:  
“(ca) defer action until the receipt of a report from the Commissioner following a criminal investigation, disciplinary investigation, or both initiated and undertaken by the police:”.

- (3) Section 17(2A)(b) of the principal Act is amended by inserting, after the expression “(c),” the words “or **paragraph (ca)**”.

## **16 Proceedings of Authority**

- (1) Section 23(3) of the principal Act is amended by inserting, after paragraph (b), the following paragraph: 5
- “(ba) the Authority may, in deciding whether to hold a hearing, have regard to whether any of the following are pending or are reasonably in contemplation:
- “(i) civil, criminal, or disciplinary proceedings: 10
- “(ii) a coroner’s inquest:”.
- (2) Section 23 of the principal Act is amended by adding the following subsections:
- “(5) The Authority has, for the purposes of any hearing under subsection (3), the same powers as are conferred on Commissions of Inquiry by sections 4 and 4B to 9 of the Commissions of Inquiry Act 1908, with all necessary modifications. 15
- “(6) Sections 4 and 4B to 9 of the Commissions of Inquiry Act 1908 apply to all persons involved in any capacity in a hearing under subsection (3) as if the inquiry were being conducted by a Commission under that Act. 20
- “(7) Subsections (1) to (4) and **(6)** and sections 24 and 26 override **subsection (5)**.”

## **17 Authority and staff to maintain secrecy**

- (1) Section 32(1) of the principal Act is amended by inserting, after the words “The Authority,”, the words “every member of the Authority,”. 25
- (2) Section 32 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
- “(3) Every member of the Authority, and every person holding office or appointment under the Authority, is deemed to be an official for the purposes of sections 105 and 105A of the Crimes Act 1961.” 30

**18 Proceedings privileged**

Section 33(1) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

- “(a) no proceedings, whether civil or criminal, may lie against the Authority, any member of the Authority, or any person holding any office or appointment under the Authority, for anything done or said by them in the course of the exercise or intended exercise of their functions under this Act, unless it is shown that they acted in bad faith: 5 10
- “(b) the Authority, members of the Authority, and any person holding office or appointment under the Authority must not be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to their knowledge in the exercise of their functions under this Act.” 15

**19 New sections 33A to 33G inserted**

The principal Act is amended by inserting, after section 33, the following sections: 20

**“33A Request to Authority regarding information that may point to defendant’s innocence**

- “(1) This section applies to a defendant who is charged with an offence punishable by imprisonment and who has reasonable grounds to believe that the Authority holds information— 25
- “(a) that has come to its knowledge through the exercise of its functions; and
- “(b) that may point to the defendant’s innocence in relation to the offence for which he or she has been charged.
- “(2) A defendant to whom this section applies may, within the applicable time period, ask the Authority if it holds information of the kind referred to in **subsection (1)(a) and (b)**. 30
- “(3) A request made under **subsection (2)** must—
- “(a) be in writing; and
- “(b) set out the reasonable grounds on which the defendant believes the Authority holds the information requested. 35

- “(4) In this section, **applicable time period** means—
- “(a) no later than 14 days after the defendant is served with a summons in relation to the offence for which he or she has been charged; or
  - “(b) if the defendant has been arrested, no later than 14 days after the laying of an information against the defendant. 5
- “33B **Authority to disclose information to court if it considers that it holds information requested by defendant**
- “(1) Despite section 32(1), if the Authority receives a request under **section 33A** and considers that it holds information of the kind requested by the defendant, it must disclose that information, and any other information that may affect the information’s probative value, to a court. 10
- “(2) In this section, **court** means a Judge of the court in which an information laid against the defendant was filed under the Summary Proceedings Act 1957 or to which the matter has been transferred. 15
- “33C **Authority may, on own initiative, disclose information to court in limited circumstances**
- “(1) Despite section 32(1), if a defendant is charged with, or convicted of, an offence punishable by imprisonment, the Authority may, on its own initiative if it considers it appropriate, disclose to a court information— 20
- “(a) that has come to the Authority’s knowledge through the exercise of its functions; and 25
  - “(b) that the Authority considers may point to the innocence of the defendant in relation to the offence for which he or she has been charged or convicted, and any other information that may affect the probative value of that information. 30
- “(2) In this section, **court** means—
- “(a) if the defendant has been charged with an offence, a Judge of the court in which the information laid against the defendant was filed under the Summary Proceedings Act 1957 or to which the matter has been transferred; or 35
  - “(b) if the defendant has been convicted of an offence but is not appealing the conviction, a Judge of the court in

which the information laid against the defendant was filed under the Summary Proceedings Act 1957 or to which the matter has been transferred; or

- “(c) if the defendant has been convicted of an offence and is appealing the conviction, a Judge of the court in which the defendant has lodged his or her appeal. 5

“33D **Court may make request to Authority for other information**

- “(1) A court that receives information disclosed by the Authority under **section 33B or section 33C** may ask the Authority to disclose to it other information that is referred to in the information originally disclosed by the Authority. 10

- “(2) A court may make a request for information under **subsection (1)** if it considers that the information may—  
“(a) assist it in deciding whether to make an order under **section 33F(3)**; or 15  
“(b) need to be the subject of an order under **section 33F(3)**.

- “(3) The Authority must comply with a request made under **subsection (1)** despite section 32(1).

“33E **Authority may not disclose certain information but may advise court on certain matters** 20

- “(1) The Authority may not disclose any information under **section 33B, section 33C, or section 33D** if—  
“(a) to do so is likely to prejudice any of the interests described in section 26(1); and 25  
“(b) a certificate has been given under that subsection.

- “(2) The Authority may, if it considers it appropriate, advise a court to which it has disclosed information under **section 33B, section 33C, or section 33D** of matters that may assist the court in deciding— 30

- “(a) whether to make an order requiring the Authority to disclose all or part of the information disclosed to the court under **section 33B, section 33C, or section 33D** to the defendant or the prosecutor, or both, under **section 33F(3)**; and 35  
“(b) what (if any) conditions the court might apply to the disclosure of the information under **section 33F(3)**.



- “33F Court may not disclose information but may make order for Authority to disclose**
- “(1) A court that receives information under **section 33B, section 33C, or section 33D**—
- “(a) may not disclose that information to any person (including, but not limited to, the defendant or prosecutor in the proceedings before the court); but 5
  - “(b) may make an order, under **subsection (3)**, for the Authority to disclose all or part of the information.
- “(2) **Subsection (3)** applies if, after inspecting information disclosed to it by the Authority under **section 33B, section 33C, or section 33D** and considering any matters raised by the Authority under **section 33E(2)**, the court considers that it is necessary to disclose all or part of the information disclosed to it in order to protect the defendant’s right to a fair hearing or trial. 10 15
- “(3) If this subsection applies, the court must make an order requiring the Authority to disclose all or part of the information to the defendant or the prosecutor, or both, as the interests of justice require, subject to any conditions the court considers appropriate. 20
- “(4) The decision of a court under this section—
- “(a) may not be appealed; but
  - “(b) may be raised by a defendant on appeal against his or her conviction for the offence in relation to which— 25
    - “(i) the defendant requested that the Authority disclose information under **section 33A**, or
    - “(ii) the Authority disclosed information on its own initiative under **section 33C**.
- “(5) The Authority must comply with an order made under **subsection (3)** despite section 32(1). 30
- “33G Certificate for use in evidence**
- “(1) If information is disclosed by the Authority as a consequence of an order made under **section 33F(3)**, the Authority must, if requested to do so in writing by a person to whom the information was disclosed (being the defendant or the prosecutor, or both) issue, to the person who made the request, a certificate in relation to the information disclosed, for use in evidence at the defendant’s hearing or trial. 35

- “(2) A certificate issued under **subsection (1)** must—
- “(a) describe the information disclosed by the Authority as a consequence of the order made under **section 33F(3)**; and
  - “(b) state that the information came to the Authority’s knowledge through the exercise of its functions. 5
- “(3) A certificate that meets the requirements in **subsection (2)**, and that is signed by a member of the Authority, is—
- “(a) admissible in evidence; and
  - “(b) in the absence of proof to the contrary, sufficient evidence of the matters in the certificate. 10
- “(4) If a certificate is issued under this section, the information disclosed by the Authority as a consequence of the order made under **section 33F(3)** is admissible in evidence.
- “(5) This section—
- “(a) applies despite anything in section 25(4); but 15
  - “(b) does not limit the effect of section 33(1)(b).”

## 20 Annual report

Section 35 of the principal Act is amended by inserting, after subsection (1), the following subsection:

- “(1A) The report must include (without limitation),— 20
- “(a) in \$10,000 bands, the number of employees or officers of the Authority receiving remuneration of more than \$100,000; and
  - “(b) the total remuneration and benefits received by each member of the Authority; and 25
  - “(c) the total value of all compensation payments and other benefits paid in respect of a person who ceases to be a member, employee, or officer of the Authority and the number of persons to whom payments were made.”

## 21 New sections 36 and 36A substituted 30

The principal Act is amended by repealing section 36, and substituting the following sections:

### “36 Delegation of powers by Authority

- “(1) The Authority may, either generally or particularly, and subject to any restrictions and conditions it thinks fit, delegate any 35 of its powers under this Act to—
- “(a) any member of the Authority; or
  - “(b) any person holding office under the Authority.

- “(2) A delegation under **subsection (1)(b)** may be made to a specified person, to the holder for the time being of a specified office, or to the holders of offices of a specified class.
- “(3) A delegation under **subsection (1)** must—
- “(a) be in writing; and 5
  - “(b) despite **clause 3(2)** of the **Schedule**, be signed by all members of the Authority.
- “(4) Despite **subsection (1)**, the Authority must not—
- “(a) delegate its power to delegate under this section to any person; or 10
  - “(b) delegate its power to make any report or recommendation under this Act to any person holding office under the Authority.
- “(5) A delegation under this section—
- “(a) does not affect or prevent the Authority from exercising any of its powers under this Act: 15
  - “(b) to 1 member of the Authority has effect despite **clause 3(2)** of the **Schedule** (relating to the quorum necessary for the transaction of business of the Authority):
  - “(c) may be revoked by resolution of the Authority and on written notice to the delegate. 20
- “36A **Actions of delegate**
- “(1) The Authority is responsible for the actions of a delegate appointed under **section 36**.
- “(2) A delegate may, unless the delegation provides otherwise, exercise the powers delegated to him or her in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the Authority. 25
- “(3) A member of the Authority who purports to be acting under a delegation given under **section 36** is presumed to be acting in accordance with the terms of the delegation unless the contrary is proved. 30
- “(4) A person holding office under the Authority who purports to be acting under a delegation given under **section 36** must, if required to do so, produce evidence of his or her authority to exercise the power.” 35

- 22 Offences**  
Section 37 of the principal Act is amended by omitting the word “other” in each place where it appears.
- 23 Amendments to other Acts**  
Section 39 of the principal Act is amended by repealing sub-section (2). 5
- 24 New sections 40 to 47 and heading substituted**  
The principal Act is amended by repealing section 40, and substituting the following heading and sections:  
*“Transitional provisions”* 10
- “40 Complaints made to Police Complaints Authority**  
Any complaint made to the Police Complaints Authority before the commencement of this section must be dealt with by the Authority under this Act (as amended by the Independent Police Complaints Authority Amendment Act **2002**), whether or not any action was taken in relation to the complaint before the commencement of this section. 15
- “41 Police Complaints Authority is chairperson**
- “(1) The person who, immediately before the commencement of this section, held office as the Police Complaints Authority under section 4(2) (as it read immediately before the commencement of this section) is taken to have been appointed to the office of chairperson of the Authority under section 4C (as substituted by section 6 of the Independent Police Complaints Authority Amendment Act 2002).”** 20 25
- “(2) The person who is taken to have been appointed as the chairperson of the Authority under this section is appointed on the same terms and conditions on which, and for the remainder of the term for which, the person was appointed under section 4(2) (as it read immediately before the commencement of this section).”** 30

- “42 **Deputy Police Complaints Authority is member of Authority**
- “(1) The person who, immediately before the commencement of this section, held office as a Deputy Police Complaints Authority under section 8 (as it read immediately before the commencement of this section) is taken to have been appointed as a member of the Authority under **section 4A(1)** (as substituted by **section 6** of the Independent Police Complaints Authority Amendment Act **2002**). 5
- “(2) The person who is taken to have been appointed as a member of the Authority under this section is appointed on the same terms and conditions on which, and for the remainder of the term for which, the person was appointed under section 8 (as it read immediately before the commencement of this section). 10
- “43 **Employees and officers transferred to Authority** 15
- “(1) Every employee or officer appointed by the Police Complaints Authority immediately before the commencement of this section is, on and from that date, an employee or officer of the Authority on the same terms and conditions that applied to the employee or officer immediately before that date. 20
- “(2) For the purposes of every enactment, law, contract, and agreement relating to the employment of the employee or officer,—
- “(a) the contract of employment of that employee or officer is taken to be unbroken; and
- “(b) the employee’s or officer’s period of service with the Police Complaints Authority and every other period of service of that employee or officer that was recognised by the Police Complaints Authority as continuous service is taken to have been a period of service with the Authority. 25 30
- “(3) A person to whom **subsection (1)** applies is not entitled to any compensation just because the person has ceased to be an employee or officer of the Police Complaints Authority.
- “44 **References to Police Complaints Authority**
- On the commencement of the Independent Police Complaints Authority Amendment Act **2002**, unless the context otherwise requires, every reference to the Police Complaints Authority in any contract or other instrument, document, or notice must be read 35

as a reference to the Independent Police Complaints Authority.

- “45 **Proceedings to which Police Complaints Authority party**  
Any proceedings to which the Police Complaints Authority was a party or that the Police Complaints Authority was considering bringing before the commencement of this section may be brought, continued, completed, and enforced by or against the Authority. 5
- “46 **Assets and liabilities vest in Authority**  
On the commencement of the Independent Police Complaints Authority Amendment Act 2002, the assets and liabilities of the Police Complaints Authority vest in the Authority. 10
- “47 **Authority must arrange annual report and accounts**  
The Authority must perform the duties that the Police Complaints Authority would have performed under section 35 of the Police Complaints Authority Act 1988 and section 41 of the Public Finance Act 1989 if the Independent Police Complaints Authority Amendment Act 2002 had not been enacted for the period beginning on 1 July 2002 and ending immediately before the commencement of the Independent Police Complaints Authority Amendment Act 2002.” 15 20
- 25 **Schedule added**  
The principal Act is amended by adding the **Schedule** set out in **Schedule 1**.

### Part 3

#### Consequential amendments and repeals

- 26 **Consequential amendments to other Acts and regulations**
- (1) The Acts specified in **Schedule 2** are amended in the manner indicated in that schedule. 30
- (2) The Penal Institutions Regulations 2000 are amended by inserting in paragraph (f) of the definition of **official agency** in regulation 3, before the word “Police”, the word “Independent”.

**27 Repeals**

The Higher Salaries Commission Amendment Act (No 2) 1992 is amended by repealing so much of the Schedule as relates to section 9(1)(a) of the principal Act.

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**Schedule 1** s 24  
**New Schedule added to principal Act**

**Schedule** s 12B  
**Meeting procedure**

- 1 Notice of meetings** 5
- (1) The Authority must appoint the times and places of ordinary meetings of the Authority, and give notice of those meetings to each member not present when the appointment is made.
- (2) The chairperson or the other 2 members (jointly) may call a special meeting of the Authority by giving at least 7 days' notice of the special meeting and the business to be transacted at the meeting to each member for the time being in New Zealand. 10
- (3) Only the business stated in the notice of the special meeting may be transacted at the special meeting. 15
- (4) Notice of a meeting—
- (a) must be written and state the time and place of the meeting; and
- (b) may be given by post, delivery, or electronic communication. 20
- (5) An irregularity in a notice of a meeting is waived if all members entitled to receive the notice agree to the waiver or attend the meeting without protesting about the irregularity.
- 2 Methods of holding meetings** 25
- A meeting of the Authority may be held—
- (a) by a quorum of the members being assembled together at the time and place appointed for meeting; or
- (b) by means of audio, audio and visual, or electronic communication by which a quorum of members can simultaneously communicate with each other throughout the meeting. 30
- 3 Quorum**
- (1) A quorum for a meeting of the Authority is 2 members.
- (2) No business may be transacted at a meeting of the members if a quorum is not present. 35



**Schedule**—continued

- 4 Presiding at meetings**
- (1) At a meeting of the Authority, the following person presides:  
 (a) the chairperson; or  
 (b) if there is no chairperson or the chairperson is not present, a member chosen by the other 2 members. 5
- (2) The person chosen under **subclause (1)(b)** may exercise all the powers, duties, and functions of the chairperson for the purposes of the meeting.
- 5 Voting at meetings**
- (1) Each member has 1 vote. 10
- (2) In addition to his or her general vote, the chairperson at the meeting has a casting vote.
- (3) A resolution of the Authority is passed if—  
 (a) it is agreed to by all members present without dissent;  
 or  
 (b) a majority of the votes cast on it are in favour of it. 15
- (4) A member present at a meeting of the Authority is presumed to have agreed to, and to have voted in favour of, a resolution of the Authority unless he or she expressly dissents from, or votes against, the resolution at the meeting. 20
- 6 Unanimous written resolutions**
- (1) A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all members is as valid and effectual as if it had been passed at a meeting of the Authority duly called and constituted. 25
- (2) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more members.
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**Schedule 2**  
**Consequential amendments to other Acts**

s 25(1)

- Coroners Act 1988** (1988 No 111)  
Insert in section 29(3)(b)(i), before the word “Police” in both places where it appears, the word “Independent”. 5
- Higher Salaries Commission Act 1977** (1977 No 110)  
Omit from the Fourth Schedule the item “The Police Complaints Authority and the Deputy Police Complaints Authority” and substitute the item “The members of the Independent Police Complaints Authority” 10
- Penal Institutions Act 1954** (1954 No 51)  
Insert in section 21P(2)(c)(vi), before the word “Police” in both places where it appears, the word “Independent”.
- Police Act 1958** (1958 No 109)  
Insert in section 6(4)(b), before the word “Police”, the word “Independent”. 15
- Protected Disclosures Act 2000** (2000 No 7)  
Insert in paragraph (a)(vii) of the definition of the term **appropriate authority** in section 3, before the word “Police”, the word “Independent”. 20
- Public Finance Act 1989** (1989 No 44)  
Omit from the Fourth Schedule the item “Police Complaints Authority”.  
Insert in the Fourth Schedule, after the item “Human Rights Commission”, the item “Independent Police Complaints Authority”. 25  
Omit from the Fifth Schedule the item “Police Complaints Authority”.  
Insert in the Fifth Schedule, after the item “Human Rights Commission”, the item “Independent Police Complaints Authority”. 30  
Omit from the Seventh Schedule the item “Police Complaints Authority”.  
Insert in the Seventh Schedule, after the item “Human Rights Commission”, the item “Independent Police Complaints Authority”. 35