IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S14 of 2017

BETWEEN:



**RYAN BRIGGS**
Appellant

and

**STATE OF NEW SOUTH WALES**
Respondent

# APPELLANT'S SUBMISSIONS

## Part I: Certification

1. The appellant certifies that these submissions are in a form suitable for publication on the internet.

## Part II: Issues said to arise

2. Whether the need to respect privacy excuses the New South Wales Police Service from actively enquiring into the psychological health of its officers, in circumstances where an officer indicates that he is not coping with his duties.

3. Is it necessary to identify a "system of general instruction" in circumstances where an individual police officer indicates difficulty in coping with his duties?

4. Whether the content of an employer's duty of care in the context of psychological injury differs from its content in the context of physical injury.

5. Whether the New South Wales Police Force is required to exercise reasonable care with regard to its psychologically injured officers when conducting internal investigations concerning that injured officer.

## Part III: *Judiciary Act 1903*, s.78B

6. The appellant considers that notice is not required pursuant to s. 78B of the *Judiciary Act 1903*.

Date of document: 15 June 2017
**Filed for the appellant by:**
Cardillo Gray Partners
Level 1, Cnr Auckland and Hunter Streets
Newcastle NSW 2300

Telephone: (02) 4910 0677
Contact: Stuart Gray

**Part 1V: Citations of Judgments below**

7. The decision of the Court of Appeal is unreported. Its internet citation is: *State of New South Wales v Briggs* [2016] NSWCA 344 (**"CA"**). The decision of the primary judge is also unreported. Its internet citation is: *Briggs v State of New South Wales* [2015] NSWDC 235 (**"J"**).

**Part V: Narrative of Facts**

8. The appellant became a police officer on 21 December 1999 (J[50]). He approached his career with enthusiasm, commitment and ambition, obtaining successive promotions to sergeant at a relatively early stage (J[51], [52]). He saw himself as a career police officer who aimed to achieve a senior supervisory and mentoring role (J[45]). As a young detective at Gosford he had been one of the recipients of official commendation for his work (J[46]).

9. On 25 April 2013, however, the appellant was medically discharged from the New South Wales Police Force and has thereafter been in receipt of workers compensation benefits (J[280], [575]).

10. The appellant's medical discharge was brought about because he was suffering from post-traumatic stress disorder ("PTSD") and depression. Although initially challenging the diagnosis, the respondent ultimately accepted during the trial that his condition of PTSD and depression had been caused or contributed to by his work as a police officer (J[4], [5]); CA[77]).

11. It was accepted that the respondent owed the appellant a duty of care, and that the scope of the duty extended to the need to consider the avoidance of psychological injury occurring in the course of the appellant's employment as a police officer (J[429]; CA[4], [42]). It was also accepted that the risk of a police officer sustaining recognisable psychological injury through encountering traumatic events was foreseeable (J[434]-[437]; CA[3], [42]).

12. During the course of his duties as a police officer the appellant was exposed to a series of traumatic events and circumstances (CA[75], [78], [84]) that led to him developing his psychological injuries (CA[34], [77]).

13. The first traumatic incident having an effect upon the appellant was his attendance at a sudden infant death syndrome ("SIDS") incident in July 2003: J[60]-[63]; J[438]-[439]; J[447]-[448]; J[517]; CA[74]-[77].

14. During the period 2003 to 2006, whilst stationed at Gosford performing general duties, the appellant was exposed to a "large range of traumatic incidents" as part of his work "on the trucks" ([CA[78]-[80]; J[52]-[59]).

15. From August 2006 to February 2010 the appellant was stationed with the State Crime Command Gang Squad at Parramatta. While this period of duty did not expose him to the same level of traumatic incidents (CA[81]), the work exacerbated his condition (J[77]-[79]).

16. In February 2010 the appellant was promoted to sergeant and stationed at Rose Bay. Contrary to his expectations (J[83]-[85]; CA[82]) he was required to "go out on the trucks" and, in doing so, encountered a series of traumatic events including attending the Gap at Watsons Bay on average twice a week in connection with suicides and attempted suicides (J[86]-[87]; CA[84]).

17. The appellant was on leave from early April 2010 for about six weeks on a honeymoon (J[89]). When he returned to work he found that his work duties had become more onerous and he was rostered "on the trucks" more frequently; his mental condition deteriorated (J[90]-[96]).

18. In July 2011 the appellant spoke to his senior officer Detective Inspector Sipos. Inspector Sipos was the duty officer in charge of "man management" at Rose Bay Local Area Command (J[103]). On that occasion he asked for a change of duties, telling him that he was struggling and wanted to get "off the truck", and needed a break and was prepared to accept a lesser position as brief handling manager, which was work at a level below that of sergeant: J[102]; CA[87].[1] No action was taken by Inspector Sipos to investigate further the issue raised with him by the appellant.

19. The primary Judge found that the respondent was in breach of its duty to the appellant in two respects:

---

[1] It may be noted that at CA[87] Leeming JA said that the primary Judge "made no finding in terms as to what was said by Mr Briggs to Detective Inspector Simos". This is incorrect: see J[481], [482]. It was accepted by counsel for the respondent at the hearing of the special leave application that it was incorrect: *Briggs v. State of New South Wales* [2017] HCA Trans 109 at p. 5.4-5.8.

(a) in failing to provide any counselling or debriefing opportunities in respect of critical incidents[2] in the period 2003-2011: J[469]-[470]; J[525]-[527];

(b) in failing to take any steps to explore or follow up the "struggling" disclosure he had made to Inspector Sipos in July 2011: J[528]-[535].

20. The Court of Appeal set aside both these findings. In this Court the appellant does not challenge the Court of Appeal's decision on the issue referred to in paragraph 19(a).

21. In November 2011 the appellant was involved in the "road rage" incident described at J[142]-[143] and CA[92]. He consequently sought medical assistance and ceased duty (CA[93]) claiming workers compensation for psychological injury.

22. On 17 October 2012 the appellant returned to work on restricted duties at Gosford (CA[94]). Whilst performing restricted duties at Gosford the appellant was subjected to a targeted drug test for steroids (which proved negative) and, when subsequently on sick leave, was directed to attend a Professional Standards Command interview – (concerning four allegations that were unsustained (J[232] to [237]) – of approximately 8 hours duration ([CA[94]).

23. The primary judge found that the respondent's "insensitive" and "unhelpful" actions "without regard to the Police Complaint Handling Guidelines" after the appellant's return to work at Gosford "undermined the beneficial effects of treatment" and effectively destroyed the remaining good will and trust between the parties (J[540]-[546]). However, he considered that he was "unable to come to a concluded view as to whether the actions of the Professional Standards Command amounted to a breach of duty owed to the appellant": J[511].

24. The respondent's appeal to the Court of Appeal, as noted above, succeeded. The appellant, by Notice of Contention, had contended that the respondent was negligent in the manner it conducted its Professional Standards Command enquiry. The Court of Appeal also found in favour of the respondent on that issue (CA[201]).

**Part VI: Argument**

***Breach of Duty regarding the July 2011 disclosure to Inspector Sipos***

[2] Apart from the SIDS incident.

25. The central question was whether the respondent breached its duty in failing to respond reasonably to the appellant's disclosure "that he was struggling and wanted to "get off the trucks". Being "on the trucks" was a colloquial expression referring to being on vehicle patrols, where many traumatic incidents might be encountered: J[83]-[87]; CA[78].

26. Further, as noted above, the case was one where – see CA[42] – it was conceded that there was an obligation on the respondent to take reasonable care to avoid foreseeable risk of injury arising from the appellant's service as a police officer and it was conceded that the risk of a police officer sustaining recognizable psychological injury through encountering traumatic events was foreseeable. Knowledge that psychological harm might occur by incremental exposure to traumatic events was, as the trial Judge observed at J[468], something that formed part of the corporate knowledge of police officers in managerial and supervisory roles. Detective Inspector Simos fell into that category.

27. It is submitted that the primary Judge's analysis of the matter at J[481]-[488] was plainly correct. To put it in the shortest way, why didn't Inspector Sipos at least make minimal further inquiries of the appellant. That would have been likely to have resulted in the steps discussed at J[489] to [498] and the consequences referred to at J[528] to [535].

28. The Court of Appeal, however, found (CA[154]-[168]) that the respondent's failure to respond to the appellant's "struggling disclosure" was not a breach of duty. The four reasons given to support this conclusion by Leeming JA were, with respect, flawed.

29. The first reason (CA[155]) was that no "documentary record" was tendered by either party. That ignores the fact that any such record, if extant, would be in the possession of the respondent. No reliance was placed by the respondent on any such document at trial. The view adopted by the Court of Appeal also does not sit well with the way in which the respondent conducted its case at trial: see J[475].

30. The second reason (CA[156]), namely that the "struggling" was related to domestic issues, does not take into account that the appellant spoke not only of "struggling" but also specifically of getting "off the truck" (J[481], [482], [487]). It may be accepted that Inspector Sipos knew of the appellant's personal circumstances – the

long commute and the periods of leave – but he also must have known that the appellant was asking to get off the truck, i.e. to cease to be involved in a particular type of policing.

31. The third reason (CA[157]-[158]) is that the disclosure did not reasonably convey a psychological disorder. First it is now common ground that the statement at (CA[157]), that there were no precise findings about what was said, was an error[3]. Secondly, the emphasis on "struggling" once again ignores the reference to "getting off the truck". In any event, at a bare minimum the disclosure revealed an inability to cope (i.e. indicative of psychological distress) that should have been sufficient to trigger further enquiry by the responsible superior officer in a disciplined force.[4]

32. The fourth reason (CA[159]-[161]) was erroneous. The primary judge's view at (J[109]) was made in the context of all the evidence, including that setting out Detective Inspector Sipos's responsibilities (J[103]) and the unchallenged view of Dr. Diamond (CA[213]). The Court of Appeal found that the primary judge was entitled to rely upon Dr. Diamond's evidence in relation to the issue of causation (CA[214]). However, this evidence was also pertinent to the question of breach of duty.

33. Given the respondent's uncontroversial duty of care, it had an obligation to respond reasonably to the appellant's struggling disclosure. At the very least, it should have enquired into the reasons for and extent of the appellant's distress. This would have been a relatively easy and inexpensive thing to do. Further, following relevant enquiry, the respondent had at its disposal recourse to the EAP[5] and possible referral for appropriate medical consideration.

34. Complaints of psychological distress should not be treated differently from complaints of physical distress or injury (*Mount Isa Mines v. Pusey* (1970) 125 CLR 383 *per Windeyer* at 395, 403 and 415, *Jaensch v. Coffey* (1984) 155 CLR 549 at 552 (Gibbs C.J.) and 577 (Brennan J.); *Tame v. New South Wales* (2011) CLR 317 per McHugh J. at [140] and Hayne J. at [281]; *Aboushadi v. CIC Insurance Ltd* (1996) 23 MVR 385 at 387, 388 (NSWCA). See too in Ireland: *Maher v. Jabil Global Services Ltd* [2005] 16 E.L.R. 233 per Clarke J. at 246.

---

[3] See footnote 1.
[4] The appellant and other officers were, of course, armed: CA [131].
[5] See paragraph 51 below.

35. It is submitted that by failing to respond at all, the respondent breached its duty of care.

36. The Court of Appeal also, at CA[163]-[169] and CA[215] dealt with a number of matters, going ultimately to causation, in relation to the effect of no action having been taken following the July 2011 disclosure to Inspector Sipos.

37. In this regard the matters assumed at CA[164] are contrary to the primary Judge's factual findings at J[126]-[131], particularly J[131]. Those findings were not challenged in the Court of Appeal, and the primary Judge had specifically believed the appellant in relation to them.

10 38. CA[165] once again leaves out of account that the appellant had said that he was "struggling", "needed a break" *and* "wanted to get off the truck". The assumption on which CA[165] is based was irrelevant.

39. CA[166]-[167]. This reasoning does not give sufficient weight to the primary Judge's reasons at J[528] to [534] dealing with the position following the disclosure to Inspector Sipos. The Judge's observations about the "missed opportunities" (J[529] to [530], and the effects which most probably would have resulted (J[531] to [535]) all appear sensible, realistic and appropriate responses to the evidence before him.

40. There is a further matter arising in relation to CA[167]. It concerns particularly the
20 last two sentences of that paragraph, with their reliance on considerations of "privacy, dignity and autonomy". Those considerations are referred to on a number of occasions in the Court of Appeal's reasons: CA[126], [143], [168], [222]-[226].

41. An immediate difficulty with their application for present purposes is that the case was one where the appellant was *asking* for help from the appropriate superior officer. Consideration of privacy, dignity and autonomy can only be of limited relevance in those circumstances. The considerations adverted to by McColl JA at CA[28]-[29] also demonstrate the limited relevance which those considerations have in cases such as the present.

42. The Court of Appeal also dealt with causation in relation to the "struggling"
30 disclosure at CA[213] to [215] and in part at CA[210].

43. Dealing first with CA[213]-[215], at CA[213]-[214] the Court of Appeal accepted that the primary Judge was entitled to rely on Dr Diamond's evidence, quoted at CA[213], that the failure on behalf of the respondent to act on the appellant's disclosure to Inspector Sipos materially contributed to the appellant's psychiatric condition.

44. The Court of Appeal yet at CA[215] referred to "other difficulties", but these were speculation and seem to disregard the effect of Dr Diamond's evidence and also that of Dr Murray, in circumstances where the evidence of both had been admitted without objection or cross-examination and where there was no evidence adduced by the respondent which addressed Dr Diamond and Dr Murray's opinions.

45. Returning to CA[210] it will be seen that its first sentence refers to both "some unspecified period between 2003 and 2011" *and* "the time when he made the 'struggling' disclosure". It is, of course, only the latter which is the subject of the appeal to this Court.

46. CA[210], in its second sentence, refers to two bases on which it is said that there was material error in the finding that had a suggestion been made for the appellant to undergo psychological counseling, the appellant would have availed himself of that opportunity.

47. One such basis was "a misreading of Mr Briggs' testimonial evidence". The second was "failure sufficiently to have regard to the contemporaneous evidence" which, it was said, was "best seen in the letter accompanying Mr Briggs' transfer application in 2011".

48. The second basis has already been dealt with in paragraph 36 above. The first basis relates back to the material error said to be referred to at CA[144]. It is clear, however, that the evidence referred to (which is at CA[143]) related to a period *before* the appellant worked at Rose Bay, i.e. before the "struggling" disclosure could have occurred.

***Content of the Duty of Care***

49. It is not entirely clear whether the Court of Appeal treated the "failure to identify a general instruction" as referred to in CA[170(4)] as applicable to the appellant's

disclosure to Inspector Sipos or only as applicable to the primary Judge's finding of liability arising from events in the period 2003-2011[6].

50. Assuming that the observations in CA[170(4)] were intended to be applicable to the appellant's disclosure to Inspector Sipos, the requirement to "postulate a general instruction" regarding the duty owed by the respondent was inappropriate in the circumstances of that disclosure. The point was that no action was taken in response to the request for assistance made by a particular police officer. There was unchallenged expert evidence, accepted by the primary Judge (J[523], [528]-[531]), that had some basic enquiry been initiated by the respondent it would have led, in all probability, to efficacious early psychological intervention.

51. It was common ground that psychological treatment via EAP referral by the respondent was part of the system of work ( J [64], [65], [385], [434], [440] to [446]). It was part of the appellant's case that he should have been referred for such treatment following further enquiry consequent upon the "struggling disclosure". Indeed he could have been "directed" to submit to an examination.[7] There was no "general instruction" that required articulation.

52. This was a case where the respondent, through its "man manager" Inspector Sipos, failed to enquire as to the mental health of the appellant who was known to have been regularly exposed to the risk of psychological injury. It had systems in place to provide psychological support in such circumstances including referral to the Police Medical Officer and EAP. Unlike *State of New South Wales v. Fahy* (2007) 232 CLR 486, in which the failure to adhere at all times to the alleged "buddy system" was explained by evidence, the only explanation offered by the respondent as to why no action was taken in response to the appellant's disclosure was to challenge its importance. For reasons already dealt with, the disclosure conveyed information that should have been addressed and not discounted on the grounds of misplaced notions of privacy.

53. Moreover, the insistence upon a "compelling case" (CA [126]) before the respondent could require the appellant to be psychologically assessed was unrealistic in the context of the quasi employment relationship, the appellant's

---

[6] Not pursued in this Court: see paragraph 20 above.
[7] *Police Regulation 2008*, reg.10

statutory obligation to obey lawful orders[8] and the appellant's disclosure to Inspector Sipos.

***Notice of contention***

54. The Court of Appeal gave leave at the hearing to the appellant to file a Notice of Contention. In essence the appellant's complaint was that the respondent's conduct was unreasonable after the appellant had taken sick leave for psychological injury and returned to restricted duties. The conduct included the manner in which the targeted drug test was carried out and the directed eight-hour interview.

55. With regard to the targeted drug testing, the appellant does not cavil with the fact that the respondent was authorised to carry it out pursuant to s. 211AA(1) of the *Police Act 1990* (CA[186]-[187]). However, the manner and circumstances in which the test was carried out should be governed by what is reasonable. Even assuming that the "targeting" of the appellant was justified (and the respondent led no evidence about this, notwithstanding the negative result of the test), the manner in which it was conducted was highly unusual and was obviously likely to attract attention and cause embarrassment to the appellant, who the respondent already knew was suffering from the effects of psychological injury. In the circumstances, this was unreasonable.

56. With regard to the eight-hour interview, the appellant's submissions in reply squarely raised the issue as an aspect of the Professional Standards Command ("PSC") investigation which was contended to be unreasonable. This aspect was dismissed as an additional matter of which "no complaint was made in the Notice of Contention" (CA[207]). With respect, the Notice of Contention itself didn't provide particulars but was particularised by the written submissions filed after the hearing of oral submissions (CA[172]). It was specifically raised in the appellant's submissions in reply in the Court paragraphs 1 and 2. The Court of Appeal erred by failing to address it. (*Dranichnikov v Minister for Immigration and Multicultural Affairs* (2003) 197 ALR 389)

57. The respondent led no evidence to justify its conduct in relation to either the manner in which the drug testing was carried out or the necessity for an eight-hour interview. Any documentary evidence concerning the investigation was peculiarly

[8] *Police Act 1990*, s. 201 and *Police Regulation, 2008*, reg. 8.

in the possession of the respondent and protected from production under subpoena by virtue of s.170 of the *Police Act 1990* (*Commissioner of Police v Hughes* [2009] NSWCA 306).

58. The primary judge found himself unable to reach a concluded view on the evidence as to whether the embarrassing targeted drug test[9] and subjecting the appellant to an eight-hour interview whilst on sick report the respondent had breached its duty of care. However, given the primary judge's acceptance of the appellant's evidence regarding the former (J[211]) and his findings in relation to the latter (J[220]-[231]), [545]-[546]), there was, at least, sufficient prima facie evidence of breach of duty. In the absence of any exculpatory evidence from the respondent, the Court of Appeal should have found in favour of the appellant on the Notice of Contention.

59. The conduct of the PSC, (including the interview and drug testing), was left unexplained before the primary judge in circumstances where the respondent knew that being the subject of an internal affairs investigation was one of the most stressful critical life events for police officers (J [374])

60. With regard to the eight-hour interview, it was clearly foreseeable that this would have been particularly stressful for a police officer already on sick leave for psychological injury.

61. Section 145 of the *Police Act 1990* did not absolve the respondent from its duty of care. Indeed, that duty was heightened by the vulnerability of the appellant who was known by the respondent to be suffering from a psychological injury, performing selected duties, and on sick leave at various times: *Perre v Apand Pty Ltd* (1999)198 CLR 180 at [10]-[11], [120], [123]. *Crimmins v Stevedoring Industry Finance Committee* (1999)200 CLR 1 at [100]. The appellant's known vulnerability was part of the "circumstances of the case" that should have been taken into account pursuant to s.145 (1) (a) of the *Police Act 1990*.

62. It was to the "circumstances of the case" that the Commissioner's Guidelines were issued, providing instructions for managing a complaint received about the conduct of one of its officers (J[398] to [406], [509]). The guidelines were published

[9] The appellant was required to provide a urine sample to a female officer in the female toilets of his home station; circumstances that made him feel so humiliated that he contemplated self-harm: J[205]-[211]).

pursuant to s. 8(4) of the *Police Act 1900* and were, at the relevant time, binding on members of the New South Wales Police Force.

63. The Guidelines provided that the appellant was "entitled to have his complaint handled discreetly" (J[399]). However, it was not (J[205]-[209]). It also provided that the investigating officers "must consider the welfare of the subject officer": J[403].

64. Steps should have been taken by the respondent having regard to the circumstances of the appellant's case whether dictated by the *Police Act 1990,* the Commissioner's Guidelines, or common sense not to cause the appellant's injury to worsen. The words "effective and timely" as they appear in s.145 does not provide carte blanche to the servants and agents of the respondent to do as they pleased with respect to the investigation into the appellant without reasonable regard for the appellant's circumstances.

**Part VII: Relevant Statutory Provisions**

65. *Police Act 1990* ss.8 (4), 145, 170, 211AA.

66. *Police Regulation 2008,* reg.8.

**Part VIII: Orders Sought**

1. Appeal allowed with costs.

2. Judgment and orders of the New South Wales Court of Appeal set aside. In lieu thereof the respondent's appeal to that Court be dismissed with costs.

**Part IX: Duration Estimate**

67. The appellant estimates that his oral argument will take two hours.

Dated: -- June 2017

**D.F. Jackson QC**
New Chambers
Level 34, 126 Phillip Street
SYDNEY NSW 2000
Email: jacksonqc@newchambers.com.au
Tel: (02) 9151 2009 Fax: (02) 9233 1850

**IDM Roberts SC**
Elizabeth St Chambers
Email: Roberts@estc.net.au
Tel: (02) 9232 7020 Fax: (02) 9336 5353

**T Ower**
4 Wentworth Chambers
Email: tower@wentworth.com.au
Tel: (02) 9232 2722

Counsel for the Appellant

To: The Respondent [address]

TAKE NOTICE: Before taking any step in the proceedings you must, within 14 DAYS after service of this application, enter an appearance in the office of the Registry in which the application is filed, and serve a copy on the appellant.

THE APPELLANT IS REPRESENTED BY:

Cardillo Gray Partners
Level 1, Cnr Auckland and Hunter Streets
NEWCASTLE NSW 2300
Reference: Stuart Gray
Tel: (02) 4910 0677
Fax: (02) 8287 2506
Email: law@cardillograypartners.com

# Police Act 1990 No 47

Current version for 6 January 2017 to date (accessed 15 June 2017 at 13:17)



## 8 Commissioner to manage and control NSW Police Force

(1) The Commissioner is, subject to the direction of the Minister, responsible for the management and control of the NSW Police Force.

(2) The responsibility of the Commissioner includes the effective, efficient and economical management of the functions and activities of the NSW Police Force.

(3) The Commissioner may classify the various duties that members of the NSW Police Force are required to perform and allocate the duties to be carried out by each such member.

(4) The Commissioner may issue (and from time to time amend or revoke) instructions to members of the NSW Police Force with respect to the management and control of the NSW Police Force.

(4A) The Commissioner (on behalf of the Crown) may make or enter into contracts or arrangements with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise of the functions of the NSW Police Force.

(5) This section is subject to the other provisions of this Act and the regulations.

# Police Act 1990 No 47

Current version for 6 January 2017 to date (accessed 15 June 2017 at 13:19)



## 145 Conduct of investigation

(1) The police officer or police officers carrying out an investigation:

(a) must carry out the investigation in a manner that, having regard to the circumstances of the case, is both effective and timely, and

(b) in carrying out the investigation, must have regard to any matters specified by the Commissioner or Ombudsman as needing to be examined or taken into consideration.

(2) If the complaint under investigation is indicative of a systemic problem involving the NSW Police Force generally, or a particular area of the NSW Police Force, the investigation may extend beyond any police officer to whom the complaint relates:

(a) to the NSW Police Force generally, or that particular area of the NSW Police Force, and

(b) to other police officers and other members of the NSW Police Force.

(3) (Repealed)

# Police Act 1990 No 47

Current version for 6 January 2017 to date (accessed 15 June 2017 at 13:19)



## 171 Part not to affect police officers' other powers and duties

(1) This Part does not operate to absolve a police officer who receives a complaint from liability to perform any duty imposed on the police officer otherwise than by this Part.

(2) Action on a complaint may be taken otherwise than under this Part (including action involving criminal proceedings and action under Part 9) even if action on the complaint has yet to commence or is in progress under this Part.

(3) This section has effect despite any other provision of this Part.

# Police Act 1990 No 47

Current version for 6 January 2017 to date (accessed 15 June 2017 at 13:19)



## 211AA Testing of officers for steroids

(1) An authorised person may require any police officer who is on duty in accordance with a roster to provide a sample of the police officer's urine for the purpose of testing for the presence of steroids. The selection of police officers for testing pursuant to this subsection is to be conducted on a targeted basis, as determined by the Commissioner.

(2) The regulations may make provision for or with respect to the following:

(a) the authorisation of persons:

(i) to administer tests for the purpose of detecting the presence of steroids, and

(ii) to operate equipment for that purpose,

(b) the conduct of testing,

(c) the taking of samples of urine,

(d) the devices used in carrying out tests,

(e) the accreditation of persons conducting analyses for the presence of steroids,

(f) the procedure for the handling and analysis of samples of urine,

(g) offences relating to interference with test results or the testing procedure,

(h) the confidentiality of test results,

(i) requests for production of medical prescriptions for steroids and offences relating to failure to comply with such requests.

(3) The annual report of the NSW Police Force prepared under the *Annual Reports (Departments) Act 1985* must include details of:

(a) the number of tests for steroids conducted during the relevant year, and

(b) the number of those tests that indicated that a police officer had tested positive for the presence of steroids.

(4) In this section:

***authorised person*** means a person authorised in accordance with the regulations to conduct tests for the purposes of this section and the regulations.

***steroid*** means anabolic and androgenic steroidal agents included in Schedule Four to the Poisons List under the *Poisons and Therapeutic Goods Act 1966*.



4

(2) Superintendents and inspectors:

(a) if in charge of a Local Area, are responsible for the peace and good order of the Area, and

(b) are responsible for the proper performance of duty by police officers, administrative officers and temporary employees under their control.

(3) Police officers, if in charge of a Branch, Section or Special Task Force, are responsible for the proper performance of duty by police officers, administrative officers and temporary employees under their control.

### 7 Oath or affirmation of office for police officers

(1) The form of the oath required to be taken by a police officer under section 13 of the Act is as follows:

I, , do swear that I will well and truly serve our Sovereign Lady the Queen as a police officer without favour or affection, malice or ill-will until I am legally discharged, that I will cause Her Majesty's peace to be kept and preserved, and that I will prevent to the best of my power all offences against that peace, and that while I continue to be a police officer I will to the best of my skill and knowledge discharge all my duties faithfully according to law. So help me God.

(2) The form of the affirmation is the same as the form of the oath, except that:

(a) the words "solemnly, sincerely and truly declare and affirm" are to be substituted for the word "swear", and

(b) the words "So help me God" are to be omitted.

### 8 Performance of duties by police officers

(1) Police officers are to comply strictly with the Act and this Regulation and promptly comply with all lawful orders from those in authority over them.

(2) In particular, a police officer is required:

(a) to serve wherever the officer is duly directed, and

(b) to perform such police duty as may be duly directed, whether or not during the officer's rostered hours of duty.